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Financial, Corporate Governance And M&A Litigation / White Collar Crime Alert - Major Medical Device Manufacturer Agrees To Pay $13.2 Million To Settle FCPA Charges

October 28, 2013 | Atlanta | Chicago | Columbus | Delaware | Elkhart | Fort Wayne | Grand Rapids | Indianapolis | Los Angeles | Minneapolis | South Bend

Stryker Corporation, a Michigan-based manufacturer of medical devices, has agreed to pay approximately $13.2 million to settle charges that it violated the Foreign Corrupt Practices Act's (FCPA) books and records and internal controls provisions due to improper payments made to foreign officials by foreign subsidiaries in Argentina, Greece, Mexico, Poland, and Romania. Among other things, Stryker was accused of booking payments as legitimate legal expenses, travel expenses, and charitable donations when in fact those payments constituted bribes to foreign officials to obtain a total of approximately $7.5 million in illicit gains.

The settlement, which the Securities and Exchange Commission (SEC) announced Oct. 24, is a reminder of the pitfalls that can befall a U.S. company operating abroad. This is yet another example of a U.S. company paying substantial penalties not for violations of the anti-bribery provisions, but for books and records and internal controls violations of a subsidiary. U.S. companies must ensure that their FCPA and anti-corruption compliance programs reach all the way through their foreign subsidiaries, even where those subsidiaries are operated somewhat independently and themselves have no U.S. contacts other than through the parent company. The SEC will no doubt continue to take the position that a failure to institute and follow-through on internal controls can subject a parent company to FCPA charges, even where there was no other direct involvement by the parent in the activity, or even knowledge of it.

This case also highlights the many (often creative) forms a bribe can take on a company's books and records. In this case, the SEC alleged that Stryker's Mexican subsidiary directed its Mexican law firm to pay approximately $46,000 to a Mexican government employee in order to secure Stryker Mexico's status as the winning bidder in connection with a contract to sell medical products to public hospitals in Mexico. The Mexican law firm then invoiced Stryker Mexico for $46,000 for purported legal services, and Stryker Mexico booked the payment as a legitimate legal expense, even though no legal services were provided. In another example, Stryker's Romanian subsidiary made 192 improper payments to foreign officials totaling approximately $500,000, recording the payments as legitimate sponsorships of foreign officials to attend conferences and medical events, even though in at least one case, Stryker Romania's own internal documentation showed that it would receive a contract for the sale of a particular medical device in exchange for the sponsorship.

In addition to paying the agreed-upon fines, disgorgement and

RELATED PEOPLE

Larry A. Mackey
Of Counsel (Retired)

P 317-231-7236
larry.mackey@btlaw.com

Trace Schmeltz
Partner
Chicago, Washington, D.C.

P 312-214-4830
F 312-759-5646
tschmeltz@btlaw.com

Kathleen L. Matsoukas
Partner
Indianapolis, New York

P 317-231-7332
F 317-231-7433
kathleen.matsoukas@btlaw.com

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prejudgment interest, Stryker retained outside counsel to conduct an internal investigation into these five and other jurisdictions where it suspected violations. Stryker also agreed to implement a company-wide anti-corruption compliance program that was more robust and expansive than prior efforts. A link to the SEC release announcing the charges and linking to the cease-and-desist order can be found here.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work, or a leader of the firm's Financial, Corporate Governance and M&A Litigation group or White Collar Crime group in the following offices: Larry Mackey (Indianapolis) at 317-231-7236; Jason Barclay (Indianapolis) at 317-231-7250; Trace Schmeltz (Chicago) at 312-214-4830; or Kathleen Matsoukas (Indianapolis) at 317-231-7332.

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