

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 56438 / September 13, 2007**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 2717 / September 13, 2007**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12798**

**In the Matter of**

**FERRO CORPORATION and**  
**ANTHONY J. MAIKUT,**

**Respondents.**

**ORDER INSTITUTING CEASE-AND-DESIST**  
**PROCEEDINGS, MAKING FINDINGS, AND**  
**IMPOSING A CEASE-AND-DESIST ORDER**  
**PURSUANT TO SECTION 21C OF THE**  
**SECURITIES EXCHANGE ACT OF 1934**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Ferro Corporation (“Ferro”) and against Anthony J. Maikut (“Maikut”) (collectively, “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

### III.

On the basis of this Order and Respondents' Offers, the Commission finds<sup>1</sup> that:

#### **Respondents**

1. Ferro is an Ohio corporation with its principal place of business in Cleveland, Ohio. It manufactures, among other things, performance chemicals in facilities it owns in the U.S. and in foreign countries. Ferro's common stock is registered pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange.

2. Maikut, age 52, resides in Twinsburg, Ohio. Maikut was the controller for Ferro's Performance Chemicals Group ("Chemicals Group") from 1998 until July 2004, when Ferro terminated his employment. Maikut was a certified public accountant in the State of Ohio until 1997, when he failed to renew his license.

#### **Related Party**

3. Brian E. Haylor ("Haylor"), age 39, resides in Avon, Ohio. From November 2000 until his resignation in July 2004, Haylor was the controller for Ferro's Polymer Additives Division ("PAD"), one of three divisions within the Chemicals Group. In his position as PAD controller, Haylor reported directly to Maikut.

#### **Summary**

4. Ferro issued materially false and misleading financial statements in its quarterly reports for the first, second and third quarters of 2003, its annual report for 2003 and its quarterly report for the first quarter of 2004. Haylor caused Ferro to issue the false financial statements by making numerous false accounting entries by omitting to make required entries in Ferro's books and records. Maikut, as Haylor's immediate supervisor, failed to adequately review Haylor's journal entries and account balances and participated in some erroneous accounting decisions. Ferro failed to maintain adequate internal controls, which enabled Haylor to engage in his fraudulent scheme. As a result of Haylor and Maikut's conduct, and as a result of other errors, Ferro restated its financial statements for 2003 and the first quarter of 2004.

#### **Haylor's Fraudulent Conduct**

5. From at least March 2003 through June 2004, Haylor intentionally recorded false entries and omitted required entries in PAD's accounting records. The false entries and omissions resulted in Ferro overstating its operating income<sup>2</sup> in its Forms 10-Q for the quarters ended March

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<sup>1</sup> The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> Operating income is net income before income taxes and gains or losses from discontinued operations.

31, June 30 and September 30, 2003, in its 2003 Form 10-K and in its Form 10-Q for the quarter ended March 31, 2004.

6. Haylor made false entries in an account known as temporary accounts receivable. Haylor should have used the temporary accounts receivable account to record sales for items sold and shipped to a customer, but for which Ferro had not issued an invoice. Once Ferro issued the invoice, Haylor should have eliminated the entry to temporary accounts receivable and transferred the balance to trade accounts receivable. Haylor admitted that he recorded fictitious entries to increase temporary accounts receivable and corresponding entries to reduce expenses. Haylor's conduct resulted in an increase in operating income of \$1,050,000 in the first quarter of 2003, \$527,000 in the second quarter, and \$123,000 in the third quarter.

7. Haylor made false accounting entries in an account known as unrecorded liabilities. This account is the mirror image of temporary accounts receivable because it reflects amounts owed by Ferro for which it has not yet received an invoice. Haylor reduced this account by \$120,000 in the third quarter of 2003 and by \$300,000 in the fourth quarter of 2003, which resulted in a reduction of Ferro's expenses on its income statement. Haylor did not have any legitimate reason for these entries and no documentation to support them.

8. According to Ferro, the approximate effect of Haylor's fraudulent entries and omissions on Ferro's operating income is as follows:

(All Dollar Amounts in Millions)	2003					2004	Total
	Qtr 1	Qtr2	Qtr 3	Qtr 4	Total	Qtr 1	All Periods
Previously Reported Operating Income	\$14.2	\$7.5	(\$1.1)	\$3.6	\$24.2	\$19.3	\$43.5
Less: Adj. for Fraudulent Accounting	(\$3.5)	(\$1.1)	(\$0.1)	(\$0.3)	(\$5.0)	(\$0.7)	(\$5.7)
Operating Income as Adjusted	\$10.7	\$6.4	(\$1.2)	\$3.3	\$19.2	\$18.6	\$37.8
Overstatement as a % of Oper. Inc.	32.7%	17.2%	8.3%	9.1%	26.0%	3.8%	15.1%

### **Maikut's Negligent Conduct**

9. As the Chemicals Group controller, Maikut was responsible for the financial statements prepared by Haylor. Maikut did not, however, adequately review Haylor's monthly and quarterly post-closing adjusting entries or regularly review PAD's balance sheet, even after senior managers asked for more information about certain PAD account balances.

10. Maikut's failure adequately to review Haylor's work enabled Haylor to engage in his fraudulent conduct. Haylor typically recorded false entries or omitted required entries during the monthly or quarterly closing process via post-closing adjustments. Had Maikut adequately reviewed Haylor's adjustments, he could have questioned them. In addition, Haylor's conduct generated irregular account balances. Senior management asked Maikut about an irregular balance in temporary accounts receivable at the end of 2003, but Maikut did not request an account reconciliation from Haylor until June 2004, when senior management demanded an explanation.

When Haylor failed to prepare the requested reconciliation, Ferro discovered his fraudulent conduct.

11. Maikut also participated in some erroneous accounting decisions. For example, in July 2003, PAD sold products to a customer under a 12-month contract beginning in July 2003 and ending in June 2004. By the terms of the contract, the customer could earn rebates if its purchase volume exceeded certain levels. In April 2004, Haylor learned that the customer would earn a rebate of \$1.2 million. Consistent with Generally Accepted Accounting Principles, Haylor should have immediately recorded the amount of the rebate earned from July 2003 through April 2004.<sup>3</sup> Haylor, however, at Maikut's direction, began recording the rebate expense in equal monthly installments on a basis that would have fully expensed the item over an eight-month period to avoid having the entire \$1.2 million expense appear in PAD's results for the second quarter of 2004. Ferro corrected the erroneous entries when they were discovered after Haylor left Ferro in June 2004 and prior to filling its quarterly report for the second quarter of 2004.

### **Ferro's Restatement**

12. On March 31, 2006, Ferro filed its 2004 Form 10-K, which contained restated financial results for 2003 and the quarter ended March 31, 2004. The restatement corrected inaccurate prior period results caused by Haylor's fraudulent entries and omissions and by numerous errors made by Ferro's accounting personnel. The errors were the result of poor recordkeeping and inadequate internal controls, and caused Ferro to overstate its operating income by an additional \$6.6 million in 2003 and \$4.6 million in the first quarter of 2004. The individual errors, however, resulted in both increases and decreases in Ferro's operating income.

13. For example, in 2003, Ferro was in the process of incorporating new software for its accounting systems. Some business units used the existing system while others used the new system. This required Ferro to reconcile differences resulting from the use of different systems and to make adjusting entries. In reconciling these differences, Ferro erroneously made adjustments that resulted in an overstatement of its income by \$6.1 million in 2003 and by \$191,000 in the first quarter of 2004. Another significant accounting error resulted when Ferro computed its employee compensation expense. Errors in these accounts resulted in an understatement of Ferro's income by \$2.9 million in 2003 and an overstatement of \$158,000 in the first quarter of 2004.

14. Ferro's restatement had a material effect on the company's earnings results for 2003 and the first quarter of 2004, as demonstrated in the following chart:

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<sup>3</sup> See Financial Accounting Standards Board, FAS No. 5.

(All Dollar Amounts in Millions)	2003					2004	Total
	Qtr 1	Qtr2	Qtr 3	Qtr 4	Total	Qtr 1	All Periods
Previously Reported Operating Income	\$14.2	\$7.5	(\$1.1)	\$3.6	\$24.2	\$19.3	\$43.5
Less: Adj. for Fraudulent Accounting	(\$3.5)	(\$1.1)	(\$0.1)	(\$0.3)	(\$5.0)	(\$0.7)	(\$5.7)
Adj. for Accounting Errors	(\$2.8)	(\$3.4)	(\$0.8)	\$0.4	(\$6.6)	(\$4.6)	(\$11.2)
Total Adjustments	(\$6.3)	(\$4.5)	(\$0.9)	\$0.1	(\$11.6)	(\$5.3)	(\$16.9)
Operating Income as Adjusted	\$7.9	\$3.0	(\$2.0)	\$3.7	\$12.6	\$14.0	\$26.6
Over (Under)statement as a % of Oper. Inc.	79.7%	150.0%	45.9%	(2.70%)	92.1%	37.9%	63.5%

15. Ferro also identified material weaknesses in its internal controls and concluded that they had been ineffective.

16. Ferro's deficient system of internal controls enabled Haylor to engage in his fraudulent conduct. For example, the company concluded that it had failed to perform timely reviews of accounting reconciliations and journal entries. More specifically, management did not consistently approve post-closing journal entries. Haylor was able to record fraudulent post-closing journal entries during 2003 and the first quarter of 2004 because his supervisor, Maikut, did not adequately review and approve them. The company also concluded that it had insufficiently trained accounting personnel coupled with insufficient accounting policies and procedures. Haylor was able to carry out his scheme in part because his supervisor and others did not consistently review and follow-up on suspicious account balances.

17. Ferro's deficient system of internal controls also resulted in numerous errors. For example, the company's failure to consistently review the calculations and accounting for amounts due to employees under various compensation plans led to a material overstatement of employee compensation expenses. In addition, Ferro's failure to timely perform and review accounting reconciliations led to material errors in reconciling different accounting systems and recording adjusting entries.

### Legal Analysis

18. Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file accurate quarterly and annual reports with the Commission. Rule 12b-20 under the Exchange Act requires that these reports must contain any material information necessary to make the required statements made in the reports not misleading. As a result of the conduct described above, Ferro violated these provisions of the Exchange Act by issuing a materially inaccurate Form 10-K for 2003 and materially inaccurate Forms 10-Q for the first three quarters of 2003 and the first quarter of 2004.

19. Section 13(b)(2)(A) of the Exchange Act requires issuers to make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and disposition of its assets. Section 13(b)(2)(B) of the Exchange Act requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit preparation of financial

statements in conformity with generally accepted accounting principles and to maintain accountability of assets. As a result of the conduct described above, Ferro violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act because its books and records contained numerous inaccurate entries and because it failed to devise and maintain a scheme of internal controls adequate to detect and prevent Haylor's false accounting entries.

20. As described above, Maikut, in part, caused Ferro's violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder because he did not adequately review Haylor's post-closing journal entries, did not adequately review Haylor's account balances, and did not follow up on questions from the company's senior management about a suspicious account balance.

#### **Ferro's Remedial Efforts**

21. In determining to accept Ferro's Offer, the Commission considered remedial acts promptly undertaken by Ferro and cooperation afforded the Commission staff.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

1. Respondent Ferro cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder.

2. Respondent Maikut cease and desist from causing any violations and any future violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder.

By the Commission.

Nancy M. Morris  
Secretary