

Bakotic / Bako Litigation Frequently Asked Questions

1. Why is Bako Diagnostics involved in litigation with Dr. Bradley Bakotic and Dr. Joseph Hackel?

- Dr. Bakotic and Dr. Hackel filed a lawsuit on December 27th, 2017 against Bako Diagnostics asking a court to void certain contractual promises they made regarding their post-Bako activities.
- In response, Bako Diagnostics filed [counterclaims](#) on February 12th, 2018 to protect its business and safeguard these important contractual promises. The [counterclaims](#) describe all of the contractual promises made by Dr. Bakotic and Dr. Hackel when they sold interests in Bako in 2016 for over \$30 million and \$14 million, respectively.
- Additionally, they outline the circumstances under which Dr. Bakotic was terminated for cause from Bako, including findings of inappropriate sexual relationships with employees, hitting an employee and drug use.
- Separately, as a result of Dr. Bakotic's continued disregard for his non-compete agreements since the litigation began, Bako Diagnostics recently filed a lawsuit against Dr. Bakotic on July 18th, 2018 in an effort to protect its business after Dr. Bakotic's continued attempts to disrupt the company's operations and our conclusion that Dr. Bakotic's Rhett Foundation was being used as a tool to directly violate his non-compete agreement.
- All of Bako Diagnostics' legal filings can be viewed in their entirety here: www.BakoticBakoLitigation.com

2. Why was Dr. Bakotic terminated as CEO of Bako Diagnostics in the first place?

- Dr. Bakotic was dismissed from Bako in September 2017 following an investigation by Latham & Watkins, an independent law firm, into allegations of egregious misconduct including striking an employee and inappropriate sexual relationships with subordinates.
- The company first learned of the matter when the Board of Directors received a [letter](#), complete with graphic images, making specific allegations about Dr. Bakotic's conduct from an attorney representing a subordinate employee.
- Immediately upon learning of this information, Bako and its Board of Directors formed a Special Committee to investigate the allegations, retained Latham & Watkins, an independent law firm, to lead the inquiry, and placed Dr. Bakotic on administrative leave.
- Latham & Watkins conducted a comprehensive investigation, during which Dr. Bakotic himself admitted, with his lawyer present, to much of the alleged behavior, and the law firm was able to corroborate many of the allegations against Dr. Bakotic, including sexual relationships with subordinate employees, hitting an employee and drug use. Latham & Watkins ultimately recommended that he be terminated.

3. How confident is Bako Diagnostics that Dr. Bakotic committed the acts that he was accused of?

- Bako Diagnostics is extremely confident in the integrity of the investigation that led to Dr. Bakotic's dismissal from Bako.
- Upon learning of the allegations against Dr. Bakotic, Bako and its Board of Directors worked quickly to address the concerns and relied on outside counsel, Latham & Watkins, to conduct a comprehensive, independent investigation.

- During that investigation Dr. Bakotic admitted, with his lawyer present, to instances of misconduct, including sexual relationships with subordinate female employees, as well as physically striking one of the female employees with whom he was having an ongoing relationship.
- While Dr. Bakotic has since stated he did not settle with the female employee, his statements are in direct contrast to what her legal counsel publicly confirmed in February 2018 when her lawyer told Delaware Law Weekly affiliate [Daily Report](#) that his client reached confidential agreements with Bakotic and the company.
- Further, Dr. Bakotic's legal counsel has currently stopped the female employee from testifying and producing her agreement with Dr. Bakotic.

4. Why did Bako Diagnostics seek a temporary restraining order (TRO) against Dr. Bakotic?

- As a result of Dr. Bakotic's continued disregard for his non-compete agreements, Bako Diagnostics recently sought a temporary restraining order against Dr. Bakotic on July 18th, 2018 in an effort to protect its business after Dr. Bakotic's continued attempt to disrupt the company's operations and our conclusion that Dr. Bakotic's Rhett Foundation was being used as a tool to directly violate his non-compete agreement.
- Initially, Bako Diagnostics was supportive of Dr. Bakotic's intention to continue lecturing and educating in the podiatry community and if Dr. Bakotic would simply abide by the terms of his non-compete agreement, this TRO would no longer be necessary.
- In fact, Bako did not rule out a future role for Dr. Bakotic to serve in an advisory capacity to the company, if he successfully completed counseling and demonstrated that he could be a good corporate citizen. At the time, the committee was hopeful that Dr. Bakotic would recognize his digressions and seek the appropriate help he needed to rejoin the Bako community as outlined in his [termination letter](#).
- But despite many months of discussions aimed at finding an amicable solution, we took this action in response to Dr. Bakotic's continued attempt to disrupt the company's business operations and our conclusion that Dr. Bakotic's Rhett Foundation is being used as a tool to directly violate his non-compete agreement.

5. Is Bako Diagnostics unfairly preventing Dr. Bakotic or Dr. Hackel from practicing medicine?

- No. Dr. Bakotic and Dr. Hackel voluntarily signed agreements that explicitly stated they would refrain from competing with Bako when they sold certain interests in Bako for over \$30 million and \$14 million, respectively, in 2016.
- These type of non-compete agreements are commonplace in business and are critical components of allowing Bako to continue to conduct business without unfair competition.

6. Dr. Bakotic claims that through this TRO, Bako Diagnostics is attempting to stop his Rhett Foundation from donating to or sponsoring educational programs in the podiatry space. Is this true?

- Bako Diagnostics remains fully committed to supporting education and the development of the next generation of podiatric professionals.
- Bako Diagnostics' actions come as a direct result of Dr. Bakotic's continued disregard for his non-compete agreements.

- Despite many months of discussions aimed at finding an amicable solution, we took this action in response to Dr. Bakotic's continued attempt to disrupt the company's business operations and our conclusion that Dr. Bakotic's Rhett Foundation is being used as a tool to directly violate his non-compete agreement.
- If Dr. Bakotic would simply agree to abide by the terms of his non-compete agreement, this TRO would not be necessary. Unfortunately, it is clear that Dr. Bakotic's goals with the Rhett Foundation are not altruistic as he claims and instead he is focused on using the Foundation to damage and compete with Bako.

7. Did Bako Diagnostics know about Dr. Bakotic's egregious behavior before the investigation that led to his termination?

- The Board first learned of the matter when it received a [letter](#), complete with graphic images, making specific allegations about Dr. Bakotic's conduct from an attorney representing a subordinate employee.
- Upon learning of the allegations against Dr. Bakotic, the Board of Directors immediately formed a Special Committee to investigate, retained a prominent independent law firm to lead the inquiry, and put Dr. Bakotic on administrative leave.
- As illustrated by the prompt and decisive action taken, the company takes these matters very seriously and is committed to ensuring Bako's culture, quality control and operational standards are of the highest standards.

8. In the wake of Dr. Bakotic's termination, what actions has Bako Diagnostics taken to improve the company's culture?

- As illustrated by the prompt and decisive action taken by the Board regarding the alleged misconduct of Dr. Bakotic, Bako takes these matters very seriously and is committed to fostering an inclusive community where misconduct of any kind will not be tolerated.
- We have taken significant steps to ensure Bako's culture, quality control, and operational standards are of the highest standards.
- Over the past year, we have made it clear that Bako is a drug-free work environment that respects each employee, encourages growth and development and will not tolerate bullying or other forms of harassment.
- We have refreshed our drug testing policies and have implemented mandatory anti-harassment trainings for all employees.
- Bako is moving forward deliberately and constructively to ensure that Bako is well positioned to continue to grow and deliver the highest quality laboratory services and products to our valued customers.
- We are optimistic about the future of the industry and believe that it is important to stand up for what we believe is right and ethical in challenging times like these.

9. Is the lawsuit impacting Bako Diagnostics' ability to carry out its work?

- Bako's top priority has been and will continue to be protecting the integrity of our work, to ensure we deliver the highest quality laboratory services.
- We continue to provide the excellent service that our clients and their patients deserve and have come to expect from Bako.
- During 2018 alone, we have helped our physician partners diagnose over 1,000 malignancies in their patients.

10. What has Bako Diagnostics done since Dr. Bakotic's departure?

- Bako continues to expand its workforce of more than 250 employees, with new positions in dermatopathology/pathology, research and development, sales, marketing, and laboratory professionals.
- Bako established a Podiatric Medical Advisory Panel of a group of talented thought leaders who support our commitment to the Podiatric Medical and Surgical community. The Advisory Board guides us as we navigate, innovate, and grow as an organization committed to providing the highest quality laboratory services and products customized for the podiatric medical profession. We are confident that this group of distinguished podiatrists, educators, innovators, and scholars will help us evolve our processes, fortify our offerings, and continue in our educational endeavors to support all the medical professionals we serve.
- Bako expanded its Clinical Consultant – Podiatric Faculty to thirteen members, comprised of some of the most knowledgeable, accomplished, and dedicated podiatrists within the profession. They serve as valuable members of our organization to represent us at various local, state, and national medical conferences providing educational seminars and workshops, improving our educational endeavors with their respective talent and expertise in the field of podiatric medicine and surgery.
- Following Dr. Bakotic's departure, Executive Chairman Dr. Larry McCarthy was appointed as interim Chief Executive Officer. Dr. McCarthy has extensive management experience at healthcare companies and has played an integral role in Bako's growth since he joined the management team in 2011.
- In July, Bako announced the appointment of Ted Hull as Chief Executive Officer. Mr. Hull is a proven leader, with more than 25 years of industry experience and he is ideally suited to steer Bako Diagnostics through its next corporate chapter.
- Mr. Hull joins Dr. McCarthy, who will continue in his role as Executive Chairman, and a seasoned leadership team, all of whom have been with Bako for more than five years.

11. Does the appointment of Ted Hull as the new Chief Executive Officer of Bako Diagnostics have anything to do with the ongoing litigation?

- No, this decision has nothing to do with the Company's ongoing litigation.
- This announcement was part of the long-term plan for Bako Diagnostics. Since Dr. McCarthy took on the interim CEO position in August 2017, the goal was always to find a more permanent solution.
- Together, Dr. McCarthy, who continues as Executive Chairman, the Board and management team are confident that Mr. Hull is the right person to lead Bako Diagnostics through its next phase of growth.

12. What have been the effects on the company since Dr. Bakotic's departures?

- Business continues to grow as we provide superior services to an expanding physician customer base.
- Bako has entered into a number of new health plan laboratory provider agreements bringing our covered lives to more than 250 million including all five national health plans.
- Despite the ongoing distractions, Bako Diagnostics remains committed to supporting our more than 250 employees, current and potential clients, and the next generation of the podiatry community.

13. Dr. Bakotic claims that he was not paid over \$30 million by Consonance Capital in exchange for his interest in Bako Diagnostics. Is this true?

- As you can see in Bako Diagnostics' [counterclaims](#), Dr. Bakotic and Dr. Hackel voluntarily signed agreements that explicitly stated they would refrain from competing with Bako when they sold certain interests in Bako for over \$30 million and \$14 million, respectively, in 2016.

14. What is Bako Diagnostics asking for in its counterclaims?

- In the filing, Bako Diagnostics seeks to enforce the contractual promises made by Dr. Bakotic and Dr. Hackel, which say they will refrain from competing with Bako Diagnostics, soliciting its employees or clients, using its confidential information and intellectual property, and otherwise intentionally causing harm to the business.
- Bako Diagnostics is asking the Court to enforce these contracts and award the appropriate damages for the harm caused by Dr. Bakotic and Dr. Hackel. The company intends to do everything in its power to protect its business and safeguard these important contracts.

15. Where can I find more information about the litigation?

- The Court filings related to Bradley Bakotic, et al. v. Bakotic Pathology LP, et al; may be found under Case Number: N17C-12-337 WCC in the Superior Court of New Castle County, Delaware
- The Court filings related to Bako Pathology LP and BPA Holding Corp., v. Bradley Bakotic and Joseph Hackel; may be found under Case Number: 2018-0520- in the Chancery of the State of Delaware.