

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

SMITH & NEPHEW, INC.,

Defendant.

CRIMINAL NO. _____

VIOLATIONS:

**18 U.S.C. § 371 (Conspiracy);
15 U.S.C. §§ 78dd-1 *et seq.* (Foreign
Corrupt Practices Act); and
18 U.S.C. § 2 (Aiding and Abetting)**

INFORMATION

The United States Department of Justice, Criminal Division, Fraud Section, charges as follows:

At all times material to this Information (unless specified otherwise):

GENERAL ALLEGATIONS

The Foreign Corrupt Practices Act

1. The Foreign Corrupt Practices Act of 1977 (“FCPA”), as amended, Title 15, United States Code, Sections 78dd-1, *et seq.*, was enacted by Congress for the purpose of, among other things, making it unlawful for certain classes of persons and entities to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value to a foreign government official for the purpose of securing any improper advantage, or of obtaining or retaining business for, or directing business to, any person. The FCPA also requires that any issuer of securities shall make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

Relevant Entities and Individuals

2. Smith & Nephew, plc (“PLC”) was incorporated in England and Wales and had its principal place of business in the United Kingdom. It issued and maintained a class of publicly-traded securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 781), which traded on the New York Stock Exchange. As such, it was required to file periodic reports with the United States Securities and Exchange Commission under Section 13 of the Securities Exchange Act (15 U.S.C. § 78m). Accordingly, PLC was an “issuer” within the meaning of the FCPA, 15 U.S.C. § 78dd-1(a). By virtue of its status as an issuer, PLC was required to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflected the transactions and disposition of assets of PLC and its subsidiaries, including those described below, which were incorporated into the books, records, and accounts of PLC.

3. Defendant Smith & Nephew, Inc. (“S&N”), a wholly-owned subsidiary of PLC, together with related companies, was a global manufacturer and supplier of orthopedic medical devices. S&N was incorporated in Delaware and headquartered in Memphis, Tennessee, and, through related companies and subsidiaries, maintained operations in a number of foreign countries. S&N was a “domestic concern” as that term is defined in the FCPA, 15 U.S.C. § 78dd-2(h)(1)(B).

4. Smith & Nephew Orthopaedics GmbH (“GmbH”), is a German corporation headquartered in Tuttlingen, Germany and reporting to S&N. GmbH operated a factory and sold its products through a distributor in Greece.

5. “Greek Distributor,” based in Athens, Greece, was an agent and distributor for S&N and GmbH in Greece.

6. “VP International,” a U.S. citizen, was Vice President for International Sales for S&N until May 2004 and was based in Memphis, Tennessee.

7. “Greece Sales Manager,” a U.S. citizen, oversaw S&N sales in Greece until September 2003 and was based in Memphis, Tennessee.

8. “Legal Advisor,” a U.S. citizen, was Senior Corporate Counsel for S&N and was based in Memphis, Tennessee.

Background

9. Greece has a national healthcare system wherein most Greek hospitals are publicly owned and operated. Health care providers who work at publicly-owned hospitals (“HCPs”) are government employees, providing health care services in their official capacities. Therefore, such HCPs in Greece are “foreign officials” as that term is defined in the FCPA, 15 U.S.C. § 78dd-2(h)(2)(A).

10. Until in or around late 1997, S&N and GmbH had standard relationships with the Greek Distributor’s entities in which they sold products at a discount to the “list” price and the Greek Distributor would re-sell to Greek HCPs and government hospitals at a profit. The arrangement provided that S&N and GmbH would cover marketing expenses for Greek Distributor, up to ten percent of sales.

11. Beginning in or around 1998, S&N and GmbH had various “marketing” arrangements with two offshore shell companies controlled by Greek Distributor, which provided that a percentage of sales made by Greek Distributor would be paid to the shell companies. Arrangements with a third offshore shell company provided for increased discounts to generate cash for improper purposes. No true services were provided in exchange for these

payments and discounts. S&N and GmbH maintained these relationships with Greek Distributor and his companies until in or around December 2007.

**COUNT ONE
(Conspiracy)**

THE CONSPIRACY AND ITS OBJECT

12. Paragraphs 1 through 11 of this Information are realleged and incorporated by reference as if set out in full herein.

13. From in or around 1998 through at least in or around June 2008, within the territory of the United States and elsewhere, defendant S&N and others, known and unknown, did unlawfully and knowingly combine, conspire, confederate, and agree to commit the following offenses against the United States:

a. to offer, pay, promise to pay, and authorize the payment of money and other things of value, to a person, while knowing that all or a portion of such money or things of value would be offered, given, or promised, directly or indirectly, to foreign officials of Greece for purposes of: (i) influencing acts and decisions of such foreign officials in their official capacities; (ii) inducing such foreign officials to do and omit to do acts in violation of the lawful duties of such officials; (iii) securing an improper advantage; and (iv) inducing such foreign officials to use their influence with a foreign government and instrumentalities thereof to affect and influence acts and decisions of such government and instrumentalities, in order to assist defendant S&N and others in obtaining and retaining business for and with, and directing business to, defendant S&N, in violation of Title 15, United States Code, Section 78dd-2; and

b. to knowingly falsify, and cause to be falsified, books, records, and accounts which were required, in reasonable detail, to accurately and fairly reflect the

transactions and dispositions of the assets of PLC, an issuer within the meaning of the FCPA, in violation of Title 15, United States Code, Sections 78m and 78ff.

PURPOSE OF THE CONSPIRACY

14. The purpose of the conspiracy was to secure lucrative business with hospitals in the Greek public health care system by making and promising to make corrupt payments of money and things of value to publicly-employed Greek HCPs.

MANNER AND MEANS OF THE CONSPIRACY

15. To achieve the objects and purpose of the conspiracy, defendant S&N and others used the following manner and means, among others:

a. It was a part of the conspiracy that defendant S&N, certain of its executives, employees, and affiliates agreed to sell to Greek Distributor at full list price, then pay the amount of the distributor discount - between 25 and 40 percent of the sales made by Greek Distributor - to an off-shore shell company controlled by Greek Distributor, in order to provide off-the-books funds for Greek Distributor to pay cash incentives and other things of value to publicly-employed Greek HCPs to induce the purchase of S&N products, while concealing the payments.

b. It was a further part of the conspiracy that at the end of each of PLC's fiscal years from in or around 1998 to in or around 2005, defendant S&N, its executives, employees, and affiliates falsely recorded or otherwise accounted for the payments to the shell companies on its books and records as "marketing services," in order to conceal the true nature of the payments in the consolidated books and records of S&N and GmbH; from in or around 2005 to in or around June 2008, S&N also mischaracterized the nature of certain sales in its consolidated books and records., which books and records were incorporated into the books and

records of PLC for purposes of preparing PLC's year-end financial statements, which were filed with the Securities and Exchange Commission in Washington, D.C

16. In total, from 1998 to 2008, defendant S&N, and its affiliates and employees, authorized the payment, directly or indirectly, of approximately \$9.4 million to Greek Distributor's shell companies, some or all of which was used to pay cash incentives to publicly-employed Greek HCPs to induce the purchase of S&N products.

OVERT ACTS

17. In furtherance of the conspiracy and to accomplish the unlawful objects, the following overt acts, among others, were committed within the territory of the United States and elsewhere:

18. In January 1998, GmbH signed a contract for "marketing services" with a shell company incorporated in the United Kingdom that was owned by Greek Distributor. The shell company did not perform any services and was paid approximately 40 percent of the sales made to Greek HCPs by Greek Distributor.

19. In or around May 1998, Greek Distributor met with Greek Sales Manager and S&N's Vice President for Marketing, and recommended that S&N also sign a contract for "marketing services" with an offshore shell company controlled by Greek Distributor.

20. In or around October 1998, an S&N executive in Memphis signed a contract for "marketing services" with a shell company ("Shell Company A") incorporated in the Isle of Man that was owned by Greek Distributor. Shell Company A did not perform any true services and was paid between 25 and 35 percent of the sales to Greek HCPs made by Greek Distributor.

21. In or around late fall 1999, the S&N Chief Financial Officer raised with S&N Legal questions from internal auditors about the payments to the Greek Distributor's shell companies.

22. On or around November 9, 1999, Greece Sales Manager met with Legal Advisor to discuss issues with GmbH's relationship with Greek Distributor, during which the fact that surgeons in Greece were being paid to use medical devices products was discussed; notes from the meeting include reference to the fact that such payments were "not legal or ethic[al]."

23. On or around November 17, 1999, Legal Advisor spoke with an employee of GmbH, notes from the call reflect that GmbH pays "promotion support," stating that it is the "same as Memphis [S&N]."

24. Also on or around November 17, 1999, Legal Advisor briefed a more senior S&N lawyer on the issue; notes from the meeting reflect that they discussed the fact that Greek Distributor was receiving "promotion support" from GmbH and that S&N was doing the same thing, but no services were received in exchange.

25. In or around January 2001, S&N renewed the contract with the Shell Company A purportedly to provide "marketing services" when in reality it was to provide bribes to Greek HCPs.

26. In or around February 2002, Greek Distributor traveled to Memphis, Tennessee and met with VP International and others regarding reductions in Greek government reimbursement rates for S&N products sold by Greek Distributor; during the meeting, Greek Distributor proposed that the discount to Greek Distributor be increased to account for the reimbursement reduction, without any reduction in the "marketing" payments to Shell Company A.

27. On or around February 23, 2002, VP International sent an email from Memphis, Tennessee to Greek Distributor, proposing that the "marketing" payments to Shell Company A should also be reduced.

28. On or around March 8, 2002, Greek Distributor sent an email from Athens to VP International in Memphis, Tennessee, copying Greece Sales Manager, stating, “the [Shell Company A] commission cannot be reduced for the time being, since it is already not sufficient to cover my company’s cash incentive requirements at the current market level, with major competitors paying 30-40% more than [Greek Distributor]. As I explained to you in Memphis (as well as during your last visit to Athens) I absolutely need this fund to promote my sales with surgeons, at a time when competition offers substantially higher rates. [Shell Company A]’s only reason for being is the need for cash incentives, a real pain in the neck but an unavoidable fact of Greek life;” Greek Distributor goes on to state, “In case it is not clear to you, please understand that I am paying cash incentives right after each surgery....” (Emphasis in original.)

29. In or around mid-2002, Greek Distributor and S&N agreed on an eight percent reduction in price on some products sold to Greek Distributor, with no reduction in “marketing” payments to Shell Company A.

30. In or around January 2003, the contract with Shell Company A was terminated and VP International in Memphis signed a new “marketing services” contract with a new shell company (“Shell Company B”), which was owned by Greek Distributor with which GmbH had a contract; although the contract stated that the shell company would charge based on a fee system, the invoices were still based on a percentage of sales by Greek Distributor of approximately 26 percent.

31. In or around mid-2004, internal auditors asked VP International about the payments to Shell Company A and Shell Company B due to an investigation into GmbH payments by foreign authorities.

32. On or around May 28, 2004, VP International left S&N.

33. On or around January 1, 2005, S&N entered into a “distribution” contract with a different shell company, incorporated in the United Kingdom, which was owned by Greek Distributor (“Shell Company C”). Shell Company C did not perform any true services but was a pass-through for Greek Distributor. Shell Company C received a 35 percent discount off its purchases of S&N orthopedic products sold in Greece, which Greek Distributor used to fund bribe payments to Greek HCPs.

34. In or around December 2004, GmbH terminated its relationships with Greek Distributor and related companies.

35. In or around April 2005, Greek Distributor contacted S&N about a reduction in reimbursement rates by the Greek government; S&N requested a marketing plan from Greek Distributor to justify further discounts to Shell Company C.

36. In or around May 2005, Greek Distributor met with an S&N representative, who informed Greek Distributor that it could not make payments to doctors, and that Greek Distributor would need to produce a marketing plan; no further steps were taken to ensure that Greek Distributor was not paying Greek HCPs.

37. In or around mid-February 2007, in connection with the acquisition of a company as a new subsidiary of S&N’s operations in Greece, an employee of Greek Distributor stated to an S&N employee that Greek Distributor was paying “incentives” to doctors and that the newly acquired company paid even higher incentives to Greek HCPs for purchasing medical products.

38. In or around June 2007, subsequent to completion of the acquisition of the company, Greek Distributor again noted to an S&N employee that he paid Greek HCPs for purchasing S&N’s products, but that he paid them at a lower rate than the Greek subsidiary of the newly-acquired company.

39. In or around December 2007, the contract between S&N and Shell Company C expired; however, S&N continued to sell products to Greek Distributor.

40. In or around June 2008, S&N terminated all relationships with Greek Distributor and related entities.

(All in violation of Title 18, United States Code, Section 371.)

COUNT TWO
(Foreign Corrupt Practices Act)

41. Paragraphs 1 through 11 and 17 through 40 of this Information are re-alleged and incorporated as if fully set forth herein.

42. From in or around 1998 through in or around at least June 2008, within the territory of the United States and elsewhere, defendant S&N, Inc., a “domestic concern” within the meaning of the FCPA, 15 U.S.C. § 78dd-2(h)(1)(B), corruptly and willfully made an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value to a person, and aided and abetted the same, while knowing that all or a portion of such money or thing of value would be offered, given, or promised, directly or indirectly, to foreign officials for purposes of: (i) influencing acts and decisions of such foreign officials in their official capacity; (ii) inducing such foreign officials to do and omit to do acts in violation of the lawful duty of such officials; (iii) securing an improper advantage; and (iv) inducing such foreign officials to use their influence with foreign governments and instrumentalities thereof to affect and influence acts and decisions of such governments and instrumentalities in order to assist defendant S&N, Inc. in obtaining and retaining business; to wit, in order to induce the purchase of S&N products by Greek HCPs, defendant S&N made and caused to be made, indirectly through Greek Distributor, improper payments totaling approximately \$9.4 million, knowing that some of the money would be paid to publicly-employed Greek HCPs.

(All in violation of Title 15, United States Code, Section 78dd-2 and Title 18, United States Code, Section 2.)

COUNT THREE

(Foreign Corrupt Practices Act, 15 U.S.C. § 78m, 18 U.S.C. § 2)

43. The allegations of paragraphs 1 through 11 and 17 through 40 of this Information are realleged and incorporated by reference as though set in forth in full.

44. From in or around 1998 through in or around at least June 2008, in the District of the District of Columbia and elsewhere, at the end of each of PLC's fiscal years, the books and records of S&N contained false characterizations of payments made to Greek Distributor to fund bribes paid to publicly employed Greek HCPs as "marketing services," as well as false characterizations of "discounts" given to Greek Distributor, and those books and records were incorporated into the books and records of PLC for purposes of preparing PLC's year-end financial statements, which were filed with the Securities and Exchange Commission in Washington, D.C.

(All in violation of Title 15, United States Code, Sections 78m and 78ff and Title 18, United States Code, Section 2.)

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Date: *6 February 2012*