

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

FILED IN CLERK'S OFFICE  
U.S.D.C. Atlanta

JUL 28 2006

LUTHER D. THOMAS, Clerk  
By *[Signature]* Deputy Clerk

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

RICHARD P. SMYTH,  
ARNOLD E. JOHNS, JR.,  
MICHAEL J. BECKER, and  
ALAN T. DAVIS,

Defendants.

Civil Action  
File No.  
1:01-CV-1344-CC

ORDER IMPOSING DISGORGEMENT AND PREJUDGMENT INTEREST, AND  
ENTERING FINAL JUDGMENT AGAINST ARNOLD E. JOHNS, JR.,  
FOLLOWING REMAND FROM THE ELEVENTH CIRCUIT

This matter came before the Court for an evidentiary hearing on July 17, 2006, on the issue of the amount of disgorgement and prejudgment interest to be imposed against defendant Arnold E. Johns, Jr. This hearing was held by the Court pursuant to the order of the appellate court in Johns' appeal from this Court's initial entry of final judgment on February 19, 2004. See SEC v. Smyth et al., 420 F. 3d 1225(11<sup>th</sup> Cir. 2005).

At the evidentiary hearing, the Securities and Exchange Commission ("Commission") presented an agent witness to establish its disgorgement and prejudgment interest calculations. In response, defendant Johns called

two witnesses, including Dr. Jason Greene, a finance professor at Georgia State University, which the Court qualified to offer his opinions in the areas of market response to announcements, and the impact of news stories on market prices. Defendant Johns also testified at the evidentiary hearing.

As background, the Commission has filed its complaint and amended complaint herein. Defendant Johns has previously entered a general appearance, and has admitted the in personam jurisdiction of this Court over him and the jurisdiction of this Court over the subject matter of the action.

By order of this Court dated October 30, 2002, Johns was permanently enjoined from further violations of the antifraud provisions, books and records provisions, internal accounting control provisions and reporting provisions of the federal securities laws. That order also directed that Johns "shall pay disgorgement and prejudgment interest in amounts to be resolved upon motion of the Commission at a later date." The order further provided, that for purposes of the Commission's motion to set disgorgement and prejudgment interest, the allegations of the Commission's complaint (save for the amount of disgorgement) shall be deemed to be true and that Johns may

not by way of defense contend that disgorgement and prejudgment interest should not be imposed. Johns stipulated to the terms of the October 30, 2002 order.

The Commission's motion to set disgorgement and prejudgment interest is once again before this Court. While virtually all of the allegations of the Commission's complaint and amended complaint are deemed to be true for purposes of this motion (including all allegations relating to Johns' conduct in this matter), the Commission's various memorandum in support of its motion includes, among other things, admissions of defendant Johns taken in sworn testimony before the Commission staff and made by Johns during the litigation of this proceeding. The Commission's motion is also based upon the testimony of Neal A. Seiden, who provided a calculation for the "losses avoided" by Johns in his Vista 2000, Inc. ("Vista") stock sales.

The Court finds that the Commission has shown by a preponderance of the evidence that its method of calculating the amount of disgorgement and prejudgment interest is a reasonable approximation of losses avoided by defendant Johns. The Court nevertheless finds that the "gestation period" (being the time necessary for the market to fully absorb and act in response to the original inside information, once that data has become generally accessible

to investors), was one day after Vista's press release announcing the financial fraud within the company (or April 16, 1996), rather than the three days (or April 18, 1996), as proffered by the Commission. The Court further finds from the evidence that the closing price of Vista stock on April 16, 1996 was \$3.53125. The amount of "losses avoided," and the prejudgment interest thereon, ordered herein is based upon Vista's closing stock price one day after the adverse information was publicly disseminated, or April 16, 1996.

For the purposes of this Order, and in consideration of Johns' stipulation that all allegations in the complaint be deemed admitted for the purposes of determining the amount of disgorgement and prejudgment interest, it appears that Johns sold Vista stock while in possession of material, nonpublic information in February 1996, and the true nature of Vista's public filings was not disclosed publicly until April 15, 1996, after the close of the market. In February of 1996, Johns sold Vista stock as follows, for the following losses avoided:

<u>Date of Sale</u>	<u>Sales Price</u>	-	<u>Closing Price on 04/16/96</u>	x	<u>Number of Shares Sold</u>	=	<u>Loss Avoided</u>
02/05/96	(\$10.5625	-	\$3.53125)	x	5,000	=	\$ 35,156.25
02/05/96	(\$10.6250	-	\$3.53125)	x	5,000	=	\$ 35,468.75

02/05/96	(\$11.2500 - \$3.53125)	x	5,000	=	\$ 38,593.75
02/06/96	(\$11.2500 - \$3.53125)	x	5,000	=	\$ 38,593.75
02/08/96	(\$11.2500 - \$3.53125)	x	5,000	=	\$ 38,593.75
02/08/96	(\$11.3750 - \$3.53125)	x	5,000	=	\$ 39,218.75
02/08/96	(\$11.5000 - \$3.53125)	x	10,000	=	\$ 79,687.50
02/15/96	(\$12.5000 - \$3.53125)	x	<u>7,500</u>	=	<u>\$ 67,265.63</u>

TOTAL LOSSES AVOIDED	47,500	\$372,578.13
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The Court concludes that the losses avoided by defendant Johns total \$372,578.13.

# I.

## DISGORGEMENT AND PREJUDGMENT INTEREST

**IT IS HEREBY ORDERED** that Defendant Johns pay disgorgement in the amount of \$372,578.13 representing losses avoided, from his conduct alleged in the complaint and amended complaint, plus prejudgment interest thereon at the rate used by the Internal Revenue Service for unpaid debts. Prejudgment interest owed by Johns from February 15, 1996 (the last day of his Vista stock sales) through July 17, 2006, totals \$399,209.01. Johns is ordered to pay \$771,787.14 to the United States Treasury within sixty (60) days from the date of the entry of this Order by cashier's check, certified check, or postal money order made payable to the U.S. Treasury; hand-delivered or delivered by overnight delivery service to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and submitted

under a cover letter which identifies Johns as a defendant in these proceedings, a copy of which cover letter and money order or check shall be sent to Edward G. Sullivan, Senior Trial Counsel, Securities and Exchange Commission, 3475 Lenox Road, N.E., Suite 1000, Atlanta, Georgia 30326-1232, within 65 days from the entry of this order.

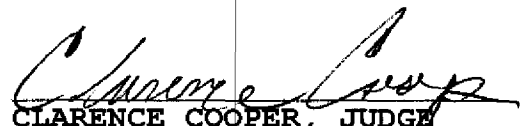
**II.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that this Court shall retain jurisdiction over this matter for all purposes, including implementing and enforcing the terms of this Order, and may order other and further relief that this Court deems appropriate under the circumstances.

**III.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that there is no just reason for delay, and the Clerk is directed to enter a Final Judgment against defendant Johns pursuant to the terms of this Order, and pursuant to the terms of the Order of Permanent Injunction previously entered in this Court against him on October 30, 2002.

**SO ORDERED**, this 28<sup>th</sup> day of July, 2006.

  
**CLARENCE COOPER, JUDGE**  
**UNITED STATES DISTRICT COURT**