

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

GREGORY J. MISFELDT,
GREGORY L. TYRER,
JODI L. KNUEPPEL, and
MARK R. SONDAY

Defendants.

03 2666
03 Civ. ()

COMPLAINT

JOHNSON, J.

MANN, M.J.

Plaintiff, Securities and Exchange Commission ("Commission"), for its Complaint against defendants Gregory J. Misfeldt ("Misfeldt"), Gregory L. Tyrer ("Tyrer"), Jodi L. Knueppel ("Knueppel") and Mark R. Sondag ("Sondag") (collectively "Defendants"), alleges as follows:

SUMMARY

1. This matter involves illegal insider trading based on misappropriated, material, nonpublic information concerning the future contents of the Inside Wall Street column ("IWS column") in *Business Week* magazine. Knueppel and Sondag acquired information concerning the contents of the IWS column during the course of their employment at a Perry Judd's Incorporated ("Perry") printing plant in Waterloo, Wisconsin, one of the locations where *Business Week* was printed each week. During a one-and-a-half-year period, Knueppel and Sondag disclosed this information to Misfeldt and Tyrer before it was public. Misfeldt and Tyrer used this information, which consisted of names, ticker symbols and equity analysis relating to publicly traded companies, to make pre-publication purchases of the securities of companies

favorably mentioned in the column ("IWS Securities"). Due to the IWS column's popularity with investors, IWS Securities tended to increase in price immediately after the column became public. Misfeldt and Tyrer capitalized on this price increase by selling the IWS Securities after *Business Week* was publicly released. On a few occasions Misfeldt and Tyrer also made pre-publication short sales of the securities of companies negatively discussed in the column. Misfeldt and Tyrer paid Knueppel and Sondag from fifty to two hundred fifty dollars per week in exchange for the tips. From June 1997 through January 1999, Misfeldt and Tyrer executed purchase and sale transactions in 163 and 166 securities respectively, based on material, nonpublic information that they knew, or were reckless in not knowing, had been misappropriated from *Business Week* by Knueppel and Sondag. Misfeldt's illicit profits totaled \$346,807.66 and Tyrer's illicit profits totaled \$1,063,452.40.

NATURE OF THE PROCEEDINGS AND THE RELIEF SOUGHT

2. The Commission brings this action pursuant to the authority conferred upon it by Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78u(d), to enjoin Defendants from violating the federal securities laws. The Commission also seeks a judgment requiring Defendants to disgorge the profits of their fraudulent conduct plus prejudgment interest thereon, and such other and further relief as the court may deem appropriate.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action, and venue is proper, pursuant to Sections 21(d) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78aa. Certain of the alleged

transactions, acts, practices, and courses of business occurred in the Eastern District of New York, including, but not limited to, the purchase and sale of securities from market makers located in the Eastern District.

STATUTES AND RULES ALLEGED TO HAVE BEEN VIOLATED

4. Defendants have engaged in, and unless enjoined, will continue to engage, directly or indirectly, in transactions, acts, practices or courses of business that constitute 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.

DEFENDANTS

5. **Gregory J. Misfeldt**, age 49, is a janitor in Fort Atkinson, Wisconsin where he also resides. He was employed as a molder in Lake Mills, Wisconsin from December 1974 through May 2002.

6. **Gregory L. Tyrer**, age 43, is a machinist in Lake Mills, Wisconsin where he has worked since June 1978. He resides in Watertown, Wisconsin.

7. **Jodie L. Kneuppel**, 37, is a photo shop specialist in McFarland, Wisconsin and resides in Lake Mills, Wisconsin. She was employed at Perry's Waterloo, Wisconsin printing plant from January 1995 through April 1998.

8. **Mark R. Sunday**, age 41, is a real estate agent in Madison, Wisconsin and resides in Sun Prairie, Wisconsin. He was employed at the Perry's Waterloo, Wisconsin printing plant from 1983 until 2001.

FACTS

Business Week's IWS Column

9. *Business Week* is a weekly magazine published by The McGraw-Hill Companies, Inc. ("McGraw-Hill") covering current events in business and finance. From 1996 through early 1999, *Business Week* had an average weekly circulation ranging from approximately 894,000 to 924,000 paid subscribers in the United States. Each issue of *Business Week* includes the IWS column, which provides information on publicly traded companies.

Preparation and Delivery of Business Week

10. From June 1997 through January 1999, *Business Week* staff typically completed the IWS column by Wednesday. A limited number of staff were involved in preparing the column and sensitive information was stored in a secure part of the *Business Week* computer network with restricted access.

11. McGraw-Hill shipped pages of *Business Week* to Applied Graphics Technology ("AGT"), which provides prepress services, and AGT electronically transmitted the pages to the printers, including Perry, by late Wednesday night. The printers completed printing *Business Week* early Thursday mornings.

12. McGraw-Hill released *Business Week* on the Internet at 6:30 p.m. on Thursdays. Subscribers and newsstands received their copies Friday mornings.

13. The information contained in the IWS column has a material impact on the price of the securities of the companies mentioned in the IWS column ("IWS Securities"). Securities of companies favorably mentioned in the IWS column generally rise in price immediately after the IWS column becomes public. Conversely, securities of companies that are mentioned

unfavorably in the column generally decrease in price immediately after the IWS column becomes public.

14. Recognizing that *Business Week* in general and the IWS column in particular contain information that may be material to investors, McGraw-Hill executed formal, written security agreements with AGT and the printers to protect the confidentiality of the contents of the publication.

15. McGraw-Hill's agreement with AGT discussed the requirement that the contents of the magazine remain confidential until the information became generally known to the public. In the agreement, AGT "acknowledges that the information contained in [McGraw-Hill]'s publications contain confidential and proprietary information and may constitute material inside information under the United States securities laws." AGT ensured that all its employees were aware of the confidential nature of the contents of McGraw-Hill's magazines, according to the agreement.

16. Between June 1997 and January 1999, the printers, including Perry, also were parties to written security agreements with McGraw-Hill, and printing employees were instructed as to the confidential nature of *Business Week*'s contents during training and periodically thereafter. In its agreement with McGraw-Hill, Perry

acknowledge[d] that information contained in [*Business Week*] is proprietary to the Publisher and that unauthorized release of such information will cause Publisher irreparable injury. [Perry] shall not permit any information contained within [*Business Week*] to be made available in any form before it is made available to the general public. ... [Perry] shall be responsible to continuously

communicate to and create awareness among its employees to maintain the confidentiality and security of [*Business Week*].

In addition, at least twice during the relevant time period – on May 21, 1998 and April 5, 1999 – McGraw-Hill wrote to Perry “to remind everyone in your organization to be particularly alert for any attempts to secure copies of *Business Week* magazine or any information contained in ... [the] magazine.” In the letters, the publisher urged Perry to limit employee access to the material in the magazine to such information required to produce *Business Week*, and to ensure that “every employee ... is aware of our serious concerns regarding *Business Week* security.”

17. Perry’s employees, including Kneuppel and Sunday, received employee handbooks stating that Perry employees are prohibited from using customer information for their own or another’s financial benefit. In relevant part, the handbook provides:

“Confidential information” includes information contained in or relating to material submitted by customers to be printed or which is printed by [Perry], until that information has been made available to the general public by [Perry] or the customer. ... [Perry] employees are not to disclose confidential information to anyone.... [Perry] employees are not to use confidential information to engage or assist in any transaction for their own or anyone else’s financial benefit, including but not limited to the purchase, sale, or transfer of securities [and] stocks ... until that information has been made available to the general public by [Perry] or the customer. ... [Perry] employees are not to remove any materials containing confidential information from [Perry]’s

premises or otherwise distribute or disseminate confidential information....

Misfeldt and Tyrer's Illegal Trading

18. Misfeldt was a reader of *Business Week* when he discovered the increase in the price of IWS Securities that coincided with the weekly release of the magazine. Misfeldt shared his discovery with Tyrer and the two agreed to try and profit from trading IWS Securities. To that end, Misfeldt and Tyrer agreed to work jointly to obtain information concerning the contents of the IWS column on Thursdays before *Business Week* was publicly released.

19. Misfeldt and Tyrer focused on *Business Week's* printers as a possible source of the pre-publication information from the IWS column. They learned that the magazine was printed at Perry's plant in Waterloo. Misfeldt realized that he knew someone who worked there: Kneuppel.

20. Misfeldt approached Kneuppel about divulging information from the IWS column before *Business Week's* public release, in exchange for cash. Misfeldt told Kneuppel that he and a friend had been speculating in IWS Securities on Fridays and felt they could do better on their investments if they were to receive the IWS column's information prior to Friday. Misfeldt warned Kneuppel that if she provided him with the information, Perry probably would disapprove and she would be risking her job. Kneuppel already was aware that her employer prohibited sharing prepublication contents because Perry educated its employees of its confidentiality agreement with McGraw-Hill during training and in signs posted around the plant.

21. Knueppel immediately started providing Misfeldt with the requested information from the IWS column. Beginning in June 1997, Knueppel called Misfeldt -- or occasionally Tyrer -- every Thursday between noon and 2 p.m. and shared the names and ticker symbols in each week's IWS Securities. Knueppel understood that, due to the increase in the prices of IWS Securities on Fridays and Misfeldt and Tyrer's desire to purchase IWS Securities at lower Thursday prices, she was required to give Misfeldt the information concerning the IWS column's contents prior to close of the stock market on Thursdays.

22. In exchange for the tips, Misfeldt and Tyrer mailed Knueppel weekly cash payments initially of fifty dollars and later one hundred dollars. Misfeldt and Tyrer each contributed half the money for these payments.

23. In the fall of 1997, Knueppel was scheduled to take vacation but wanted to preserve the arrangement -- and her weekly tipping fees -- with Misfeldt and Tyrer in her absence. To that end, Knueppel approached Sondag about divulging to her the IWS column's contents ahead of *Business Week's* public release while she was away on vacation, and then she would relay it to Misfeldt and Tyrer. Knueppel explained to Sondag that she had been providing Misfeldt and Tyrer with information concerning the IWS column's contents on Thursdays so that they could place trades in IWS Securities before the close of the stock market. Knueppel also told Sondag that Misfeldt and Tyrer sent her weekly cash payments in exchange for the tips and that she likewise would pay Sondag if he agreed to assist in the arrangement.

24. Sondag was aware that he was required to keep the pre-publication contents of *Business Week* confidential and that Knueppel's proposition posed a risk to his job, but he nevertheless accepted Knueppel's offer. While Knueppel was on vacation, Sondag called Knueppel on Thursday and shared with her information pertaining to the contents of the IWS

column. Knueppel in turn relayed the information to Misfeldt. Knueppel mailed Sondag half of the cash payment, which by that time had been increased to \$100, that Misfeldt and Tyrer sent her for that week.

25. Knueppel resumed supplying the IWS information to Misfeldt when she returned from vacation but again enlisted Sondag to serve as her stand-in while she was on maternity leave in November and December 1997. Sondag supplied her with information from the IWS column on Thursday of every week. Knueppel again shared this information with Misfeldt every Thursday. Knueppel mailed Sondag half of the cash payments from Misfeldt and Tyrer.

26. Knueppel returned to Perry in January 1998, and resumed tipping Misfeldt and Tyrer without Sondag's involvement. In April 1998, Knueppel resigned from Perry and arranged for Sondag to tip Misfeldt and Tyrer directly.

27. From April 1998 through January 1999, Sondag called Misfeldt or Tyrer every Thursday to relay information concerning the contents of the IWS column. From April 1998 through January 1999, Misfeldt and Tyrer mailed Sondag weekly cash payments up to \$250 per week in exchange for the tips.

28. In addition, Misfeldt and Tyrer continued to pay Knueppel \$100 per week for four months following her departure from Perry in consideration for her prior tipping.

29. Tyrer kept notes of how much he contributed to Knueppel and Sondag's tipping fees. From June 1997 to January 1999, Tyrer recorded spending a total of \$8,800 for tipping fees. Misfeldt contributed an equal amount.

30. Misfeldt and Tyrer opened accounts with brokers with telephone or Internet order placement systems for the purpose of purchasing IWS Securities prior to *Business Week's* public release. From June 1997 through January 1999, Misfeldt and Tyrer generally made pre-

publication purchases of the same IWS Securities, although Tyrer traded in higher volume and consequently generated greater profits.

31. From June 1997 through January 1999, Misfeldt executed purchase and sale transactions in 163 IWS Securities from seventy-five different issues of *Business Week*. Misfeldt made the purchases before the market closed on Thursdays and, in most instances, sold the stock the next day. In total, Misfeldt's profits from purchases and sales of IWS Securities were \$346,807.66.

32. Misfeldt knew, or was reckless in not knowing, that these purchases and sales were based on information that Knueppel and Sondag misappropriated in violation of a duty of confidentiality. Misfeldt also knew, or was reckless in not knowing, that this information was material and nonpublic.

33. From June 1997 through January 1999, Tyrer executed purchase and sale transactions in 166 IWS Securities from seventy-six different issues of *Business Week*. Tyrer made the purchases shortly before the market closed on Thursdays and, in most instances, sold the stock the next day. In total, Tyrer's profits from purchases and sales of IWS Securities were \$1,063,452.40.

34. Tyrer knew, or was reckless in not knowing, that these purchases and sales were based on information that Knueppel and Sondag misappropriated in violation of a duty of confidentiality. Tyrer also knew, or was reckless in not knowing, that this information was material and nonpublic.

35. Knueppel and Sondag breached the duty of confidentiality they owed to their employer and to *Business Week*'s publisher when they disclosed material, nonpublic information concerning the contents of the IWS column before the magazine's public release.

36. The IWS Securities were listed on the New York Stock Exchange, American Stock Exchange, National Association of Securities Dealers Automated Quotation system, or the Pink Sheets.

CLAIM FOR RELIEF

37. Paragraphs 1 through 36 are realleged and incorporated herein by reference.

38. From at least June 1997 through January 1999, Defendants, directly and indirectly, singly and in concert, by use of the means or instrumentalities of interstate commerce, the mails, or any facility of any national securities exchange, 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 light of the circumstances under which they were made, not misleading; and (3) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of the securities, or any other persons.

39. As part of, and in furtherance of these violations, and as set forth above, Misfeldt and Tyrer executed purchase and sale transactions in at least 163 and 166 securities, respectively, while in possession of misappropriated, material, nonpublic *Business Week* information that they received from Kneueppel and Sondag. Misfeldt and Tyrer knew, or were reckless in not knowing, that Kneueppel and Sondag disclosed this information to them in breach of a duty of confidentiality.

40. By reason of the foregoing, Defendants violated, and unless enjoined will again 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.

RELIEF SOUGHT

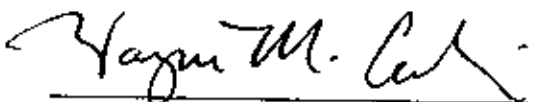
WHEREFORE, plaintiff Commission respectfully requests that this Court enter judgment:

- A. Permanently restraining and enjoining Defendants, their agents, servants, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, directly and indirectly, from future violations 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;
- B. Ordering Defendants to disgorge the ill-gotten gains that they derived from the purchase of IWS securities 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, and to pay prejudgment interest thereon; and

C. Granting such other and further relief as this Court shall deem just and proper.

Dated: New York, New York
May 28, 2003

Respectfully submitted,


By: WAYNE M. CARLIN (WC-2114)
Regional Director

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