U.S. Securities and Exchange Commission

U.S. SECURITIES AND EXCHANGE COMMISSION

Litigation Release No. 19653 / April 12, 2006

Accounting and Auditing Enforcement Release No. 2411 /April 12, 2006

SEC v. Dollar General Corp., et al., Civil Action No. 3:05-0283 (filed April 7, 2005)

Court Enters Final Judgment Against Former Dollar General Chief Financial Officer Brian Burr

Burr Will Pay Over $1.2 Million in Penalties, Disgorgement and Prejudgment Interest

On April 11, 2006, the United States District Court for the Middle District of Tennessee entered a settled final judgment against Brian Burr ("Burr"), former chief financial officer and executive vice president at Dollar General Corporation ("Dollar General"). Burr was the only litigating defendant in the Commission's action filed on April 7, 2005 against Dollar General and several of its former officers and employees for alleged accounting fraud that overstated Dollar General's earnings. In settling with the Commission, Burr consented, without admitting or denying the Commission's allegations, to the entry of a final judgment, which permanently enjoins him from violating the antifraud and other provisions of the federal securities laws, orders him to pay $1,204,598.17 in civil penalties, disgorgement, and prejudgment interest, and bars him from serving as an officer or director of a public company for five years.

In its complaint the Commission alleged that, in 1999 and 2000, Dollar General's accounting staff determined that Dollar General should have recognized $13.4 million in import freight expenses in fiscal 1999. Rather than restating prior periods, as required by GAAP, or recognizing all the expense in fiscal year 1999, Burr participated in discussions of possible ways to account for the $13.4 million in freight expenses that did not entail recognizing all such expenses in fiscal year 1999. The complaint further alleged that on February 5, 2000, Dollar General's former controller sent a memorandum to Burr and others describing a $10 million "variance" in relation to freight expenses, and Dollar General's intention to charge the "$10 million 1999 shortfall" at a rate of $833,000 per month during Dollar General's fiscal year 2000. Ultimately, Dollar General recorded the shortfall in this manner. Burr knew that deferring the bulk of the expenses to fiscal year 2000 avoided the negative impact on already announced fiscal year 1999 earnings as well as year-end bonus payments to Dollar General employees, including Burr. The Commission's complaint alleges that, by deferring the freight expenses, Dollar General met certain targets, including an internal target for employee bonuses and analysts' expectations for the Company's earnings per share for fiscal year 1999. If Dollar General had recognized the freight expenses in 1999, it would have fallen short of the bonus target and analysts' expectations.

The complaint further alleges that Burr engaged in insider trading. After

Dollar General terminated Burr in February 2001, Burr and his counsel met with Dollar General senior management. At this meeting, on April 12, 2001, Burr's counsel told Dollar General management that Burr could not sign a separation agreement until he knew that certain accounting issues were addressed by Dollar General. Burr also wanted a release from the Company for any responsibility for certain accounting issues. On April 5, 2001, Burr exercised Dollar General options at $17.5360, and immediately sold 126,597 Dollar General shares at sales prices ranging from $22.50 to $22.84. Burr exercised additional Dollar General options on April 27, 2001, selling 5,000 Dollar General shares at prices from $24 to $24.02. After the Company's April 30, 2001 press release announcing accounting irregularities and the necessity for a restatement, Dollar General's stock price dropped from its Friday, April 27, 2001 closing price of $23.00 to a Tuesday, May 1, 2001 closing price of $15.76. The complaint alleges that Burr avoided losses by his sale of Dollar General securities.

Without admitting or denying the allegations in the Commission's complaint, the Court permanently enjoined Burr from violating the antifraud, internal controls, books and records and lying to auditor provisions of the federal securities laws, specifically, Section 17(a) of the Securities Act of 1933 and Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 10b-5, 13b2-1, and 13b2-2 thereunder. The Court also enjoined Burr from aiding and abetting violations of the periodic reporting, internal controls, and books and records provisions of the Exchange Act, specifically, 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. The Court further ordered Burr to pay $1,204,598.17, comprising $494,824 in disgorgement, $143,950.17 in prejudgment interest, and civil penalties of $565,824. The Court also prohibited Burr from acting as an officer or director of a public company for five years. Dollar General and four other individuals have previously settled the Commission's actions against them. For more information, see Litigation Release No. 19174 (April 7, 2005), Administrative Release No. 34-51501 (April 7, 2005).

http://www.sec.gov/litigation/litreleases/2006/lr19653.htm
