UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

JAMES W. MCINTOSH,
THOMAS M. AKERS, JR.,
JAMES J. STANAWAY,
ERNEST A. STINSA, AND
MICHAEL J. SCHULTZ

Defendants.

Civ. No. 10-cv-4903

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") alleges:

1. This is an action to obtain civil penalties against five current and former employees of Navistar International Corp. ("Navistar" or the "Company") for various violations of the federal securities laws. The Complaint concerns improper and, with respect to four of the defendants, fraudulent accounting practices in various aspects of Navistar's business, including vendor rebates, warranty reserve, vendor tooling buybacks, and fraudulent accounting at a Wisconsin foundry, from 2002 through 2005.

JURISDICTION

2. The Commission seeks the imposition of civil monetary penalties pursuant to Section 20(d) of the Securities Act of 1933 [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Securities Exchange Act of 1934 [15 U.S.C. § 78u(d)(3)].

3. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §78aa].

Venue lies in this district because Navistar's corporate offices are located in Warrenville, Illinois, which is in this district, and because the transactions, acts, and omissions giving rise to this action occurred in this district.

4. The defendants, directly or indirectly, made use of the means or instrumentalities of interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged herein.

DEFENDANTS

5. James W. McIntosh ("McIntosh"), 60, of Naperville, Illinois, was Vice President of Finance for the Engine Division throughout the relevant period. In that position, McIntosh was the CFO of the Engine Division and was directly responsible for its accounting, financial reporting, and internal controls. McIntosh was transferred to the Parts Group in January 2006 and subsequently retired in May 2007.

6. Thomas M. Akers, Jr. ("Akers"), 58, of Aurora, Illinois, was Director of Purchasing for the Engine Division from April 1996 through August 2004. He was thereafter promoted to Vice President, Purchasing and Logistics and remained in that position until his retirement in January 2009.

7. James J. Stanaway ("Stanaway"), 64, of Springfield, Ohio, was Director of Finance for the Engine Division during the relevant period through June 2004, when he retired from the Company. In that role, Stanaway reported directly to McIntosh.

8. Ernest A. Stinsa ("Stinsa"), 41, of Elmhurst, Illinois, replaced Stanaway as Director of Finance for the Engine Division in 2004. Stinsa left Navistar in January 2006, but rejoined the Company in May 2010 in its Global Product Development division. In his new capacity, Stinsa has no direct accounting or financial reporting responsibilities.

9. Michael J. Schultz ("Schultz"), 45, of Waukegan, Illinois, was the Plant Controller at Navistar's foundry in Waukesha, Wisconsin, during the relevant period. Schultz was terminated in April 2005.

OTHER RELEVANT PERSONS OR ENTITIES

10. Navistar, a Delaware corporation headquartered in Warrenville, Illinois, is a holding company whose principal subsidiary, Navistar, Inc. (f/k/a International Truck and Engine Corporation), manufactures and markets commercial trucks, school buses, diesel engines, and related parts worldwide. During the relevant period, Navistar's securities were registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange. As of November 30, 2009, Navistar had 70,718,762 shares outstanding.

FACTS

Fraudulent and Other Improper Accounting Practices at Navistar

Vendor Rebates

11. During the 2001 to 2004 time period, Navistar ramped up its engine production beyond initial expectations and correspondingly increased its purchases of engine parts from suppliers. Navistar sought to share in those suppliers' unanticipated profits by asking them to pay a portion back to the Company in the form of rebates. Under Generally Accepted Accounting Principles ("GAAP"), a company could recognize rebates only when they were actually earned, *i.e.,* when the entity had substantially accomplished what was necessary to be entitled to such rebates. Accordingly, Navistar could record the full rebate as income in the then-current period *only* if no contingencies existed on its right to receive the rebate. Conversely, the Company was prohibited from booking rebates as income in the then-current period if they were based on future business.

12. During this period, Navistar booked 35 rebates and related receivables from its suppliers. Of those rebates and receivables, as many as 30 were improperly booked. While these rebates and receivables took different forms -- including volume-based rebates and so-called "signing bonuses" for Navistar's award of new business -- all were improperly booked as income in their entirety upfront, even though, in whole or in part, they were earned in future periods. The Company's eventual restatement of these rebates and receivables totaled $9.7 million of pre-tax income in 2004 and $8.5 million in 2003, which represented 27.7 percent and 2.7 percent, respectively, of the restated loss before income taxes for those years.

13. The vast majority of these receivables were volume-based rebates that Navistar obtained from its suppliers at the end (or even after the end) of the fiscal year. As contingent consideration for paying these rebates, however, many suppliers required the Company either to agree to new business or to repay the amount of the rebate in the form of waived price concessions on already-agreed upon future business. The Engine Division booked these rebates, often using the same form letter (which in certain instances was back-dated) that falsely stated that the rebate was based on past purchases and had no contingencies. In some instances, certain Engine Division employees also generated side-letter arrangements with vendors that detailed that the rebates were contingent on future purchases and/or the vendor could recoup the rebate through inflated future prices by which the Company would forego agreed-upon price reductions. Additionally, these side-letters stated that Navistar would refund the rebate accordingly if the Company failed to make sufficient future purchases. These side-letters made clear that these rebates had not actually been earned at the time the amounts were recognized.

14. In one instance, "Vendor Rebate 1," a supplier executed a form rebate letter drafted by Navistar, and dated October 19, 2004, that said the supplier was providing the Company a $2.1 million rebate based on "2004 volume and piece price productivity

improvements." However, the very next day, October 20, 2004, the parties executed a side-letter arrangement that specifically stated that half of the rebate was based on pulling forward productivity improvements expected to be achieved in 2005. Navistar also agreed to refund any shortfall to the supplier should these improvements not be achieved. Thus, the side-letter made clear that the supplier's rebate was contingent on future business with the Company. Nevertheless, Navistar approved the rebate and booked the entire dollar amount in fiscal year 2004.

15. Another form of these improperly-booked rebates were so-called "signing bonuses" that Navistar demanded and received from certain suppliers in exchange for awarding new business. Despite the fact that the suppliers' payments were contingent on receiving that new business from Navistar, the Company booked the rebates in their entirety during the then-current period in which they were received, instead of when earned over the period of the future business.

16. In one such instance, "Vendor Rebate 2," McIntosh contacted Stanaway four days after the 2003 fiscal year-end to discuss the need to fill an earnings shortfall. Stanaway, in turn, discussed the shortfall with Akers, who in exchange for promising to provide future business to a particular supplier in 2004, convinced the supplier to agree to pay a $6.2 million signing bonus to the Company and to provide Navistar with a letter that would allow the Company to book the full amount in 2003. The vendor had never before done business with Navistar. Akers had engaged in previous discussions with the vendor about possible future business and the payment of a signing bonus, but the terms of the signing bonus were not finalized until after the 2003 fiscal year-end. Stanaway, who had no direct role in acquiring the rebate, then approved an entry recording the $6.2 million as income in 2003.

17. McIntosh, Akers, and Stanaway understood that to be booked in the current period, such rebates could not be contingent or otherwise based on future business. Despite this understanding, McIntosh and Akers directly negotiated or otherwise arranged for the Company to enter into and book certain rebates during the then-current period knowing, or recklessly failing to know, that such rebates were contingent on future business. As recorded, these rebates were not in compliance with GAAP. Additionally, McIntosh and Akers directly or indirectly approved the creation and use of letters that they knew or recklessly failed to know did not reflect material aspects of the transaction.

18. Akers initiated the concept at Navistar of seeking vendor rebates based on volume increases and often supervised the employees negotiating the vendor rebates and related receivables. In several instances, including Vendor Rebate 1 and Vendor Rebate 2, Akers directly or indirectly approved rebates that he knew, or recklessly failed to know, were tied to future business but would nonetheless be booked in the then-current period. Akers participated directly in the negotiations of multiple rebates and, in certain instances, personally received both a "clean letter" and "side-letter" for the same rebate, which was evidence that the rebate had contingencies.

19. As CFO of the Engine Division, McIntosh was responsible for the accounting for all Engine receivables during the relevant period, including all vendor rebates. McIntosh was involved in the planning of at least three rebates, including Vendor Rebate 2, knowing, or recklessly failing to know, that they were contingent on future business but would nonetheless be booked in their entirety in the then-current period.

20. As Director of Engine Finance, Stanaway approved the recording of receivables from fiscal 2001 through 2003, including all vendor rebates. Stanaway typically was not involved in the negotiation of vendor rebate agreements or the procuring of "clean" letters that

supported the booking of such rebates, and usually became involved in these transactions only at the final approval stage. Despite his lack of involvement in obtaining these vendor rebates, Stanaway approved the booking of certain rebates as income, including the booking of Vendor Rebate 2, knowing, or recklessly failing to know, that they were contingent on future business and should not be booked as income in the current period. Stanaway had little accounting background or formal training in GAAP at the time of the transactions.

21. Stinsa succeeded Stanaway for a relatively brief period, from July 2004 until January 2006. As Stanaway's successor, Stinsa was not involved in the negotiation of vendor rebate agreements or the procuring of "clean" letters that supported the booking of such rebates. Instead, Stinsa became involved in the vendor rebate process only when asked on a sporadic basis to approve booking certain rebates. While authorized to approve booking these receivables, Stinsa's primary responsibilities did not include these transactions, and he had little accounting background or formal training in GAAP at the time of the transactions. For example, Stinsa did not specifically know whether booking so-called "signing bonuses" into income in the then-current period was consistent with GAAP; instead, he assumed it was, because he knew the Company had a practice of soliciting and booking such receivables. In fiscal 2004, Stinsa erroneously approved the booking of a $4 million signing bonus based on a letter that, while expressly stating that the bonus was unconditional, also stated that the payment concerned the award of "new" business. Stinsa should have inquired whether the receivable was, in fact, contingent on the vendor's expected new business with Navistar. Stinsa erroneously approved the booking of two other vendor rebates in fiscal 2004, including another signing bonus and a volume-based rebate. In approving these rebates without sufficient inquiry, Stinsa directly or indirectly caused Navistar to enter a false financial book, record or account.

Vendor Tooling

22. Prior to 2003, Navistar periodically entered into amortization agreements concerning the cost of tooling with vendors. Under these arrangements, the vendors purchased the tooling they used to make parts sold to Navistar, and the Company repaid the suppliers for those tooling costs through amortization payments incorporated in the piece-price rates of the parts ultimately sold to Navistar. In 2003, the Company determined that in some instances, instead of continuing these amortization payments, the Company would benefit (in part through beneficial accounting treatment) by purchasing the tooling outright from the suppliers and depreciating the tooling costs going forward over a longer period. Consequently, in 2003, the Company initiated a program pursuant to which Navistar arranged to terminate certain of these amortization agreements and acquired the tooling via lump sum payments to the suppliers. However, instead of paying suppliers the remaining unamortized tooling cost as of the 2003 purchase date, the Company paid the suppliers a dollar amount equivalent to the unamortized tooling cost as of the beginning of the 2003 fiscal year. Since Navistar had already been paying amortization to the suppliers since the start of that fiscal year (*i.e.,* November 1, 2002), the Company arranged to receive back from those suppliers a "rebate" equivalent to those year-to-date amortization payments. The Company then improperly booked these rebates into income. In addition, the Company improperly deferred depreciation costs related to the tooling buybacks.

23. In 2003, two Navistar employees approached the Company's outside auditor regarding the accounting for certain contemplated tooling buyback transactions. After learning of the planned accounting for the program, e-mails indicate that the auditor informed the employees that the recapture and booking of previously-paid amortization into income was improper. While certain transactions were booked in fiscal year 2003 because they were believed to be of immaterial dollar amounts, e-mails indicate that the auditor informed the

Company that no such transactions would be permitted in fiscal year 2004. Despite being informed of these developments, McIntosh used a "60-day rule" and authorized Engine Division employees in 2004 to record 60 days of amortization recaptured as income based on the Company's payment terms. In so doing, McIntosh disregarded employees' warnings that continuing to record the recapture of amortization as income would be inconsistent with the auditor's guidance on the accounting.

24. In disregarding that guidance, McIntosh knew or recklessly failed to know that Navistar booked income in violation of GAAP. In 2004, the Company restated a total of $1.6 million in income related to the vendor tooling buyback program, or 4.6 percent of the restated loss before income taxes for that year.

Waukesha

25. From 2001 to 2005, Schultz, the Waukesha plant controller, engaged in various fraudulent accounting practices that collectively caused income during that period to be overstated by a total of approximately $38 million.

26. From early 2003 through 2005, Schultz directed the plant manager of accounting to delay processing certain vendor invoices that had been received and to refrain from accruing those unprocessed invoices in accounts payable as current period expenses in order to help reach certain plant financial goals.

27. From about 2001 through 2005, Schultz directed the plant manager of accounting to alter the Waukesha inventory numbers at the end of every month in order to improve the plant's financial operating results. Schultz failed to utilize Waukesha's designated accounting software in accounting for the inventory movements and usage and instead tracked the inventory manually, which made it easier for him to record erroneous totals. When periodic physical inventory counts taken at the plant found the recorded inventory balances to be overstated,

Schultz failed to record appropriate adjustments to lower the inventory balances. As a result of this conduct, Waukesha's books falsely indicated the plant had $11 million in inventory that did not exist, and consequently understated materials expenses by that amount.

28. Schultz deferred certain costs relating to a purported arrangement with a contractor that provided services relating to parts manufactured at Waukesha. Pursuant to a purported side agreement entered into by a former Waukesha employee, Waukesha had agreed to pay higher upfront costs to the contractor as a means to help finance the start-up of the contractor's business. In return, the contractor purportedly agreed to reduce its prices to Navistar in future periods. The agreement was not in writing; additionally, there was no evidence that the contractor guaranteed to repay any specified higher upfront costs. Nevertheless, beginning in 2002, Schultz deferred the entire dollar amount of certain of the contractor's invoices (*i.e.,* not just a portion representing higher upfront amounts paid to the contractor), effectively understating expenses in order to "smooth out earnings." Schultz deferred approximately $2.4 million of those costs in the first quarter of fiscal 2003, and another $700,000 in the third quarter of fiscal 2003.

29. Schultz also improperly deferred certain costs related to Waukesha's installation of a new manufacturing line. Before installation of the manufacturing line was complete, the general contractor stopped work and filed for bankruptcy. As a result, the Company was required to pay off subcontractors' liens and pay to have the installation completed by other subcontractors. From 2002 through 2005, Schultz deferred about $3 million that Navistar incurred in start-up expenses under the supposed theory that the Company would recover those costs from the bankrupt general contractor.

30. Schultz engaged in the aforementioned conduct in an attempt to improve Waukesha's financial results. The aggregate monetary impact of Schultz's accounting

misconduct was material to Navistar's financial statements. Schultz knew or recklessly failed to know that the actions described above were not in compliance with GAAP.

Warranty Reserve

31. Beginning in fiscal year 1999, the Engine Division assumed responsibility for accounting for its warranty reserve, which reflected the Company's estimated future warranty costs on engines installed in the majority of Navistar manufactured trucks. The warranty accrual estimate process began with the Engine Division's Reliability & Quality ("R&Q") group, which generated an estimated warranty cost per unit, or CPU, for each engine sold. This calculation incorporated certain "above-the-line" items, including well-established or known steps (*e.g.,* implemented engineering fixes) that were viewed, based on historical trends or data, to have effectively reduced warranty costs. The CPU was the primary basis for the warranty reserve amount; the higher the CPU, the higher the reserve.

32. The warranty reserve-setting process should have been governed by accounting rules related to contingent liabilities. Pursuant to Statement of Financial Accounting Standards ("SFAS") No. 5, *Accounting for Contingencies - Appendix A; With Respect to Obligations Related to Product Warranties and Product Defects,* warranty reserves must be established when it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated.

33. When R&Q's CPU calculation was presented to Stanaway, and then ultimately to McIntosh, both typically stated that the initial estimated reserve number was too high for the Engine Division's business plan. Without sufficient consideration for the relevant accounting rules, Stanaway and McIntosh typically then directed R&Q to add certain "below-the-line" items to the warranty reserve calculation process because they thought these items would reflect potential reductions that the Company hoped to achieve in future warranty costs. These "below-

the-line" items included anticipated vendor reimbursements and engineering fixes that lacked historical trend or other data evidencing their likely effectiveness. For example, Stanaway and McIntosh directed R&Q to include anticipated vendor reimbursements in the warranty reserve calculation despite the lack of any specific language in the vendor contracts providing for such recoveries. Instead, the Company relied on the existence of standard provisions in supply agreements or the Illinois Commercial Code to support the contemplated vendor reimbursements. During the relevant period, approximately 50 percent of the vendor recoveries deducted below the line from warranty reserve calculations were based on something other than specific contractual language. Moreover, the Company often did not receive reimbursements from vendors for engine warranty claims. Stanaway and McIntosh also directed the inclusion in the warranty accrual calculation of anticipated engineering fixes that lacked historical and empirical data evidencing their likely effectiveness. Certain anticipated fixes were incorporated into the CPU calculation before they had even been implemented. At McIntosh and Stanaway's insistence, R&Q included these "below-the-line" items in its warranty reserve calculation, and these components consistently reduced the warranty reserve.

34. The inclusion of these anticipated vendor reimbursements and engineering fixes was not in compliance with GAAP. Stanaway and McIntosh knew or should have known that the warranty reserve-setting process was governed by accounting rules relevant to contingent liabilities, yet failed to consider or apply such rules in establishing Navistar's warranty reserve. Stanaway and McIntosh also knew or should have known that including anticipated vendor reimbursements and engineering fixes without data evidencing their effectiveness was not in compliance with GAAP.

35. The below-the-line items inappropriately included in the reserve calculation caused the warranty expense to be understated by $17 million in fiscal year 2002 and by $18.5

million in fiscal year 2003. The $18.5 million total represented 5.9 percent of the restated loss before income tax for that year.

CLAIMS

I.

Violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5

36. Based on the foregoing, Defendants McIntosh, Akers and Schultz violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

II.

Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act

37. Based on the foregoing, Defendant Stanaway violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §77q(a)(2) and §77q(a)(3)].

III.

Violations of Exchange Act Rule 13b2-1

38. Based on the foregoing, Defendants McIntosh, Akers, Stanaway, Stinsa and Schultz violated Exchange Act Rule 13b2-1 [17 C.F.R. §240.13b2-1], which in relevant part, prohibits persons from directly or indirectly causing any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act to be falsified.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment which:

(a) Orders the Defendants to pay civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and/or Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)] in respect of their violations; and

(b) Grants such other relief as this Court may deem necessary and appropriate under the circumstances.

Respectfully Submitted,

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