

ORIGINAL

FILED _____ ENTERED _____
LODGED _____ RECEIVED _____

SEP 19 2001 KN

BY _____
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON



CV 01-01463 #00000001

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RANDALL D. MARTIN and
MICHAEL R. BROWN,

Defendants.

C01-14632

CIVIL NO.

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission")
alleges for its Complaint the following:

PRELIMINARY STATEMENT

1. This case involves unlawful insider trading in the securities of VWR Scientific Products Corp. ("VWR") by two unrelated individuals, Randall D. Martin ("Martin") and Michael R. Brown ("Brown"), while each was in possession of material, nonpublic information concerning a tender offer and merger agreement between VWR and a subsidiary of Merck KGaA. As a

USA waived no iss

1 result of their trading, Martin and Brown violated both the
2 antifraud and tender offer provisions of the Securities Exchange
3 Act of 1934 ("Exchange Act").

4 2. On June 8, 1999, Brown, a VWR manager, purchased VWR
5 stock after learning information that led him to conclude that
6 the tender offer and merger was final and about to be announced
7 to the public. The merger agreement was publicly announced later
8 that day, and on June 9, 1999, the price of VWR stock increased
9 approximately 30 percent. Brown realized profits of \$16,923 from
10 his illegal trading.

11 3. On June 2, 1999, Martin, a financial planner for a
12 member of VWR's board of directors, purchased VWR stock and
13 options after being told by this individual that a merger between
14 VWR and a subsidiary of Merck KGaA was imminent. Martin realized
15 profits of \$28,940 from his illegal trading.

16 4. As a result of the conduct described in this Complaint,
17 the defendants have violated and, unless restrained and enjoined,
18 will continue to violate Sections 10(b) and 14(e) of the Exchange
19 Act, 15 U.S.C. 78j(b) and 78n(e), and Rules 10b-5 and 14e-3
20 thereunder, 17 C.F.R. 240.10b-5 and 240.14e-3.

21 **JURISDICTION AND VENUE**

22 5. The Commission brings this action pursuant to Section
23 21(d) of the Exchange Act, 15 U.S.C. 78u(d), to enjoin such acts,
24 practices and courses of business, and for other relief.

25 6. This Court has jurisdiction over this action pursuant
26 to Section 27 of the Exchange Act, 15 U.S.C. 78aa.

27 7. Certain of the acts and practices constituting the
28 violations alleged herein occurred within the Western District of

1 Washington and elsewhere, and were effected, directly and
2 indirectly, by making use of the means and instrumentalities of
3 interstate commerce, the mails, or the facilities of a national
4 securities exchange.

5 **DEFENDANTS**

6 8. Randall D. Martin, age 35, is a resident of Maple
7 Valley, Washington. He is a Certified Public Accountant in the
8 State of Washington, where he provides tax planning services to
9 the public. He is not registered with the Commission in any
10 capacity. Among Martin's clients was James Bernard ("Bernard"),
11 whom Martin knew to be a member of the VWR Board of Directors.

12 9. Michael R. Brown, age 48, is a resident of Portland,
13 Oregon. As a result of VWR's 1998 acquisition of High Purity
14 Chemical ("HPC"), a company founded by Brown, Brown became a
15 manager of VWR, and worked in VWR's Portland office. He retired
16 from VWR on June 30, 1999.

17 **FACTS**

18 10. VWR Scientific Products Corp. was a Pennsylvania
19 corporation, headquartered in West Chester, Pennsylvania. The
20 company was a distributor of laboratory supplies, chemicals, and
21 equipment. Until July 1999, when its acquisition by Merck KGaA
22 was finalized, VWR's shares were traded on the NASDAQ National
23 Market.

24 11. Merck KGaA is a pharmaceutical conglomerate based in
25 Darmstadt, Germany, and is the parent company of EM Industries,
26 Inc. and the ultimate parent of EM Laboratories, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Background

12. On February 27, 1995, VWR and EM Industries, a Merck KGaA subsidiary, entered into two agreements, a Purchase Agreement and a Standstill Agreement. The Purchase Agreement granted EM Industries certain rights, which it assigned on April 13, 1995 to EM Laboratories, another Merck KGaA subsidiary, to obtain approximately 20 percent of the total VWR shares then issued and outstanding. The Standstill Agreement granted Merck KGaA and its affiliates the right to designate a number of directors for VWR's Board and prohibited Merck KGaA and affiliates from acquiring any additional VWR shares without the consent of VWR Directors not affiliated with Merck KGaA.

13. On September 15, 1995, the Standstill Agreement was amended to grant Merck KGaA and its affiliates the right to maintain a 49.89% interest in VWR and the right to acquire additional shares by means of a tender offer commenced on or after April 13, 1999, subject to certain conditions. The agreements and the amendment were described continuously in filings with the Commission beginning in 1995. Pursuant to the agreements, EM Laboratories acquired, over time, 49.89% of VWR's issued and outstanding stock.

14. On February 18, 1999, Merck KGaA-affiliated directors told the full VWR Board of Directors that, in accordance with the terms of the Standstill Agreement, Merck KGaA and its affiliates were considering acquiring the VWR shares not already owned by affiliates of Merck KGaA. The Board was also told that Merck KGaA had retained an investment banker to advise it in that

1 regard. In response, the Board appointed a "Special Committee"
2 to be responsible for receiving and evaluating any plan or
3 proposal from Merck KGaA and reporting back to the Board with its
4 recommendations. The Special Committee consisted of inside
5 (non-Merck KGaA) directors from VWR, including VWR's president.

6 15. Between February and June 1999, negotiations took place
7 between Merck KGaA representatives and the Special Committee
8 regarding a potential merger, including the price to be paid for
9 VWR stock as part of a tender offer. During this time period,
10 VWR's Board of Directors was kept apprised of the status of the
11 negotiations.

12 16. During April and May 1999, and during the first week in
13 June, several anonymous rumors were posted to Internet message
14 boards concerning a possible tender offer and merger concerning
15 VWR.

16 17. The potential merger was also discussed in a report
17 issued on May 3, 1999 by the research department of a registered
18 broker-dealer. This report predicted, among other possibilities
19 concerning VWR, that by May or June 1999, "Merck KGaA could buy
20 all of VWR." On May 3, 1999, VWR stock closed at a price of \$27
21 per share, an increase of \$1 3/8 from the previous day's closing
22 price.

23 18. On June 8, 1999, Merck KGaA presented a proposal to the
24 Special Committee that included the tender offer and merger.
25 Later that day, the VWR Board of Directors approved Merck KGaA's
26 proposal and recommended that VWR shareholders accept the tender
27 offer and adopt the merger agreement. On that same day, VWR and
28 Merck KGaA affiliates executed the merger agreement, pursuant to

1 which Merck KGaA affiliates agreed to seek tenders of any and all
2 outstanding VWR shares for \$37 per share.

3 19. On that same day, June 8, 1999, VWR's president
4 announced the merger to VWR management in a telephone conference
5 call at approximately 5:00 p.m. EDT (2:00 p.m. PDT), after the
6 close of the market. Two hours prior to that announcement,
7 shortly before 3:00 p.m. EDT (12:00 noon PDT), while the market
8 was still open, VWR management was informed by voice mail message
9 to participate in a telephone conference call, for managers only,
10 scheduled for later that day. This meeting was not scheduled in
11 advance, and the short notice was apparently unusual.

12 20. On the evening of June 8, 1999 (EDT), within an hour of
13 the president's conference call with VWR management, VWR and
14 Merck KGaA publicly announced the tender offer and merger.

15 21. On June 8, 1999, the last full trading day prior to the
16 public announcement, the closing price of VWR stock was \$27 15/16
17 per share. On June 9, 1999, VWR stock closed at \$36 7/16 per
18 share, a 30 percent increase from the previous day's closing
19 price.

20 **Unlawful Trading by Randall D. Martin**

21 22. As of June 1999, Martin had maintained a three-year
22 professional relationship with Bernard. Bernard had retained
23 Martin to provide tax planning services related to, among other
24 things, substantial gains Bernard had previously realized from
25 the sale of stock, including VWR stock. Similarly, Bernard
26 sought Martin's advice regarding the gain he anticipated from the
27 sale of his VWR stock pursuant to the expected tender offer. As
28

1 a result, over the course of several months in the first half of
2 1999, they had a series of meetings and telephone conversations.

3 23. On June 2, 1999, Bernard told Martin in a telephone
4 conversation that the merger was imminent and the range of the
5 expected tender offer price. Martin knew that Bernard was a VWR
6 Director and that he had access to confidential information about
7 the merger negotiations. In fact, Bernard specifically told
8 Martin that the information concerning the tender offer was
9 confidential.

10 24. Nevertheless, immediately thereafter, on the same day,
11 in violation of a duty of trust and confidence he owed to
12 Bernard, Martin misappropriated material, nonpublic information
13 concerning the merger and tender offer for his own use.

14 25. On that day, Martin bought ten June 30 (\$30 strike
15 price) and ten June 25 (\$25 strike price) call option contracts
16 for VWR common stock for an aggregate net price of \$1,453 and
17 \$4,203, respectively. A call option gives its buyer the right to
18 buy a specified number of shares of stock at a particular price
19 (the "strike price") within a specified time period.

20 26. On June 2, 1999, Martin also purchased 1,000 shares of
21 VWR common stock for \$28,467 and sold short ten June 30 put
22 option contracts for VWR stock, which were sold for a net
23 aggregate sale price of \$6,170. A put option gives its buyer the
24 right to sell a specified number of shares of stock at a
25 particular price within a specified time period. On the same
26 day, in a separate transaction, Martin also bought an additional
27 350 shares of VWR stock for a net price of \$9,961.

28

1 27. On June 9, 1999, the day after the VWR/Merck KGaA
2 merger was announced, Martin sold the ten June 30 and ten June 25
3 call option contracts for a net price of \$6,346 and \$11,246,
4 respectively. On the same date, he sold 1,000 shares of VWR
5 stock and received \$36,656, and paid \$160 to cover the short sale
6 of the ten June 30 put option contracts. On June 11, 1999,
7 Martin sold his remaining 350 shares of VWR stock for a net price
8 of \$12,766. As a result of this series of transactions, Martin
9 realized profits of \$28,940.

10 **Unlawful Trading by Michael R. Brown**

11 28. In 1984, Michael Brown founded HPC, a company that had
12 supplied process chemicals used in the manufacture of
13 semi-conductors and laboratory supplies to clients in the Pacific
14 Northwest. On or about July 1, 1998, HPC was acquired by VWR,
15 after which Brown became a VWR manager, and continued running the
16 HPC portion of VWR.

17 29. As stated earlier, at approximately 2:00 p.m. PDT on
18 June 8, 1999, VWR's president announced the merger to VWR
19 management, including Brown, in a telephone conference call.
20 Shortly before noon PDT on June 8, another VWR manager instructed
21 Brown to participate in a telephone conference call with other
22 managers, which was to take place "after-the-market-close."
23 Brown concluded that the purpose of the conference call was to
24 announce the merger to the management staff. He based his
25 conclusion on the fact that he had received only two hours notice
26 of the conference call, which was highly unusual, that only VWR
27 management was to be included in the conference call, and that
28

1 the announcement would be made when VWR stock could not be
2 traded.

3 30. Brown was generally aware of the possibility of a
4 merger involving VWR, and that Merck KGaA might be the purchaser.
5 He knew about the Standstill Agreement, and was aware of the
6 messages that had been posted on the Internet leading up to the
7 first week in June that had expressed the likelihood that a
8 merger would take place between VWR and another party, possibly
9 Merck KGaA. When he received notice of the telephone conference
10 call on June 8, he concluded that a merger including VWR was
11 final and would be announced to the public shortly thereafter.
12 He then proceeded to trade based on this information.

13 31. In violation of his fiduciary duties to VWR and its
14 shareholders, Brown purchased VWR stock while in possession of
15 material, nonpublic information about the tender offer and
16 merger.

17 32. At 12:01 p.m. PDT, less than two hours before the
18 conference call, and immediately after he received notice of the
19 call, Brown placed a market order to buy 2,000 shares of VWR
20 common stock, which was filled at prices ranging from \$27 7/8 to
21 28 1/8 per share. He subsequently sold these shares after the
22 announcement, on July 6, 1999, realizing a profit of \$16,923.

23 **FIRST CLAIM**

24 **Violations of Section 10(b) of the Exchange Act**
25 **and Rule 10b-5 thereunder**

26 33. Paragraphs 1 through 32 are realleged and incorporated
27 herein by reference.
28

1 34. As a result of the conduct alleged herein, defendants
2 Martin and Brown, in connection with the purchase or sale of
3 securities, directly or indirectly, by use of the means or
4 instrumentalities of interstate commerce, or the mails, or the
5 facilities of a national securities exchange: (i) employed
6 devices, schemes, or artifices to defraud; (ii) made untrue
7 statements of material fact or omitted to state material facts
8 necessary in order to make the statements made, in the light of
9 the circumstances under which they were made, not misleading; and
10 (iii) engaged in acts, practices, and courses of business which
11 operated as a fraud and deceit upon other persons.

12 35. By reason of the foregoing, defendants Martin and Brown
13 violated Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), and
14 Rule 10b-5, 17 C.F.R. 240.10b-5 thereunder.

15 **SECOND CLAIM**

16 **Violations of Section 14(e) of the Exchange Act**
17 **and Rule 14e-3 thereunder**

18 36. Paragraphs 1 through 35 are realleged and incorporated
19 herein by reference.

20 37. As outlined above, by June 2, 1999, Merck KGaA had
21 taken substantial steps towards commencing its tender offer for
22 the securities of VWR.

23 38. Defendant Martin purchased and sold securities of VWR
24 while in possession of material information relating to the
25 tender offer and while knowing or having reason to know that said
26 information was nonpublic and had been acquired directly or
27 indirectly from a director of VWR.
28

1 39. Defendant Brown purchased securities of VWR while in
2 possession of material information relating to the tender offer
3 and while knowing or having reason to know that said information
4 was nonpublic and had been acquired directly or indirectly from
5 VWR or an employee of VWR.

6 40. By reason of the foregoing, defendants Martin and Brown
7 violated Section 14(e) of the Exchange Act, 15 U.S.C. 78n(e), and
8 Rule 14e-3, 17 C.F.R. 240.14e-3 thereunder.

9 WHEREFORE, the Commission respectfully requests that this
10 Court:

11 I.

12 Issue an injunction permanently enjoining defendants Martin
13 and Brown from violating Sections 10(b) and 14(e) of the Exchange
14 Act and Rules 10b-5 and 14e-3, thereunder.

15 II.

16 Order defendants Martin and Brown to disgorge the unlawful
17 profits realized in connection with their actions, as described
18 in this Complaint, plus prejudgment interest thereon.

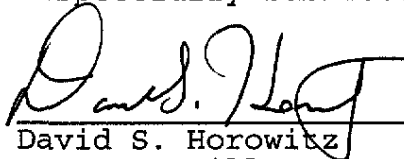
19 III.

20 Order defendants Martin and Brown to pay civil penalties
21 pursuant to Section 21A of the Exchange Act, 15 U.S.C. 78u-1, of
22 up to three times the amount disgorged.

1
2 IV.

3 Order such other and further relief as the Court may deem
4 just and appropriate.

5 Respectfully submitted,

6
7 

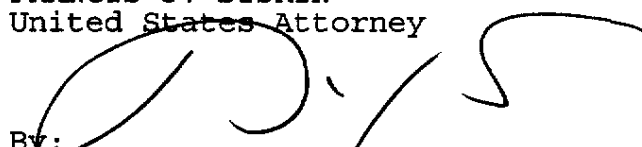
8 David S. Horowitz
9 Merri Jo Gillette
10 Mauro M. Wolfe

11 Attorneys for Plaintiff:

12 **SECURITIES AND EXCHANGE COMMISSION**
13 The Curtis Center, Suite 1120 E.
14 601 Walnut Street
15 Philadelphia, PA 19106
16 (215) 597-3100

17 Local Counsel:

18 FRANCIS J. DISKIN
19 United States Attorney

20 
21 By: _____
22 Brian C. Kipnis
23 Assistant United States Attorney
24 5100 Two Union Square
25 601 Union Street
26 Seattle, Washington 98101-3903
27 (206) 553-7970
28

Dated: September 19, 2001