

SEP 28 2007

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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

GIOACCHINO DE CHIRICO,

Defendant.

Civil Action File No.

1:07-CV-2367

**COMPLAINT FOR CIVIL PENALTY**

The plaintiff Securities and Exchange Commission (the "Commission") files this complaint and alleges the following against defendant Gioacchino De Chirico ("De Chirico" or "Defendant"):

**SUMMARY**

1. This matter relates to a payment made in 2004 by Immucor, Inc., ("Immucor") a manufacturer and distributor of blood analysis equipment and supplies used by hospitals and blood banks, to a director of a public hospital in Italy. The payment was made as a quid pro quo for the

director giving Immucor favorable consideration with regard to a contract to provide products and services to the hospital.

2. Immucor, aided and abetted by De Chirico, its President and Chief Operating Officer, falsely recorded in its books the payment to the hospital director as a legitimate corporate expense for services rendered in connection with opportunities in Switzerland. In Italy, hospital directors are public officials.

3. By disguising the payment to the hospital director as a legitimate corporate expense for services rendered, Defendant violated Section 13(b)(5) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 13b2-1 [15 U.S.C. §78m(b)(5) and 17 C.F.R. 240.13b2-1] and aided and abetted Immucor’s violations of Sections 13 (b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

### **JURISDICTION**

4. This Court has jurisdiction over this action pursuant to Sections 21(d) and 27 of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §§ 78u(d)(3) and 78aa]. Defendant, directly or indirectly, made use of the means and instrumentalities of interstate commerce and the mails

in connection with the acts, transactions, practices and courses of business alleged in this Complaint.

5. Venue in this District is proper pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because a substantial portion of the conduct alleged in this Complaint occurred within the Northern District of Georgia. In addition, as alleged in this Complaint, venue in this District is proper because Defendant resides in the Northern District of Georgia and the conduct arose out of his employment at Immucor, which at the time maintained its headquarters in the Northern District of Georgia.

#### **DEFENDANT**

6. Gioacchino De Chirico, 53, an Italian citizen and legal resident of Georgia, was, during the relevant period, President and Chief Operating Officer of Immucor. De Chirico resides in Dunwoody, Georgia.

#### **RELATED ENTITY**

7. Immucor, Inc. is a Georgia corporation headquartered in Norcross, Georgia. At all relevant times, its stock was registered with the Commission under Section 12(g) of the Exchange Act and was quoted on the NASDAQ market under the symbol BLUD.

8. Immucor is a medical equipment company specializing in the manufacture and marketing of products used in the pre-transfusion diagnostics of human blood. Among other things, the company develops, manufactures, and sells products used by hospital blood banks, clinical laboratories, and blood donor centers to detect and identify various properties of human blood prior to patient transfusion. These products include a blood analysis system, called "Galileo," and the reagents, strips and other supplies needed by Galileo to diagnose blood samples.

9. Immucor does business internationally through several wholly owned subsidiaries that operate sales and distribution facilities in the particular countries in which they are located. Immucor Italia S.p.A. ("Immucor Italia") is Immucor's subsidiary in Italy.

#### **FACTS**

10. On or about January 8, 2002, Immucor Italia sold blood testing units of a design that preceded Galileo to Niguarda Hospital in Milan, Italy. In addition to receiving the sales price for the units, this sale and the associated contract insured that Immucor would receive a stream of revenue from Niguarda Hospital for the hospital's regular purchases of the reagents, strips, and other supplies necessary to make the units work. Although the

units were subsequently replaced by Galileo units, the contract for supplies, with its related income, remained in place.

11. In May 2003, De Chirico arranged for the director of Niguarda Hospital's blood bank ("the hospital director") to plan and chair a medical conference related to Galileo that was held in Italy in October 2003. De Chirico agreed to compensate the hospital director for his services and reimburse him for his expenses.

12. Although the amount of the compensation and expenses were never discussed, the hospital director did request, and De Chirico agreed, that payment would be made in a manner which would enable the hospital director to avoid Italian income taxes. Following the conference, however, the hospital director did not submit to De Chirico any request for compensation or payment of his expenses and, by February 2004, no payments to the hospital director relating to the conference had been made.

13. To arrange a payment of €13,500 to the hospital director, an Immucor Italia sales agent submitted a payment request to Immucor describing the payment as the hospital director's overdue compensation for the October 2003 conference, and asking that it be paid to a Swiss bank account for the benefit of the hospital director. The payment was a *quid pro*

*quo* for the hospital director favoring Immucor in selecting contracts for supplies and equipment.

14. In accordance with his earlier agreement with the hospital director's request to assist him in avoiding Italian taxes, De Chirico authorized that the €13,500 payment be made through Immucor's German subsidiary, Immucor Medizinische Diagnostik GmbH. In so doing, he approved an invoice that falsely described the €13,500 payment as a consulting fee for services in connection with Galileo opportunities in Switzerland—work that De Chirico knew the hospital director had never performed.

15. As a result of De Chirico's actions, Immucor failed to properly record the disbursement, and, in April 2004, falsely booked the entry as an expense for consulting services, and filed the related false invoice.

16. Immucor failed to devise and maintain internal accounting controls which were sufficient to provide reasonable assurances that its accounts were accurately stated in accordance with Generally Accepted Accounting Principles. Specifically, Immucor's system of internal accounting controls was inadequate to prevent or detect these false entries.

17. As a further result of De Chirico's actions and because Immucor improperly recorded and paid a false invoice, its books, records and accounts did not, in reasonable detail, accurately and fairly reflect its transactions and dispositions of assets.

### **FIRST CLAIM**

#### **Violation of 13(b)(5) of the Exchange Act and Rule 13b2-1 (Circumventing Internal Controls and False Books and Records)**

18. Paragraphs 1 through 17 are re-alleged and incorporated by reference.

19. As described above, Defendant knowingly circumvented a system of internal accounting controls and knowingly falsified a book, record, or account subject to Exchange Act Section 13(b)(2).

20. By reason of the foregoing, Defendant violated Section 13(b)(5)(A) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1].

## **SECOND CLAIM**

### **Aiding and Abetting Violation of 13(b)(2)(A) of the Exchange Act (Books and Records)**

21. Paragraphs 1 through 17 are re-alleged and incorporated by reference.

22. During 2004, Defendant aided and abetted Immucor's violations of Section 13(b)(2)(A) of the Exchange Act, which occurred when Immucor failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of Immucor's assets. Through the conduct described in the above paragraphs, Defendant knowingly or recklessly substantially assisted Immucor's violations.

23. By reason of the foregoing, Defendant aided and abetted violations of Section 13 (b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

## **THIRD CLAIM**

### **Aiding and Abetting Violation of 13(b)(2)(B) of the Exchange Act (Internal Controls)**

24. Paragraphs 1 through 17 are re-alleged and incorporated by reference.



25. As described above, Immucor failed, and Defendant aided and abetted Immucor's failure, to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions were executed in accordance with management's general or specific authorization; and (ii) transactions were recorded as necessary to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or any other criteria applicable to such statements, and to maintain accountability for its assets. Through the conduct described in the above paragraphs, Defendant knowingly and substantially assisted Immucor's violations.

26. By reason of the foregoing, Defendant aided and abetted violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Commission, respectfully prays that the Court enter a Final Judgment:

I.

Ordering Defendant to pay a civil penalty in the amount of \$30,000 pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

II.

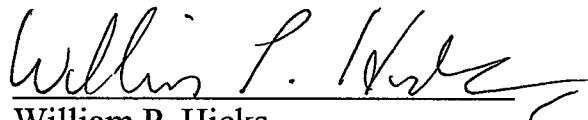
Incorporating the Consent with the same force and effect as if it were fully set forth in Final Judgment, and ordering that the Defendant comply with all of the undertakings and agreements set forth therein; and

III.

Retaining jurisdiction over this action for the purpose of enforcing the terms of the Final Judgment and granting such other relief as the Court deems appropriate.

Dated: September 27, 2007

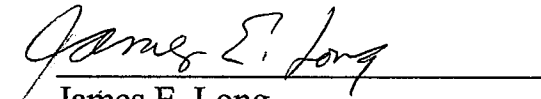
RESPECTFULLY SUBMITTED,



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COUNSELS FOR PLAINTIFF

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