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Texas Universities Say Alliantgroup Schemed For Tax Credits

By **Michelle Casady**

Law360, Houston (August 24, 2017, 6:11 PM EDT) -- The University of Texas and the University of Houston systems filed a suit against Alliantgroup LP and WHR Architects Inc. in federal court Wednesday, alleging the tax consulting firm has engaged in a "nationwide scheme" to fraudulently transfer tax credits the universities should have benefited from to its own clients.

The university systems told the court in the complaint filed Wednesday that under section 179D of the Internal Revenue Code, governmental entity-owned properties — such as public universities — are eligible for a tax deduction for constructing energy-efficient buildings. Those entities, which cannot use the deduction directly because they don't pay income taxes, can then allocate that deduction to an engineer or architect, in exchange for a rebate or a reduction in design fees, according to the complaint. Alliantgroup has convinced public universities that it is a requirement they allocate the tax deduction, but it is not, the complaint alleges.

The university systems told the court that Congress intended it as an incentive for "decision makers" to build energy-efficient buildings and did not intend to benefit an "engineer, architect or other designer." If the university doesn't benefit from the allocation of a deduction, the suit states, then it only serves to benefit the private contractor's bottom line, and "no rational governmental entity will make its construction decisions" based on whether it increases the designer's profit.

According to the complaint, after WHRA was given the contract for various university system projects, it retained Alliantgroup to consult it on any tax deductions available.

At issue are allocation forms purportedly signed by authorized officials from the universities that transfer the tax credit to WHRA. Those forms — which transferred financial benefits exceeding \$1.6 million to Alliant and WHRA — are void for many reasons, including that they were not signed by an authorized official, the university systems alleged. According to the complaint, allocation forms cannot be signed until energy modeling has been done on the building, the building has been certified as energy efficient and the amount of the allocation has been determined and included on the form.

"Alliant, however, has engaged in a nationwide scheme to obtain defective and non-compliant allocation forms from thousands of government entities using misleading and deceptive practices," the complaint alleges. "Because Alliant touts itself as a leader with respect to Section 179D deductions, it knows that a valid allocation form must include the 'amount of the Section 179D deduction' and must be executed only on facts which are 'true, correct and complete.' Nevertheless, Alliant has attempted to obtain executed allocation forms from government entities prior to any energy modeling of the building, any independent certification of energy efficiency and any computation of the Section 179D deduction amount."

The complaint, which brings claims for fraud, misrepresentation and violations of the Racketeer Influenced and Corrupt Organizations Act, asks the court to award treble damages.

John T. Simpson, general counsel for Alliantgroup, issued a statement to Law360 via email on Thursday that the company was "disappointed" that the university systems had "been led into a frivolous lawsuit" against it and WHRA that "will not hold up in court."

"Time and again, various members of Congress have publicly stated that the Energy Efficiency Deduction 179-D was intended for the benefit of the architects, engineers and contractors that construct energy-efficient buildings," the statement reads. "It was not set up to provide paybacks to government entities."

Counsel for the university systems declined to comment Thursday.

The university systems are represented by Michael E. McCue and Alex J. Pilawski of Meadows Collier Reed Cousins Crouch & Ungermann LLP.

Counsel information for Alliantgroup and WHRA was not available Thursday.

The case is The University of Texas System and the University of Houston System v. Alliantgroup LP and WHRA Merger Sub II Inc., case number 4:17-cv-02588, in the U.S. District Court for the Southern District of Texas, Houston Division.

--Editing by Alyssa Miller.

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