

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54668 / October 30, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2503 / October 30, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12466

In the Matter of

KEVIN CURRY,

Respondent.

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 (the “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 (the “Exchange Act”), against Kevin Curry (“Curry” or the “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) 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 him and the subject matter of these proceedings, which are admitted, Respondent consents 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.¹

¹ In a separate civil action filed simultaneously with this proceeding, Curry has separately consented to the entry of a judgment by the U.S. District Court for the Eastern District of Michigan pursuant to Section 21(d) of the Exchange Act ordering him to pay a civil penalty of \$25,000. *SEC v. Delphi Corporation, et al.*, Civil Action No. 2:06-cv-14891 (AC) (E.D. Mich. Oct. 30, 2006).

III.

On the basis of this Order and Respondent's Offer, the Commission finds that;²

A. Respondent and Delphi Corporation ("Delphi")

1. Respondent

Curry, 58, is a resident of Hilton Head, South Carolina. At all relevant times, he was a client executive at a Texas information technology company (the "IT Company") supporting the IT Company's relationship with Delphi.

2. Delphi

Delphi is an auto parts supplier headquartered in Troy, Michigan. At all relevant times, Delphi's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was listed on the New York Stock Exchange ("NYSE") under the symbol "DPH." On October 8, 2005, Delphi filed for bankruptcy in the Southern District of New York. On November 11, 2005, Delphi was delisted from the NYSE. Delphi's common stock is now registered with the Commission pursuant to Section 12(g) of the Exchange Act and trades in the over the counter market and is quoted in the pink sheets under the symbol "DPHIQ".

B. Facts

1. Introduction

Prior to December 2001, Delphi had entered agreements with the IT Company under which the IT Company provided information technology ("IT") services to Delphi (the "Existing IT Agreements"). In December 2001, Delphi and the IT Company entered into a new five-year IT contract, pursuant to which Delphi agreed to pay the IT Company approximately \$207 million over the course of five years in return for IT services (the "New IT Contract"). As additional consideration, the IT Company agreed to pay Delphi \$20 million at the time the New IT Contract was signed. Delphi agreed to repay the \$20 million to the IT Company over five years. Although the \$20 million was to be repaid and related to a new contract, Delphi improperly accounted for the payment as income (reduction of recorded IT expenses) in the fourth quarter of 2001.

Curry was a client executive at the IT Company. In 2001, he assisted in negotiating the terms of the New IT Contract, including the \$20 million payment. He also assisted in negotiating an inaccurate and incomplete side letter between Delphi and the IT Company, that allowed Delphi to mislead its auditors about the true nature of the \$20 million payment. Finally, in 2002, he negotiated and signed two work orders that were used by the companies to facilitate Delphi's repayment of the \$20 million to the IT Company.

² The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

2. Curry's Understanding of Delphi's Scheme

From his discussions with Delphi concerning the New IT Contract, Curry understood that Delphi sought a payment of \$20 million that it could book as income in the fourth quarter of 2001. Curry understood that because the payment was to be repaid and tied to the New IT Contract, it would be improper for Delphi to immediately record the \$20 million as income.

3. Curry's Role in Negotiating the Inaccurate and Incomplete Side Letter

Delphi asked the IT Company to enter into a side letter documenting the \$20 million payment. Curry, on behalf of the IT Company, assisted in negotiating a side letter with Delphi that described the terms of the \$20 million payment in an inaccurate and incomplete way. In order to account for the \$20 million as income, Delphi wanted to mislead its auditors into believing that it was receiving the \$20 million as a nonrefundable rebate on payments it had previously made to the IT Company, in connection with the Existing IT Agreements. Conversely, to support its own accounting for the \$20 million payment, the IT Company wanted its own auditors to understand the true terms of the payment: that it was to be repaid over five years and that it was linked directly to the New IT Contract. Curry came to understand, from others, that in order for both companies to accomplish their accounting goals, they would need to draft a vague side letter. The side letter that Curry ultimately assisted in negotiating on behalf of the IT Company deliberately omitted any reference to the New IT Contract. Instead it stated that the payment was related to the companies' "ongoing business relationship." The letter also omitted any reference to the fact that Delphi had to repay the \$20 million.

4. Curry's Role in Negotiating and Signing Two Incorrect Work Orders

In early 2002, the IT Company required that Delphi enter into a written commitment to repay the \$20 million to the IT Company. Because Delphi had accounted for the \$20 million as income, it was unwilling to enter into any document that explicitly stated that it was repaying the \$20 million. Accordingly, the companies agreed to enter into two work orders that incorrectly stated that Delphi was paying the IT Company \$20 million over five years to perform "administrative services" under the New IT Contract. In fact, the work orders were simply a mechanism for Delphi to repay the \$20 million to the IT Company. Curry negotiated and signed the work orders on behalf of the IT Company.

5. **Delphi's improper accounting**

Delphi improperly accounted for the \$20 million payment as a reduction of recorded IT expenses (effectively income) in the fourth quarter of 2001. Based on the intent of the parties and substance of the agreements, GAAP required that Delphi record the transaction as a liability to the IT Company at the time the companies executed the New IT Contract and the side letter.³ As a result of its improper accounting, Delphi overstated its fourth quarter 2001 earnings per share, as reported in its Form 10-K for the period ended December 31, 2001, by approximately 2 cents or 24%.

C. **Conclusion**

As a result of the conduct described above, Curry was a cause of Delphi's violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 promulgated thereunder, which require reporting companies to file accurate annual reports with the Commission.

Also, as a result of the conduct described above, Curry was a cause of Delphi's violations of Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Curry's Offer.

Accordingly, it is hereby ORDERED that Respondent Curry cease and desist from causing any violations and any future violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20 and 13a-1 promulgated thereunder.

By the Commission.

Nancy M. Morris
Secretary

³ Statement of Financial Accounting Concept Statement No.6 – Elements of Financial Statements, ¶¶ 35 – 40.