

**MMB**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

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**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**WESTINGHOUSE AIR BRAKE  
TECHNOLOGIES CORPORATION,**

**Defendant.**

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**Civil Action No.**

**08 7 706**

**COMPLAINT**

Plaintiff Securities and Exchange Commission (“Commission”) alleges as follows:

**SUMMARY**

1. This matter involves violations of the anti-bribery, internal controls and books and records provisions of the Foreign Corrupt Practices Act (“FCPA”) by Westinghouse Air Brake Technologies Corporation (“Wabtec”).

2. From at least 2001 through 2005, Wabtec, through its Indian subsidiary, Pioneer Friction Limited (“Pioneer”), made unlawful payments to employees of the Indian government in connection with Pioneer’s efforts to obtain and retain business from the Indian national railway system. During this time period, Pioneer made over \$137,400 in improper cash payments to employees of the Indian government in order to have its competitive bids for government business granted or considered. None of these payments was accurately reflected on Wabtec’s books and records and Wabtec failed to prevent or detect these payments.

3. By engaging in the conduct described in this Complaint, Wabtec violated Sections 13(b)(2)(A), 13(b)(2)(B) and 30A of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(2)(B) and 78dd-1].

### **JURISDICTION AND VENUE**

4. The Commission brings this action pursuant to Sections 21(d) and 32(c)(1) of the Exchange Act [15 U.S.C. §§ 78u(d), 78ff(c)(1)] to obtain civil penalties.

5. This Court has jurisdiction over this action pursuant to Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)(3) and 78aa]. In connection with the conduct described herein, Wabtec made use of the mails and/or the means or instrumentalities of interstate commerce.

### **DEFENDANT**

6. Westinghouse Air Brake Technologies Corporation, incorporated in Delaware and headquartered in western Pennsylvania, manufactures brake subsystems and related products for locomotives, freight cars and passenger vehicles, among other things. Wabtec employs approximately 5,000 people in 40 manufacturing plants, service centers, and sales offices located in the United States, Canada, Mexico, Europe, Asia, Australia and South America. Wabtec's stock is registered pursuant to Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange. Wabtec files reports with the Commission pursuant to Section 13 of the Exchange Act.

### **FACTS**

#### **A. The Unlawful Payments**

7. Pioneer, incorporated and headquartered in India, manufactures low and high friction brake blocks for rail operations. Pioneer is a fourth tier, wholly-owned subsidiary of

Wabtec. Pioneer's financial results are reported on a consolidated basis as part of Wabtec's consolidated financial statements.

8. Pioneer sells brake blocks in India to Original Equipment Manufacturers ("OEM") and aftermarket customers. The OEM market includes train car manufacturers owned or controlled by the Indian government. The national railway system in India is controlled by the Indian government through the Ministry of Railroads ("MOR"). The Indian Railway Board ("IRB") is the operating arm of the MOR. The IRB includes sixteen "Zonal Railways."

9. The IRB and Zonal Railways solicit sealed bids for specific quantities of certain low friction products from various companies located in India (the "tender process"). The IRB and Zonal Railways award the contract to the lowest bidder (the "primary contract") and notify the higher bidders of the lowest bid. Because the IRB's and Zonal Railways' requirements often exceed the production capacity of any single manufacturer, after awarding the contract to the lowest bidder, the IRB engages in negotiations with the higher bidders. In most cases, the IRB will award the higher bidders some business at the low bidder's price.

10. From at least 2001 through 2005, employees of the IRB and Zonal Railways solicited from Pioneer two types of cash payments in connection with the tender process. First, during the times that the IRB was evaluating various bids received from Pioneer and others, employees of the IRB and Zonal Railways solicited cash payments from Pioneer in order for the IRB to approve Pioneer's contract price (hereinafter referred to as the "IRB Payments"). For the years 2001 through 2004, Pioneer paid approximately \$85,000 in cash to employees of the IRB to obtain business from the IRB. In 2005, Pioneer paid \$21,217 in IRB payments to employees of the IRB for the same purpose.

11. In addition, employees of the IRB and Zonal Railways solicited payments from Pioneer to ensure that the IRB and Zonal Railways would consider Pioneer's bids in the tender process and that Pioneer would be given the opportunity to sell additional quantities of certain products at the awarded price without going through a new tender process (hereinafter referred to as the "Ordering Payments").

12. For the years 2001 through 2004, Pioneer paid approximately \$25,000 in cash in Ordering Payments to employees of the IRB and Zonal Railways for consideration of its bids and to obtain other business. In 2005, Pioneer paid approximately \$6,250 in cash in Ordering Payments to employees of the IRB and Zonal Railways for the same purpose.

13. In 2005, the IRB awarded Pioneer the primary contract and other related contracts. As a result of being awarded the contracts in 2005, Pioneer realized profits of \$259,000.

14. Pioneer's Chairman, a non-U.S. citizen and resident who is also a Vice President of Wabtec, knew about and did nothing to prevent the Ordering Payments and the IRB Payments.

**B. Improper Recording of the Unlawful Payments**

15. Pioneer made the Ordering Payments and IRB Payments with cash accumulated throughout the year primarily from "marketing agents." Marketing agents are typically companies that send invoices and collect payments on behalf of another company that has provided some service or sold some product.

16. In order to generate the necessary cash, Pioneer asked certain marketing agents to invoice it for services rendered in connection with particular IRB and Zonal Railways contracts.

In fact, the invoices were fictitious. No one rendered any services; the sole purpose of the invoices was to generate cash to make the unlawful payments.

17. Pioneer issued checks to the marketing agent for the amount of the invoice less withholdings for taxes. The marketing agent then returned cash to Pioneer, less a service commission. Other marketing agents submitted invoices for materials that Pioneer did not receive in whole or in part. Pioneer issued checks to the marketing agent for the amount of the invoice and the marketing agent returned cash (less the service fee and any amount owed for any material actually received) to Pioneer.

18. Pioneer maintained the cash generated through the use of marketing agents in a locked metal box, and documented each unlawful payment on a voucher that was maintained with the cash. Pioneer also kept track of the unlawful payments on a spreadsheet. The vouchers and the spreadsheet were maintained separately from Pioneer's other books and records and were not subject to review during annual audits.

19. Under Indian law, records generated in the normal course of business must be maintained for ten years. Wabtec requires its foreign subsidiaries to follow applicable local laws with respect to record retention. Despite these requirements, Pioneer destroyed all records relating to the Ordering Payments and the IRB Payments after one year, and therefore records do not exist prior to 2005.

20. Pioneer failed to properly account for the unlawful payments in its books and records. Pioneer recorded the marketing agents' invoices as "consulting" expenses and supplies. In fact, Pioneer did not receive any services or supplies; the sole purpose of the invoices was to raise cash. Moreover, although Pioneer maintained records regarding the unlawful payments, Pioneer did not use those records to account for the unlawful payments.

21. Wabtec's financial statements are prepared on a consolidated basis. Accordingly, Wabtec's books, records, and accounts did not reflect the Ordering Payments or IRB Payments.

**C. Wabtec's Lack of Internal Controls**

22. From 2001 through July 2006, although Wabtec's Code of Conduct prohibited giving anything of value to improperly influence any person in a business relationship with Wabtec, it did not have a FCPA policy or provide training or education to any of its employees, agents, or subsidiaries regarding the requirements of the FCPA. Wabtec also failed to establish a program to monitor its employees, agents, and subsidiaries for compliance with the FCPA.

23. In January 2006, Wabtec conducted an internal investigation of Pioneer and, upon its completion, voluntarily disclosed the facts and documents relating to this matter to the Commission staff.

**FIRST CLAIM**

**Violations of Section 13(b)(2)(A) of the Exchange Act**

24. Paragraphs 1 through 23 are realleged and incorporated herein by reference.

25. As a result of the conduct described above, Wabtec failed to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflected its transactions and dispositions of its assets.

26. By reason of the foregoing, defendant Wabtec violated Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

**SECOND CLAIM**

**Violations of Section 13(b)(2)(B) of the Exchange Act**

27. Paragraphs 1 through 26 are realleged and incorporated herein by reference.

28. As a result of the conduct described above, Wabtec 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; and (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 its assets.

29. By reason of the foregoing, defendant Wabtec violated Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

### **THIRD CLAIM**

#### **Violations of Section 30A of the Exchange Act**

30. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

31. As a result of the conduct described above, Wabtec, through its subsidiary Pioneer, corruptly paid money to officials of a foreign authority for the purposes of influencing their official decisions and inducing them to use their influence to assist Pioneer in obtaining or retaining business.

32. By reason of the foregoing, defendant Wabtec violated Section 30A of the Exchange Act [15 U.S.C. § 78dd-1].

**WHEREFORE**, the Commission respectfully requests that this Court:

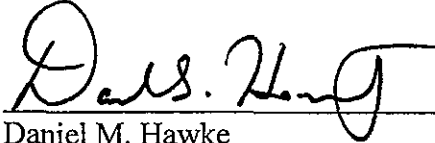
#### **I.**

Issue an Order requiring defendant Wabtec to pay a civil penalty pursuant to Sections 21(d)(3) and 32(c)(1) of the Exchange Act [15 U.S.C. §§ 78u(d)(3) and 78ff(c)(1)].

II.

Grant such other and further relief as the Court may deem just and appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel M. Hawke", written over a horizontal line.

Daniel M. Hawke

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Dated: February 14, 2008