UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,
100 F Street, N.E. Washington, D.C. 20549
Plaintiff,

v.

THOR INDUSTRIES, INC. AND
MARK C. SCHWARTZHOFF

Defendants.

Case: 1:11-cv-00889
Assigned To : Collyer, Rosemary M.
Assign. Date : 5/12/2011
Description: General Civil

COMPLAINT

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

SUMMARY

1. From approximately December 2002 to January 2007, Mark C. Schwartzhoff ("Schwartzhoff"), the Vice President of Finance of Dutchmen Manufacturing, Inc. ("Dutchmen") engaged in a fraudulent accounting scheme to understate Dutchmen's cost of goods sold. Dutchmen is a principal operating subsidiary of Thor Industries, Inc. ("Thor" or the "Company"). Instead of properly recording increased cost of goods sold, Schwartzhoff concealed the costs in various balance sheet accounts by making false entries in Dutchmen's books and records and by creating fraudulent documents. Schwartzhoff also made additional improper accounting entries to conceal other expenses during this period.

2. Schwartzhoff's fraud overstated Dutchmen's pre-tax income by nearly $27 million from fiscal year 2003 to the second quarter of fiscal 2007, and allowed him to obtain nearly $300,000 in ill-gotten bonuses. In June 2007, Thor filed restated financial statements for

fiscal years 2004 to 2006, each of the quarters of fiscal 2005 and 2006, and the first quarter of fiscal 2007, reducing pre-tax income by approximately $26 million in the aggregate and between 2% to 6% annually and between 2% to 7% in virtually every quarter.

3. Thor's failure to maintain accurate books and records and adequate internal accounting controls violated a 1999 Commission cease-and-desist order ("Order"). The Order directed Thor to cease and desist from committing future books and records and internal controls violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 ("Exchange Act"), based on similar misconduct and internal control deficiencies that occurred over four years at a different Thor subsidiary.

4. Thor's failure to implement adequate internal controls after the 1999 Order contributed to Schwartzhoff's ability to commit his fraud without detection. In particular, Thor failed to adequately implement and verify certain key segregation of duties within accounting and financial functions at Dutchmen, which allowed Schwartzhoff to have unfettered access rights to Dutchmen's accounting system, the ability to create, enter and approve manual journal entries, and the ability to create and approve account reconciliations. As a result, Schwartzhoff was able to make fraudulent journal entries in various accounts that he manipulated and to disguise these entries through account reconciliations and supporting documents that he falsified. In addition, Thor failed adequately to monitor and verify account reconciliations and account information that Schwartzhoff submitted in reporting Dutchmen's financial results. Thor also failed to implement an effective internal audit function for Dutchmen.

5. After Schwartzhoff's fraud came to light, Thor concluded that the internal control failures at Dutchmen constituted a material weakness in Thor's internal controls over financial reporting. Thor determined that similar lack of segregation of duties existed in varying degrees

at each subsidiary and that it lacked sufficient corporate level monitoring of account reconciliations for all of its subsidiaries.

JURISDICTION AND VENUE

6. The Court has jurisdiction over this action pursuant to Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]. The defendants, directly or indirectly, have made use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the devices, schemes, statements, omissions, acts, transactions, practices and courses of business alleged in this Complaint.

7. Venue is proper pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain of the acts alleged herein constituting violations of the Exchange Act occurred in the District of Columbia, including Thor's filing of materially false and misleading annual and quarterly reports and other documents with the Commission.

DEFENDANTS

8. **Thor** is a Delaware corporation based in Jackson Center, Ohio. Thor produces and sells a wide range of recreational vehicles and small and mid-size buses. It is also the largest manufacturer of recreational vehicles and small and mid-size transit and commercial buses in the U.S. and Canada. At all relevant times, Thor's common stock has been registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange under the symbol THO.

9. Thor operates generally through its independent subsidiaries; during the relevant period, Thor was comprised of 11 or more subsidiaries. Dutchmen is one of Thor's principal operating subsidiaries, with offices and facilities located in and around Goshen, Indiana.

Dutchmen manufactures and sells recreation vehicles known as conventional travel trailers and fifth wheels. Thor acquired Dutchmen in 1991.

10. **Schwartzhoff**, age 43, resides in Odessa, Missouri. From July 1992 to July 1995, he worked as an internal auditor for Thor's corporate headquarters in Jackson Center, Ohio. From July 1995 to January 2007, he was employed by Dutchmen in Goshen, Indiana: he served as Dutchmen's Controller from July 1995 to approximately May 1997, and as Dutchmen's Vice President of Finance (Dutchmen's senior financial officer position) from approximately May 1997 through January 2007. Thor suspended Schwartzhoff in January 2007 after he revealed certain aspects of his fraud to his supervisor. The Company terminated him in February 2007.

FACTS

A. Schwartzhoff's Improper and Fraudulent Accounting Entries

11. As Vice President of Finance of Thor's Dutchmen subsidiary, Schwartzhoff was responsible for Dutchmen's financial accounting, cost accounting, information technology, human resources, and product dispatch/shipping functions. Schwartzhoff had access to all aspects of Dutchmen's centralized accounting systems, including the ability to make manual journal entries without authorization from or meaningful review by anyone at Dutchmen or Thor corporate.

12. Among his duties, Schwartzhoff prepared Dutchmen's financial statements for transmission to Thor corporate for inclusion in Thor's consolidated financial statements and financial segment disclosures filed with the Commission on Forms 10-K and 10-Q. During Thor's fiscal years 2002 to 2006 (ended July 31st), Dutchmen comprised approximately 10% to 18% of Thor's revenues and 6% to 13% of Thor's pre-tax income.

13. While Vice President of Finance, Schwartzhoff engaged in a fraudulent accounting scheme, which he concealed over a period of at least four years.

1. **Schwartzhoff's Improper Accounting Entries**

14. Beginning in at least fiscal 2002, Schwartzhoff started making regular unsupported manual journal entries to Dutchmen's cash, receivables, and payables accounts to correct discrepancies that occurred during monthly account reconciliations.

15. For example, to reconcile cash discrepancies in Dutchmen's controlled disbursement bank account, Schwartzhoff made journal entries to write-off upwards of $30,000 per month for items such as old outstanding checks that had not cleared in Dutchmen's bank account. Schwartzhoff made these adjustments without any support or research. He continued to make these entries through 2006.

16. Also, between 2002 and 2006, Schwartzhoff made and concealed various delinquent tax payments. After liens had been assessed against Dutchmen for unpaid unemployment taxes, Schwartzhoff wrote company checks and stamped them with the signature stamp of Dutchmen's President without his knowledge.

17. Schwartzhoff made these payments, which involved amounts up to $200,000, without obtaining a second authorizing signature that the Company's policy required for checks in excess of $2,500. Schwartzhoff further concealed these payments by making unsupported manual journal entries to a balance sheet account instead of to payroll tax expense.

2. **Schwartzhoff's Scheme to Understate Cost of Goods Sold**

18. From the second quarter of fiscal 2002 and continuing into the second quarter of fiscal 2007, Schwartzhoff intentionally understated Dutchmen's cost of goods sold to avoid recognizing inventory costs that were not reflected in Dutchmen's financial accounting system.

Dutchmen maintained current inventory pricing in its costing department's records but did not regularly update the inventory pricing in the accounting system that Dutchmen used to produce its financial statements. As a result, when prices rose, Dutchmen relieved inventory in its costing department at current higher prices while its accounting system relieved inventory at outdated lower prices. Rather than correctly recording these "inventory losses" in Dutchmen's accounting system as an increase to cost of goods sold, Schwartzhoff concealed the inventory costs in other financial statement accounts.

19. Schwartzhoff carried out his scheme primarily by making baseless manual journal entries to falsify the financial statements and other records he provided monthly to Thor. Schwartzhoff's journal entries credited or decreased various inventory accounts, such as raw materials, to reduce the inventory value on the balance sheet so that it matched the actual inventory book value. The offsetting debits in Schwartzhoff's journal entries were improperly made to various balance sheet accounts by increasing assets or decreasing liabilities, such as by overstating accounts receivable and cash or understating accounts payable. Because the offsetting debits should have instead been made to cost of goods sold, income was overstated.

20. In December 2002, Dutchmen incurred the first of many "inventory losses" that Schwartzhoff intentionally failed to record as increased cost of goods sold. At the time, Dutchmen performed a physical inventory count that should have resulted in a $433,000 reduction of its recorded inventory balance and the related recognition of an additional $433,000 of expense. Schwartzhoff failed to record this inventory reduction and corresponding increase in cost of goods sold.

21. In January 2003, and each month thereafter until January 2007, Schwartzhoff continued to make and report unsupported accounting entries to avoid recording current period

inventory misstatements and to continue concealing his prior period fraud. For example, Dutchmen's accounting records indicate that during fiscal year 2005, Schwartzhoff made nearly 110 fraudulent entries. In fiscal year 2006, he made at least 57 fraudulent entries.

22. The impact of Schwartzhoff's fraudulent entries on Thor's income increased each year during the fraud. Schwartzhoff's understatement of cost of goods sold grew from less than $1 million in fiscal year 2003 to $4.2 million in 2005. In fiscal year 2006, his understatement skyrocketed to $14 million in the wake of Hurricane Katrina in August 2005. Orders for recreation vehicles and travel trailers increased in part due to the government's efforts to provide temporary housing for displaced hurricane victims. At the same time, increased commodity prices resulting in part from higher oil prices also increased the costs of materials to manufacture recreation vehicles and travel trailers. These higher costs at a time of higher demand caused substantially increased losses at Dutchmen, which Schwartzhoff concealed.

3. **Schwartzhoff Conceals His Fraud**

23. To cover-up his false entries, Schwartzhoff fabricated or altered supporting or related documentation, such as purchase invoices, inventory reports and other documents relating to accounts he falsified. He created false reconciliations for receivables, payables, and cash accounts to match the totals reflected in the financial statements for those accounts.

24. Instead of providing the actual account detail for receivables and payables, he downloaded the account information into a separate computer file, changed balances for the individual sub accounts, and changed the total at the bottom of the page, so that the documentation supported the amounts he falsely provided to Thor corporate.

25. To overstate cash, he manipulated the information related to Dutchmen's outstanding checks by downloading the list of checks into a separate computer file, cutting-off

the list at the check where the total amount corresponded to the desired total, and sometimes modifying individual check amounts to reach the total he needed for the reconciliation. Schwartzhoff provided these false reconciliations each month to Thor corporate. Schwartzhoff provided other false information about Dutchmen's accounts and its results of operations to Thor corporate.

26. Schwartzhoff also submitted false documents and information to Thor's external auditor ("Auditor"). For example, he provided false accounts receivable, accounts payable, and cash reconciliations to the Auditor. For audits prior to fiscal 2006, he set up his false journal entries to automatically reverse prior to the time that he knew the Auditor reviewed Dutchmen's physical inventory counts and related balance sheet information. Schwartzhoff then falsified account roll-forwards provided to the Auditor to make it appear that inventory had increased at year-end when, in fact, it had not. For the fiscal 2006 audit, Schwartzhoff provided the Auditor an altered inventory compilation spreadsheet and altered several invoices for material purchases on which he changed the prices to match the inventory compilation detail.

27. Schwartzhoff engaged in other conduct to conceal and perpetuate his misconduct. He used particular source code designations for most of his false journal entries so that he could identify them and exclude them on journal entry reports he provided to Thor corporate and the Auditor, such as accounts payable and accounts receivable reports. Schwartzhoff also delayed recruiting and hiring someone to fill the controller position at Dutchmen. He structured or assigned the duties of his subordinates so that he would retain certain duties that would eliminate or minimize the risk of detection.

4. **Schwartzhoff Acted with Scienter and Benefitted From His Scheme**

28. Schwartzhoff acted intentionally in perpetrating a multi-year fraud that he knew would provide him with direct financial benefits and that he knew, or was reckless in not knowing, would lead to Thor filing materially false and misleading financial statements and segment financial information in Thor's periodic reports filed with the Commission from the second quarter of 2003 through the first quarter of 2007. Schwartzhoff knowingly prepared and approved false and misleading financial information for Dutchmen which he submitted to Thor corporate for inclusion in Thor's consolidated financial statements that Thor filed with the Commission on Forms 10-K and 10-Q. Schwartzhoff engaged in a scheme and regular practice to misstate Dutchmen's financial results and to mislead Thor's Auditor.

29. Schwartzhoff understood that increases in Dutchmen's pre-tax income would result in increased bonuses to him. Those bonuses were paid under a "Management Incentive Plan" ("MIP") while he served as VP of Finance, and were calculated as a percentage of Dutchmen's pre-tax income. By understating Dutchmen's cost of goods sold, Schwartzhoff overstated Dutchmen's pre-tax income and earned approximately $299,805 in ill-gotten MIP bonuses during fiscal years 2004 to 2007.

B. Thor's Restatement and Misleading Filings

30. Schwartzhoff's fraudulent conduct overstated Dutchmen's (and consequently Thor's) pre-tax income by approximately $27 million in the aggregate from fiscal year 2003 through the second quarter of fiscal year 2007. As a result of his fraud, Thor's Forms 10-Q filed

for the second quarter of 2003 through the first quarter of 2007, and Thor's Forms 10-K filed for the fiscal years 2003 through 2006, were materially false and misleading.[1]

31. In June 2007, Thor filed restated financial statements to reduce its pre-tax income by a total of $26 million for fiscal years 2004 to 2006, each of the quarters of fiscal 2005 and 2006, and the first quarter of fiscal 2007. The restatement reduced pre-tax income by between 2% to 6% annually and 2% to 7% in virtually every quarter. Thor also restated the pre-tax income reported for its recreational vehicle ("RV") segment, which comprised the substantial portion of Thor's consolidated income. The restatement reduced pre-tax income for the RV segment by between 2% to 6% annually and 2% to 8% in virtually every quarter.

32. Although Thor did not restate its fiscal 2003 financial statements, the fraud overstated pre-tax income of Thor's second and third quarters of fiscal 2003 by a total of approximately $1 million or 3% and 1% respectively. Thor's fiscal 2003 pre-tax income was overstated by less than 1% (0.6%). The income reported for the RV segment in these periods was overstated by similar percentages.

C. <u>Thor Lacked Sufficient Internal Controls and Failed to Detect Schwartzhoff's Fraud</u>

33. Dutchmen's lack of adequate internal controls provided Schwartzhoff the opportunity to commit his fraud without detection. Like the other manufacturing companies Thor had acquired as its operating subsidiaries, Dutchmen had mostly maintained its own accounting system and control activities after it was acquired. At the time of the Commission's 1999 action, Thor had few standardized or company-wide accounting policies and procedures. Thor was on notice of deficiencies in 1999 and in the years during Schwartzhoff's fraud.

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1 The financial statements of Thor's first quarter 2003 Form 10-Q were unaffected by Schwartzhoff's false entries. Thor's Form 10-Q for the second quarter of 2007 was not misstated because it was not filed until after Thor had corrected its financial statements resulting from the misconduct.

Despite improving its internal controls over its financial reporting, Thor failed to make adequate upgrades to key internal accounting controls at Dutchmen.

1. **The Commission's 1999 Action Against Thor**

34. On October 18, 1999, the Commission filed a settled cease-and-desist proceeding against Thor for failing to maintain accurate books and records and adequate internal accounting controls at one of its Michigan subsidiaries, El Dorado. See In the Matter of Thor Industries, Inc., Exchange Act Release No. 42021 (Oct. 18, 1999).

35. The absence of controls provided Controller and General Manager Bradley J. Buchanan ("Buchanan") the opportunity to steal $400,000 in cash over four years and to falsify El Dorado's books and records to create illusory profits over more than two years and to conceal his theft. The misconduct overstated Thor's net income by between 4% and 19% for fiscal 1996, 1997, and the first two quarters of fiscal 1998.

36. The Company restated its financial statements and sued Buchanan, who was also charged criminally as well as by the Commission. See SEC v. Bradley J. Buchanan, Case No. 1:99-CV-02567 (ESH) (D.D.C.) (Sept. 28, 1999), SEC Litigation Release Nos. 16302 (Sept. 28, 1999) and 16518 (April 18, 2000); USA v. Bradley J. Buchanan, Case No. 2:99-CR-81174-GCS (E.D. Michigan) (Sept. 21, 1999).

2. **Similarities Between Schwartzhoff's Fraud and Buchanan's Fraud**

37. Schwartzhoff's fraud and Buchanan's fraud involved similar accounting manipulations. Both frauds involved an individual who hid operating losses through false journal entries in balance sheet accounts such as accounts receivable, cash, and inventory to understate expenses and overstate profits. Both individuals evaded signature requirements for payments from company bank accounts. And both individuals created and provided false

documentation to Thor corporate including daily operating reports, monthly controller's reports, and false bank reconciliations. Unlike Schwartzhoff, Buchanan also stole money from the Company through the improper issuance of checks, wire transfers, and money orders. But both individuals earned additional improper bonuses through their schemes to overstate profits.

38. Importantly, both frauds went undetected for a period of time through similar internal control failures that involved lack of segregation of duties such as inappropriate access over and responsibility for accounting and financial reporting, inadequate corporate oversight of account reconciliations and other account information, and inadequate procedures to review and determine whether underlying accounting records supported financial analyses and schedules submitted in support of financial statements.

3. Thor Lacked Adequate Internal Control Improvements Post-Buchanan and Failed to Prevent or Detect Schwartzhoff's Fraud

39. As a result of Buchanan's fraud, Thor was on notice that inadequate internal controls posed a significant risk to its record keeping and financial reporting. Thor's Auditor identified in its 1999 audit management letter that the main risk of fraud at Thor related to lack of segregation of duties at its subsidiaries, which numbered approximately 12 at the time and ranged up to 16 during Schwartzhoff's fraud. Throughout 2000 to 2006, Thor was aware of various internal control concerns at its subsidiaries, including instances of failure to conduct independent review and approval of journal entries, and inadequate segregation of duties involving purchasing, payroll and human resources functions at certain subsidiaries.

40. Thor was also aware of internal control concerns at Dutchmen during this period. For example, Thor's Internal Audit of Dutchmen in July 2004 identified segregation of duties deficiencies in check issuance and bank reconciliation processes, and that an excess number of individuals had access rights to the computer system to print checks, including Schwartzhoff.

41. Although Thor made improvements to its internal controls after discovery of Buchanan's misconduct, Thor either failed to identify as deficient, or failed to implement, important controls at Dutchmen (and its other subsidiaries, to varying degrees) involving segregation of duties and corporate oversight.

42. Dutchmen failed to adequately implement and verify segregation of duties within accounting and financial functions. Schwartzhoff had the ability to create, enter and approve manual journal entries in Dutchmen's accounting system, which allowed him to make fraudulent entries in inventory, accounts receivable, accounts payable, cash, and the other accounts he manipulated. Thor failed to audit adequately Dutchmen's compliance with the policy that journal entries by the VP of Finance or controller be reviewed and approved by Dutchmen's President.

43. Schwartzhoff also had the ability to create and approve account reconciliations, which he falsified to conceal his fraudulent journal entries. While Thor implemented a policy at Dutchmen in 2005 requiring that a newly hired Dutchmen employee create bank reconciliations, Schwartzhoff easily circumvented the control by structuring that staff member's duties so that she merely verified certain figures in reconciliations that Schwartzhoff prepared and then signed them, creating the appearance that she had created the reconciliations. Thor's review processes were inadequate to verify that this control was implemented and effective.

44. Schwartzhoff's "super user" access rights to Dutchmen's computer systems allowed him to falsify accounting entries and supporting documentation. Thor Internal Audit had identified Schwartzhoff's unlimited access rights in its 2004 review and recommended, but did not require, that the VP of Finance not have unlimited rights. In response, Dutchmen limited his access rights to certain account functions, such as restricting his ability to print accounts

payable checks. But the restrictions were insufficient because Schwartzhoff continued to have unfettered access to Dutchmen's general ledger. Other individuals at Dutchmen also continued to have inappropriate computer access rights.

45. In addition, Thor corporate failed adequately to monitor and verify account reconciliations and account information that Schwartzhoff submitted in reporting Dutchmen's financial results. Thor implemented a policy in 1999 requiring subsidiaries to submit monthly reconciliations of cash, accounts receivable, and accounts payable. Thor's corporate review process did not, however, verify the information that Schwartzhoff provided in his falsified reconciliations.

46. In response to Thor's revised policy that subsidiaries submit detailed listings of accounts receivable and accounts payable, Schwartzhoff routinely submitted falsified account detail for receivables and payables. He provided similar falsified detail for other accounts such as inventory. Thor failed to verify the detail in these submissions against information in Dutchmen's underlying records and accounting system.

47. Finally, Dutchmen lacked an effective internal audit function. The internal auditor Dutchmen hired in 2005 had little understanding of required internal control testing and, in fact, performed few internal audit functions. She also reported directly to Schwartzhoff, not to Thor's Internal Audit function. Moreover, Thor Internal Audit provided limited review of internal controls at Dutchmen, and indeed at other Thor subsidiaries. Thor Internal Audit was understaffed; performed a limited number of audits; failed to provide robust assessment of segregation of duties; and had inadequate procedures to validate supporting evidence Schwartzhoff submitted during control testing.

4. **Thor's Inadequate Controls Constituted a Material Weakness in the Company's Internal Controls Over Financial Reporting**

48. Following an independent investigation of Schwartzhoff's fraud conducted by outside counsel to Thor's audit committee, Thor concluded that the internal control failures at Dutchmen constituted a material weakness in Thor's internal controls. Accordingly, in its June 2007 restatement, Thor determined that it had ineffective internal controls over financial reporting, which caused its financial statements to be materially misstated.

49. Moreover, to varying degrees, lack of segregation of duties were determined to exist at each subsidiary with respect to various account reconciliation processes, account functions (such as cash), and journal entries. For example, senior accounting officers (controllers and VPs of Finance) at numerous subsidiaries had the ability to create, enter, and approve journal entries and reconciliations in accounts such as accounts receivable, accounts payable, and cash.

50. At all but one subsidiary, various individuals had inappropriate access rights to accounting and information systems, including "super user" access by senior accounting officers at some subsidiaries. In addition, Thor lacked sufficient corporate level monitoring of all subsidiaries account reconciliations because Thor employed the same inadequate review process across its subsidiaries.

51. As a result of the foregoing, Thor failed to maintain accurate books and records and internal accounting controls at Dutchmen over at least four years, and violated the Commission's 1999 Order that involved similar control deficiencies and that directed Thor to cease and desist from committing or causing violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

FIRST CLAIM FOR RELIEF

Violations of Exchange Act Section 10(b) and Exchange Act Rule 10b-5 (Schwartzhoff)

52. The Commission realleges and incorporates by reference Paragraphs 1 through 51.

53. Schwartzhoff, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange, in connection with the purchase or sale of securities, and with knowledge or recklessness: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, transactions, practices or courses of business that operated or would operate as a fraud or deceit upon other persons.

54. By engaging in the conduct alleged above, Schwartzhoff violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 [15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5].

SECOND CLAIM FOR RELIEF

Violations of Exchange Act Section 13(b)(5) and Exchange Act Rule 13b2-1 (Schwartzhoff)

55. The Commission realleges and incorporates by reference Paragraphs 1 through 54.

56. Schwartzhoff, directly or indirectly, knowingly circumvented or knowingly failed to implement a system of internal accounting controls at Thor and Dutchmen, knowingly falsified books, records, and accounts at Thor and Dutchmen subject to Section 13(b)(2)(A) of

the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], and caused to be falsified, such books, records and accounts.

57. By reason of the foregoing, Schwartzhoff violated, and unless restrained and enjoined will continue to violate, Section 13(b)(5) of the Exchange Act and Exchange Act Rule 13b2-1 [15 U.S.C. § 78m(b)(5); 17 C.F.R. § 240.13b2-1] .

THIRD CLAIM FOR RELIEF

Violations of Exchange Act Rule 13b2-2
(Schwartzhoff)

58. The Commission realleges and incorporates by reference Paragraphs 1 through 57.

59. Rule 13b2-2 of the Exchange Act [17 C.F.R. § 240.13b2-2], in relevant part, makes it unlawful for an officer or director of an issuer to, directly or indirectly: (1) make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or examination of financial statements, or the preparation or filing of any document or report required to be filed with the Commission; or (2) omit or state, or cause another person to omit or state, any material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, to an accountant in connection with: (i) any audit, review or examination of the financial statements of the issuer, or (ii) the preparation or filing of any document or report required to be filed with the Commission.

60. Schwartzhoff made and provided materially false and misleading statements, information, and documents to Thor's Auditor, and failed to disclose material facts to make the information he disclosed to the Auditor not misleading, in connection with audits of Thor's financial statements and periodic reports filed with the Commission

61. By reason of the foregoing, Schwartzhoff, directly or indirectly, violated, and unless restrained and enjoined will continue to violate, Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

FOURTH CLAIM FOR RELIEF

Violations of Exchange Act Sections 13(a), and Exchange Act Rules 12b-20, 13a-1, and 13a-13, and Aiding and Abetting of These Violations (Thor and Schwartzhoff)

62. The Commission realleges and incorporates by reference Paragraphs 1 through 61.

63. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13] require issuers of registered securities to file with the Commission factually accurate annual and quarterly reports. Exchange Act Rule 12b-20 [17 C.F.R. §240.12b-20] further provides that, in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they were made, not misleading.

64. Thor filed three annual and numerous quarterly reports with the Commission that materially misrepresented its pre-tax earnings. Schwartzhoff aided and abetted violations of these provisions by knowingly misrepresenting Dutchmen's financial results to Thor.

65. By engaging in the conduct set forth above, Thor violated, and unless restrained and enjoined will continue to violate Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20,13a-1 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13].

66. By engaging in the conduct set forth above, Schwartzhoff knowingly provided substantial assistance to Thor in its failure to file with the Commission factually accurate annual and quarterly reports.

67. By reason of the foregoing, Schwartzhoff aided and abetted, and unless restrained and enjoined will continue to aid and abet, violations of Exchange Act Section 13(a) [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13].

FIFTH CLAIM FOR RELIEF

Violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B) and Aiding and Abetting of These Violations (Thor and Schwartzhoff)

68. The Commission realleges and incorporates by reference Paragraphs 1 through 67.

69. Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] requires issuers to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of its assets. Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain the accountability of assets.

70. Thor failed: 1) to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of its assets; and 2) to devise and maintain a system of internal accounting controls sufficient to provide

reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain the accountability of assets.

71. By reason of the foregoing, Thor, directly or indirectly, violated, and unless restrained and enjoined will continue to violate Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

72. By reason of the foregoing, Schwartzhoff knowingly or recklessly gave substantial assistance to Thor in its failure to make and keep accurate books, records, and accounts and its failure to devise and maintain a sufficient system of internal accounting controls.

73. As set forth above, defendant Schwartzhoff, directly or indirectly, aided and abetted, and unless restrained and enjoined will continue to aid and abet, violations of Sections 13(b)(2)(A) and 13(b)(2)(B) [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

SIXTH CLAIM FOR RELIEF

Violations of Commission Cease-and Desist Order
(Thor)

74. The Commission realleges and incorporates by reference Paragraphs 1 through 73.

75. On October 18, 1999, the Commission ordered that Thor cease and desist from committing or causing any violation, and any future violations, of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. In the Matter of Thor Industries, Inc., Exchange Act Release No. 42021 (Oct. 18, 1999).

76. By reason of the forgoing, Thor committed violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. Accordingly, Thor has violated, and unless ordered to comply will violate, the Commission's October 18, 1999 Order.

PRAYER FOR RELIEF

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

I.

Ordering Thor to comply with the Commission's October 18, 1999 Order issued in In the Matter of Thor Industries, Inc., and permanently enjoining defendant Thor from violating, directly or indirectly, 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;

II.

Permanently enjoining defendant Schwartzhoff from violating, directly or indirectly, Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13b2-1 and 13b2-2 thereunder, and from aiding and abetting 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;

III.

Ordering defendant Schwartzhoff to disgorge his ill-gotten gains by virtue of the conduct alleged herein, and to pay prejudgment interest thereon;

IV.

Ordering defendant Thor to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

V.

Pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] barring defendant Schwartzhoff from serving as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]; and

VI.

Ordering such other relief as the Court deems just and proper.

Respectfully submitted,

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