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

SECURITIES AND EXCHANGE COMMISSION Plaintiff, v. MARK T. SCHWETSCHENAU, Defendant.	Civ. No. 10-cv-4904

COMPLAINT

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

1. This is an action to obtain a civil penalty against Mark T. Schwetschenau ("Schwetschenau" or "Defendant"), the former controller and chief accounting officer of Navistar International Corporation ("Navistar" or the "Company"), in connection with certain inappropriately-deferred expenses.

JURISDICTION

2. The Commission seeks the imposition of a civil monetary penalty pursuant to Section 21(d)(3) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(d)(3)].

3. This Court has jurisdiction over this action pursuant to 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 defendant, 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.

DEFENDANT

5. Schwetschenau, 54, of Glen Ellyn, Illinois, was the Corporate Controller and principal accounting officer of Navistar from 1998 through February 2006. Schwetschenau was one of several senior officers responsible for certain aspects of the Company's internal controls. Among other things, he was directly responsible for Navistar's accounting policies and procedures. Schwetschenau is a registered certified public accountant in Illinois.

RELEVANT ENTITY

6. 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

7. In 2000, Navistar entered into a long-term supply contract (the "Agreement") with an automobile manufacturer (the "Automaker") to develop and manufacture V-6 diesel engines commencing with model year 2002 and extending through 2012. From the fourth quarter of 2001 through the fourth quarter of 2002, the Company incurred substantial start-up costs relating to the Agreement, including expenses developing the engine, constructing a plant in Huntsville, Alabama, and leasing engine assembly assets. The Company began deferring some of these start-up costs in the fourth quarter of fiscal 2001 and as of the fourth quarter of 2002 had

accumulated $57 million of deferred pre-production costs. Specifically, the Company deferred $4.3 million in the fourth quarter of fiscal year 2001, $12.8 million in the first quarter of fiscal year 2002, and $13.3 million in each of the second and third quarters of fiscal year 2002. The $12.8 million, $13.3 million, and $13.3 million totals represent 12.5 percent, 65.5 percent, and 25.4 percent, respectively, of the Company's previously reported loss before income tax if adjusted to reverse these deferrals for each of the first three quarters of fiscal year 2002.

8. Relevant accounting rules provided that such startup costs could be deferred only if there existed an objectively verified and measured contractual guarantee of reimbursement. *See* FASB Emerging Issues Task Force Issue No. 99-5, *Accounting for Pre-Production Costs Related to Long-Term Supply Arrangements* ("EITF 99-5").

9. The terms of the Agreement standing alone did not provide for reimbursement in a manner sufficient to satisfy the requirements for expense deferral pursuant to EITF 99-5. Based on the requirements of EITF 99-5 and the Company's independent auditor, the Company attempted to secure a letter that would document an oral promise from the Automaker to reimburse the Company for its investment under the Agreement. Without the guarantee, the Company was not entitled to defer these expenses.

10. The Company never received from the Automaker a sufficiently specific written guarantee of reimbursement. Beginning in September 2001 and continuing until October 2002, when the Automaker cancelled the Agreement, Company management repeatedly but unsuccessfully sought such a guarantee in the form of a letter.

11. Schwetschenau, as principal accounting officer, and after consultation with senior management and the Company's independent auditor on the financial reporting of the issue, permitted the deferral of these start-up costs from the fourth quarter of 2001 through the fourth quarter of 2002. Schwetschenau was aware of the aforementioned circumstances concerning

these start-up costs, including that the Company was unable to obtain a written guarantee of specific reimbursement from the Automaker. Consequently, Schwetschenau should have known that the decision to defer these start-up costs was not in compliance with Generally Accepted Accounting Principles ("GAAP"). In erroneously allowing the deferral of these expenses, Schwetschenau directly or indirectly caused Navistar to enter an inaccurate financial book, record or account.

12. While Schwetschenau did receive assurances from Navistar senior officers that the Automaker had in fact committed to reimburse the Company for these start-up costs and Navistar's independent auditor was aware of all related facts and accepted the continuing deferral, these costs still should not have been deferred because the Company had not received the aforementioned written guarantee of reimbursement. Navistar, like all issuers registered with the Commission, is ultimately responsible for the accuracy of its books, records and accounts.

13. Based on the foregoing, Schwetschenau violated Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1].

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

(a) Orders the Defendant to pay civil monetary penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)]; and

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

Respectfully Submitted,

/s/John E. Birkenheier
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Date: August 4, 2010