

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	COMPLAINT
	:	Cause No. 06-1029-CV-W-REL
PAUL E. YARICK,	:	
	:	
Defendant.	:	
	:	

Plaintiff Securities and Exchange Commission alleges as follows:

SUMMARY

1. Paul E. Yarick (“Yarick” or “defendant”), the former principal financial officer and *de facto* chief financial officer of Interstate Bakeries Corporation (“IBC” or the “Company”), disregarded the estimates of IBC’s future workers’ compensation liabilities provided by its insurance consultant, on which the Company historically had relied for this critical piece of its workers’ compensation reserve analysis. Instead of recording the \$30 to \$32 million in additional workers’ compensation reserves that IBC’s insurance consultant had estimated and had confirmed with an independent actuarial firm, Yarick set IBC’s quarterly workers’ compensation reserve for the fiscal 2004 second and third quarters using obsolete information that he had been advised was unreliable.

2. As a result of Yarick’s conduct, IBC failed to account for its workers’ compensation reserve in accordance with Generally Accepted Accounting Principles (“GAAP”), and the Company filed financial statements in its Forms 10-Q for the fiscal second and third quarters 2004 that understated IBC’s reserves by at least \$30 million. The understatement of IBC’s reserves caused

IBC to fail to record the expense necessary to increase the reserve, which resulted in the Company overstating its fiscal second quarter pre-tax income in its Form 10-Q for the period ended November 15, 2003, and its cumulative fiscal third quarter pre-tax income in its Form 10-Q for the period ended March 6, 2004.

3. Prior to the filing of IBC's Forms 10-Q for its second and third fiscal quarters, Yarick, whose quarterly reserve determinations were not reviewed substantively by other IBC personnel, failed to disclose to IBC's accountants, its Board, its Audit Committee, its auditor, and the public that he had disregarded IBC's consultant's estimates in setting the fiscal second and third quarter 2004 reserves.

4. Because Yarick's quarterly reserve determinations were not reviewed substantively by other IBC personnel, IBC's controls were deficient with respect to this important aspect of its financial reporting. Yarick was responsible for IBC's internal controls and should have ensured that this control failure was addressed and corrected.

5. In May 2004, Yarick and other IBC executives disclosed to the Company's auditors and its Board that the Company would have to recognize an adjustment to its workers' compensation reserve of approximately \$40 million. On June 3, 2004, IBC issued a press release announcing that it had increased this reserve by that amount during fiscal 2004. In August 2004, after the completion of an internal inquiry concluded that Yarick had information as of the second quarter that should have led him to adjust the workers' compensation reserve at that time, IBC announced its intention to restate the fiscal second and third quarters 2004.

6. The Commission, in the interest of protecting the public from such activities, brings this action seeking a permanent injunction against Yarick, enjoining him from further violations of

the antifraud provisions of the Securities Exchange Act of 1934, imposing an officer and director bar, and ordering him to pay civil monetary penalties as allowed by law.

JURISDICTION AND VENUE

7. The Commission brings this action pursuant to the authority conferred upon it by Section 21(d) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78u(d)], to permanently enjoin Yarick from future violations of the federal securities laws.

8. This Court has jurisdiction over this action, and venue is proper, pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa].

9. Defendant, directly or indirectly, made use of the means or instruments of transportation and communication, and the means or instrumentalities of interstate commerce, or of the mails, in connection with the transactions, acts, practices and courses of business alleged herein. Certain of the transactions, acts, practices and courses of business alleged herein took place in the Western District of Missouri.

DEFENDANT

10. **Paul E. Yarick**, 67, of Overland Park, Kansas, served as IBC’s vice president and treasurer from 1978 to August 2004. In April 2003, IBC appointed Yarick senior vice-president finance. In this role, he served as the Company’s *de facto* CFO and signed and certified IBC’s periodic reports as the Company’s principal financial officer from April 2003 to April 2004. In August 2004, after the IBC’s internal inquiry, the Company removed Yarick from financial reporting responsibilities. In September 2004, Yarick separated from IBC.

RELEVANT ENTITY

11. **Interstate Bakeries Corp.**, a Delaware corporation headquartered in Kansas City, Missouri, is one of the nation's largest wholesale bakers. On September 22, 2004, IBC voluntarily filed bankruptcy proceedings, and currently is planning to reorganize. *See In re Interstate Bakeries Corporation*, Case No. 04-45814-jwv11 (W.D. Mo.). IBC's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. § 78l(b)] and was traded on the New York Stock Exchange until September 2004, when it was delisted after the Company's bankruptcy filing. IBC's stock currently is quoted in the Pink Sheets and traded in the over-the-counter market. IBC ends its fiscal year on the Saturday closest to the last day of May each year.

FACTS

Background

12. IBC historically has self-insured for its estimated workers' compensation liabilities. As a self-insurer, IBC is required to accrue a reserve for the potential losses associated with its workers' compensation self-insurance program when the loss contingency is probable and the Company can estimate the amount of the loss. *See* Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies*, ("FAS 5"). The nature of the contingency, the amount of the accrual, and, if appropriate, the possibility of further losses should be disclosed if doing so is necessary to prevent the financial statements from being misleading. Even if the loss contingency is reasonably possible, rather than probable, FAS 5 requires IBC to disclose in its financial statements the possibility of the additional loss, the nature of the loss contingency, and an estimate of the possible loss or range of loss. A loss is

probable if it is likely to occur, and it is reasonably possible if the chance of the loss occurring is more than remote but less than likely. FAS 5, ¶3.

13. From at least the mid-1990s through fiscal 2004, Yarick set IBC's workers' compensation reserve quarterly relying upon an actuarially-based estimate from the Company's insurance consultant. No one at IBC substantively reviewed Yarick's quarterly workers' compensation reserve determination, or the methodology or rationale for his reserve determination.

14. In early May 2003 (toward the end of fiscal 2003), IBC's insurance consultant advised Yarick, who was IBC's *de facto* CFO by that time, that because of recent anomalies in IBC's loss experiences, the insurance consultant's methodology for estimating IBC's future liability for workers' compensation claims potentially was no longer reliable. The insurance consultant further advised that even under this possibly unreliable methodology, IBC likely had a \$16 million deficit in its reserve accrual, and that, if other methodologies were used to calculate the reserve, IBC's reserve deficit could be substantially higher.

15. Shortly thereafter, IBC's auditors scrutinized the reserve and developed their own estimates as part of the fiscal 2003 audit. This action ultimately prompted IBC to add \$15 million to its workers' compensation reserve in the fourth quarter of fiscal 2003, which brought the total to approximately \$103.6 million, or the low end of the range that the auditor had determined was acceptable.

IBC Understates its Workers' Compensation Reserve

16. In late July or early August 2003, the insurance consultant, in conjunction with discussing its estimate of IBC's workers' compensation liability for the fiscal first quarter 2004, reiterated its concerns about the reliability of the methodology it was using to Yarick. The insurance consultant advised Yarick that it was considering changing methodologies, and indicated that if a different methodology was used, IBC's workers' compensation liability could be considerably higher than the then current reserve. The insurance consultant did not, however, change its methodology for that quarter and provided its estimate to Yarick based on its current methodology.

17. In early November 2003, IBC's insurance consultant advised Yarick that, consistent with the concerns it had expressed in the two prior quarterly meetings, it had changed the methodology it used to estimate IBC's workers' compensation reserve. The insurance consultant told Yarick that it estimated IBC's workers' compensation reserve should be within a range from \$134 million to \$152.2 million. The low end of this estimate was approximately \$32 million higher than IBC's fiscal first quarter 2004 reserve. Yarick expressed concern about the impact of the estimate on IBC, and did not accept the insurance consultant's report for the quarter. Instead, the insurance consultant and Yarick agreed that the insurance consultant would hire an actuarial firm to substantiate its estimate.

18. By late November 2003, the actuarial firm hired by the insurance consultant completed its work and submitted it to the consultant. The actuarial review confirmed the estimate that the consultant had reported to Yarick. By at least early December 2003, the insurance consultant informed Yarick that it had confirmed its new, much higher estimate with an independent actuarial firm. Yarick, however, failed to disclose the insurance consultant's change of

methodology, its new, much higher workers' compensation reserve estimate, or the independent confirmation of the consultant's new estimate to IBC accountants, the Company's board, its Audit Committee, or its auditor.

19. As a result of Yarick's conduct, IBC issued a materially inaccurate press release and filed a materially inaccurate Form 10-Q for its quarter ended November 15, 2003. Yarick set IBC's workers' compensation reserve at approximately \$101.6 million, or \$32 million below the low end of the insurance consultant's estimate range. If, consistent with the consultant's estimate, IBC had recorded a current period expense to increase its reserve by the additional \$32 million, the Company's pretax earnings for the period would have been reduced by a corresponding amount. Consequently, IBC reported fiscal second quarter 2004 pretax income of \$11.25 million when it should have reported a substantial loss.

20. In connection with the fiscal second quarter 2004 review by IBC's independent auditor, Yarick signed a December 17, 2003, letter to the auditor in which management represented that they "agree[d] with the work of specialists in evaluating the self-insurance reserves for workers' compensation..." To the contrary, however, in setting the workers' compensation reserve Yarick did not use the estimate provided by IBC's insurance consultant, which had been confirmed by a third party actuarial firm.

21. In IBC's fiscal second quarter 2004 Form 10-Q filed December 22, 2003, which Yarick signed as the Company's principal financial officer, Yarick certified that based on his knowledge, the report did not, among other things, include any material misstatements or omissions and that the report fairly presented, in all material respects the financial condition and results of operations for the period. However, as a result of Yarick's conduct, IBC's workers' compensation

reserve was materially understated and the Company's earnings were materially overstated, as described in Paragraph 19 above, in the fiscal second quarter 2004 Form 10-Q that Yarick certified.

22. In early February 2004, during IBC's fiscal third quarter 2004, IBC's insurance consultant, after updating the numbers to reflect the most recent quarter, advised Yarick that its workers' compensation reserve estimate essentially had not changed. Later in February 2004, the insurance consultant provided IBC with a reserve estimate of \$137 million. Yarick again failed to disclose the insurance consultant's change of methodology, its new, much higher workers' compensation reserve estimate, or the independent confirmation of the consultant's new estimate to IBC's accountants, its board, its Audit Committee, or its auditor.

23. Instead, Yarick set IBC's third quarter fiscal 2004 workers' compensation reserve at \$107 million, approximately \$30 million below the low end of the most recent estimate provided by its insurance consultant. As a result, IBC again materially understated its workers' compensation reserve, and the Company reported pretax earnings of \$15,394,000 for the 40 weeks ended March 6, 2004, when it should have reported a substantial loss.

24. In connection with the third quarter 2004 review by IBC's independent auditor, Yarick signed an April 19, 2004, letter to the auditor in which management again represented that they "agree[d] with the work of specialists in evaluating the self-insurance reserves for workers' compensation...." Yarick, however, again failed to disclose to the auditor that in determining the workers' compensation reserve, he did not use the estimate provided by IBC's insurance consultant, which had been confirmed previously by a third party actuarial firm.

25. In IBC's fiscal third quarter 2004 Form 10-Q, Yarick again certified that, based on his knowledge, the report did not, among other things, include any material misstatements or omissions and that the report fairly presented, in all material respects the financial condition and

results of operations for the period. However, as a result of Yarick's conduct, IBC's workers' compensation reserve was materially understated and the Company's cumulative earnings were materially overstated, as described in Paragraph 23 above, in the fiscal third quarter 2004 Form 10-Q that Yarick certified.

26. In early May 2004, Yarick advised IBC's Audit Committee that management was reviewing the workers' compensation reserve for a possible year-end charge in the fourth quarter, without disclosing the potential magnitude of the issue. Throughout fiscal 2004, prior to the filing of the quarterly reports, the chairman of IBC's Audit Committee routinely had asked Yarick and other members of IBC's senior management about the adequacy of the Company's material reserves. On those occasions, however, Yarick failed to disclose that the insurance consultant had advised him of an estimate that required a significant upward adjustment to the workers' compensation reserve and an actuarial review had confirmed that estimate.

27. On or about May 17, 2004, after IBC received the insurance consultant's report used to prepare IBC's fourth quarter and year end financial statements, IBC's chief executive officer and its controller met with Yarick to discuss IBC's course of action. At that meeting, Yarick expressed concern about using the insurance consultant's estimate and suggested that IBC withhold the insurance consultant's estimates from the auditor. IBC's chief executive officer and controller disagreed. Between May 18 and May 21, 2004, IBC's management, including Yarick, advised the Board, the Audit Committee, its auditor, and its lenders that the Company had a substantial workers' compensation reserve shortfall. On June 3, 2004, IBC announced that it had increased its workers' compensation reserve during fiscal 2004 with a charge to pretax income of approximately \$40 million, and that it was reviewing whether all or part of the charge related to earlier quarters, thus necessitating a restatement of fiscal 2004 quarterly results of operations.

FIRST CLAIM
Violations of Section 10(b)
of the Exchange Act and Rule 10b-5 Thereunder

28. Paragraphs 1 through 27 are realleged and incorporated herein by reference as if set forth in full.

29. Defendant Yarick in connection with the purchase or sale of securities, has: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operate as a fraud or deceit upon purchasers, prospective purchasers, and other persons.

30. Yarick acted with *scienter* because he was at least reckless.

31. By reason of the foregoing, Yarick violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

SECOND CLAIM
Violations of Section 13(b)(5) of the Exchange Act
and Rule 13b2-1 Thereunder

32. Paragraphs 1 through 27 are realleged and incorporated herein by reference as if set forth in full.

33. Defendant Yarick knowingly falsified books, records, or accounts described in Section 13(b)(2) of the Exchange Act.

34. By reason of the foregoing, Yarick violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 [17 C.F.R. § 240.13b2-1] thereunder.

THIRD CLAIM
Violations of Commission Rule 13b2-2 Under the Exchange Act

35. Paragraphs 1 through 27 are realleged and incorporated herein by reference as if set forth in full.

36. Defendant Yarick, as an officer of IBC, directly or indirectly, made or caused to be made materially false or misleading statements, or omitted to state, or caused another person to omit to state, material facts necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with

(1) any audit or examination of the financial statements of the issuer required to be made; or

(2) the preparation or filing of any document required to be filed with the Commission.

37. By reason of the foregoing acts and practices, Defendant Yarick violated Commission Rule 13b2-2 under the Exchange Act [17 C.F.R. §240.13b2-2], directly or indirectly.

FOURTH CLAIM
Violations of Commission Rule 13a-14 Under the Exchange Act

38. Paragraphs 1 through 27 are realleged and incorporated herein by reference as if set forth in full.

39. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] requires companies filing reports with the Commission to file reports that do not contain untrue statements of material fact or omit material facts necessary to make the statements made, in light of the circumstances in which

they were made, not misleading. Rule 13a-14 thereunder [17 C.F.R. § 240.13a-14], requires the principal executive officer and principal financial officer of the company to sign a certification that the report does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances in which such statements were made, not misleading.

40. Yarick certified IBC fiscal second and third quarter 2004 quarterly reports on Form 10-Q as IBC's principal financial officer. Specifically, Yarick certified that, based on his knowledge, the report did not, among other things, include any material misstatements or omissions and that the report fairly presented, in all material respects the financial condition and results of operations for the period. However, in the Forms 10-Q that Yarick certified, IBC's workers' compensation reserve was materially understated and the Company's earnings were materially overstated.

41. Yarick knew or was reckless in not knowing that the reports he certified contained untrue statements of material fact and omitted to state material facts necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

42. By reason of the foregoing, Yarick violated Commission Rule 13a-14 [17 C.F.R. § 240.13a-14].

FIFTH CLAIM

Aiding and Abetting IBC's Violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-11 and 13a-13 Thereunder

43. Paragraphs 1 through 27 are realleged and incorporated herein by reference as if set forth in full.

44. Based on the conduct alleged herein, IBC violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-11 and 13a-13 thereunder.

45. Defendant Yarick, in the manner set forth above, knowingly provided substantial assistance to IBC, as an issuer of a security registered pursuant to Section 12 of the Exchange Act, in its failure:

- (a) to file with the Commission, in accordance with Commission rules and regulations
 - (1) such information and documents as the Commission requires to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12 of the Exchange Act [15 U.S.C. §78l], and
 - (2) such annual reports, certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports, as the Commission may prescribe;
- (b) to add such further information, if any, as may be necessary to make required statements, in the light of the circumstances under which they are made not misleading, to that information expressly required to be included in a statement or report;
- (c) to file in a timely fashion with the Commission current reports, as required by Commission Rule 13a-11 [17 C.F.R. §240.13a-11];
- (d) to file in a timely fashion with the Commission quarterly reports, as required by Commission Rule 13a-13 [17 C.F.R. §240.13a-13].

46. By reason of the foregoing, Yarick aided and abetted IBC's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-11 and 240.13a-13].

SIXTH CLAIM
Aiding and Abetting IBC's Violation
of Section 13(b)(2) of the Exchange Act

47. Paragraphs 1 through 27 are realleged and incorporated herein by reference as if set forth in full.

48. Based on the conduct alleged herein, IBC violated Section 13(b)(2) of the Exchange Act.

49. Defendant Yarick, in the manner set forth above, knowingly provided substantial assistance to IBC in connection with its failure:

- (a) to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer;
- (b) to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that
 - (1) transactions are executed in accordance with management's general or specific authorization;
 - (2) transactions are recorded as necessary (A) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (B) to maintain accountability for assets;

- (3) access to assets is permitted only in accordance with management's general or specific authorization; and
- (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences;

50. By reason of the foregoing, Yarick aided and abetted IBC's violation of Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Find that the defendant committed the alleged violations.

II.

Permanently restrain and enjoin defendant from violating, or aiding and abetting, directly or indirectly, the provisions of law and rules alleged in this Complaint.

III.

Order defendant to pay civil penalties, including post-judgment interest, pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], in an amount to be determined by the Court.

IV.

Prohibit defendant from acting as an officer or director of any issuer required to file reports pursuant to Sections 12(b), 12(g) or 15(d) of the Exchange Act [15 U.S.C. §§ 78l(b), 78l(g) and 78o(d)], pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)].

V.

Grant such other relief as this Court may deem just or appropriate.

VI.

Retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may hereby be entered, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,

s/ Jeffrey B. Norris

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