

# 3024108

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

**FILED**  
JAN 30 2020  
At  
ROBERT N. LEGOVICH, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA

INSTITUTO MEXICANO DEL SEGURO )  
SOCIAL, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ZIMMER BIOMET HOLDINGS, INC., )  
 )  
 )  
Defendant. )

Civil Action No.  
3:20cv99

IMSS' ORIGINAL COMPLAINT

The Instituto Mexicano del Seguro Social ("IMSS"), an agency of the Mexican government, complains of Zimmer Biomet Holdings, Inc. ("Zimmer Biomet") as follows:

NATURE OF THE CASE

1. For years, Zimmer Biomet used bribery as an integral part of its world-wide marketing strategy. Zimmer Biomet conducted the extensive, international scheme from its home office in Warsaw.

2. Zimmer Biomet's conduct is well established. In 2012, before the merger of Biomet and Zimmer, Biomet entered into agreements with the Department of Justice and the Securities and Exchange Commission in which Biomet admitted its use of bribery in Argentina, Brazil and China and agreed to pay \$22.8 million in fines and forfeitures for its illicit conduct in those countries.

3. Despite these agreements, Zimmer Biomet continued its illegal bribery. As a result, in early 2017, Zimmer Biomet entered into another deferred prosecution agreement with the Department of Justice and another settlement with the SEC. In both cases, Zimmer Biomet confessed



to organized bribery in Mexico and Brazil. In total, Zimmer Biomet paid \$30.5 million in fines and forfeitures as a result of its admitted conduct.

4. Zimmer Biomet's bribery was not limited to foreign nations. In 2007, Zimmer and Biomet separately confessed to paying kickbacks to US physicians to sell its products and agreed to pay nearly \$200 million in fines and forfeitures for their illegal conduct.

5. In Mexico, Zimmer Biomet paid bribes to illegally sell unregistered medical devices to IMSS, a decentralized agency of the Mexican government that purchases medical products provided to Mexican citizens by various agencies of the Mexican government, including IMSS itself.

6. If IMSS had known of the lack of registrations or the bribery, it could not have made any purchases from Zimmer Biomet. All of IMSS' contracts with Zimmer Biomet since at least 2008 are therefore voidable.

#### JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 (a)(4) because this action is between a foreign state (according to the Foreign Sovereign Immunities Act (the FSIA)) and a citizen of the United States.

8. This Court has venue pursuant to (1) 28 U.S.C. § 1391(b)(1) because Zimmer Biomet has its principal place of business in this District and (2) 28 U.S.C. § 1391(2) because a substantial part of the events and omissions giving rise to the claims presented herein occurred in this District.

#### PARTIES

9. IMSS is the Mexican Social Security Institute, a decentralized agency of the United Mexican States. IMSS is therefore a "foreign state" pursuant to the FSIA, and its officials are covered by the Foreign Corrupt Practices Act.

10. Zimmer Biomet is a multinational corporation principally involved in the development, manufacture, and marketing of medical devices. Zimmer Biomet is headquartered in Warsaw, Indiana.

11. Zimmer Biomet is the successor to Biomet, Inc., also of Indiana. Zimmer Biomet has assumed all of the rights and obligations of Biomet, Inc.

12. Zimmer Biomet's registered agent for service of process is Corporation Service Company, 135 North Pennsylvania Street, Suite 1610, Indianapolis, Indiana 46204.

## FACTUAL BACKGROUND

### *The Parties' Business Relationship*

13. IMSS is the main social-service agency of the Mexican government. IMSS was created in 1943 by order of the Mexican President, who continues to nominate IMSS's General Director.

14. IMSS provides health care services to tens of millions of Mexican citizens at hospitals that IMSS owns and operates throughout Mexico. The Mexican government funds IMSS through taxation and compulsory contributions. IMSS also manages the purchases of medical supplies for other Mexican governmental agencies, including the Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado (ISSSTE), Petroleos Mexicanos (Pemex), and the Mexican military.

15. IMSS is the appropriate agency to bring the claims presented herein.

16. Zimmer Biomet is an orthopedic medical device company. The company distributes its products both domestically in the United States and internationally in multiple countries.

17. In Mexico, Zimmer Biomet distributed its products through Biomet 3i Mexico, an indirectly wholly-owned subsidiary.

### *Zimmer Biomet's International Bribery Scheme*

18. For years, Zimmer Biomet used bribes to sell its products to governmental agencies throughout the world, including within the United States and Mexico. Zimmer Biomet's conduct was international in scope and orchestrated from Zimmer Biomet's corporate offices in Warsaw, Indiana. Zimmer Biomet utilized a similar scheme in at least the United States, Mexico, Brazil, China, and Argentina.

19. Zimmer Biomet's international bribery strategy has been established in actions brought by the DOJ and the SEC.

20. In 2012, Biomet entered into a deferred prosecution agreement with the Department of Justice and a settlement agreement with the SEC based on Biomet's illegal bribery in Brazil, China, and Argentina. Zimmer Biomet became bound by those agreements following the merger of Zimmer and Biomet in 2015. As part of its 2012 agreements, Biomet paid a \$17.3 million fine to the DOJ and \$5.5 million in disgorgement of illicit profits and interest to the SEC. Biomet also agreed to a number of internal remedial actions designed to prevent further violations of United States law, including the creation of an independent compliance monitor.

21. Despite its earlier confessions, the fines and disgorgements, and the purported compliance monitor, Zimmer Biomet continued to pay bribes to foreign government officials.

22. Accordingly, in 2017, Zimmer Biomet entered into another deferred prosecution agreement with the DOJ and another settlement with the SEC, this time for bribes paid from at least 2008 through 2013 in Mexico and Brazil.

23. Zimmer Biomet's use of bribes and kickbacks was not limited to foreign countries. Zimmer Biomet also utilized illicit payments to sell its products in the United States. Prior to their merger, Zimmer and Biomet separately admitted to utilizing the same illicit practices in the United States. Zimmer Biomet paid kickbacks to US physicians to make sales funded by the US government.

As a result of this domestic conduct, Zimmer and Biomet paid nearly \$200 million in fines and forfeitures to the SEC and DOJ.

24. As a result of its prior agreements with the US government, Zimmer Biomet cannot deny its illegal conduct. In both the 2012 and 2017 deferred prosecution agreements with the DOJ, Zimmer Biomet agreed that it would not “make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility” for its illegal conduct and the conduct of its agents. Zimmer Biomet is also bound by the SEC agreements that resulted in final administrative orders.

#### *Zimmer Biomet's Conduct in Mexico*

25. In Mexico, between at least 2008 and 2013, Zimmer Biomet knowingly paid bribes to Mexican government officials to facilitate the sale of products to and through IMSS.

26. From 2008 through 2013, Zimmer Biomet paid almost \$1 million to its Mexican agents, who acted as bagmen for passing on bribes to Mexican government officials. The bribes were paid so Zimmer Biomet could illegally smuggle unregistered medical products into Mexico so the unregistered products could be sold to IMSS.

27. Zimmer Biomet was informed the conduct was illegal, but decided to continue the profitable scheme.

28. Zimmer Biomet knew of, and directly supported, the illegal activities of its wholly-owned subsidiaries and its agents throughout the world and specifically including Mexico. In the alternative, Zimmer Biomet acted with willful ignorance of the bribery scheme, using its wholly-owned subsidiaries and its agents to obscure illicit payments that benefited Zimmer Biomet.

29. To control the international scheme, Zimmer Biomet personnel communicated with Zimmer Biomet personnel around the world, including within Mexico. Zimmer Biomet personnel would also travel to and from Mexico in support of the scheme.

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