

Corporate “C” Plea Not Good Enough

Article By:

Thomas E. Zeno

Rebecca A. Worthington

A recent decision discusses a corporate “C” plea not being good enough for a federal judge. The case involves a pharmaceutical company trying to negotiate a specific sentence with prosecutors. The judge’s analysis follows below after a short background about a C plea.

Types of Guilty Pleas

Federal Criminal Rule 11(c)(1) governs plea agreement procedure. It includes a limitation: “The court must not participate in these discussions.” The subsection describes three types of guilty pleas. Subsection (A) covers the common plea agreement in which the government dismisses charges as part of the agreement. Under subsection (B), the government agrees to recommend, or not oppose, the defendant’s request for a particular sentence. The C plea is named after its subsection, 11(c)(1)(C). A C plea agreement establishes that “a specific sentence or sentencing range is the appropriate disposition of the case.” A crucial difference is that the C plea operates only “once the court accepts the plea agreement.” In other words, the court has specific power to reject a C plea.

The Judge’s Concerns

In this case, the judge rejects the deal. US District Judge William Young of Massachusetts explains his position while trying not to bargain with the parties. He acknowledges the parties negotiated in good faith and recognizes “much to commend in the proffered plea.” In addition, he sees “not a scintilla of collusion among the parties” and says the plea does not appear to be “a sweetheart deal.” He commends the company for installing new management and for cooperating with the government’s ongoing investigation. Recognizing the benefit of the bargain, he understands the government obtains a criminal conviction, restitution, and a fine. The company obtains a predictable sentence to be imposed on the day of the plea, thus limiting the negative publicity.

The judge does not say what terms he will accept in a C plea. He feels that would be too close to bargaining. However, the judge lists concerns both about specifics of the bargain and about bargains with corporations generally.

The Alleged Crime

The judge begins by reciting circumstances of the alleged crime. With the knowledge of management, the company deceptively marketed a cholesterol medication for a rare genetic disease. These deceptions caused the medication to be prescribed inappropriately for patients. Some of these patients were elderly and children who experienced adverse reactions. The company netted a gross gain from the crime of more than \$15.5 million.

Problems with the Deal

Among the judge's specific concerns:

- No presentence report would be prepared so the judge lacked a thorough understanding of the “complex case”
- Proposed calculations under the Sentencing Guidelines may be wrong by, for example, not including adjustments for sophisticated means and vulnerable victim
- The proposed fine is lowered without an explanation of the company's financial condition
- The company would pay restitution to the government and payors but none to victims who suffered mental and physical harm because of complications
- An “adequate” internal compliance program lacks an external monitor

The “Larger Issue”

Turning from the particulars of this case, the judge criticizes the “two-tier criminal justice system.” In his view, corporate C pleas succeed “after closed door negotiations” with the government and limited judicial scrutiny. Consistent with avoiding open courtrooms through arbitration, when corporations become criminal defendants they seek “cozy” certainty through C pleas to which the executive branch accedes.

Individuals, on the other hand, are not afforded the benefits of C pleas. According to the judge, individuals “plead guilty and face a truly independent judge.”

Judge Young finds this system “neither fair nor just.” He even questions why the company should not be allowed to “collapse in disgrace.”

Next Steps?

Because the court raised concerns without providing answers, it is difficult to know what may happen next.

- Will the parties appeal?
- Will they return with an acceptable C plea?

- Will they present a different kind of plea agreement?
- Will they settle the matter in another way?

Time will tell.

© Copyright 2025 Squire Patton Boggs (US) LLP

National Law Review, Volume VII, Number 338

Source URL: <https://natlawreview.com/article/corporate-c-plea-not-good-enough>