

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

H. THOMAS DAVIS, JR.,

Defendant.

Civil Action No.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

The plaintiff Securities and Exchange Commission (“Commission”) files this Complaint and alleges as follows:

1. This matter involves insider trading in the common stock of Mercer Insurance Group, Inc. (“Mercer”) by Mark W. Baggett (“Baggett”) based on material, non-public information about Mercer’s acquisition provided to him by Mercer’s then board member, Defendant H. Thomas Davis, Jr. (“Defendant Davis”), a friend and business associate of Baggett.

2. Based upon the inside information provided by Defendant Davis in breach of his fiduciary duty to Mercer and its shareholders, Baggett purchased 4,426 shares of Mercer between October 7, 2010 and November 24, 2010, shortly

before the public announcement on November 30, 2010 that Mercer was to be acquired by United Fire & Casualty Company (“United Fire”).

3. On December 1, 2010, the trading day immediately following the public announcement of the merger, shares of Mercer Insurance closed at \$27.89, an increase of \$9.03 over the prior day’s close and representing a 48% increase in price. Volume on December 1, 2010 was 710,900 shares, compared to the average daily trading volume in November 2010 of 18,426 shares.

4. Baggett sold all of his Mercer shares on December 1, 2010, thereby obtaining \$41,584.55 in ill-gotten, insider trading profits.

5. Baggett also tipped a friend, who had previously helped Baggett in his trading of securities (the “Remote Tippee”), with the information provided to him by Defendant Davis. The Remote Tippee purchased 4,500 shares of Mercer between October 20, 2010 and November 26, 2010, all of which the Remote Tippee also sold on December 1, 2010, generating \$42,521.55 in ill-gotten, insider trading profits.

6. Defendant Davis has engaged in, and unless restrained and enjoined by this Court, will continue to engage in acts and practices which constitute or will constitute violations of Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5].

7. The Commission brings this action pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] to enjoin Defendant Davis from engaging in transactions, acts, practices and courses of business alleged in this Complaint, and transactions, acts, practices, and courses of business of similar purport and object, for disgorgement of illegally obtained funds and prejudgment interest thereon, for a civil monetary penalty against Defendant Davis, for an officer and director bar against Defendant Davis, and other equitable relief.

JURISDICTION AND VENUE

8. This Court has jurisdiction of this action pursuant to Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa].

9. Defendant Davis, directly and indirectly, has made use of the mails and the means and instrumentalities of interstate commerce in connection with the transactions, practices and courses of business alleged in this Complaint.

10. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain of the actions set forth herein occurred within the Eastern District of North Carolina. Baggett, who was tipped by Defendant Davis, resides in this district as well.

DEFENDANT AND OTHER PERSONS OR ENTITIES

11. Defendant H. Thomas Davis, Jr. is a resident of Venice, Florida and for all relevant time periods here, was a member of Mercer's board of directors.

Between 2001 to 2006, Defendant Davis was also a senior vice president of Mercer. Defendant Davis was and is the 100% owner of Preferred Property Insurance Agency, an independent insurance agency with an office in Wilmington, North Carolina.

12. Mark W. Baggett is a resident of Wilmington, North Carolina and, following United Fire's acquisition of Mercer, became an agent of Preferred Property Insurance Agency.

13. Mercer Insurance Group, Inc., formerly (formerly NASDAQ: MIGP), was a publicly-traded corporation headquartered in Pennington, New Jersey that offered for sale property and casualty insurance.

14. United Fire & Casualty Company (NASDAQ: UFCS) is a property and casualty carrier headquartered in Cedar Rapids, Iowa. On November 30, 2010, it reached an agreement to acquire Mercer by purchasing in cash Mercer's shares at \$28.25 per share, and, following the close of the trading markets on November 30, 2010, jointly announced publicly with Mercer their respective boards' unanimous approval of the merger and acquisition agreement.

DEFENDANT DAVIS' AND BAGGETT'S RELATIONSHIP

15. Beginning in or about 2009, Baggett became an acquaintance of Defendant Davis when Baggett expressed an interest in affiliating with a North Carolina insurance agency offering property and casualty insurance. Baggett

solicited advice from Defendant Davis during this timeframe, which Defendant Davis routinely provided, concerning the prospect of selling property and casualty insurance and affiliating with an insurance agency for that purpose.

16. Beginning in or about June 2010 and continuing through most of 2011, Defendant Davis and Baggett engaged in discussions and negotiations concerning the possibility of Baggett becoming affiliated with Preferred Property Insurance Agency.

17. Beginning in June 2010, Defendant Davis and Baggett worked together on a venture to implement a trash haulers insurance program in North Carolina, similar to a program that Defendant Davis and Mercer had previously implemented.

UNITED FIRE'S ACQUISITION OF MERCER

18. Beginning in June 2010, and continuing up until the public announcement on November 30, 2010, United Fire and Mercer conducted negotiations regarding Mercer's merging into and being acquired by United Fire.

19. The merger negotiations between United Fire and Mercer included multiple letters of interest and preliminary proposals, to which Defendant Davis had access and contemporaneously reviewed.

20. The merger negotiations also included multiple special meetings of the board of directors of Mercer, for which Defendant Davis was present, during which the potential merger with United Fire was discussed.

21. On October 15, 2010, United Fire submitted a preliminary proposal to Mercer to purchase Mercer for cash in a range of \$25.50 to \$27.50, subject to certain other terms and due diligence; and the parties entered a confidentiality agreement on October 20, 2010.

22. On November 15, 2010, United Fire submitted a formal acquisition proposal whereby United Fire would purchase Mercer in cash for \$27.50 per share.

23. At the November 17, 2010 Mercer board meeting, which Defendant Davis attended, Mercer's board considered United Fire's offer, and instructed Mercer's chief executive officer to request that United Fire increase its bid while the board of directors for Mercer recessed their meeting.

24. Following a discussion between Mercer's chief executive officer and United Fire while the Mercer board was in recess, United Fire indicated to Mercer that it would agree to a per share price offer of \$28.25, subject to certain conditions including a short exclusivity period.

25. On November 30, 2010, following further negotiation and due diligence, the boards of directors of United Fire and Mercer each unanimously approved the

merger and acquisition agreement pursuant to which United Fire would acquire Mercer shares at a per share purchase price of \$28.25.

26. The merger and acquisition agreement was executed after the close of the trading markets on November 30, 2010, and a joint press release was issued by the parties on November 30, 2010 following the agreement's execution.

**DEFENDANT DAVIS TIPS BAGGETT AND
BAGGETT TRADES ON THAT TIP**

27. Between October 1, 2010 and November 30, 2010, Defendant Davis and Baggett conducted more than 70 telephone conversations, exchanged more than 80 text messages, and met in person on multiple occasions.

28. During this time period, Defendant Davis breached his fiduciary duty to Mercer by discussing with Baggett that Mercer was conducting ongoing, advanced merger negotiations

29. Defendant Davis knew, or was severely reckless in not knowing, that information concerning ongoing, advanced merger negotiations involving Mercer was non-public and material.

30. Defendant Davis knew, or was severely reckless in not knowing, that he was breaching his fiduciary duty to Mercer and its shareholders by providing this non-public and material information to Defendant.

31. Baggett knew, or was severely reckless in not knowing, that the information provided to him by Defendant Davis concerning the Mercer merger was non-public and material.

32. Baggett knew, or was severely reckless in not knowing, that the information concerning the Mercer merger was provided to him by Defendant Davis in breach of Defendant Davis' fiduciary duty to Mercer and its shareholders.

33. Between October 7, 2010 and November 24, 2010, Baggett, based on the non-public, material information received from Defendant Davis, purchased 4,426 shares of Mercer common stock at a weighted average price per share of \$18.3493, for an aggregate investment of \$81,214.00.

34. At the close of trading on November 30, 2010, Mercer's share price was \$18.86.

35. Following the after-business hours announcement on November 30, 2010 of United Fire's intended acquisition of Mercer at a price of \$28.25 per share, Mercer's share price on December 1, 2010 moved sharply upward closing at \$27.89 per share, or approximately 48% over Mercer's November 30, 2010 closing share price.

36. On December 1, 2010, Baggett sold all 4,426 of his Mercer shares, realizing illicit profits of \$41,584.45.

**BAGGETT'S RELATIONSHIP WITH AND
TIPPING OF INSIDER INFORMATION TO THE REMOTE TIPPEE**

37. In or about 2009 and 2010, Baggett and the Remote Tippee were personal friends and members of the same country club where they played golf together.

38. In or about 2009 and 2010, the Remote Tippee, a more sophisticated securities trader than Baggett, provided securities trading advice to Baggett on how Baggett should trade his securities.

39. During this time period, Baggett generally did not provide the Remote Tippee with securities trading advice as the Remote Tippee was a more sophisticated trader.

40. In October 2010, after his receipt of, non-public, material information from Defendant Davis, Baggett began providing this information to the Remote Tippee.

41. Between October and November 2010, Baggett informed the Remote Tippee that the information he was providing regarding Mercer's acquisition was confidential and that if the Remote Tippee disclosed the information to others, there could be significant negative consequences.

42. Between October and November 2010, Baggett informed the Remote Tippee that the information regarding Mercer's acquisition came from a board

member of Mercer, and, although not identifying Defendant Davis by name, described the relationship between Defendant Davis and Mercer.

43. Between October and November 2010, Baggett provided the Remote Tippee with specific information, including the timing of the Mercer acquisition as well as the final purchase price offered by United Fire.

44. Baggett knew, or was severely reckless in not knowing, that the information he was providing to the Remote Tippee was material and non-public.

45. Baggett knew, or was severely reckless in not knowing, that the information he was providing to the Remote Tippee had been provided to him by Defendant Davis in breach of Defendant Davis' fiduciary duty to Mercer and its shareholders.

46. Between October 20, 2010 and November 26, 2010, based on the material and non-public information provided by Baggett, the Remote Tippee purchased 4,500 shares of Mercer common stock at a weighted average price per share of \$18.4407, for an aggregate investment of \$82,983.45.

47. On December 1, 2010, the Remote Tippee sold all 4,500 of the Remote Tippee's shares, realizing illicit profits of \$42,521.55.

COUNT I
FRAUD

Violations of Section 10(b) of the Exchange Act [15. U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5]

48. Paragraphs 1 through 47 are hereby realleged and are incorporated herein by reference.

49. In connection with the purchase and sale of securities described herein, Defendant Davis, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

- a) employed devices, schemes, and artifices to defraud;
- b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- c) engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

50. Defendant Davis knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, and engaged in fraudulent acts, practices and courses of business.

51. By reason of the foregoing, the Defendant Davis, directly and indirectly, has violated and, unless enjoined, will continue to violate Section 10(b) of the

Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

PRAYER FOR RELIEF

WHEREFORE, the Commission, respectfully prays that the Court:

I.

Make findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure.

II.

Issue a permanent injunction enjoining Defendant Davis and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, and each of them from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

III.

Issue an Order requiring Defendant Davis to disgorge, on a joint and several basis, all ill-gotten gains arising from Baggett's trading in the securities of Mercer, as alleged in the Commission's Complaint, plus pay prejudgment interest thereon.

IV.

Issue an Order requiring Defendant Davis, pursuant to Sections 21(d)(3) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d)(3) and 78u-1], to pay a civil monetary penalty.

V.

Issue an Order barring Defendant Davis from acting as a director or officer of any issuer having a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VI.

Grant such other and further relief as may be necessary and appropriate.

RESPECTFULLY SUBMITTED,

/s/ Paul Kim
Paul Kim
Senior Trial Counsel
Georgia Bar No. 418841
kimpau@sec.gov

M. Graham Loomis
Regional Trial Counsel
Georgia Bar No. 457868
loomism@sec.gov

COUNSEL FOR PLAINTIFF
U.S. SECURITIES AND EXCHANGE COMMISSION
Atlanta Regional Office
950 East Paces Ferry Road, N.E.
Suite 900
Atlanta, Georgia 30326-1382
Tel: (404) 842-7600
Fax: (404) 842-7633