

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

STEVEN A. HARTUNG,

Defendant.

Civil Action No.

COMPLAINT

Plaintiff Securities and Exchange Commission (the “Commission”) alleges:

SUMMARY OF THE ACTION

1. Defendant Steven A. Hartung (“Hartung”) violated the federal securities laws by using inside information to trade in the common stock of Idenix Pharmaceuticals, Inc. (“Idenix”), a Massachusetts-based biopharmaceutical company that made drugs to treat Hepatitis C. Hartung traded Idenix based on inside information that he received from a relative (the “Insider”) who worked at Merck & Co. (“Merck”), which was bidding to acquire Idenix through a tender offer (the “Merck-Idenix tender offer”).

2. In early May 2014, the Insider learned about the Merck-Idenix tender offer after he was asked to help Merck forecast the profitability of a Hepatitis C treatment being developed by Idenix.

3. Although the Insider agreed to keep the information confidential and not disclose it to anyone, the Insider told Hartung about the potential merger.

4. On May 9, 2014 and later that month, Hartung bought a total of 3,345 shares of Idenix stock.

5. On June 9, 2014, Merck and Idenix issued a joint press release announcing the companies' execution of a merger agreement and the commencement of a tender offer by Merck to acquire all of the outstanding shares of Idenix for \$24.50 per share, or \$3.85 billion. On the day of the announcement, the price of Idenix stock increased 229%.

6. After the public announcement, Hartung sold all of his Idenix shares, reaping ill-gotten gains of \$59,688.

7. By engaging in the conduct described in this Complaint, Hartung violated 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], and Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14-e3].

JURISDICTION AND VENUE

8. The Commission brings this action pursuant to Sections 21(d) and 21A of the Exchange Act [15 U.S.C. §§78u(d) and 78u-1], to enjoin such acts, practices, and courses of business; and to obtain disgorgement, prejudgment interest, civil money penalties and such other and further relief as the Court may deem just and appropriate.

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

10. Venue in this District is proper pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Certain of the acts, practices, and courses of business constituting the violations alleged herein occurred within the Eastern District of Pennsylvania.

DEFENDANT

11. Steven A. Hartung, age 60, resides in Williamsport, Pennsylvania and is related to the Insider.

RELEVANT ENTITIES AND PERSON

12. Prior to being acquired by Merck, Idenix was a publicly-traded biopharmaceutical company, and its stock was listed on the NASDAQ stock exchange.

13. Merck is a publicly-traded pharmaceutical company headquartered in Whitehouse Station, New Jersey. Merck purchased Idenix through a tender offer, and Merck now operates Idenix as a wholly-owned subsidiary.

14. The Insider resides in Doylestown, Pennsylvania. At all relevant times, the Insider was a Merck employee with expertise concerning the market for Hepatitis C treatments.

FACTS

A. The Merck-Idenix Tender Offer

15. In December 2013, Merck informed Idenix that it was interested in reviewing certain clinical trial data regarding a particular drug Idenix was developing to treat the Hepatitis C virus. On February 28, 2014, Merck and Idenix entered into a confidentiality agreement.

16. On April 7, 2014, Idenix publicly announced positive results from a phase I/II clinical trial of its Hepatitis C drug and that it intended to initiate a full clinical trial of the drug in mid-2014.

17. On April 29, 2014, Merck verbally offered to acquire Idenix for \$9 to \$10 per share in cash and a contingent payment to be made based on future positive clinical results. On May 1, Idenix retained outside legal counsel in connection with the possible sale of the company.

18. On May 5, 2014, Merck and Idenix met, and Idenix informed Merck that it had received an offer from another company. Idenix told Merck to submit a formal offer soon if it was interested in purchasing Idenix.

19. On May 8, 2014, Merck engaged a financial advisor and outside legal counsel in connection with its possible acquisition of Idenix.

20. On May 9, 2014, Merck offered to acquire all of Idenix's outstanding shares for \$1.5 billion, or \$9.78 per share.

21. On May 15, 2014, Merck and Idenix entered into a confidentiality agreement and from May 15 through June 6, 2014, Merck conducted due diligence on Idenix.

22. On May 23, 2014, Idenix asked Merck and two other potential acquirers to submit proposals to acquire Idenix by June 3.

23. On June 3, 2014, Merck submitted a proposal to acquire all of Idenix's outstanding shares at a price of \$18 per share.

24. On June 6, Idenix asked all of the potential acquirers to make final proposals by June 8, and Merck submitted a final proposal to acquire all of the outstanding shares of Idenix for \$3.85 billion, or \$24.50 per share. Later that day, Idenix's board of directors approved Merck's proposal, and Merck and Idenix executed a merger agreement.

25. On June 9, 2014, prior to the opening of the market, Merck and Idenix issued a joint press release announcing the execution of the merger agreement and the commencement of a tender offer by Merck to acquire all of the outstanding shares of Idenix for \$24.50 per share, or \$3.85 billion. Idenix's stock increased from a closing price of \$7.23 per share on the prior trading day to a closing price of \$23.79 per share the day of the announcement, which represented a 229 percent increase.

B. The Insider and Hartung Learned of the Merck-Idenix Tender Offer

26. On May 6, 2014, Merck asked the Insider to be part of a small group that Merck had formed to forecast the profitability of Idenix's Hepatitis C treatment in the event that Merck acquired Idenix.

27. At a meeting that day, the Insider learned that Merck intended to attempt to acquire Idenix, and that either Merck or another company would likely acquire Idenix.

28. Over the next several weeks, the Insider learned additional details regarding this potential transaction, including: Merck's May 9th offer to acquire Idenix; the fact that Merck was conducting due diligence; that there were two other companies competing for Idenix; and that in late May Merck's senior management approved a revised and higher bid for Idenix in order to compete with other active bidders.

29. As an employee at Merck, the Insider agreed to follow Merck's policies regarding insider trading and safeguarding confidential information. Those policies prohibit Merck employees from disclosing Merck confidential information.

30. Despite the Insider's agreement to follow Merck's policies, on or about May 8, the Insider told Hartung about the Merck-Idenix tender offer so that Hartung could benefit financially. Specifically, the Insider told Hartung that the Insider was working on a forecasting project in connection with Merck's possible take-over of Idenix and that Idenix was a good company. In addition, the Insider told Hartung that the Insider could not trade on the information personally because it would be insider trading.

C. Hartung's Illegal Trading

31. Hartung used the information he obtained from the Insider to trade Idenix stock. On May 9, 2014, Hartung bought 1,945 shares of Idenix stock at an average price of \$5.11 per share, for \$10,031.

32. Later that month, on May 30, 2014, Hartung bought an additional 1,400 shares of Idenix stock at \$6.59 per share, for \$9,328.

33. On June 9, 2014, shortly after Merck publicly announced its agreement to acquire Idenix, the Insider called Hartung. Later that day, Hartung called his broker and sold all 1,400 shares of Idenix stock he purchased May 30, 2014. The next day, Hartung sold 972 of the 1,945 shares of Idenix stock he purchased May 9, 2014. On August 11, 2014, he tendered to Merck his remaining 973 shares of Idenix stock. In total, Hartung generated profits of \$59,688 by trading Idenix stock based on the material, nonpublic information he received from the Insider.

D. Hartung Violated the Federal Securities Laws

34. As a Merck employee, the Insider owed a duty of trust or confidence to Merck to safeguard and not disclose to others confidential information about Merck or other companies that Insider learned through the Insider's employment at Merck.

35. In breach of the Insider's duty to Merck, the Insider misappropriated material, nonpublic information from Merck regarding the Merck-Idenix tender offer and disclosed it to his relative, Hartung.

36. Hartung knew or should have known that Insider breached a duty of trust or confidence by disclosing material, nonpublic information to him so that Hartung could trade and financially profit using the information. A reasonable investor would have viewed this

information as being important to his or her investment decision and/or significantly altering the mix of information available to the public.

37. Hartung acquired Idenix stock on the basis of the material, nonpublic information he received from the Insider regarding the Merck-Idenix tender offer.

38. Members of the investing public who sold Idenix stock at the same time as Hartung's purchases were harmed by Hartung's conduct because he unlawfully gained an advantage through his trading on the basis of inside information.

CLAIMS FOR RELIEF

FIRST CLAIM

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

39. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1-38 inclusive, as if they were fully set forth herein.

40. By engaging in the conduct described above, Defendant Hartung, knowingly or recklessly, in connection with the purchase or sale of securities, directly or indirectly, by the use of means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

- a. employed devices, schemes, or artifices to defraud;
- b. made untrue statements of material fact or 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/or
- c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

41. By engaging in the foregoing conduct, Defendant Hartung 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].

SECOND CLAIM

Violations of Section 14(e) of the Exchange Act and Rule 14e-3 Thereunder

42. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1-41 inclusive, as if they were fully set forth herein.

43. The Insider disclosed material, nonpublic information regarding Merck's tender offer for the securities of Idenix to Hartung.

44. The Insider disclosed this material, nonpublic information to Hartung so that Hartung could unlawfully trade using this information.

45. By May 9, 2014, the date of the first illegal trade in Idenix securities alleged herein, Merck had taken substantial steps to complete its tender offer to acquire Idenix. Specifically, the companies had executed a confidentiality agreement, retained financial advisers and legal counsel, and were negotiating the price of the transaction.

46. The Insider was required to refrain from communicating this information to third parties, including Hartung, under circumstances in which it was reasonably foreseeable that such communications were likely to result in unlawful trading.

47. Hartung knew or had reason to know that the information the Insider tipped him regarding the Merck-Idenix tender offer was nonpublic information that had been acquired from someone working on behalf of the offeror or issuer.

48. At the time Hartung traded in Idenix securities as described herein, he was in possession of material, nonpublic information regarding the Merck-Idenix tender offer that he

knew or had reason to know was nonpublic and acquired directly or indirectly from a someone working on behalf of the offeror or issuer.

49. By reason of the foregoing, defendants violated, unless enjoined, will continue to violate, Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14e-3].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment:

I.

Permanently restraining and enjoining Defendant Hartung from, directly or indirectly, 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] and from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 C.F.R. § 240.14-e3];

II.

Ordering Defendant Hartung to disgorge the unlawful trading profits derived from the activities set forth in this Complaint, together with prejudgment interest;

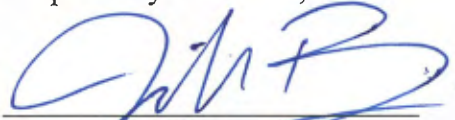
III.

Ordering Defendant Hartung to pay civil penalties up to three times the profits made pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1];

IV.

Granting such other and further relief as this Court may determine to be just and necessary.

Respectfully submitted,



Joseph G. Sansone

Jennifer Chun Barry (Pa. Bar No. 72961)

Kelly L. Gibson (Pa. Bar No. 91753)

David W. Snyder (Pa. Bar No. 78516)

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