

SECURITIES CLASS ACTION MAY PROCEED BASED ON ALLEGATIONS OF MISLEADING STATEMENTS CONCERNING POTENTIAL FCPA VIOLATIONS

On October 4, 2006, the United States District Court for the Northern District of Georgia held that allegedly misleading statements concerning potential violations of the Foreign Corrupt Practices Act (“FCPA”) may give rise to claims under Sections 10-b and 20(a) of the Securities Exchange Act of 1934. See In re Immucor Incorporated Securities Litigation, No. 1:05-cv-2276-WSD (Oct. 4, 2006). In denying a motion to dismiss filed by the defendant company and several officers, the court concluded that the shareholder-plaintiffs had adequately pled that a series of statements and omissions in SEC filings, press releases, and conference calls with stock analysts, by Immucor’s former Chairman and CEO and former President, misled investors by understating the potential scope and gravity of alleged violations of the FCPA by the company’s Italian subsidiary. The shareholder-plaintiffs pled that the statements and omissions artificially inflated Immucor’s stock price, which dropped when the truth about Immucor’s FCPA issues became known to the market, causing the plaintiffs’ losses.

Immucor manufactures and sells products used to detect and identify various properties of human blood prior to transfusion. In their complaint, the plaintiffs alleged that one of the named defendant-officers was involved in a scheme to pay bribes to doctors associated with government medical facilities in Italy, and that he, the company, and two other company officers knowledgeable about the company’s internal investigation of the matter publicly misrepresented the seriousness of the underlying criminal conduct and the strength of the company’s internal controls. The alleged misrepresentations, which appeared in SEC filings, press releases, and analyst calls, included the following:

- **2004 10-K:** The plaintiffs alleged that the company’s 2004 10-K, which contained an evaluation of the effectiveness of the company’s disclosure controls and procedures and concluded that its disclosure controls and procedures were effective, was materially misleading because the defendants knew, but failed to disclose, the nature and scope of the apparent criminal conduct uncovered in Italy and concomitant deficiencies in the company’s internal controls.
- **Press release:** According to the complaint, a 2004 press release was also allegedly misleading, because the press release -- which stated that the company’s Italian subsidiary and the subsidiary’s former president were under investigation for improper payments and that the company had concluded that certain invoices did not meet the books and records requirements of the FCPA -- failed to give a complete description of the alleged criminal activity in Italy and misleadingly characterized the matter as an isolated instance of poor recordkeeping.

- **Analyst teleconference and press release:** These statements indicated that the company's internal investigation had identified "certain weaknesses" in the company's internal controls and that, although a number of improperly recorded transactions were identified, they nevertheless represented "an isolated event." According to the plaintiffs, these statements presented an unreasonably optimistic outlook on the investigation and misrepresented the scope and gravity of the FCPA issues given that the internal investigation had identified 90 payments, 20 of which were "legally doubtful."

The plaintiffs also alleged several similarly misleading statements in the company's 10-Q filings, which allegedly understated the extent of the Italian subsidiary's FCPA problems and the potential penalties the company faced. The plaintiffs alleged that they had relied on all of the foregoing statements in purchasing Immucor stock and suffered losses when the "truth" regarding the scope and gravity of the allegedly unlawful conduct was revealed to the market. In denying the defendants' motion to dismiss, the court made clear findings that the case could proceed because the underlying statements were materially misleading and the complaint adequately alleged that the defendant-officers acted with actual knowledge or at least severe recklessness regarding the false and misleading nature of the statements.

This case highlights the extreme care that must be taken in making any disclosure regarding potential FCPA violations, their scope and seriousness, potential government responses, or the range of possible penalties or other consequences, such as federal contracting debarment. It also demonstrates the advantages of obtaining sophisticated FCPA and Section 10-b counsel in handling disclosures of this nature.

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If you have any questions concerning the foregoing or would like additional information, please contact Martin J. Weinstein (202-303-1122, mweinstein@willkie.com), Robert J. Meyer, (202-303-1123, rmeyer@willkie.com) or the attorney with whom you regularly work.

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