

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

OCT 12 2005
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
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DEPUTY CLERK

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

vs.

ROBERT B. PETROSKY,

Defendant.

Civil Action No.

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) files its Complaint against Defendant Robert B. Petrosky (“Defendant”), and would show the Court as follows:

I. INTRODUCTION

1. This case involves insider trading by Defendant in the securities of Premcor, Inc. ("Premcor").

2. Defendant is the husband of a Senior Manager in the Hydrocarbons Accounting Group for Valero Energy Corporation (“Valero”), who obtained material, non-public information regarding Valero’s intentions to acquire Premcor, a refining company. During a routine dinner conversation, Defendant’s wife disclosed the planned acquisition of Premcor by Valero to Defendant.

3. Subsequent to learning about Valero's planned acquisition of Premcor, Defendant acted upon the material, non-public information by purchasing 3,800 shares of Premcor stock between March 17 and April 22, 2005. The planned acquisition by Valero became public on April 25, 2005. That same day, Defendant liquidated all of his holdings in Premcor for a total profit of \$41,381.85.

4. By reason of his activities, Defendant violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder. The Commission, in the interest of protecting the public from any further violations of the federal securities laws, brings this action against Defendant seeking permanent injunctive relief, appropriate civil money penalties, and disgorgement of ill-gotten gains plus prejudgment interest from Defendant.

II.
JURISDICTION AND VENUE

5. The Commission brings this action under Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] to enjoin Defendant from future violations of the federal securities laws and to seek disgorgement, prejudgment interest, and a civil penalty.

6. This Court has jurisdiction over this action under Sections 21(d), 21A and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1 and 78aa].

7. Defendant, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the acts, practices and courses of business described in this Complaint.

8. Venue is proper because the transactions, acts, practices and courses of business described below occurred within the jurisdiction of the Western District of Texas.

III.
DEFENDANT

9. Defendant, age 47, is self-employed and resides in Boerne, Texas. Defendant has been married to his wife for 26 years, and handles all investments and finances on behalf of his family.

IV.
RELATED ENTITIES

10. During the relevant time period, Valero was a Texas corporation with its principal place of business in San Antonio, Texas. Valero's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act, and traded on the New York Stock Exchange under the symbol VLO.

11. During the relevant time, Premcor was a Delaware corporation with its principal place of business in Old Greenwich, Connecticut. Premcor's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act, and traded on the New York Stock Exchange under the symbol PCO.

V.
STATEMENT OF FACTS

12. In January 2005, Valero was considering a strategic acquisition. In February 2005, Valero and Premcor began discussion regarding a possible acquisition.

13. On or about March 16, 2005, Defendant's wife became aware of Valero's intent to acquire Premcor during a meeting with her supervisor at Valero, the Assistant

Controller in the Hydrocarbons Accounting Department. Defendant's wife was instructed that all information about the planned acquisition was confidential.

14. On the evening of Defendant's wife's meeting with her supervisor regarding the Premcor acquisition, Defendant's wife discussed the planned acquisition with Defendant during dinner.

15. Acting upon the material, non-public information obtained from his wife, Defendant began purchasing shares of Premcor on March 17, 2005, which breached a reasonable and legitimate expectation of confidentiality held by his wife. Between March 17 and April 22, 2005, Defendant purchased a total of 3,800 shares of Premcor. Defendant purchased 1,900 shares in his wife's IRA account, for which Defendant had full trading authority, and 1,900 shares in an account held jointly by Defendant and his wife.

16. On April 25, 2005, Valero announced that it had reached an agreement to acquire Premcor for \$6.9 billion in cash and stock. Premcor's stock price closed 18 percent higher at \$69.68 on volume of nearly 11 million shares, an increase from \$58.98 and volume of 808,500 shares the prior trading day.

17. On the same day as Valero's announcement of the Premcor acquisition, Defendant liquidated all 3,800 shares of Premcor for a total profit of \$41,381.85.

VI.
CLAIMS

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

18. Plaintiff Commission realleges and incorporates by reference paragraphs 1 through 17 above as fully set forth herein.

19. Defendant, by engaging in the conduct described above, directly and indirectly, in connection with the purchase and sale of securities, and by use of the means and instrumentalities of interstate commerce and of the mails, has:

- (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 the light of the circumstances under which they were made, not misleading; and
- (c) engaged in acts, practices or courses of business that have operated or will operate as a fraud and deceit upon other persons.

20. Defendant intentionally, knowingly or recklessly made the untrue statements and omissions and engaged in the devices, schemes, artifices, transactions, acts, practices and courses of business described above.

21. By reason of the foregoing acts and practices, Defendant 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].

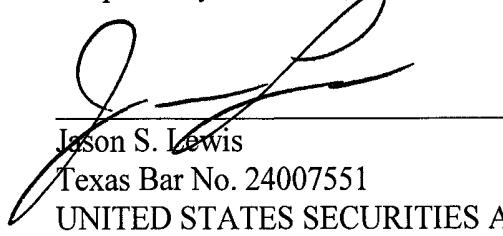
VII.
REQUEST FOR RELIEF

The Commission respectfully requests that this Court enter a judgment:

- (i) permanently enjoining Defendant from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder;
- (ii) ordering Defendant to pay civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1] for his violations of the federal securities laws as alleged herein;
- (iii) ordering Defendant to disgorge all ill-gotten gains from the conduct alleged herein, with prejudgment interest; and
- (iv) granting such other relief, both in law and in equity, as this Court may deem just and appropriate.

Dated this 12th day of October, 2005.

Respectfully submitted,



Jason S. Lewis
Texas Bar No. 24007551

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CONSENT OF DEFENDANT ROBERT B. PETROSKY

1. Defendant Robert B. Petrosky ("Defendant") acknowledges having been served with the complaint in this action and having entered a general appearance, and admits the Court's jurisdiction over him and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendant from violating Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b) and Rule 10b-5 thereunder, 17 C.F.R. §240.10b-5;
- (b) orders Defendant to pay disgorgement in the amount of \$41,381.85, plus prejudgment interest in the amount of \$622.80; and

(c) orders Defendant to pay a civil penalty in the amount of \$20,690.91 under Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

3. Defendant agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

6. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

7. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

8. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

10. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this

action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

11. Defendant understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendant agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

12. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action or to assert any claims against the Commission or its employees. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

13. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

14. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: September 19, 2005

Robert B. Petrosky
Robert B. Petrosky

On September 19, 2005, Robert B. Petrosky, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

Rosalie Ochoa
Notary Public
Commission expires: 8-26-2006

Approved as to form:

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