

**WABTEC SETTLES FCPA CLAIMS RELATED TO  
FOREIGN SUBSIDIARY'S IMPROPER PAYMENTS**

On February 14, 2008, Westinghouse Air Brake Technologies Corporation (“Wabtec”) entered into settlement agreements with the U.S. Securities and Exchange Commission (“SEC”) and the U.S. Department of Justice (“DOJ”) in connection with improper payments totaling over \$137,400 made to government officials in India. As part of the SEC settlement, Wabtec was ordered to pay \$259,000 in disgorgement of profits realized in connection with the improper payments and \$29,351 in prejudgment interest. *See* U.S. Securities and Exchange Commission Litigation Release No. 20457 (Feb. 14, 2008); *SEC v. Westinghouse Air Brake Technologies Corporation*, Civil Action No. 08-CV-706 (E.D. Pa.). Wabtec also agreed to pay an \$87,000 civil penalty and to retain an independent compliance monitor. In a separate nonprosecution agreement with DOJ involving the same conduct, Wabtec agreed to pay a \$300,000 penalty. *See* Department of Justice Press Release (Feb. 14, 2008), available at [http://www.usdoj.gov/criminal/pr/press\\_releases/2008/02/02-14-08wabtec-agree.pdf](http://www.usdoj.gov/criminal/pr/press_releases/2008/02/02-14-08wabtec-agree.pdf).

Wabtec manufactures brake subsystems and related products for locomotives, freight cars and passenger vehicles. It operates 40 manufacturing plants, service centers, and sales offices in the United States, Canada, Mexico, Europe, Asia, Australia, and South America. The company is incorporated in Delaware and headquartered in Pennsylvania, and its stock is listed on the New York Stock Exchange.

Pioneer Friction Limited (“Pioneer”) is a fourth-tier, wholly-owned subsidiary of Wabtec. Two of the intermediary subsidiaries are Australian companies that are, in turn, owned by a U.S. holding company. Pioneer’s financial results are reported on a consolidated basis as part of Wabtec’s consolidated financial statements. Pioneer, which is incorporated and headquartered in India, manufactures low and high friction brake blocks for rail operations.

Pioneer sells brake blocks in India to original equipment manufacturers (“OEMs”) and aftermarket customers. The OEM market includes train car manufacturers owned or controlled by the Indian government. The Indian Ministry of Railroads (“MOR”) controls the national railway system in India. The operating arm of the MOR is the Indian Railway Board (“IRB”), which includes 16 “Zonal Railways.” The IRB and Zonal Railways typically make purchases through a sealed bidding process, but because their requirements often exceed the capacity of the lowest bidder, they frequently negotiate with bidders other than the lowest bidder to obtain additional quantities of product to meet their needs.

According to the DOJ and SEC settlements, from at least 2001 through 2005, Wabtec, through Pioneer, made unlawful cash payments totaling over \$137,400 to government employees in India in order to obtain or maintain business opportunities with the Indian national railway system. The SEC alleged that these payments were solicited by employees of the IRB and Zonal Railways for two purposes. First, payments were allegedly solicited in order for the IRB to

approve Pioneer's sealed bid during the tender process. Pioneer made cash payments totaling approximately \$85,000 for this purpose in 2001 through 2004 and approximately \$21,217 in 2005. Second, IRB and Zonal Railways employees allegedly solicited payments in order to ensure that the IRB and Zonal Railways would consider Pioneer's bids in the tender process and that Pioneer would have the opportunity to sell additional quantities of certain products at the awarded price without going through a new tender process. Pioneer made cash payments totaling approximately \$25,000 for this purpose from 2001 through 2004, and approximately \$6,250 in such payments in 2005.

The SEC complaint alleges that Pioneer used "marketing agents" to assist in these schemes. Pioneer allegedly asked certain marketing agents to provide fictitious invoices for services supposedly rendered in connection with particular IRB and Zonal Railways contracts. Based on the fictitious invoices, Pioneer issued checks to the marketing agents, who then returned the cash to Pioneer, less a service commission. Pioneer then used the cash to make the bribe payments. The complaint further alleges that Pioneer's Chairman, a non-U.S. citizen who is also a Vice President of Wabtec, knew about the improper payments and did nothing to prevent them.

The SEC charged Wabtec with violating the anti-bribery, books and records, and internal controls provisions of the Foreign Corrupt Practices Act ("FCPA"), §§ 30A, 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934, respectively. Specifically, the SEC alleged that Wabtec, through Pioneer, violated the FCPA's anti-bribery provisions by making improper payments to employees of the Indian government in order to obtain or retain business for Wabtec, the books and records provisions by falsely recording the improper payments as "consulting fees" and maintaining fictitious invoices in its books and records, and the internal controls provisions by failing to devise and maintain a sufficient system of internal accounting controls, including an appropriate FCPA policy, FCPA training, and a program to monitor its employees, agents, and subsidiaries for compliance with the FCPA.

These settlements are particularly notable because Wabtec was held fully responsible for conduct occurring at a foreign subsidiary. They also illustrate an increasingly common scheme of using agents and distributors as cash conversion entities to fund improper payments. Finally, the SEC settlement makes clear the SEC's now oft-repeated view that an issuer's internal controls must include a program for monitoring foreign employees, agents, and subsidiaries for compliance with the FCPA.

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