

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUDGE NORGLÉ

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

KEVIN L. LINDSEY,
THOMAS R. PERZ

Defendants.

00C 5539
Case No. _____

MAGISTRATE JUDGE ROSEMOND

~~DOCKET~~

SEP 13 2000

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CLERK
U.S. DISTRICT COURT

COMPLAINT

Plaintiff Securities and Exchange Commission ("Plaintiff" or "Commission") alleges the following:

1. On September 9, 1998 and on September 16, 1998, Defendant Thomas R. Perz ("Defendant Perz") purchased the common stock of Marquette Medical Systems, Inc. ("Marquette") while he was in possession of material, nonpublic information regarding Marquette.

2. On or before September 9, 1998, Defendant Kevin L. Lindsey ("Defendant Lindsey"), then employed as Corporate Comptroller and Vice President of Business Development at Marquette, disclosed material nonpublic information regarding Marquette to Defendant Perz.

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3. Defendant Perz and Defendant Lindsey, directly and indirectly, have engaged and, unless enjoined, will continue to engage in acts, practices, and courses of business 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 [17 C.F.R. §240.10b-5] promulgated thereunder.

4. Plaintiff brings this action to enjoin such acts, practices and courses of business pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§78u(d) and 78u(e)].

JURISDICTION

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

6. Defendant Perz and Defendant Lindsey will, directly and indirectly, unless enjoined, continue to engage in the acts, practices, and courses of business set forth in this Complaint and in acts, practices, and courses of business of similar purport and object.

ENTITIES INVOLVED

7. At all times relevant herein, General Electric Co. ("GE"), was a New York corporation headquartered in Fairfield, Connecticut. GE's securities were registered with the Commission and were publicly traded on the New York Stock Exchange.

8. At all times relevant herein, Marquette was a Wisconsin corporation headquartered in Milwaukee, Wisconsin. Prior to GE's acquisition of Marquette, Marquette's common stock was registered with the Commission and was publicly traded on the NASDAQ market.

FACTS

9. At all times relevant herein, Marquette had a policy, which prohibited all directors and employees of Marquette from trading Marquette stock while in possession of material, nonpublic information.

10. On or about July 15, 1998, Marquette's board of directors authorized Marquette's Chairman of the Board to approach GE about a possible merger of GE and Marquette.

11. Marquette and GE had ongoing discussions about GE acquiring Marquette from on or about July 27, 1998 through on or about August 27, 1998. These discussions revolved around what price per share GE would pay Marquette for Marquette's stock in a possible acquisition.

12. On or about July 27, 1998, Marquette suggested an acquisition price to GE of approximately \$60 per share while GE proposed a purchase price of approximately \$35 to \$40 per share.

13. On or about August 17, 1998, Marquette suggested an acquisition price to GE of approximately \$50 per share while GE proposed a purchase price of approximately \$40 per share.

14. On or about August 27, 1998, when Marquette and GE were apart by approximately \$10 per share, GE suggested that GE and Marquette split the difference in the amount that GE and Marquette were apart. GE also suggested that Marquette's Chairman of the Board meet with GE's Chairman of the Board and Chief Executive Officer to resolve the difference in price.

15. On or about September 1, 1998, a meeting was scheduled for September 11, 1998 between Marquette's Chairman of the Board and GE's Chairman of the Board and Chief Executive Officer to resolve the difference in price.

16. From on or about July 27, 1998 through on or about September 5, 1998, Defendant Lindsey knew about the discussions between GE and Marquette about a possible acquisition.

17. On or before September 9, 1998, Defendant Lindsey knew that GE's and Marquette's valuations of Marquette were apart by \$10 per share.

18. On or before September 9, 1998, Defendant Lindsey knew that a meeting had been scheduled between Marquette's Chairman of the Board and GE's Chairman of the Board and Chief Executive Officer to resolve the difference in the acquisition price.

19. Marquette's discussions with GE about a possible acquisition by GE of Marquette was nonpublic information from the time these discussions began in July 1998 to the time of the announcement on September 21, 1998.

20. On or before September 9, 1998, Defendant Lindsey, then employed as Corporate Comptroller and Vice President of Business Development at Marquette, disclosed material nonpublic information regarding a GE acquisition of Marquette to Defendant Perz. Defendant Lindsey breached his fiduciary duty to Marquette shareholders by disclosing this material nonpublic information.

21. On September 9, 1998, Defendant Perz purchased 10,000 shares of Marquette stock at \$23.9375 per share. Defendant Perz made this purchase while in possession of information provided to him by Defendant Lindsey about a GE acquisition of Marquette. When purchasing these shares, Defendant Perz knew, or should have known, the information regarding a GE acquisition of Marquette was nonpublic. At the time of this purchase, Defendant Perz had assumed a fiduciary duty to the shareholders of Marquette not to trade on this material nonpublic information.

22. On September 16, 1998, Defendant Perz purchased 10,000 shares of Marquette stock at \$24.375 per share. Defendant Perz made this purchase while in possession of information provided to him by Defendant Lindsey about a GE acquisition of Marquette. When purchasing these shares, Defendant Perz knew, or should have known, the information regarding a GE acquisition of Marquette was nonpublic. At the time of this purchase, Defendant Perz had assumed a fiduciary duty to the shareholders of Marquette not to trade on this material nonpublic information.

23. For the three months prior to September 21, 1998, Marquette's stock was trading in the range of \$22.75 to \$27.375 per share.

24. On September 21, 1998, Marquette announced that GE would be acquiring Marquette for \$45 per share. At the close of the market on September 21, 1998, Marquette common stock closed at \$42.50 per share and within three days of the announcement, the price had climbed to \$43.50 per share.

**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] promulgated thereunder**

25. On or before September 9, 1998, Defendant Lindsey, in connection with the purchase of securities, namely the common stock of Marquette, by the use of the means and instrumentalities of interstate commerce, the mails, and the facility of a national securities exchange, directly and indirectly, employed devices, schemes, and artifices to defraud, 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 engaged in acts, practices and courses of business which operated and would operate as a fraud and deceit upon any person. As

part of this conduct, Defendant Lindsey, in breach of his fiduciary duty to Marquette and its shareholders arising from his position of trust and confidence disclosed material nonpublic information about GE's acquisition of Marquette to Defendant Perz.

26. On or about September 9, 1998, Defendant Perz, in connection with the purchase of securities, namely the common stock of Marquette, by the use of the means and instrumentality of interstate commerce, the mails, and the facility of a national securities exchange, directly and indirectly, employed devices, schemes, and artifices to defraud, 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 engaged in acts, practices and courses of business which operated and would operate as a fraud and deceit upon any person. As part of this conduct, Defendant Perz breached a fiduciary duty to Marquette and its shareholders when he purchased 10,000 shares of Marquette stock while he was in possession of material, nonpublic information regarding an acquisition of Marquette by GE.

27. On or about September 16, 1998, Defendant Perz, in connection with the purchase of securities, namely the common stock of Marquette, by the use of the means and instrumentality of interstate commerce, the mails, and the facility of any national securities exchange, directly or indirectly, employed devices, schemes, and artifices to defraud, 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 engaged in acts, practices and courses of business which operated and would operate as a fraud and deceit upon any person. As part of this conduct, Defendant Perz breached a fiduciary duty to Marquette and its shareholders when he purchased 10,000 shares of Marquette stock while he was in possession of material, nonpublic information regarding an acquisition of Marquette by GE.

28. Defendant Lindsey knew or was reckless in not knowing the facts and circumstances described in Paragraphs 9 through 27 above.

29. Defendant Perz knew or was reckless in not knowing the facts and circumstances described in Paragraphs 9 through 27 above.

30. As a result of the activities described in Paragraphs 9 through 27 above, Defendant Lindsey 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.

31. As a result of the activities described in Paragraphs 9 through 27 above, Defendant Perz 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.

THEREFORE, the Plaintiff respectfully requests that this Court:

I.

Find that Defendant Perz and Defendant Lindsey committed the violations alleged above.

II.

Grant a Final Order and Judgment of Permanent Injunction, Civil Penalties, and Other Equitable Relief (“Final Judgment”), in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, enjoining Defendant Lindsey and Defendant Perz, their agents, servants, employees, assigns, attorneys, and those persons in active concert or participation with them who receive actual notice of the Final Judgment by personal service or otherwise, and each of them, from, directly or indirectly, by the use of the means and instrumentalities of interstate commerce, the mails, or the facility of an national securities exchange, engaging in the unlawful acts, practices, and courses of business described above, or any conduct of similar purport or object, in connection with the transactions in the securities described in this complaint or any other

security, including 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] promulgated thereunder.

III.

Grant an Order requiring Defendant Lindsey and Defendant Perz to pay to the registry of this Court disgorgement of their ill-gotten gains plus prejudgment interest from September 21, 1998 to the date of final judgment in this matter.

IV.

Grant an Order requiring Defendant Lindsey and Defendant Perz to pay civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. §78u-1].

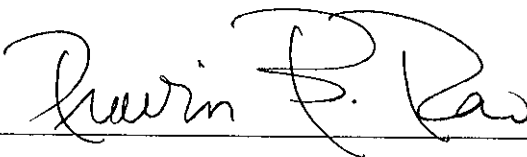
V.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VI.

Grant an Order for such further relief as the Court may deem appropriate.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Pravin B. Rao", is written over a horizontal line.

Jane E. Jarcho, IL ID # 06193642
James A. Davidson, IL ID # 06286786
Pravin B. Rao, IL ID # 06230097

ATTORNEYS FOR PLAINTIFF
SECURITIES AND EXCHANGE COMMISSION
500 W. Madison Street, Suite 1400
Chicago, Illinois 60661
Telephone: (312) 353-7390

Dated: September 8, 2000

JS 44 (Rev. 3/99)

AT 3

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM.)

DOCKETED
SEP 13 2000

I. (a) PLAINTIFFS
JUDGE NORGLE
U.S. Securities and Exchange Commission

DEFENDANTS
Kevin L. Lindsey,
Thomas R. Perz
Milwaukee County

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES) **MAGISTRATE JUDGE ROSE**
County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) **Milwaukee County**

00C 5539

(c) Attorney's (Firm Name, Address, and Telephone Number)
Jane E. Jarcho, James A. Davidson, Pravin B. Rao
United States Securities and Exchange Commission
500 West Madison Street, Suite 1400 (312) 353-7390
Chicago, Illinois 60661-2511

Attorneys (If Known)
Thomas E. Brown
Gimbel, Reilly, Guerin & Brown
Two Plaza East, Suite 170
330 E. Kilbourn Avenue
Milwaukee, Wisconsin 53202

Nathan A. Fishbach
Whyte, Hirschbock, Dudek
111 E. Wisconsin, Suite 2100
Milwaukee, Wisconsin 53202

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff
 2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated in This State	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated in Another State	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Custom or Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (139 Sff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS— Third Party 26 USC 7609	

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify) _____
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Violations of Federal Securities Laws: Section 10(b) of the Exchange Act (15 U.S.C. § 78j (b)) and Rule 10b-5 (17 C.F.R. § 240.10b-5)

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ **CHECK YES only if demanded in complaint:**
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE _____ **DOCKET NUMBER** _____

DATE 9/8/00 **SIGNATURE OF ATTORNEY OF RECORD**
Pravin B. Rao

FOR OFFICE USE ONLY
RECEIPT # _____ **AMOUNT** _____ **APPLYING IFP** _____ **JUDGE** _____ **MAG. JUDGE** _____

1-2

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

In the Matter of

Eastern Division

U.S. Securities and Exchange Commission
v.
Kevin L. Lindsey
Thomas R. Perz

JUDGE NORGLÉ
MAGISTRATE JUDGE ROSEMOND

00C 5539

Case Number:
MAGISTRATE JUDGE ROSEMOND

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

United States Securities and Exchange Commission

FILED
00 SEP - 8 PM 2:09
CLERK
U.S. DISTRICT COURT

DOC 477
SEP 13 2000

(A)		(B)	
SIGNATURE <i>Pravin B. Rao</i>		SIGNATURE <i>James A. Davidson</i>	
NAME Pravin B. Rao		NAME James A. Davidson	
FIRM United States Securities and Exchange Commission		FIRM United States Securities and Exchange Commission	
STREET ADDRESS 500 West Madison Street, Suite 1400		STREET ADDRESS 500 West Madison Street, Suite 1400	
CITY/STATE/ZIP Chicago, Illinois 60661-2511		CITY/STATE/ZIP Chicago, Illinois 60661-2511	
TELEPHONE NUMBER (312) 353-7390		TELEPHONE NUMBER (312) 353-7420	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 06230097		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 06206786	
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	
(C)		(D)	
SIGNATURE <i>Jane E. Jarcho</i>		SIGNATURE	
NAME Jane E. Jarcho		NAME	
FIRM United States Securities and Exchange Commission		FIRM	
STREET ADDRESS 500 West Madison Street, Suite 1400		STREET ADDRESS	
CITY/STATE/ZIP Chicago, Illinois 60661-2511		CITY/STATE/ZIP	
TELEPHONE NUMBER (312) 353-5479		TELEPHONE NUMBER	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 06193642		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>	
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	
DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	

PLEASE COMPLETE IN ACCORDANCE WITH INSTRUCTIONS ON REVERSE.

1-3