

## Roche Blasts Attys' 'Misconduct' In Diabetes Fraud Deposition

By Aaron West

*Law360 (March 14, 2023, 10:53 PM EDT)* -- A plaintiff in a derailed deposition for a diabetes test strip fraud case wants a do-over in the office of a special master after alleged "misconduct" by the defendant, who is a BakerHostetler attorney, and his counsel disrupted the proceedings.

In the January deposition, plaintiff Roche Diagnostics Corp. was questioning defendant Lee Rosebush — an attorney at Washington D.C.-based BakerHostetler — about his role in the purported fraud scheme. The deposition was allegedly derailed when Rosebush "consistently interposed lengthy, nonresponsive and scripted answers to even the most basic of questions." According to the Indianapolis-based company's motion — dated March 3 and filed with the court Tuesday — Winston & Strawn attorney John Drosick and Husch Blackwell attorney Rick Anderson "compounded" the situation with meritless objections and by advising Rosebush to repeat his "non-responsive answers."



Geoffrey Potter

Roche in its motion clarified that it's not asking for sanctions or costs — just for another shot at deposing Rosebush, but this time in the office of a special master who can make sure the proceeding stays on track.

"The conduct of Rosebush and his counsel fell far short of the standard set by the Federal Rules of Civil Procedure," Roche said in its motion. "Nevertheless, Plaintiffs are not seeking sanctions; nor are they seeking their costs. They only ask that they be permitted to conduct depositions unimpeded by misconduct."

During the deposition, Roche said Rosebush repeatedly obstructed its questioning with "evasive and nonresponsive" testimony. At times, Roche alleged, he was "aided" by Drosick and Anderson, who "encouraged" the misconduct with "asked-and-answered" objections the company said were meritless.

For example, when Roche asked Rosebush about the alleged insurance fraud the underlying case concerns, and whether he was aware that fraud had taken place, instead of answering "yes" or "no," Rosebush sought to change the subject, Roche claims. When Roche attempted to ask the question again, the attorneys objected, saying his client had already answered the question.

"So began a pattern that would persist throughout the deposition," Roche said in its motion.

The parties weren't immediately available for comment on Tuesday.

The underlying case, which was filed in 2019, concerns a multiyear insurance fraud allegedly perpetrated by officials of now-defunct Alliance Medical Holdings LLC. Roche claims that Alliance's former officers and directors conspired with its financial backers to carry out the alleged scheme, which involved fraudulently obtaining pharmacy insurance benefits from diabetes testing strips that weren't meant for drug store sales, causing Roche to pay \$87 million in rebates.

A countersuit filed in November by Zions Bancorporation NA alleges that Roche contributed to the fraud by allowing Alliance to go outside the companies' distribution agreements for the test strips at issue and seeks accounting for how many rebates Roche paid to pharmacy benefit managers during the fraud.

Roche is represented by Peter C. Harvey, Geoffrey Potter, Aron Fischer and Tara J. Norris of Patterson Belknap Webb & Tyler LLP.

Zions is represented by Liza M. Walsh, Peter J. Pizzi, Stephen V. Falanga, Marc D. Haefner, William T. Walsh Jr. and Francis W. Yook of Walsh Pizzi O'Reilly Falanga LLP.

The case is Roche Diagnostics Corp. et al. v. Smith et al., case number 2:19-cv-08761, in the U.S. District Court for the District of New Jersey.

--Editing by Rich Mills.