

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE
COMMISSION,
100 F Street, N.E.
Washington D.C. 20549-6030

Plaintiff,

v.

JAMES M. MATERNA,
2682 ASHLEY ROAD
SHAKER HEIGHTS, OH 44122
JOHN R. HOLTZHAUSER,
AND PAUL R. VENESKY

Defendants.

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: Case: 1:07-cv-01274
: Assigned To : Kennedy, Henry H.
: Assign. Date : 7/18/2007
: Description: General Civil
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COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission or "SEC") alleges that:

SUMMARY

1. This case involves a pattern of accounting fraud by certain of the senior officers of OM Group, Inc. in 2001, 2002, and years prior. James Materna ("Materna"), the former Chief Financial Officer, and John Holtzhauser ("Holtzhauser"), the former Controller, engaged in accounting fraud by recording and directing numerous adjustments to the consolidated financials ("top-side adjustments"), which were wholly unsupported and often duplicative of entries already recorded at the operating unit level. The improper accounting practices were done with the intent to manage earnings and to achieve financial results that were closer to OM Group's annual plan.

2. Many of the improper accounting practices included, among other things, overcapitalizing overhead costs, inflated inventory recovery yields, improper supplier receivables and interest receivables, duplicating entries already made at the operating unit level, recording inaccurate inventory estimates, and recording expenses out of period. These practices materially increased OM Group's annual and quarterly net income in 2001 and prior years in a departure from generally accepted accounting principles ("GAAP").

3. Paul Venesky ("Venesky"), the former Controller of OMG Americas, a wholly owned subsidiary of OM Group, aided and abetted OM Group's violations by recording erroneous and unsupported accounting entries at the direction of Materna and Holtzhauser to OMG Americas' books and records.

4. During the relevant period, the company did not have an adequate system of internal controls that would detect and prevent the improper accounting practices. As a result, OM Group filed materially false and misleading financial statements in the company's annual report on Form 10-K for the fiscal years ended December 31, 2001 and December 31, 2002, and in the company's quarterly reports on Form 10-Q for the first three quarters of 2002 and the fourth quarter results on Form 10-K, and the first three quarters of 2003 filed on Form 10-Q. The materially false and misleading financial statements were included in the Form S-1, effective January 16, 2002, that was issued in OM Group's \$225.7 million equity offering.

5. In March 2005, after conducting an internal investigation into the accounting improprieties, OM Group issued a restatement reducing its retained earnings for the relevant period by \$64 million as a result of the fraudulent conduct.

6. Materna, Holtzhauser, and Venesky each failed to provide sufficient information to OM Group's independent outside auditor, Ernst & Young LLP ("E & Y"), and there was a concerted effort to hide the practices from E & Y.

JURISDICTION AND VENUE

7. This court has jurisdiction over this action under Section 22(a) of the Securities Act of 1933 ("Securities Act") [15U.S.C. § 77v (a)], and Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d) and (e) and 78aa]. Defendants, directly or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

8. Venue is appropriate in this Court under 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] because OM Group, Inc. does business in this judicial district and certain acts or transactions constituting the violations by the defendants occurred in this district.

DEFENDANTS

9. James M. Materna, age 62, was Chief Financial Officer ("CFO") of OM Group, Inc. from July 1992 until his retirement in May 2002. Materna has been a certified public accountant licensed to practice in the State of Ohio since 1973. His CPA license went inactive after his retirement from OM Group.

10. John R. Holtzhauser, age 50, was Controller of OM Group, Inc. from 1991 until he left the company in August 2003 due to a company restructuring. Holtzhauser has been a certified public accountant licensed to practice in the State of Ohio since 1981.

11. Paul R. Venesky, age 44, was Controller of OMG Americas from August 1993 to September 2001 and Director of Operations from September 2001 to October 2002. He was also Controller of the Cobalt division from October 2002 through August 2003. Venesky left the company in May 2004. Venesky has been a certified public accountant licensed to practice in the State of Ohio since 1986.

RELEVANT ENTITIES

12. OM Group, Inc. (“OM Group” or the “company”) is a Delaware corporation headquartered in Cleveland, Ohio. The company has over 1,400 employees in North America, Europe, Asia and Africa and annual revenues of over \$1 billion. OM Group’s common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange under the ticker symbol “OMG.” The company’s independent auditor is Ernst & Young LLP.

13. OMG Americas is one of OM Group’s wholly owned subsidiaries, and is comprised of manufacturing facilities at five North American locations in New Jersey, North Carolina, Ohio, Pennsylvania, and Utah. OMG Americas’ financial results were examined by OM Group’s outside auditor as part of its quarterly reviews and annual audits of OM Group’s consolidated financial statements. OMG Americas’ headquarters were also in Cleveland, Ohio.

FACTS

I. BACKGROUND

A. History of OM Group

14. OM Group is a producer and marketer of metal-based specialty chemicals and related materials primarily from cobalt and nickel. The company’s products are used in many end

markets including rechargeable batteries, liquid detergents, adhesion promoters for rubber tires, stainless steel, and alloy and plating applications.

15. OM Group was formed in 1991 and was the parent company of three operating subsidiaries, Mooney Chemicals, Kokkola Chemicals in Finland, and Vasset S.A. in France. It became a public company in September of 1993.

B. OM Group Experienced Tremendous Growth and Positive Earnings During the 1992 Through 2001 Period

16. From 1992 until 1998, the company acquired a number of entities in the United States and internationally, the majority of which owned manufacturing facilities. In 2000, the company acquired a nickel refinery in Harjavalta, Finland, which increased OM Group's sales revenue from approximately \$500 million to nearly \$1 billion. In August 2001, the company completed the acquisition of Degussa Metals Catalysts Cerdec ("dmc²") that consisted of multiple operating entities. After the dmc² acquisition, OM Group had over \$2 billion in sales revenue.

17. The Harjavalta acquisition was financed with about \$200 million in bank borrowing. dmc² was financed with debt (a bridge loan), equity, and the sale of assets. In conjunction with the dmc² acquisition, the company sold certain assets to repay a portion of the bridge loan. Shortly thereafter, in December 2001, the company completed a \$400 million bond offering and used the proceeds to repay the remainder of the bridge loan. In January 2002, the company completed a \$225.7 million equity offering and used the proceeds to repay other debts. OM Group filed registration statements for both the equity and bond offerings, which contained financial statements covering the 1999 through 2000, and 1999 through 2001 periods, respectively.

18. OM Group also experienced earnings growth during the 1999 through 2001 period and reported positive net income that increased each year during that period. OM Group's net income for the 1999 through 2001 period was as follows: 1999--\$55.8 million; 2000--\$71.5 million; 2001--\$75.6 million; Q1 2002--\$23.3 million (up from \$19.6 million in Q1 2001); Q2 2002--\$25.5 million (up from \$20.1 million in Q2 2001).

C. OM Group's Accounting Process

19. Although OM Group grew through acquisitions, the accounting staff did not grow at the same rate as the company, and the accounting staff at both the corporate and the operating unit level was thin.

20. The company was slowly implementing an automated accounting system, but it was not fully operational during the relevant time period.

21. At the end of each quarter and each fiscal year, OM Group consolidated the financial statements of its various operating entities and subsidiaries into one consolidated financial statement, which was reported on OM Group's Forms 10-K and 10-Q.

22. During the relevant period, Materna and Holtzhauser were responsible for the entire consolidation process, which took place at the company's Cleveland headquarters. Each operating unit submitted to Holtzhauser electronically its monthly financial statement. Holtzhauser consolidated the information into one corporate financial statement.

23. During the close process, both Holtzhauser and Materna made numerous top-side adjustments to OM Group's consolidated financial statement. In some instances, either Holtzhauser or Materna directed the individual controllers of the operating units to make adjustments at the local level and then resubmit the financials. OM Group did not have an

internal audit group during the relevant period. Thus, there was no review of the work being performed by Holtzhauser or Materna other than the audits performed by E & Y.

D. The Shareholder Litigation, Audit Committee Investigation and \$64 Million Restatement

24. Materna retired from OM Group in May 2002. In the third quarter of 2002, under the direction of a new CFO, OM Group announced a lower of cost or market adjustment to inventory of \$108 million, after changing its outlook for the price of cobalt and determining that it had to lower production levels of cobalt and sell off inventory to raise cash. OM Group's trend of obtaining positive net income ceased when OM Group's third quarter of 2002 reflected a net loss of \$71.2 million for the three month period, and \$22.3 million for the nine month period. In response to this announcement, the company's stock price dropped 71% from \$30.90 to \$8.95, and shareholders filed a class action lawsuit on November 1, 2002 and a shareholder derivative suit on December 12, 2002.

25. After finding questionable e-mails regarding the company's accounting practices, OM Group's audit committee launched an independent investigation in November 2003. The internal investigation and a subsequent restatement audit by E & Y concluded that there were numerous unsupported top-side adjustments and other accounting entries to OM Group's financial statements.

26. On March 31, 2005, as a result of the internal investigation, the company restated its financials for fiscal years ended December 31, 2002 and 2001, quarters ended September 30, 2003, June 30, 2003, March 31, 2003, and all four quarters of 2002. The restatement also affected periods prior to 2001.

27. The restatement adjustments reduced previously reported retained earnings as of September 30, 2003 by \$64 million. A summary of the impact of the restatement follows (in millions):

Increase in net income for the nine months Ended September 30, 2003	\$111.3
Increase in 2002 net income	125.1
Decrease in 2001 net income	(123.5)
Decrease in net income for years prior to 2001	<u>(176.9)</u>
Cumulative net decrease in previously reported Retained earnings at September 30, 2003	<u>\$(64.0)</u>

28. The materiality of the adjustments is demonstrated below:

(in millions)	9 months ended 9-30-03	Year ended 12-31-02	Year ended 12-31-01	Years prior to 1-1-01	Total
Net income (loss) as originally reported	57.6	(327.9)	75.7		
Adjustments	<u>111.3</u>	<u>125.1</u>	<u>(123.5)</u>	<u>(176.9)</u>	<u>(64.0)</u>
Net income (loss) as restated*	168.9	(202.8)	(47.8)		
Percent overstated (understated)	(66%)	(62%)	258%		

* Before OM Group's change from the LIFO to FIFO method of valuing inventory.

II. IMPROPER ACCOUNTING PRACTICES AND FRAULENT CONDUCT

A. Corporate Level Top-Side Adjustments Made by Materna and Holtzhauser

29. The internal investigation and subsequent restatement audit concluded that there were more than 700 top-side adjustments to OM Group's financials. The adjustments were across the divisions and appeared to have no pattern. The support for the adjustments was either inadequate or did not exist. The improper top-side adjustments are discussed below.

1. Overcapitalizing Overhead Costs

30. During the 1999 through 2002 period, Materna and Holtzhauser made top-side adjustments to capitalize additional overhead costs related to certain of its operating units. These adjustments were wrong because they were duplicative of amounts already recorded at the operating unit level. In particular, Materna and Holtzhauser knew that costs related to two of OM Group's Finnish subsidiaries, Kokkola and Harjavalta, were already captured on the operating units' ledgers. Thus, their top-side adjustments to OM Group's consolidated financial statements contributed to an overstatement of OM Group's income.

2. Cobalt Inventory Recovery Yields

31. OM Group had to extract their raw materials, like cobalt, from slag piles. Although OM Group estimated the yields for the piles, extraction was a very inexact process and resulted in inconsistent yields from month to month. When the yields were below what Materna and Holtzhauser estimated -- for example, if they expected the operating unit to extract 10% cobalt but it only extracted 8% -- Materna and/or Holtzhauser made a top-side adjustment for the remaining expected yield. Their contention was that the remaining 2% was still in the pile or somewhere in the manufacturing process. However, there was no process for extracting the

remaining expected yield, nor was there any analysis done to determine whether it was cost effective to attempt to recover any remaining content. This accounting practice was not consistent with GAAP, and allowed the company to increase income.

3. Supplier Receivables & Interest Receivables

32. Prior to 2001, OM Group was in a contractual dispute with three cobalt raw material suppliers concerning the metal content of raw materials that OM Group bought from the suppliers. In connection with this dispute, Materna recorded three receivables totaling \$26.9 million that were treated as prepaid inventory representing advance payments for future inventory shipments. It was determined that OM Group waived its claim to these recoverable amounts in its dispute negotiations with the suppliers, or otherwise did not adequately document its position to support recording these assets. The top-side adjustments resulted in an overstatement of OM Group's assets.

33. OM Group advanced \$27.6 million to its joint venture partners during construction of a smelter in years prior to 2001. OM Group recorded a receivable for such amount. Although there was no written agreement between OM Group and the joint venture partners providing for interest on the advance, OM Group recorded interest income on the advances in 2001 and years prior of \$5.5 million and \$9.9 million, respectively. In 2002, OM Group established a reserve of \$12.0 million against the interest receivable of \$15.4 million. In 2003, OM Group finalized a written agreement with one of the partners, which provided for \$6.8 million in interest income. The original interest recorded represented a contingent asset that should not have been recorded until a written agreement was finalized. Thus, the interest receivable and the 2002 reserve should not have been recorded.

4. Duplicating Entries Already Made at the Operating Unit Level

34. OM Group purchased nickel raw material that was off-specification and incurred incremental costs to process this material to a usable form, which was recorded as a receivable from the supplier by Materna and Holtzhauser. However, the raw material contract included provisions for financial remedy for off-specification raw material, and the remedy properly was accounted for at the operating unit level. Materna and Holtzhauser made numerous other top-side adjustments to capitalize costs that were expensed at the operating unit level for certain fixed asset projects, software implementation projects, and miscellaneous other assets. The adjustments were not appropriate because the operating units appropriately accounted for the expenses.

5. Other Erroneous and Unsupported Accounting Entries

35. There were numerous other top-side adjustments and errors that were restated, including inappropriate adjustments to fixed asset construction projects, certain accounts payable and cost of sales related to raw material contracts, inventory numbers, incorrect entries related to purchase accounting for the Harjavalta acquisition, errors in foreign currency remeasurement and intercompany profit elimination, improper derivative accounting, and expenses charged in a period that should have been taken in an earlier period. Materna and Holtzhauser were responsible for the top-side adjustments in these areas. All of the top-side adjustments were wholly inaccurate and unsupported.

B. Inaccurate Estimates to OMG Americas' Books and Records Made by Venesky at the Direction of Holtzhauser and Materna

36. As Controller of OMG Americas, Venesky was responsible for consolidating OMG Americas' financial results and submitting them to Holtzhauser. At times, Venesky used inaccurate estimates to record inventory amounts at OMG Americas.

37. During the relevant period, OMG Americas did not have an inventory tracking system that could account for inventory that was "work-in-process," i.e., raw materials that had entered into the manufacturing process but not yet into finished goods. As a result, work-in-process was estimated by Venesky at the direction and review of Holtzhauser and Materna. These estimates were wholly inaccurate and unsupported.

38. Venesky also recorded estimates for amounts of finished goods inventory in-transit to company warehouses from the Franklin facility. However, OMG America's automated accounting system appropriately captured the amounts; thus, Venesky's estimates were wholly inaccurate and unsupported.

39. Venesky also recorded estimates for containers, packaging and certain lab inventory at the Franklin facility. However, given OMG Americas had no mechanism to retrieve the containers from its customers or to track when such containers were sent to customers, Venesky's estimates were wholly inaccurate and unsupported.

40. Venesky submitted all of his estimates to Holtzhauser and Materna for their review. More often than not, Venesky's estimates increased following feedback from Holtzhauser and Materna.

41. Based on information given to him by Materna and Holtzhauser, Venesky also recorded inaccurate journal entries concerning certain litigation. In 2000, Venesky recorded \$4.5 million for anticipated recovery of contributions previously made by the company to a settlement trust and related legal fees for product liability litigation. The asset was reduced to \$2.5 million in 2001 and was written off in December 2002. Despite having an adverse judgment entered against the company's position and other unfavorable facts and circumstances, OM Group kept the receivable on its books. Venesky established the receivable pursuant to discussions with Materna and Holtzhauser based upon their expectation that when the claimants had settled the matter, the funds in the trust would be redistributed to the contributors. However, Venesky testified that he did not recall learning from Materna or Holtzhauser that an adverse judgment had been rendered against the company.

C. Evidence that the Accounting Improprieties Amounted to Fraud

42. There are numerous e-mails and documents that clearly demonstrate that Materna and Holtzhauser engaged in fraudulent accounting practices, and that Venesky aided and abetted the fraudulent accounting practices. The e-mails evidence the intent to adjust numbers to meet earnings targets or to enhance OM Group's performance in a particular quarter or year end.

43. The e-mails also show that there was a concerted effort by Materna, Holtzhauser, and Venesky to hide material information from E & Y. In one e-mail, Venesky notified the Controller that Venesky would record "a couple [of] small undetectable changes to inventory then be prepared to submit them to EY" and then further stated that "I can't change them by much, it would not be a prudent move." In another, Venesky wrote to both Materna and Holtzhauser that "My concern about inventory is that going too heavy in WIP [work-in-process] or others will trigger even greater scrutiny. Truth is, we have a fresh set of auditors, and I have

no idea how much conversational auditing this group will take. . . . We are dogging these 2 areas (a/r misc and inventory) and I don't know how much more we can pull out. . . .”

44. The e-mails and other documents also show that Materna and Holtzhauser were aware that the accounting entries made to OM Group's financial statements were not supportable and that OM Group's financial statements were potentially materially misstated during the relevant period. There are also e-mails that show Venesky raised red flags to Materna and Holtzhauser that certain of the entries made to the financial statements were not supportable, and that perhaps they had been too aggressive with some of the numbers that had been recorded. In one e-mail, Venesky wrote to Holtzhauser, “I do believe that we were too aggressive in our estimation of an SGA [sales general administrative expenses] adjustment. I believe that we can substantiate one-fourth that number, the rest is tight.”

45. The documents also reflect a pattern of recording almost random round numbers to journal entries to try to manage OM Group's earnings, and to look for “other candidates,” i.e., other accounting categories in which to make more adjustments. There is also evidence that certain journal entries were made at locations that E & Y would not likely visit during audits.

FIRST CLAIM

Anti-Fraud Violations

Violations of 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
Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5]

46. Paragraphs 1 through 45 above are realleged and incorporated by reference.

47. As alleged above, Materna, Holtzhauser, and OM Group directly or indirectly, acting intentionally or recklessly, by 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 offer, sale, or purchase of securities: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated as a fraud or deceit upon other persons.

48. By reason of the foregoing, Materna, Holtzhauser, and OM Group violated Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5.

49. As alleged above, Venesky knowingly or recklessly provided substantial assistance to OM Group in connection with its violation of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5.

50. By reason of the foregoing, Venesky aided and abetted OM Group's violation of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5.

SECOND CLAIM

Reporting Violations

Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1, 13a-11 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13]

51. Paragraphs 1 through 50 are realleged and incorporated by reference.

52. As alleged above, OM Group filed with the Commission materially false and misleading financial statements as part of its annual reports on Form 10-K, quarterly reports on Form 10-Q, and current reports on Form 8-K.

53. By reason of the foregoing, OM Group violated Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11 and 13a-13.

54. As alleged above, Materna, Holtzhauser, and Venesky knowingly or recklessly provided substantial assistance to OM Group in connection with its violations of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11 and 13a-13.

55. By reason of the foregoing, Materna, Holtzhauser, and Venesky aided and abetted OM Group's violations of Sections 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13.

THIRD CLAIM

Books and Records Violations

Violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]
and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1]

56. Paragraphs 1 through 55 are realleged and incorporated by reference.

57. As alleged above, OM Group failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of its assets.

58. By reason of the foregoing, OM Group violated Section 13(b)(2)(A) of the Exchange Act.

59. As alleged above, Materna, Holtzhauser, and Venesky knowingly or recklessly provided substantial assistance to OM Group in connection with its violation of Section 13(b)(2)(A) of the Exchange Act.

60. By reason of the foregoing, Materna, Holtzhauser, and Venesky aided and abetted OM Group's violation of Section 13(b)(2)(A) of the Exchange Act.

61. As alleged above, Materna, Holtzhauser, and Venesky, directly or indirectly, falsified or caused to be falsified books, records, or accounts subject to Section 13(b)(2)(A) of the Securities Exchange Act.

62. By reason of the foregoing, Materna, Holtzhauser, and Venesky violated Rule 13b2-1 of the Exchange Act.

FOURTH CLAIM

Internal Controls Violations

Violations of Sections 13(b)(2)(B) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(B) and 78m(b)(5)] and Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2]

63. Paragraphs 1 through 62 are realleged and incorporated by reference.

64. As alleged above, OM Group failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions were executed in accordance with management's general or specific authorization; (ii) transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets; (iii) access to assets was permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets was compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

65. By reason of the foregoing, OM Group violated Section 13(b)(2)(B) of the Exchange Act.

66. As alleged above, Materna, Holtzhauser, and Venesky knowingly or recklessly provided substantial assistance to OM Group in connection with its violation of Section 13(b)(2)(B) of the Exchange Act.

67. By reason of the foregoing, Materna, Holtzhauser, and Venesky aided and abetted OM Group's violation of Section 13(b)(2)(B) of the Exchange Act.

68. As alleged above, Materna, Holtzhauser, and OM Group knowingly circumvented or knowingly failed to implement a system of internal accounting controls or knowingly, directly or indirectly, falsified or caused to be falsified, any book, record or account subject to Section 13(b)(2) of the Exchange Act.

69. By reason of the foregoing, Materna and Holtzhauser violated Section 13(b)(5) of the Exchange Act.

70. As alleged above, Venesky knowingly or recklessly provided substantial assistance to Materna's and Holtzhauser's violations of Section 13(b)(5) of the Exchange Act.

71. By reason of the foregoing, Venesky aided and abetted Materna's and Holtzhauser's violation of Section 13(b)(5) of the Exchange Act.

72. As alleged above, Materna, Holtzhauser, and Venesky, directly or indirectly, (1) made or caused to be made a materially false or misleading statement to an accountant in connection with; or (2) omitted to state, or caused another person to omit to state, any material fact 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: (i) any audit, review or examination of the financial statements of the issuer required to be made pursuant to this

subpart; or (ii) the preparation or filing of any document or report required to be filed with the Commission.

73. By reason of the foregoing, Materna, Holtzhauser, and Venesky violated Rule 13b2-2 of the Exchange Act.

PRAYER FOR RELIEF

Wherefore, the SEC respectfully requests that this Court enter a final judgment:

I.

Permanent Injunctive Relief

(Materna, Holtzhauser, and Venesky)

- (a) Permanently enjoining Defendants Materna and Holtzhauser from violating Section 17(a) of the Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act and Rule 10b-5, 13b2-1, and 13b2-2 thereunder.
- (b) Permanently enjoining Defendant Venesky from violating Sections 10(b) and 13(b)(5) of the Exchange Act and Rule 10b-5, 13b2-1, and 13b2-2 thereunder.
- (c) Permanently enjoining Defendants Materna, Holtzhauser, and Venesky 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, 13a-11, and 13a-13 thereunder.

II.

Officer and Director Bar

(Defendants Materna and Holtzhauser)

- (a) Barring Materna for a period of five (5) years from serving as an officer or director of any public company pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)], and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)].

(b) Barring Holtzhauser for a period of five (5) years from serving as an officer or director of any public company pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)], and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)].

III.

Disgorgement (Holtzhauser)

(a) Ordering Holtzhauser to pay disgorgement of \$76,707, representing certain past bonus payments.

IV.

Civil Money Penalties

(Materna, Holtzhauser, Venesky)

(a) Ordering Materna to pay a civil penalty in the amount of \$100,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

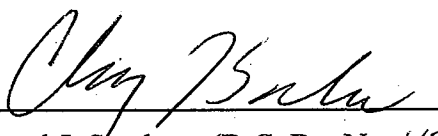
(b) Ordering Holtzhauser to pay a civil penalty in the amount of \$100,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

(c) Ordering Venesky to pay a civil penalty in the amount of \$25,000 pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

(d) Granting such other and further relief as this Court deems just and proper.

Dated: July __, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cheryl J. Scarboro", written over a horizontal line.

Cheryl J. Scarboro (D.C. Bar No. 422175)
Tracy L. Price
Keshia L. West

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