

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

Case No.: 2:05-CV-40263

v.

Magistrate Judge Steven D. Pepe

CHARLES C. CONAWAY,

Defendant.

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**FINAL JUDGMENT AS TO DEFENDANT
CHARLES C. CONAWAY**

Following a three week trial, on June 1, 2009, a jury found that Defendant Charles C. Conaway ("Defendant") violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5], and in addition he aided and abetted Kmart Corporation in its violations of Section 10(b) of the Exchange Act and Rule 10b-5, and in Kmart Corporation's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-13]. Having considered the evidence, briefs, and arguments of the parties, having made findings of fact and conclusions of law as set forth in the Memorandum Opinions dated January 20 and February 25, 2010, (the latter being modified this date), the Court now enters this Final Judgment as to Defendant pursuant to Rule 58 of the Federal Rules of Civil Procedure as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant violated Section 10(b) of the Exchange Act and Rule 10b-5, and in addition he aided and abetted Kmart

Corporation in its violations of Section 10(b) of the Exchange Act and Rule 10b-5, and in addition he aided and abetted Kmart Corporation in its violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement in the amount of \$5,000,000, together with prejudgment interest thereon in the amount of \$2,853,432, and a civil penalty in the amount of \$2,500,000 pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall satisfy this obligation by paying \$10,353,432 within fourteen days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Charles C. Conaway as a Defendant in this action, setting forth the title and civil action number of this action and the name of this Court, and specifying that payment is made pursuant to this Final Judgment. The payment shall be accompanied by a declaration from the Defendant, made pursuant to 28 U.S.C. § 1746, that he has not received and will not seek any payment, reimbursement, or indemnification from any third party for any portion of the civil penalty. If the Defendant does not provide the foregoing declaration, this Final Judgment shall, upon motion by the Securities and Exchange Commission, be modified to increase the amount of the civil penalty from \$2,500,000 to \$5,000,000. A copy of the payment and accompanying declaration shall be mailed to Alan Lieberman, Securities and Exchange Commission, 100 F

Street, NE, Washington, DC 20549-4030. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Final Judgment shall be stayed for 60 days in order to allow the SEC to conduct discovery and the parties to attempt to negotiate the terms of a stay pending appeal. During this 60-day period, the Defendant shall be and is hereby enjoined from taking any action to transfer, conceal, or dissipate any assets.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

SO ORDERED.

Dated: March 3, 2010
Ann Arbor, MI

s:\ Steven D. Pepe
Steven D. Pepe
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Final Judgment* was served on the attorneys and/or parties of record by electronic means or U.S. Mail on March 3, 2010.

s/D. Opalewski
Case Manager