

TEXAS LAWYER

Fraud, Conspiracy Claims Persist Against BakerHostetler and Brown & Fortunato

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What You Need to Know

- Amended complaints have been filed against Baker & Hostetler and Brown & Fortunato alleging legal malpractice and various torts.
- The plaintiff is the liquidating trustee in the bankruptcy of Alliance Health.
- The law firms allegedly enabled Alliance to conceal its fraudulent activities, causing \$100M in losses to manufacturers and pharmacy benefit managers.

The liquidating trustee in the bankruptcy of Alliance Medical Holdings LLC amended complaints on Friday against BakerHostetler and Brown & Fortunato.

The defendants are law firms that represented Utah-based Alliance Health during the years immediately preceding a 2017 FBI raid that shut off their access to cash and forced the company into bankruptcy.

Yvette Austin is the trustee for Alliance Health Liquidating Trust. Austin filed suit against Baker & Hostetler in September 2022, alleging nine counts that include legal malpractice, conspiracy and fraud. Austin sued on behalf of creditors LifeScan Inc., Roche



BakerHostetler logo

Diagnostics Corp. and Roche Diabetes Care Inc., leading manufacturers of blood glucose test strips.

The law firms were alleged to have provided legal services to Alliance that enabled the company to cause more than \$100 million in damages. Alliance’s business model relied on an illegal misdirection of test strips—routing “not for retail” products to pharmacies to be sold at retail prices, the amended complaints state.

In an April filing by Vinson & Elkins defense attorney George Kryder—a reply supporting

Baker's motion to dismiss Austin's complaint—he argued the direct tort claims fail because they improperly seek contribution from Baker.

"Their claims also fail for lack of causation because (Austin) doesn't allege that Alliance was unaware that its conduct was illegal, or would have changed its self-sustaining behavior with different legal advice," Kryder argued.

"By plaintiff's own admission, 'despite ... repeated and explicit warnings that the Questionable Business Practices harmed manufacturers like Roche, Alliance continued that practice—at Alliance officers' direction—until it was raided by the FBI,'" the Kryder response states.

The Baker defenses also argued indirect claims should fail because they are time-barred because the plaintiffs knew of Alliance's fraud scheme more than four years before any purported tolling agreements. In addition, the pharmacy benefit managers or manufacturers could not have relied on Baker's adversarial submissions on behalf of Alliance.

The case remains before U.S. Bankruptcy Judge Marvin Isgur in the Southern District of Texas-Houston Division, with no ruling on the motion to dismiss.

Friday's amended complaints restate that the law firms enabled and provided cover to Alliance's deceitful management, directors and executives.

The complaint against Brown, for instance, asserts Brown and its attorneys had intimate knowledge of the scheme ... as its outside health care regulatory counsel.

"Sworn testimony of former Alliance executives, dispensing [not-for-retail] strips and submitting improper insurance claims for retail strips was the 'foundational practice' of Alliance and an 'integral part of [Alliance's] business model.' The practice was openly discussed among all or certain of Alliance's senior management, its Board of Directors, its key investors and, most importantly for purposes of this lawsuit, Brown," the complaint alleges.

Rebutting Baker's claim that Alliance knew its actions were illegal and would not change its business operations regardless of Baker's counsel, the liquidating trustee asserted the complaint against the firm the following:

"Baker knew of the legal risks created by the Questionable Business Practices and, at one point, advised Alliance to do a limited self-disclosure to the inspector general of the U.S. Department of Health and Human Services. However, as described below, Baker later changed its advice and recommended Alliance not self-disclose when Baker learned that the risk of private civil litigation arising from self-disclosure was greater than the risk of government investigation.

"Alliance followed Baker's advice, and the fraud remained concealed. Had Baker advised Alliance to discontinue its Questionable Business Practices in the other contexts described herein, Alliance would have done so," the complaint versus Baker said.

The liquidating trustee is represented by the McKool Smith trial team of principals Kyle Lonergan, Joshua Newcomer and James Smith.