

Scheidlin, J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

APR 13 2010

SECURITIES AND EXCHANGE)
COMMISSION,)
Plaintiff,)
v.)
COLLINS & AIKMAN CORPORATION,)
DAVID A. STOCKMAN, J. MICHAEL STEPP,)
GERALD E. JONES, DAVID R. COSGROVE,)
ELKIN B. MCCALLUM, PAUL C. BARNABA,)
JOHN G. GALANTE, CHRISTOPHER M.)
WILLIAMS, and THOMAS V. GOUGHERTY,)
Defendants.)

Civil Action No. 07-2419

Honorable Shira A. Scheindlin

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FINAL JUDGMENT AS TO DAVID STOCKMAN

The Securities and Exchange Commission having filed a Complaint and defendant David A. Stockman ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over him and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Sections 17(a)(2) and (3) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C.

§§ 77q(a)(2) and (3)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (b) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78(b)(5)] by knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record or account described in Section 13(b)(2) of the Exchange Act.

III.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Rule 13b2-1 of the Exchange Act [17 C.F.R. §240.13b2-1] by directly or indirectly falsifying, or

causing to be falsified, any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act.

IV.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Rule 13b2-2 of the Exchange Act [17 C.F.R. §240.13b2-2] by directly or indirectly taking any action to mislead an independent public or certified public accountant engaged in an audit or review of the financial statements of an issuer if such statements are required to be filed with the Commission and the Defendant knew or should have known that such action, if successful, could result in rendering the issuer's financial statements materially misleading.

V.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Rule 13a-14 of the Exchange Act [17 C.F.R. §240.13a-14] by falsely certifying that financial statements and other financial information contained in a report filed with the Commission pursuant to Section 13(a) of the Exchange Act fairly presents the filing company's financial condition, results of operations, and cash flows for the reporting period.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violation of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §240.12b-20, §240.13a-1, and §240.13a-13] by knowingly providing substantial assistance to an issuer in failing to file with the Commission such accurate and complete information and documents as are required by the Commission pursuant to Section 13(a) and Rules 12b-20, 13a-1, 13a-11, and 13a-13.

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violation of Sections 13(b)(2)(A) and (B) [15 U.S.C. §78(m)(b)(2)(A) and (b)] of the Exchange Act by knowingly providing substantial assistance to an issuer in failing to make or keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuers, or in failing to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as

necessary to conform with Generally Accepted Accounting Principles or any other applicable criteria and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

VIII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$4,424,000, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$2,376,000, and a civil penalty in the amount of \$400,000 pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act. Defendant shall satisfy this obligation by paying \$7.2 million (subject to a credit for up to \$4.4 million in disgorgement and interest per Paragraph IX below) pursuant to the terms of the payment schedule set forth in Paragraph IX to the Clerk of the Court, together with a cover letter identifying David Stockman as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS") or any other type of interest bearing account that is

utilized by the Court. These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held in the interest bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States.

The Commission may by motion propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed

in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

IX.

Defendant shall satisfy his \$7.2 million obligation under this Final Judgment as follows:

(a) Defendant shall pay \$2.4 million in disgorgement and interest, and the \$400,000 civil penalty, for a total of \$2.8 million, to the Clerk of this Court within 14 days after entry of this Final Judgment; and

(b) Defendant shall receive credit against the remainder of his \$7.2 million obligation, up to \$4.4 million, for any amounts paid by Defendant within 14 days after entry of this Final Judgment in settlement of claims asserted by the plaintiffs in Mainstay High Yield Corporate Bond Fund v. Heartland Industrial Partners, L.P. et al, No. 07-10542 (E. D. Mich.) and Epstein v. Heartland Industrial Partners, L.P. et al, No. 07-13555 (E. D. Mich.). If within 14 days after entry of this Final Judgment the Defendant has not shown that he has paid at least \$4.4 million in settlement of the Mainstay and Epstein cases, Defendant shall not later than 20 days after entry of this Final Judgment pay to the Clerk of the Court an amount equal to \$7.2 million minus (i) the \$2.8 million paid pursuant to paragraph (a) above and (ii) any amounts paid by Defendant in settlement of the Mainstay and Epstein cases.

If Defendant fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this

Final Judgment, including post-judgment interest, minus any payments made, shall become due and payable immediately without further application to the Court.

X.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

XI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated: 4/19/10


SHIRA A. SCHEINDLIN
United States District Judge

**THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON _____**