

Health Care Co., Feds End Dispute Over Seized Documents

By **Sarah Jarvis**

Law360 (April 17, 2023, 7:39 PM EDT) -- Harbor Healthcare System LP has resolved a lawsuit it brought against the federal government over prosecutors' seizure of allegedly privileged documents from the company's compliance director in a False Claims Act investigation, following a Fifth Circuit ruling in the health care company's favor.

U.S. District Judge Andrew S. Hanen signed a one-page order Friday dismissing the case with prejudice and leaving each party to handle their own costs and fees. The parties had filed a joint stipulation of dismissal the same day, indicating they resolved the case.

That filing doesn't detail the terms of their resolution. Counsel for Harbor didn't immediately respond to a request for comment or details about the resolution on Monday, and a representative for the U.S. Attorney's Office for the Southern District of Texas declined to comment.

According to court documents, the U.S. Department of Health and Human Services requested information on certain Harbor patients after the company was hit with two *qui tam* lawsuits alleging violations of the False Claims Act in 2014 and 2016. The U.S. Department of Justice subsequently issued its own civil investigative demand to the company in 2017.

Harbor's compliance director, Eric Sprott, coordinated the responses to both agencies, according to court documents. Sprott isn't named as a defendant in the instant case.

Later in 2017, federal prosecutors executed search warrants on Harbor, seizing 29 smartphones, 20 computers and hard drives, and the email accounts of 17 employees, according to court documents. Among the items seized were Sprott's computer, email account, iPhone and all the paper documents in his office.

Harbor argued that the materials seized from Sprott contained information protected by attorney-client privilege, including communications regarding the government's civil investigative demand, according to court records.

The health care company filed suit in the Southern District of Texas in 2018, requesting leave to file a motion for return of property and judicial intervention. The following year, the court granted the government's request to dismiss the case, after Harbor identified more than 3,800 emails from Sprott's account as privileged, according to court documents.

The health care company appealed to the Fifth Circuit, which in 2021 reversed and remanded the case to the district court, finding that the lower court misunderstood the harm Harbor alleged and improperly equated return of property with suppression of evidence. The appellate court also found that the lower court abused its discretion by refusing jurisdiction over Harbor's motion seeking return of its documents, court records show.

"The district court incorrectly concluded that the government did not show a 'callous disregard' for Harbor's rights simply because it obtained search warrants prior to seizing Harbor's privileged materials," the Fifth Circuit found. "But it is a stipulated fact in this case that 'the government did not seek express prior authorization from the issuing magistrate judge for the seizure of attorney-client privileged materials.'"

In October 2021, Judge Hanen ordered the government to return to Harbor all hard copies of documents it obtained from Sprott that were designated as privileged and to destroy all electronic versions of such documents, court records show.

A representative for HHS didn't immediately confirm Monday whether its investigation into Harbor is still open, and a representative for the DOJ's Civil Division couldn't confirm whether its own investigation was still pending.

According to its website, Harbor was founded in 2005 and handles functions such as accounting services, information technology, human resources and clinical operations for a network of health care professionals across the country. Its affiliated entities cover hospice, clinics and medical devices, among other things.

Harbor is represented by Gregory S. Saikin and Patrick T. Lewis of BakerHostetler and Edmund W. Searby of Porter Wright Morris & Arthur LLP.

The U.S. is represented by Assistant U.S. Attorney Brad R. Gray of the U.S. Attorney's Office for the Southern District of Texas.

The case is Harbor Healthcare System LP v. U.S., case number 4:18-cv-03195, in the U.S. District Court for the Southern District of Texas.

--Editing by Daniel King.