

United States v. Smith & Nephew, Inc. (D.D.C. 2012)

Nature of the Business.

Smith & Nephew plc is a global medical company incorporated in England and Wales. It issued and maintained a class of publicly-traded securities which traded on the New York Stock Exchange. Smith & Nephew Inc. ("S&N Inc.") was a wholly-owned subsidiary of Smith & Nephew, plc, and was a global manufacturer and supplier of orthopedic medical devices. S&N Inc. was incorporated in Delaware and headquartered in Memphis, Tennessee.

Influence to be Obtained.

From about 1998 to about 2008, Smith & Nephew, through certain executives, employees, and affiliates, funded an offshore slush fund by selling products at full list price to a Greek distributor based in Athens and then paying the "distributor discount" to an offshore shell company controlled by the distributor. The distributor then paid cash incentives and other things of value to publicly-employed Greek health care providers to induce the purchase of medical devices manufactured by Smith & Nephew. The funds were recorded as "marketing services" to conceal the true nature of the payments in the consolidated books and records of Smith & Nephew and its subsidiaries.

Enforcement.

On February 6, 2012, the DOJ filed a criminal information against S&N Inc., charging S&N Inc. with violations of the FCPA's anti-bribery and books-and-records provisions and aiding and abetting the books and records provisions of the FCPA. On the same day, the DOJ entered into a three-year deferred prosecution agreement with S&N Inc. under which S&N Inc. agreed to pay a monetary penalty of \$16.8 million. Additionally, the agreement calls for a monitorship term of 18 months and self-monitoring and reporting for the remainder of the DPA period.

In a related settlement with the SEC, parent company Smith & Nephew plc agreed to pay approximately \$5.4 million in disgorgement and prejudgment interest.

Key Facts

Citation. *United States v. Smith & Nephew, Inc.*, No. 1:12-cr-00030 (D.D.C. 2012).

Date Filed. February 6, 2012.

Country. Greece.

Date of Conduct. 1998 – 2008.

Amount of the Value. \$9.4 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Shell Companies; Subsidiary Companies.

Foreign Official. Publicly-employed doctors and healthcare providers in Greece.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Anti-Bribery; Books-and-Records.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United Kingdom.¹

Total Sanction. \$16,800,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. Smith & Nephew PLC*.

Total Combined Sanction. \$22,226,799.

¹ Defendant Smith & Nephew, Inc. is a Delaware corporation headquartered in Memphis. Smith & Nephew Inc. is a wholly owned subsidiary of Smith & Nephew plc, a company incorporated in England and Wales and headquartered in the United Kingdom.