

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

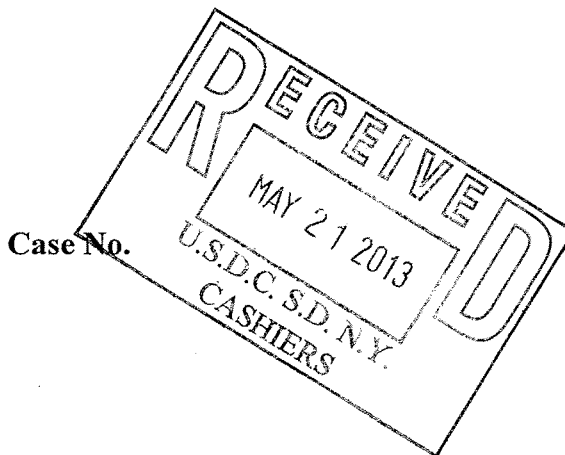
SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JOHN ANTHONY STILWELL,
DR. MICHAEL CURTIS MOORE, and
JILLIAN MARGARET MURPHY

Defendants.



COMPLAINT

Plaintiff, Securities and Exchange Commission (the "Commission"), alleges as follows:

SUMMARY OF THE ACTION

1. This matter involves unlawful tipping and insider trading by Defendants John Anthony Stilwell ("Stilwell"), Dr. Michael Curtis Moore ("Moore"), and Jillian Margaret Murphy ("Murphy") in the shares of American Physicians Capital, Inc. ("ACAP"), ahead of the July 8, 2010 public announcement that ACAP had agreed to be acquired by The Doctors Company ("TDC").

2. At all times relevant to this complaint, Stilwell was an employee at an unregistered investment advisory firm owned and operated by his brother; Stilwell's brother, in addition to owning and operating the investment advisory firm, was also a member of ACAP's board of directors; Moore was a friend of Stilwell's; and Murphy was Stilwell's sister-in-law.

3. In or about March 2010, Stilwell, in the course of his work at his brother's investment advisory firm, learned material, nonpublic information (the "Inside Information") about ACAP's board of directors' efforts to sell the company.

4. Stilwell misappropriated the Inside Information from his brother and tipped it to both Moore and Murphy, each of whom then purchased shares of ACAP on the basis of it. Moore in turn tipped the Inside Information to a relative ("Tippee 1"), and Murphy in turn tipped the Inside Information to a friend ("Tippee 2"). Ultimately, the trades placed by Moore, Murphy, Tippee 1, and Tippee 2 resulted in ill-gotten gains of \$61,687.85.

5. By knowingly or recklessly engaging in the conduct described in this Complaint, each of the Defendants violated and, unless restrained and enjoined by this Court, will continue to violate 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].

JURISDICTION AND VENUE

6. 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 this Court may deem just and appropriate.

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

8. Venue in this District is proper because one of the Defendants is found, inhabits, and/or transacts business in the Southern District of New York and because one or more acts or transactions constituting the violation occurred in the Southern District of New York.

9. In connection with the conduct alleged in this Complaint, Stilwell, Moore, and Murphy made use of a means or instrumentality of interstate commerce, or of the mails, and/or of a facility of any national securities exchange.

DEFENDANTS

10. **John Anthony Stilwell**, age 50, resides in New York, New York. Stilwell was formerly an employee at his brother's then unregistered investment advisory firm. Stilwell is either a friend or a relative of the other Defendants.

11. **Dr. Michael Curtis Moore**, age 65, resides in Black Forest, Colorado. A physician, Moore is a longstanding friend of Stilwell's and an investor in some of the limited partnerships operated and advised by Stilwell's brother's firm.

12. **Jillian Margaret Murphy**, age 43, resides in Denver, Colorado. Murphy is Stilwell's sister-in-law.

RELATED PERSONS AND ENTITIES

13. At all times relevant to this Complaint, **American Physicians Capital, Inc.**, was a holding company for a medical professional liability insurer incorporated in Michigan, with its principal place of business located in East Lansing, Michigan. ACAP's common stock was registered pursuant to Section 12(b) of the Exchange Act [15 U.S.C. § 781(b)], and was listed on the Nasdaq Global Select Market under the symbol "ACAP." On July 8, 2010, ACAP announced that it had agreed to be acquired by TDC.

14. **The Doctors Company** is a private medical liability insurer based in Napa, California.

15. At all times relevant to this Complaint, **Stilwell's brother** owned and operated an unregistered investment advisory firm, located in New York, New York, and also served as a

member of ACAP's board of directors.

16. **Tippee 1** is a relative of Moore's.

17. **Tippee 2** was a friend of Murphy's.

FACTS

A. ACAP's Board of Directors Pursues a Sale of the Company; Stilwell's Brother is Involved.

18. At its annual conference on March 12, 2010, ACAP's board of directors discussed whether it should consider a potential sale of ACAP as one of the company's strategic options. Based on these discussions, the board instructed ACAP's management to evaluate various strategic alternatives, including whether to continue as an independent, stand-alone company or whether it would be in the best interests of ACAP's shareholders for the board to consider selling ACAP. The board also authorized ACAP's CEO and Stilwell's brother, a member of ACAP's board, to identify potential acquirers and to contact them on a preliminary basis in order to gauge their interest in acquiring ACAP.

19. On March 17, 2010, initial discussions between ACAP and TDC occurred at an industry conference in Scottsdale, Arizona. Also around this time, ACAP's CEO and Stilwell's brother contacted three other potential acquirers, two of whom indicated an interest in a possible acquisition of ACAP and executed confidentiality agreements for the purpose of pursuing further discussions with ACAP.

20. On April 9, 2010, ACAP implemented a trading ban for all board members and certain others with knowledge of the potential sale of the company.

21. On April 14, 2010, ACAP's CEO and Stilwell's brother met with TDC's CEO in New York. During this meeting, the parties discussed a general price range for the acquisition of ACAP and ACAP's desire for an all cash transaction.

22. On April 29, 2010, ACAP's management provided ACAP's board with a report on ACAP's strategic options, an assessment of the medical professional liability insurance market, and an update on the initial discussions with the potential acquirers. In addition, a representative from ACAP's outside legal counsel reviewed with the board the board's fiduciary responsibilities in connection with the exploration of strategic alternatives. Following these presentations, the board determined to continue to evaluate a sale of the company and authorized management to continue discussions with potential acquirers.

23. Between the April 29, 2010 board meeting and the morning of July 8, 2010, ACAP's board and management participated in additional activities pertaining to the sale of ACAP.

24. On July 8, 2010, at 9:00 a.m. (EDT), ACAP and TDC announced an agreement under which TDC would acquire ACAP for \$41.50 per share. ACAP's shares closed that afternoon at \$40.63, up \$8.87, a gain of approximately 28% over the previous day's closing price.

B. Stilwell's Brother Possessed Material Nonpublic Information about ACAP and the Sale Process.

25. Stilwell's brother was a member of ACAP's board of directors and thus owed a fiduciary duty of trust and confidence to ACAP and its shareholders.

26. In connection with his position as an ACAP board member, Stilwell's brother was made privy to confidential ACAP information and was subject both to ACAP's "*Statement of Corporate Policy Regarding Transactions In American Physicians Capital, Inc. Securities*" and its "*Code of Ethics and Conduct.*" Both of these documents specified that ACAP policy prohibited ACAP directors and employees from trading on material nonpublic ACAP information and, generally, from disclosing such information to others absent a business purpose.

27. In addition to serving as a member of ACAP's board of directors, Stilwell's brother also owned and was the principal of an unregistered investment advisory firm which operated and advised several investment partnerships, one of which owned a large number of ACAP shares.

28. At least by March 12, 2010, Stilwell's brother knew that ACAP's board was considering the sale of the company, which information was both material and nonpublic.

29. Beginning on March 12, 2010, as a member of ACAP's board, Stilwell's brother was aware of and participated in many of the affirmative steps that resulted in the sale of ACAP, including, but not limited to:

- (a) participating in a March 12, 2010 meeting of ACAP's board during which the board discussed whether it should consider a sale of ACAP as one of its strategic options and authorized him and ACAP's CEO to identify and then contact potential acquirers;
- (b) receiving notification of, and being made subject to, a trading ban implemented by ACAP on April 9, 2010;
- (c) participating in an April 14, 2010 meeting during which he and ACAP's CEO met with the CEO of TDC in New York and discussed a general price range for ACAP and ACAP's desire for an all cash transaction; and
- (d) participating in a April 29, 2010 meeting of ACAP's board during which (i) ACAP management provided the board with a report on ACAP's strategic options and an update on the initial discussions with potential acquirers, (ii) a representative of ACAP's outside legal counsel reviewed with the board the board's fiduciary responsibilities in connection with the exploration of strategic

alternatives, and (iii) the board determined to continue to evaluate a sale of the company and authorized management to continue discussions with potential acquirers.

C. Stilwell was Subject to a Duty of Confidentiality to His Brother.

30. Stilwell was experienced in working in the securities industry, and he understood that information he obtained from his brother in the course of his employment at his brother's firm was confidential and that his brother expected him to maintain the confidentiality of it.

D. In the Course of His Employment at His Brother's Firm, Stilwell Obtained the Inside Information Concerning the Anticipated Sale of ACAP.

31. Stilwell knew his brother was a director of ACAP and that his brother, as a director, obtained nonpublic information from the company.

32. Sometime around March or early April 2010, Stilwell became aware of ACAP's board of directors' efforts to sell the company. Stilwell learned this information in the ordinary course of his work at his brother's firm.

33. Stilwell also was aware that his brother wanted ACAP to be sold and had plans to meet with the CEO of TDC in New York City concerning the sale of ACAP.

34. Stilwell understood that this information about the prospective sale of ACAP was material and nonpublic.

E. Stilwell Misappropriated the Inside Information from His Brother and Tipped it to Moore and Murphy, Both of Whom Then Purchased ACAP Securities.

35. In breach of a duty of confidentiality owed to his brother, Stilwell misappropriated the Inside Information and tipped it, on at least two occasions, to his friend, Moore, who then purchased ACAP securities on the basis of it.

36. Further in breach of this duty of confidentiality owed to his brother, Stilwell tipped the misappropriated Inside Information to his sister-in-law, Murphy, who then purchased ACAP securities on the basis of it.

The April 15, 2010, Tip to Moore

37. During the evening of April 15, 2010, Stilwell called Moore. Stilwell shared the Inside Information with Moore during this call.

38. This April 15, 2010 evening call from Stilwell to Moore occurred the day after Stilwell's brother participated in a meeting during which he and ACAP's CEO met with the CEO of TDC in New York and discussed a general price range for ACAP and ACAP's desire for an all cash transaction.

39. On April 16, 2010, after receiving a telephone call from Stilwell the previous evening, Moore purchased 2,000 shares of ACAP common stock in a joint account he shared with his wife.

40. Brokerage records dating back to January 2008 reflect that Moore had not previously traded in ACAP securities prior to this April 16, 2010 transaction. With the exception of a small position held in a real estate investment trust and some trades in two other individual securities, this account was, during the period of 2008 through 2010, predominantly invested in a portfolio of income oriented mutual funds.

The April 28, 2010, Tip to Moore

41. During the evening of April 28, 2010, Stilwell again called Moore. Stilwell again shared the Inside Information with Moore during this call.

42. This April 28, 2010 evening call from Stilwell to Moore occurred (a) five days after ACAP and TDC executed a confidentiality agreement, (b) the evening before Stilwell's brother attended ACAP's board of directors meeting during which the board continued to evaluate the sale of ACAP, and (c) two days before ACAP's management sent three potentially interested parties a letter requesting preliminary indications of interest in acquiring ACAP.

43. On April 29, 2010, after receiving a telephone call from Stilwell the previous evening, Moore purchased an additional 2,000 shares of ACAP common stock, although this time in his individual retirement account ("IRA").

44. Brokerage records dating back to January 2008 reflect that Moore had not previously traded in ACAP securities in this account prior to this April 29, 2010, transaction. The purchase of ACAP securities in Moore's IRA was anomalous in that 99% of this account's value had, since January 2008, been composed of mutual funds.

45. Following the July 8, 2010 public announcement that ACAP had agreed to be acquired by TDC, Moore began liquidating his entire ACAP position. He realized, totaling both accounts in which he purchased ACAP securities, \$37,307.34 in ill-gotten gains from his illegal trading.

The April 28, 2010, Tip to Murphy

46. Near the time Stilwell called Moore during the evening of April 28, 2010, in another call, Stilwell provided Murphy with the Inside Information in an effort to "help her out."

47. On the day following this call, April 29, 2010, Murphy purchased 200 shares of ACAP common stock in an individual account in her name. On April 30, 2010, she purchased another 440 shares. These purchases were the first transactions in ACAP securities in this brokerage account which was then only recently opened.

48. Following the July 8, 2010, public announcement that ACAP had agreed to be acquired by TDC, Murphy began liquidating her entire ACAP position. She realized a total of \$4,207.00 in ill-gotten gains from her illegal trading.

F. **Moore and Murphy Tipped Tippee 1 and Tippee 2, Respectively, Each of Whom Purchased ACAP Securities.**

Tippee 1 Trades in ACAP Securities After Learning of the Inside Information

49. Tippee 1 is a relative of Moore.

50. On April 15, 2010, approximately 10 minutes after Stilwell tipped Moore with the Inside Information, Tippee 1 called Moore's home. The telephone connection lasted for approximately 13 minutes. During that call Moore communicated the Inside Information to Tippee 1.

51. On April 19, 2010, Tippee 1 purchased 2,000 shares of ACAP common stock in an individual account in his name.

52. Following the July 8, 2010 public announcement that ACAP had agreed to be acquired by TDC, Tippee 1 liquidated his entire ACAP position. Tippee 1 realized a total of \$16,564.00 in ill-gotten gains from his trading.

Tippee 2 Trades in ACAP Securities After Learning Inside Information

53. Tippee 2 was a friend of Murphy.

54. After Stilwell tipped Murphy during the evening of April 28, 2010, Murphy, based on the tipped Inside Information, encouraged Tippee 2 to purchase ACAP shares.

55. On April 29, 2010, the day after Murphy received an evening telephone call from Stilwell and the same day that Murphy began purchasing ACAP securities, Tippee 2, based on the tipped Inside Information, purchased 435 shares of ACAP common stock. The next day she purchased another 125 shares.

56. Following the July 8, 2010 public announcement that ACAP had agreed to be acquired by TDC, Tippee 2 began liquidating her entire ACAP position. Tippee 2 realized a total of \$3,609.51 in ill-gotten gains from her trading.

G. Stilwell, Moore, and Murphy Violated the Federal Securities Laws.

57. Stilwell obtained the Inside Information from his brother in the course of his employment at his brother's firm and knew or was reckless in not knowing that he had a duty to maintain the confidentiality of it.

58. The Inside Information Stilwell obtained was material and nonpublic. A reasonable investor would have viewed the Inside Information as being important to his or her investment decision.

59. Stilwell knew or was reckless in not knowing that the Inside Information was material and nonpublic.

60. In breach of a fiduciary duty of confidentiality owed to his brother, the source of the Inside Information, Stilwell knowingly or recklessly relayed the Inside Information to Moore and Murphy, each of whom he knew would likely trade in ACAP securities on the basis of it.

61. Stilwell, through his tipping of the Inside Information, obtained a personal benefit of gifting trading profits to Moore and Murphy.

62. At all relevant times, Moore and Murphy knew or had reason to know that the Inside Information tipped to him or her by Stilwell had been obtained in breach of a fiduciary duty of confidentiality.

63. When Stilwell tipped the Inside Information to Moore and Murphy, they inherited Stilwell's duty to maintain the confidentiality of that information and to not tip it further or to trade upon it.

64. At all relevant times, Moore and Murphy knew or were reckless in not knowing that the Inside Information tipped to him or her by Stilwell was material and nonpublic.

65. In violation of his inherited duty of confidentiality, Moore knowingly or recklessly (a) traded in ACAP securities and (b) tipped the Inside Information to someone he knew would likely trade in ACAP securities on the basis of it.

66. Moore, through his tipping of the Inside Information, obtained a personal benefit of gifting trading profits to Tippee 1.

67. In violation of her inherited duty of confidentiality, Murphy knowingly or recklessly (a) traded in ACAP securities and (b) tipped the Inside Information to someone she knew would likely trade in ACAP securities on the basis of it.

68. Murphy, through her tipping of the Inside Information, obtained a personal benefit of gifting trading profits to Tippee 2.

69. Both Tippee 1 and Tippee 2 purchased ACAP securities on the basis of the Inside Information tipped to him or her by Moore and Murphy, respectively.

CLAIM FOR RELIEF

Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder ***(Against All Defendants)***

70. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1-69, inclusive, as if they were fully set forth herein.

71. The Inside Information was material and nonpublic.

72. At all times relevant to this Complaint, each of the Defendants acted knowingly or recklessly.

73. By engaging in the conduct described above, the Defendants directly or indirectly, in connection with the purchase or sale of securities, by use of the 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; and
- (b) 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.

74. By reason of the foregoing, the Defendants 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 [17 C.F.R. § 240.10b-5], thereunder.

PRAYER FOR RELIEF

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

I.

Permanently restraining and enjoining Defendants John Anthony Stilwell, Dr. Michael Curtis Moore, and Jillian Margaret Murphy from, directly or indirectly, engaging in conduct in violation 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];

II.

Ordering Dr. Michael Curtis Moore and Jillian Margaret Murphy to disgorge all ill-gotten gains or unjust enrichment derived from the activities set forth in this Complaint, together with prejudgment interest thereon;

III.

Ordering each Defendant to pay a civil penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

IV.

Granting such other and further relief as this Court may deem just, equitable, or necessary in connection with the enforcement of the federal securities laws and for the protection of investors.

Respectfully submitted,

SECURITIES AND EXCHANGE COMMISSION



By: One of its attorneys

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