

'Objection!': Baker & Hostetler Partner Accused of Tanking His Deposition

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What You Need to Know

- Roche Diagnostics has asked a special master to allow a second deposition of attorney Lee Rosebush based on what it says were evasive answers the first time.
- Rosebush is accused in the suit of participating in a fraud scheme involving the sale of diabetic test strips.
- At the deposition, Rosebush gave

An attorney who is a defendant in a New Jersey insurance fraud suit is being asked to sit for a second deposition after allegedly giving evasive answers the first time around.

Lee Rosebush allegedly “consistently interposed lengthy, nonresponsive and scripted answers to even the most basic of questions,” and therefore should be compelled to undergo additional questioning, plaintiff Roche Diagnostics Corp. claimed in a March 3 motion that seeks to compel a do-over.

Roche, which said Rosebush was part of an insurance fraud enterprise that cost the company \$87 million in sales of diabetic test strips, is asking a special master to enact safeguards to ensure he will give responsive answers if a second round of questioning is granted.

Allegedly False Insurance Claims

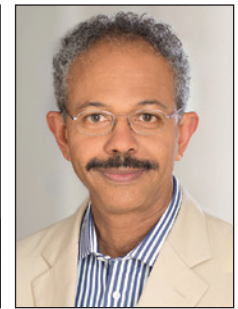
The suit, filed in 2019, said Rosebush, of Baker & Hostetler in Washington, D.C., was outside counsel to Alliance Medical Holdings, a Sandy, Utah-based company, and later joined its board of directors.



**Geoffrey Potter of
Patterson Belknap
Webb & Tyler.**



**Lee Rosebush of
Baker &
Hostetler.**



**Peter Harvey of
Patterson Belknap
Webb & Tyler.**

Courtesy photos

Rosebush was allegedly architect of a strategy in which Alliance purchased small, local pharmacies to carry out the fraud, the suit said.

The pharmacies bought diabetic test strips from Roche which were intended for sale to persons whose insurance plans covered the product as a medical benefit, the suit claimed.

But the pharmacies instead allegedly sold the strips to people whose insurance plans cover test strips as a pharmacy benefit, then submitted insurance claims falsely representing that they dispensed retail strips, the suit claimed.

Through its alleged actions, Alliance and its related companies allegedly illegally exploited the substantial difference in wholesale list price and insurance reimbursement rates between strips intended for medical beneficiaries and the strips intended for pharmacy beneficiaries, the suit said.

A large portion of this activity allegedly took place in New Jersey, the site of the largest pharmacy affiliated with Alliance, Peterson Pharmacy in South Amboy.

The suit is filed in U.S. District Court in Newark.

Request for Second Deposition

Rosebush's Jan. 26 deposition was held at the Houston office of his attorney, Rick Anderson of Husch Blackwell, even though Texas has no connection to the case.

Roche asked Special Master Dennis Cavanaugh, a former federal judge now with McElroy, Deutsch, Mulvaney & Carpenter in Morristown, New Jersey, in the motion if a second deposition could be held at Cavanaugh's law office. That way, the special master could be summoned if any dispute arises, the motion said.

In an example cited in the motion, Rosebush's deposition went awry when he gave answers that didn't match the questions asked. The suit claims that unique identifiers for each package of strips, a 10-digit code called the National Drug Code, was changed to facilitate the fraud. Rosebush was asked if he knew of that practice.

"Rather than answer the question properly—that is, with a 'Yes' or a 'No'—and thereby admit his knowledge of the fraud, Rosebush chose to change the subject by interjecting his self-serving understanding of the [pharmacy benefit manager] audits," the Roche motion states.

When a lawyer for Roche, Geoffrey Potter of Patterson Belknap Webb & Tyler, asked Rosebush again about whether the codes were switched, Anderson said, "Objection, form."

Rosebush then said "my understanding of the [pharmacy benefit manager] audits ..." as Potter cut in, saying, "I'm not asking you about the PBM audits. I'm asking you about what did Alliance do." To that, an attorney for other defendants in the case, Christopher Borchert of Alston & Bird, responded, "Geoff, objection. You have to let the witness answer—finish his answer."

Anderson then said, "Go ahead, finish your answer, Lee." Rosebush responded, "My understanding of the PBM audits were that they were looking at where the documents came from."

Potter then asked, "And my question to you, sir, is: Did Alliance submit for reimbursement a different NDC code than the NDC code on the box that was dispensed to the patient?" Anderson then said "Objection, form." Another defense lawyer in the case, John

Drosick of Winston & Strawn, added, "And objection. Asked and answered. Rosebush then said "Can you repeat the question?"

"So began a pattern that would persist throughout the deposition. Time and time again, plaintiffs pressed Rosebush on his knowledge of, and participation in, the Alliance fraud. Whenever a truthful answer would reflect poorly on him, Mr. Rosebush would veer off course and reiterate—often with identical words, emphases, cadence, and gestures—his scripted, and completely non-responsive, speech about the nature of the PBM audits," the motion says.

Specialty Area

Anderson and his local counsel, Paul Carbon of Margolis Edelstein in Berkeley Heights, New Jersey, did not respond to calls about the motion.

Rosebush, reached at his office, referred questions to his attorneys.

Peter Harvey of Patterson Belknap in New York submitted the motion on behalf of Roche.

Harvey was attorney general of New Jersey from 2003 to 2006. He did not respond to a call about the case. The Roche suit is being heard along with another, also brought by Harvey, raising similar allegations on behalf of another diabetic test strip manufacturer, LifeScan Inc., against many of the same defendants, but Rosebush is not a party in the LifeScan case.

Rosebush was allegedly aware of and openly discussed Alliance's alleged fraudulent billing practices, and allegedly knew that buying the small pharmacies was intended to improve Alliance's ability to profit from fraudulent activity, the suit claims.

Rosebush is one of 10 individuals named as defendants in the Roche suit.

Rosebush told Law.com affiliate The National Law Journal in an April 2022 article that he specializes in pharmacy law and was a pharmacist before he became a lawyer. He said he has kept his pharmacist license active after changing professions, in order to keep up with developments impacting the profession.

Discussing his representation of pharmacists in the article, Rosebush said, "[My] area of the law is a very, very small bar. Off the top of my head, I would tell you there's maybe three to five people who do what I do."