

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION
450 Fifth Street, N.W.
Washington, D.C. 20549

Plaintiff,

v.

MICHAEL G. SARGENT,
DENNIS J. SHEPARD,
ROBERT J. SCHARN, and
ROBERT L. BAKER,

Defendants.

96 Civ. ____ ()

COMPLAINT

96-10609JLT

Plaintiff Securities and Exchange Commission alleges:

SUMMARY

1. This case involves insider trading in the common stock of Purolator Products Company ("Purolator") prior to the October 3, 1994 announcement that Mark IV Industries, Inc. ("Mark IV") and Purolator had entered into a definitive merger agreement, pursuant to which a tender offer would be commenced. On the day of the announcement, the price of Purolator stock closed at \$24-5/8, up \$6-5/8 over the previous trading day's close. Defendant Dennis J. Shepard obtained material, nonpublic information about the negotiations between Mark IV and Purolator from his business associate, who was a Purolator director. At the time that his business associate gave him such information, Shepard understood and gave assurances to his business associate that he would not

trade in Purolator securities or pass on the information about the negotiations to others. These assurances notwithstanding, Shepard tipped defendant Michael G. Sargent, his friend and dentist, about the negotiations.

2. After obtaining the information from Shepard, Sargent purchased 20,400 Purolator shares during the next three weeks. Sargent also tipped the following persons who knew or should have known that the information had been improperly obtained: Defendant Robert J. Scharn, Sargent's friend, who purchased 5,000 shares, and defendant Robert L. Baker, Sargent's accountant, who purchased 1,000 shares. In addition, after being tipped, Sargent discussed Purolator with two other persons, who thereafter purchased a total of 800 shares. Collectively, Sargent and his tippees purchased 27,200 Purolator shares and realized profits of approximately \$190,750.

3. By engaging in such conduct, each of the defendants has violated, and unless restrained and enjoined will continue to violate, Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78j(b), 78n(e)] ("Exchange Act") and Rules 10b-5 and 14e-3 [17 C.F.R. §§ 240.10b-5, 240.14e-3] promulgated thereunder.

JURISDICTION

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

5. The defendants made use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of national securities exchanges, in connection with the acts, practices, and courses of business alleged herein, certain of which have occurred within the District of Massachusetts.

PARTIES

6. The Commission brings this action pursuant to authority conferred on it by Sections 21(d) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d) & (e)].

7. Defendant Michael G. Sargent, 38, lives in Westford, Massachusetts, and is a dentist.

8. Defendant Dennis J. Shepard, 51, is a patient and friend of Sargent. He lives in Lowell, Massachusetts. Since November 1993, Shepard has been a principal of Aldrich Shepard Associates, Inc., a management consulting firm located in Lowell.

9. Defendant Robert J. Scharn, 51, is a friend of Sargent and lives in Chelmsford, Massachusetts. He owns and operates the Town Meeting Restaurant in Chelmsford.

10. Defendant Robert L. Baker, 48, resides in Wayland, Massachusetts. He is a certified public accountant licensed in Massachusetts and has provided accounting services to Sargent.

OTHER PERSONS

11. Purolator Products Company was a Delaware corporation with its headquarters in Tulsa, Oklahoma. Purolator was a

manufacturer, distributor and marketer of filtration products and systems, including a broad range of automotive filters.

Purolator's securities were registered with the Commission pursuant to Section 12(g) of the Exchange Act. Purolator common stock was traded on Nasdaq.

12. Mark IV Industries, Inc. is a Delaware corporation with its headquarters in Amherst, New York. Mark IV manufactures products for three markets: power and fluid transfer; transportation; and professional audio. Mark IV's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act.

THE UNDERLYING TRANSACTION

13. Early in the summer of 1994, Mark IV informed Purolator that it was interested in acquiring Purolator in a negotiated transaction involving a tender offer at a purchase price of \$22 per share. Purolator Board members, including Shepard's business associate, were informed of Mark IV's interest and subsequent events. In September 1994, Mark IV conducted a due diligence review of Purolator. On September 29, 1994, Mark IV informed Purolator that it was prepared to increase its offer price to \$24 per share. After further negotiations, Mark IV increased its offer to \$25 per share early on Monday morning, October 3. Shortly thereafter, Mark IV and Purolator jointly announced that they had entered into a merger agreement, pursuant to which Mark IV would commence a tender offer for all Purolator shares for \$25

per share. On October 3, the stock closed at \$24-5/8, up \$6-5/8 over the previous trading day's close.

SHEPARD LEARNS OF THE MARK IV/PUROLATOR NEGOTIATIONS

14. In the summer of 1994, Shepard's business associate told Shepard about Mark IV's interest in acquiring Purolator because the business associate had little if any privacy in their shared office space and because he expected to be having communications concerning the negotiations while in the office. Shepard agreed to keep the information confidential and not to trade Purolator stock.

15. Thereafter, Shepard's business associate took no special precautions to keep developments in the negotiations between Mark IV and Purolator from Shepard.

**SARGENT, SCHARN, BAKER AND OTHERS
PURCHASE PUROLATOR COMMON STOCK**

16. Shepard, in violation of his fiduciary or similar duty to his business associate, misappropriated material, nonpublic information concerning the Mark IV/Purolator transaction by communicating such information to Sargent, knowing, or reasonably expecting, or recklessly disregarding the likelihood that Sargent would trade in the securities of Purolator. Sargent knew or should have known that the information was communicated to him in breach of a duty.

17. While in possession of material, nonpublic information concerning the Mark IV/Purolator transaction that had been

communicated to him by Shepard, Sargent purchased 20,400 shares of Purolator stock for his own account.

18. While in possession of material, nonpublic information concerning the Mark IV/Purolator transaction that had been communicated to him by Shepard, Sargent also communicated information concerning the transaction to Scharn and Baker, knowing, or reasonably expecting, or recklessly disregarding the likelihood that Scharn and Baker would trade in the securities of Purolator. Scharn and Baker each knew or should have known that the information was communicated to him in breach of a duty.

19. While in possession of material, nonpublic information concerning the Mark IV/Purolator transaction that had been communicated to him by Sargent, Scharn purchased 5,000 shares of Purolator stock for his own account.

20. While in possession of material, nonpublic information concerning the Mark IV/Purolator transaction that had been communicated to him by Sargent, Baker purchased 1,000 shares of Purolator stock for his own account.

21. While in possession of material, nonpublic information concerning the Mark IV/Purolator transaction that had been communicated to him by Shepard, Sargent also recommended or discussed Purolator with two other persons, knowing, or reasonably expecting, or recklessly disregarding the likelihood that the two persons would trade in the securities of Purolator. Subsequently, the two persons purchased a total of 800 shares of Purolator stock.

22. Prior to the public announcement of the Mark IV/Purolator transaction on October 3, 1994, Sargent, Scharn, Baker and the two other persons with whom Sargent discussed Purolator purchased 27,200 shares of Purolator common stock, realizing total profits of about \$190,750.

LYING TO COMMISSION STAFF

23. When first contacted by the Commission staff, defendants Sargent and Scharn told the staff that Scharn first heard about Purolator from one or two customers in the bar of Scharn's restaurant, that Scharn then told Sargent about the conversation he had heard in his bar, and that they each thereafter bought Purolator stock. Sargent and Scharn told the staff this story in an attempt to prevent the staff from learning that Shepard was the source of their information about Purolator. During their later investigative testimony -- and after the staff had already learned that Shepard had possessed material, nonpublic information about Purolator -- Sargent and Scharn admitted that they had made false statements in their initial discussions with the staff and that, in fact, Scharn had learned about Purolator from Sargent, who had learned about Purolator from Shepard.

FIRST CLAIM

**Violations of Exchange Act Section 10(b) and Rule 10b-5
by Sargent, Shepard, Scharn and Baker
in Connection with Purchases of Purolator Stock**

24. Paragraphs 1 through 23 are realleged and incorporated herein by reference.

25. In September and October 1994, each of the defendants, directly or indirectly, by use of the means or instrumentalities of interstate commerce, of the mails or of the facilities of national securities exchanges, in connection with the purchase or sale of securities: (1) employed devices, schemes, or artifices to defraud; (2) made untrue statements of material fact, or 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/or (3) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon the purchasers or sellers of the securities of Purolator or upon other persons.

26. By reason of the foregoing, defendants Sargent, Shepard, Scharn and Baker each violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder.

SECOND CLAIM

Violations of Section 14(e) of the Exchange Act and Rule 14e-3 Promulgated Thereunder by Sargent, Shepard, Scharn and Baker in Connection with Trading in Purolator Stock

27. Paragraphs 1 through 23 are realleged and incorporated herein by reference.

28. In September and October of 1994, after the commencement of a tender offer, or the taking of a substantial step or steps to commence a tender offer, for the securities of Purolator, Sargent, Scharn and Baker each purchased or caused to be purchased the securities of Purolator, while in possession of material information relating to the tender offer, which information they knew or had reason to know was nonpublic and which information they knew or had reason to know was obtained, directly or indirectly, from the offering person, the issuer Purolator, or a person acting on behalf of the offering person or Purolator; and Sargent and Shepard each communicated material, nonpublic information relating to the Purolator tender offer to other persons under circumstances in which it was reasonably foreseeable that such communications were likely to result in the purchase or sale of the securities of Purolator.

29. By reason of the foregoing, defendants Sargent, Shepard, Scharn and Baker each violated Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

enter judgment in favor of the Commission finding that defendants Sargent, Shepard, Scharn and Baker violated the securities laws and Rules promulgated thereunder as alleged herein;

II.

permanently enjoin all defendants from violating Sections 10(b) and 14(e) [15 U.S.C. §§ 78j(b), 78n(e)] of the Exchange Act and Exchange Act Rules 10b-5 and 14e-3 [17 C.F.R. §§ 240.10b-5, 240.14e-3];

III.

order defendants Sargent, Scharn and Baker to account for and disgorge the profits they realized as a result of the illegal conduct alleged herein and to pay prejudgment interest thereon;

IV.


order defendants Shepard and Sargent to account for and disgorge all profits realized by persons to whom they unlawfully communicated material, nonpublic information and to pay prejudgment interest thereon; and

v.

grant such other relief as this Court may deem just and proper.

Dated: March 25, 1996

Respectfully submitted,


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