

FILED

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA 12 JAN 30 AM 9:12  
SOUTH BEND DIVISION

ROBERT N. TROVICH  
U.S. DISTRICT COURT  
FOR THE NORTHERN DISTRICT  
OF INDIANA

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,

Plaintiff,

v.

BRIAN S. MOORE,

Defendant.

3:12 CV 67

Civil Action No. \_\_\_\_\_

**COMPLAINT**

Plaintiff Securities and Exchange Commission (the "Commission") alleges as follows:

**SUMMARY**

1. By this action, the Commission seeks an order from the Court, pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002, requiring Defendant Brian S. Moore to reimburse Symmetry Medical, Inc. ("Symmetry" or the "Company") for the bonuses and incentive-based and equity-based compensation he received, and the profits he realized from his sale of Symmetry stock, during the statutory time periods established by Section 304(a) of the Sarbanes-Oxley Act of 2002.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to Section 3(b) of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7202(b)] and Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d), 78u(e) & 78aa].

3. Venue is proper in this district pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain of the transactions, acts, practices and courses of conduct constituting violations of the federal securities laws alleged in this Complaint occurred within this district.

#### **DEFENDANT AND RELATED ENTITIES**

4. Defendant Brian S. Moore is a UK citizen residing in Chicago, IL and the United Kingdom. Moore served as chief executive officer and president of Symmetry between June 2003 and January 2011.

5. Symmetry is a Delaware corporation headquartered in Warsaw, Indiana. Through its operating subsidiaries, Symmetry is a manufacturer of medical implants and instruments and also manufactures specialized products for the aerospace industry. Since its December 2004 initial public offering, Symmetry's common stock has been registered with the Commission pursuant to Section 12(b) of the Exchange act and listed on the New York Stock Exchange. At all relevant times, the Sheffield, England-based TPC was one of Symmetry's operating subsidiaries, and accounted for a significant portion of Symmetry's consolidated revenues and net income.

#### **FACTS**

6. Beginning prior to Symmetry's December 2004 initial public offering, and continuing until late September 2007, personnel at the Company's TPC subsidiary—led by certain members of TPC's senior management—engaged in misconduct in the reporting of TPC's financial results that, in turn, resulted in the material misstatement of the financial

statements of the Indiana-headquartered Symmetry, into which TPC's financials were consolidated.

7. The misconduct at TPC involved the systematic understatement of expenses and overstatement of assets and revenues, which TPC achieved primarily by improperly recognizing revenue, improperly capitalizing expenses, overvaluing inventory, and understating costs of goods sold. TPC reported fictitious sales revenues in an effort to make up shortfalls to its monthly and quarterly sales revenue targets. In an effort to boost TPC's profits artificially, TPC intentionally understated cost of revenues. Rather than report the actual costs of inventory sold, TPC's accounting group made journal entries reducing expense and increasing inventory balances. As a result, TPC's balance sheet overstated inventory.

8. As a result of the misconduct at TPC, Symmetry issued materially inaccurate and non-compliant accounting statements in its (i) December 2004 initial public offering and July 2005 secondary offering registration statements; (ii) annual public filings with the Commission for fiscal years 2004, 2005 and 2006; and (iii) quarterly public filings for the first and second quarters of 2007. Specifically, Symmetry filed Forms 10-K for fiscal years 2004 through 2006 and Forms 10-Q for the first and second quarters of 2007 that were in material non-compliance with its financial reporting requirements under the federal securities laws, and Symmetry was required to restate its financial statements for fiscal years 2005 and 2006 and for the first two quarters of its 2007 fiscal year, along with selected financial data for its 2003-2006 fiscal years.

9. During the 12-month periods following Symmetry's filing of inaccurate financial statements in: (i) its December 2004 IPO and July 2005 registration statements; (ii) its 2004-06 annual public filings; and (iii) its quarterly filings for the first and second quarters of 2007,

Defendant Moore received bonuses, incentive and equity based compensation and profits from the sale of Symmetry stock.

**CLAIM FOR RELIEF**

10. Defendant Moore has not reimbursed Symmetry for the bonuses, incentive and equity-based compensation or profits from sales of Symmetry stock that he received or obtained during the statutory time periods established by Section 304(a) of the Sarbanes-Oxley Act of 2002.

11. The Commission has not exempted Defendant Moore, pursuant to Section 304(b) of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7243(b)], from the application of Section 304(a) of that Act [15 U.S.C. § 7243(a)].

12. As a result of the foregoing, Defendant has failed to comply with Section 304(a) of the Sarbanes-Oxley Act, 15 U.S.C. § 7243(a).

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that the Court:

I.

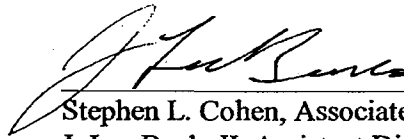
Order the Defendant to reimburse Symmetry for certain bonuses, incentive-based and equity-based compensation he received, and profits he realized from his sale of Symmetry stock during the relevant statutory time periods pursuant to and established by Section 304 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7243]; and

II.

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: January 30, 2012

Respectfully submitted,



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