

**BLOOMBERG LAW**

# Roche, LifeScan Proceed in Diabetes Test Strip Fraud Suits

**By Mary Anne Pazanowski  
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Two diabetes test strip makers can move forward with New Jersey-based federal lawsuits alleging that they've been defrauded of millions due to an illegal scheme perpetrated by former employees and business partners of Alliance Medical Holdings LLC.

Roche Diagnostics Corp. and LifeScan Inc. alleged that they lost millions in profits between 2013 and 2017 because they were forced to pay rebates to Alliance-related entities that allegedly sold "retail" blood glucose test strips to customers, when they'd actually sole "wholesale" strips that weren't eligible for rebates.

The allegedly fraudulent scheme operated nationwide, and involved pharmacies in Arizona, California, Florida, Georgia, Iowa, Illinois, Kentucky, Maryland, Michigan, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Utah, and Virginia, the companies said. A New Jersey pharmacy, in particular, submitted fraudulent claims for more than 12 million test strips in a three-year period, they said.

The defendants are facing similar lawsuits in Michigan and Alabama.

Roche and LifeScan make test strips used by people with diabetes to check their blood sugar levels. They sell some of the strips to distributors for about \$46 to \$78 per box. Distributors sell the boxes to retail pharmacies or durable medical equipment suppliers.

Retail pharmacies sell the strips directly to patients, whose insurers then reimburse the costs. Roche and LifeScan provide rebates ranging from \$30 to \$70 dollars per box to the insurers.

The manufacturers sell other strips exclusively to mail-order sellers for less than \$24 per box. Insurers reimburse these entities for only the small markup they charge the ultimate buyers. Roche and LifeScan don't pay insurers rebates for these boxes.

## **FRAUD SCHEME**

The allegedly fraudulent scheme was relatively simple. The Alliance-related entities bought wholesale strips from mail-order sellers at the lower price, then distributed them to patients

through retail pharmacies as if they'd been bought from distributors at the higher price. Insurers reimbursed their members for the retail prices, then obtained rebates from Roche and LifeScan.

Judge Claire C. Cecchi, of the US District Court for the District of New Jersey, denied the defendants' motion to dismiss the suit Sept. 30.

Roche and LifeScan adequately pleaded claims for civil violations of the federal Racketeer Influenced and Corrupt Organizations Act by alleging that the defendants engaged in a pattern of racketeering activity by submitting false reimbursement claims involving misrepresentations calculated to deceive the manufacturers, the court said.

They also sufficiently alleged that the Alliance-affiliated pharmacies used mails and wires to carry out this scheme "on thousands of occasions," and that it was reasonably foreseeable to the officer, director, and shareholder defendants that they would do so, the court said.

The plaintiffs also adequately alleged that a RICO enterprise consisting of several distinct entities existed solely for the purpose of carrying out the fraudulent scheme over a period of several years, the court said. The complaint also stated a claim for RICO conspiracy, it said.

Roche and LifeScan can also move forward on claims under New Jersey law for fraud, negligent misrepresentation, unjust enrichment, and tortious interference with business relationships, Cecchi [said](#) in the unpublished opinion.

Patterson Belknap Webb & Tyler LLP represents Roche and LifeScan. Kaufman Dolowich Voluck LLP, Gordon Rees Scully Mansukhani LLP, Pryor Cashman LLP, Midlige Richter LLC, Dentons US LLP, Mintz & Gold LLP, Chiesa Shahinian & Giantomasi PC, Margolis Edelstein, Walsh Pizzi O'Reilly Falanga LLP, Winston & Strawn LLP, and Alston & Bird LLP represent the defendants.

The cases are [LifeScan Inc. v. Smith](#) , D.N.J., No. 17-cv-5552, unpublished 9/30/22 ; [Roche Diagnostics Corp. v. Smith](#) , D.N.J., No. 19-cv-8761, unpublished 9/30/22 .



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