

Hydro Kleen Systems Inc.

Case ID:

ST-202

Case Cluster :

Hydro Kleen Systems Inc.

Jurisdiction of Settlement:

Canada

Jurisdiction of Settlement / Enforcement Agency:

Crown Prosecutors (Alberta)

Jurisdiction of Foreign Public Official(s) :

Canada, United States

Year of Settlement:

2005

Month/Day of Settlement (or Notes):

01/10

Other Jurisdictions of Settlement:

United States

Settlement with Individual or Legal Person?:

Legal Person

Type of Settlement:

Criminal

Legal Form of Settlement:

Guilty Plea

Monetary Sanctions (Types):

Criminal Fine

Total Monetary Sanctions (US\$):

\$20,279.00

Criminal Fine/Penalty (US\$) :

\$20,279

Monetary Sanctions Returned / Ordered Returned (US\$):

\$0

UNCAC Articles(s) Implicated:

Art.16

Art.26

OECD Anti-Bribery Convention Articles Implicated:

Art. 1, Art. 2

Offenses - Alleged:

Bribery of foreign official [subparagraph 426(1)(a)(i) of the Criminal Code (secret commissions) and paragraph 3(1)(a) of the Corruption of Foreign Public Officials Act (CFPOA)]

Offenses - Settled:

Bribery of foreign official (Corruption of Foreign Public Officials Act)

Public Procurement Contract / SOE Involved?:

No (Customs)

Summary:

According to Canada's Phase 3 Report by the OECD (March 2011), "At the time of the Phase

2 on-site visit to Canada in 2003, proceedings were ongoing in respect of charges against Hydro Kleen Group Inc., an Alberta-based company, and two individuals, concerning the bribes of approximately CAD 30 000 paid to a US Immigration official contrary to subparagraph 426(1)(a)(i) of the Criminal Code (secret commissions) and paragraph 3(1)(a) of the Corruption of Foreign Public Officials Act (CFPOA). In January 2005, Hydro Kleen admitted guilt to one count under the CFPOA as part of a plea agreement. The company was fined CAD 25 000. The two other charges, against a director and an officer of the company, were stayed as part of the plea agreement." (Source: Canada Report to the OECD: Phase 3 - Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 18 March 2011.) According to the Sentencing hearing transcripts in R. v. Watts, et al [2005] A.J. No. 568, "Between the 1st day of August, 2000, and the 1st day of December, 2001, at or near Red Deer and elsewhere in the Province of Alberta, in order to obtain or retain an advantage in the course of business directly or indirectly gave, offered, or agreed to give or offer a loan, reward, advantage or benefit, to wit: the sum of \$28,299.88 more or less to a foreign public official, to wit: Hector Ramirez Garcia for the benefit of Hector Ramirez Garcia as consideration for an act or omission by Hector Ramirez Garcia in connection with the performance of his duties or functions on behalf of the United States of America, United States Department of Justice, Immigration and Naturalization Service, contrary to section 3(1)(a) of the Corruption of Foreign Public Officials Act SC 1998, C34." (Source: R. v. Watts [2005] A.J. No. 568, Oral Judgment and Sentencing Hearing, January 10, 2005). Please note that during sentencing a victim, the competitor company - Innovative Coke Expulsion Inc. - that lost the contract due to the bribery by Hydro Kleen, read a "victim impact statement" pursuant to section 722 of the Criminal Code. (Source: Ibid.) The three individuals were charged with violations of Canada's Corruption of Foreign Public 2002 Year in Review: Developments in U.S. and International Efforts to Combat Transnational Commercial Bribery Officials Act and of the Criminal Code of Canada. Mr. Garcia pleaded guilty and served a six-month jail sentence. Upon his release in February 2003, Mr. Garcia was deported to the United States where he faces prosecution by the DOJ. [] A related civil lawsuit was filed in Canada by another refinery cleaning company, Innovative Coke Expulsion Inc. ("ICE" on the grounds that Garcia accepted bribes to deny its employees entry into the United States. ICE also filed a civil RICO suit against Hydro Kleen, which has a U.S. subsidiary, in the United States. In May 2002, Hydro Kleen paid ICE \$300,000 in settlement." (Source: American Bar Association, "2002 Year in Review: Developments in U.S. and International Efforts to Combat Transnational Commercial Bribery.")

Sources :

Canada Report to the OECD: Phase 3 - Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (18 March 2011), accessed at <http://www.oecd.org/dataoecd/55/25/47438413.pdf>; R. v. Watts, et al [2005] A.J. No. 568, Oral Judgment and Sentencing Hearing, January 10, 2005, accessed at http://www.cba.org/cba/dublin2009/pdf/Gowlings_Appendix%20A%20-%20R%20v.%20Watts.pdf (Hydro Kleen sentencing); American Bar Association, "2002 Year in Review: Developments in U.S. and International Efforts to Combat Transnational Commercial Bribery," accessed at http://apps.americanbar.org/intlaw/committees/special_projects/corrupt_practices/yir_corrupt.pdf.