

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION
450 Fifth Street, N.W.
Washington, DC 20549,

Plaintiff,

v.

JEFFREY L. LEACH
1937 Brandywine Street
Philadelphia, PA 19130,

HUBERT A. LEACH
6334 Woodbine Avenue
Philadelphia, PA 19151,

LMC ASSETS CORP.
1429 Walnut Street, Suite 1100
Philadelphia, PA 19102,

Defendants,

and

MARY F. LEACH
Philadelphia, PA,

Relief Defendant.

Civil Action No.

00 - CV - 5928

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) alleges the following:

NATURE OF THE ACTION

1. Defendant Jeffrey L. Leach (“Jeffrey Leach”), with significant assistance from his brother, defendant Hubert A. Leach (“Hubert Leach”), made millions of dollars in unlawful profits, and caused investors to suffer millions of dollars in losses, by orchestrating a scheme to conduct

fraudulent “mini” tender offers for the stock of three publicly-traded companies. “Mini” tender offers are offers for less than five percent of a class of securities registered with the Commission. These offers were made through two shell companies that Jeffrey Leach created and controlled -- defendant LMC Assets Corp. (“LMC”) and Carnegie Investment Management, Ltd. (“Carnegie”). Carnegie is presently in bankruptcy. The target companies of the mini tender offers were Fleming Companies, Inc. (“Fleming”), Fruit of the Loom, Ltd. (“Fruit of the Loom”) and Mattel, Inc. (“Mattel”).

2. All three tender offers were fraudulent for several reasons, including:

(a) the offering documents contained material omissions and false statements as to the offeror’s intent in making the offer, the ability to pay for tendered shares, and other material matters;

(b) the defendants made numerous false and misleading statements outside of the offering documents; in particular, they made many false promises to tendering shareholders that they would be paid for their shares, typically by a date certain, and simply never paid for many shares tendered;

(c) the defendants structured the offers without the use of any escrow account or independent receiving agent, and failed to disclose that they could not pay for the shares. Thus, they gained control of the shares before payment and obtained the equivalent of an unsecured loan and a free “call option” on the tendered shares. The defendants then used the unpaid-for shares as collateral to receive millions of dollars in cash from margin loans and to engage in extremely risky margin trading schemes; and

(d) the defendants engaged in other practices that are specifically unlawful in connection with tender offers. For example, the defendants unlawfully amended the Mattel offer

by increasing the offering price but failing to hold the offer open, thereby denying shareholders sufficient time to consider the amended offer. The defendants also unilaterally and illegally amended the Fruit of the Loom offer five weeks after its purported closing, and coerced shareholders into accepting a significantly lower price or the return of their shares. And, in connection with all three offers, the defendants failed to pay for or return the shares “promptly” after the close of each offer.

3. By engaging in the foregoing conduct, Jeffrey Leach, Hubert Leach, LMC (and Carnegie), directly or indirectly, have engaged in fraudulent, manipulative or deceptive acts, practices, transactions and/or courses of business that violate Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b) and 78n(e)] and Rules 10b-5 and 14e-1 thereunder [17 C.F.R. §§ 240.10b-5 and 240.14e-1].

4. The Commission seeks a judgment permanently enjoining defendants from future violations and directing disgorgement of their illegal profits, pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)]. Unless enjoined, the defendants will continue to engage in acts, practices, transactions and/or courses of business similar to those alleged herein. The Commission also brings this action for an award of civil penalties against the defendants, pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. §§ 78u(d)(3)]. Mary F. Leach (“Mary Leach”) is named solely as a relief defendant, and the Commission seeks a judgment directing disgorgement as to her.

JURISDICTION

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

THE DEFENDANTS AND CARNEGIE

6. Defendant Jeffrey Leach, age 40, resides at 1937 Brandywine Street, Philadelphia, Pennsylvania 19130. He incorporated LMC and Carnegie, and served as President and Chief Executive Officer of LMC. Jeffrey Leach also exercised control over both LMC and Carnegie.

7. Defendant Hubert Leach, age 38, resides at 6334 Woodbine Avenue, Philadelphia, Pennsylvania 19151. He is Jeffrey Leach's brother, and served as Vice President of LMC.

8. Defendant LMC is a Delaware corporation, which maintained its registered office and principal place of business at 1429 Walnut Street, Suite 1100, Philadelphia, Pennsylvania 19102. LMC purports to be a private investment company, and was owned and controlled by Jeffrey Leach. Upon information and belief, Jeffrey Leach and Hubert Leach were the sole employees of LMC.

9. Relief defendant Mary Leach is the mother of Jeffrey Leach and Hubert Leach. Upon information and belief, she resides in Philadelphia, Pennsylvania.

10. Carnegie is a corporation that was incorporated by Jeffrey Leach under the laws of the Cayman Islands in October 1999. It was the vehicle through which Jeffrey Leach, with assistance from Hubert Leach, conducted fraudulent tender offers for the shares of Fruit of the Loom and Mattel. Its registered office was located at Cayside, Harbour Drive, Georgetown, Grand Cayman, Cayman Islands, BWI. On March 24, 2000, Carnegie filed a voluntary petition for bankruptcy under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Pennsylvania.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

LMC's Fraudulent Offer for Fleming and Related Fraudulent Activities

11. On February 19, 1999, LMC announced a tender offer for three percent of the outstanding shares of Fleming. Fleming is listed on the New York Stock Exchange. The offering price was \$7.90 per share. The closing date for the offer was March 17, 1999, but on that date LMC announced that it was extending the expiration date to March 24, 1999. In the press release announcing the extension, LMC failed to disclose the approximate number of securities deposited in response to the offer. Shareholders tendered more than 1.4 million shares in response to this tender offer.

12. Jeffrey Leach structured the Fleming offer so that LMC gained control of the shares without first having to tender payment. LMC did not use the "Automated Tender Offer Program" ("ATOP") of The Depository Trust Company ("DTC") or any other centralized agency, nor did LMC use any other escrow arrangement. Jeffrey Leach, on behalf of LMC, simply issued a press release and announced the offer on the Business Wire, a news and press release service.

13. The offering documents, which Jeffrey Leach prepared, instructed tendering shareholders manually to execute letters of transmittal and stock powers, and physically to deliver them to LMC. Banks and broker-dealers notified their customers of the tender offer and delivered letters of transmittal to LMC on their customers' behalf. Once LMC confirmed receipt of the letters of transmittal, LMC instructed the banks and broker-dealers to transfer the shares via DTC "free delivery to participant," to the further credit of one of two retail brokerage accounts maintained by LMC at two different brokerage firms. Jeffrey Leach controlled both of

these brokerage accounts. The tendered Fleming shares were thus delivered free and clear directly into LMC's brokerage accounts.

14. Approximately \$12 million worth of Fleming shares were transferred to LMC in response to its tender offer. Jeffrey Leach falsely represented to his broker-dealer that the shares had been paid for, and were thus available to be used as collateral for margin purposes.

15. The Fleming offering documents contained material false statements and omissions. For example, they stated that LMC intended "to acquire an equity position" and "as soon as practicable . . . increase the equity position in the Company." These statements were false because Jeffrey Leach intended to sell the shares if and when the market price rose above the offering price.

16. LMC had virtually no assets when it made the Fleming tender offer, and it failed to disclose to tendering shareholders that it lacked the financial resources to pay for the tendered shares, absent an increase in the market value of the shares. LMC's only known resource, independent of its brokerage accounts, consisted of a business checking account at a Pennsylvania bank. On the opening date of the Fleming tender offer, it had a balance of less than \$500. By the end of March 1999, LMC had received approximately \$12 million worth of Fleming shares in response to its offer, but LMC never had any known independent source of funds, such as a bank line of credit, to pay for the tendered shares. LMC's bank account never exceeded \$500,000, and its brokerage accounts had no assets other than the tendered Fleming shares and other shares that LMC had purchased on margin using the Fleming shares as collateral.

17. To delay shareholder complaints about non-payment, Jeffrey Leach inserted the following false language into the Fleming offering document:

Due to the difficulty of determining the number of shares validly tendered and not withdrawn, the Purchaser does not expect to be able to announce the final results of the offer until at least or up to 20 New York Stock Exchange trading days after the Expiration Date.

18. In fact, given that he processed the letters of transmittal, Jeffrey Leach knew at all times exactly how many shares had been tendered and not withdrawn. Jeffrey Leach inserted this "20 trading day" holding period into the offer to provide himself with a window of time to decide whether to pay for the shares or return them to the tendering shareholders. This provision effectively provided LMC with an unsecured loan and a free "call option" on the tendered shares.

19. Jeffrey Leach caused LMC to use the unpaid-for Fleming shares as collateral for aggressive and extremely risky margin trading. Most of the Fleming shares were deposited into a retail margin account in LMC's name with a brokerage firm in New Jersey. Jeffrey Leach falsely told the account executive that clients of LMC were funding the offer.

20. After the shares were credited to the account, Jeffrey Leach caused LMC to make dozens of trades using margin loans obtained against the Fleming shares.

21. LMC failed to make prompt payment to tendering shareholders. Due to a rising market price, LMC garnered a \$4.2 million profit on the eventual sale of the tendered Fleming shares. Jeffrey Leach caused LMC to use a portion of the Fleming profits to purchase a house for his brother, Hubert Leach. However, LMC did not begin making payments on the Fleming shares until April 30, 1999, well after the closing date of the offer, and after the purported "20 trading day" holding period referenced in the offer. Payments did not begin in earnest until June. The last participant was not paid until July 1999, nearly four months after the close of the tender offer.

Carnegie's Fraudulent Offer for Fruit of the Loom and Related Fraudulent Conduct

22. In October 1999, Jeffrey Leach formed Carnegie to conduct further tender offers. On or about October 13, 1999, Jeffrey Leach opened a retail margin account for Carnegie at the same brokerage firm in New Jersey where LMC had its account, and Jeffrey Leach and Hubert Leach were authorized to execute transactions on behalf of Carnegie.

23. Jeffrey Leach used Carnegie to make a fraudulent tender offer for Fruit of the Loom. On or about October 14, 1999, Carnegie announced a tender for three percent of the outstanding shares of Fruit of the Loom. The offer expired on November 12, 1999, and the offering price was \$3.85 per share. The language of the Fruit of the Loom offer was similar to that of LMC's Fleming offer, containing the same material misrepresentations and omissions as to the offeror's intent, ability to pay, and the "20 trading day" holding period.

24. Carnegie announced the offer on the Business Wire and through DTC, but Carnegie did not use DTC's ATOP. DTC simply announced the offer to its participants. Jeffrey Leach caused Carnegie to designate itself as the receiving agent and LMC as the information agent for the offer, and the delivery instructions were similar to the Fleming offer. Banks and broker-dealers again coordinated tenders on behalf of customers who desired to tender their Fruit of the Loom shares. As Carnegie instructed, the tendered shares were delivered "free and clear" into Carnegie's retail margin account, such that Carnegie did not pay for the shares prior to gaining control over them. In response to Fruit of the Loom offer, shareholders tendered approximately 3.5 million shares, worth nearly \$14 million at the tender price.

25. Hubert Leach played a significant role in Carnegie's Fruit of the Loom tender offer. He handled the information agent function at LMC, fielding telephone calls and sending blank letters of transmittal and delivery instructions to interested parties. Hubert Leach also

tracked the receipt of tendered shares into Carnegie's account, and reconciled the shares entering the account with the letters of transmittal forwarded to LMC. When frustrated shareholders subsequently contacted Carnegie or LMC, they usually spoke with Hubert Leach.

26. Hubert Leach falsely assured shareholders, both orally and in writing, that their shares had been accepted and that they would receive the offering price of \$3.85 per share.

27. In fact, neither Carnegie nor LMC possessed the funds needed to pay for the tendered shares at that time. On the date the offer was announced, the only known assets of Carnegie and LMC were the profits generated by the fraudulent Fleming tender offer, and Carnegie had no known source of independent funds.

28. The defendants unlawfully amended Carnegie's Fruit of the Loom offer after the offer had closed. On December 16, 1999, CNBC reported that Fruit of the Loom was preparing for a possible bankruptcy filing in the early part of January. The following afternoon, December 17, more than a month after the close of the offer, but before any shareholders had been paid, Carnegie announced that it was offering tendering shareholders the option of accepting \$1.00 per share or the return of their shares. Carnegie sent the amended offer by facsimile to tendering shareholders on the afternoon of Friday, December 17. The amended offer gave shareholders until the close of business on Monday, December 20, to respond, which was less than two business days after the amendment was announced.

29. The new offer price was well below the December 16 and December 17 market closing price for Fruit of the Loom. Most shareholders chose to accept the return of their shares, but a number of shareholders who could not be contacted in time received only the amended price of \$1.00 per share. As a result, Carnegie ended up purchasing from tendering shareholders slightly more than 500,000 Fruit of the Loom shares, which it sold at a profit of approximately

\$234,000. Because shareholders could not withdraw their shares after the offer had closed, and while the market price for Fruit of the Loom was falling, the defendants' coercive, unlawful amendment of the Carnegie offer caused tendering Fruit of the Loom shareholders to lose approximately \$10.4 million.

Carnegie's Fraudulent Offer for Mattel and Related Fraudulent Conduct

30. On or about November 1, 1999, Jeffrey Leach caused Carnegie to announce a tender offer for three percent of the outstanding shares of Mattel. The offering price was \$14.35 per share, and the expiration date was November 29, 1999. On November 26, Carnegie increased the offer price to \$15.75 per share. However, Carnegie failed to hold the offer period open for at least ten additional days after the price increase.

31. The Mattel offering documents contained the same language, misrepresentations and omissions as the Fleming and Fruit of the Loom offers. Shareholders tendered approximately 2.4 million Mattel shares in response to the offer, obligating Carnegie to pay about \$38 million. As Carnegie instructed, banks and broker-dealers delivered customer shares, via DTC, "free and clear" into Carnegie's retail margin account.

32. Carnegie failed to pay the majority of tendering Mattel shareholders, even after the "20 trading day" holding period specified in the offer had expired. Shortly after the offer expired, Mattel's chief executive officer resigned and Mattel's stock price fell below the offer price. Neither Carnegie nor LMC had the \$38 million in cash needed to pay tendering shareholders, or any means of obtaining such funds. LMC had approximately \$6,000 in its bank account on the expiration date of the offer, and Carnegie had no known assets of any kind beside the Mattel and Fruit of the Loom shares and other stock bought on margin.

33. Jeffrey Leach used the Mattel shares in the Carnegie account as collateral for aggressive and extremely risky margin trading of technology stocks.

34. Jeffrey Leach also used the unpaid-for Mattel shares as collateral for cash margin withdrawals from Carnegie's brokerage account. Between December 29, 1999 and March 10, 2000, Carnegie withdrew \$6.1 million from the account by wire transfer. Jeffrey Leach forged the letters of authorization for the wire transfers, which purported to bear the signature of one of the nominal directors of Carnegie, on Carnegie letterhead.

35. After the Mattel offer expired, numerous shareholders contacted LMC to ask whether their shares had been accepted and, if so, when payment would be forthcoming. Both Jeffrey Leach and Hubert Leach gave these inquiring shareholders a variety of false excuses for not promptly paying for their tendered shares. For example, in telephone calls and letters, Hubert Leach and Jeffrey Leach falsely informed shareholders that payment had been delayed because of bad weather, banking holidays, missing paperwork, administrative difficulties, and processing delays.

36. Between January and March 2000, LMC, through both Jeffrey Leach and Hubert Leach, mailed many letters falsely assuring shareholders that their shares had been accepted and that payment was forthcoming. However, the date for final payment that LMC provided was constantly deferred. Jeffrey Leach also fabricated letters purporting to be from Carnegie, promising shareholders that payment would begin shortly.

37. On or about March 20, 2000, the clearing firm for Carnegie's broker called for repayment of Carnegie's entire margin debit balance of approximately \$8.4 million. Carnegie responded by filing an action in the United States District Court for the Southern District of New York, seeking a temporary restraining order to enjoin the margin call. The Court ordered

Carnegie to provide proof of payment for the Mattel shares. Carnegie responded by filing a bankruptcy petition in the United States Bankruptcy Court for the Eastern District of Pennsylvania on March 24, 2000.

38. Carnegie paid some of the tendering Mattel shareholders before the bankruptcy filing. After the filing, Carnegie held approximately 95% of the still-unpaid-for Mattel shares in its brokerage account. These shares were ultimately returned to the tendering shareholders on a pro-rata basis. Carnegie neither returned nor paid for approximately 92,000 of the tendered Mattel shares, thus causing tendering shareholders to lose approximately \$1.4 million on those shares. Carnegie also received and unlawfully retained approximately \$213,000 in Mattel dividends.

FIRST CLAIM FOR RELIEF

Violations of Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] by Jeffrey Leach, Hubert Leach and LMC

39. Paragraphs 1 through 38 are re-alleged and incorporated herein by reference.

40. LMC's offer with respect to Fleming and Carnegie's offers with respect to Fruit of the Loom and Mattel constitute tender offers.

41. By engaging in the conduct alleged herein, Jeffrey Leach, Hubert Leach and LMC, in connection with a tender offer, a request for invitation for tenders, or a solicitation of security holders in favor of such offer, request or invitation: (a) 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/or (b) engaged in fraudulent, deceptive or manipulative acts or practices.

42. Jeffrey Leach, Hubert Leach and LMC knew or recklessly disregarded the fact that their statements and/or conduct with respect to the tender offers described herein included the material false statements and omissions described herein.

43. By reason of the foregoing, Jeffrey Leach, Hubert Leach and LMC violated Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)].

SECOND CLAIM FOR RELIEF

Violations of Rule 14e-1 [17 C.F.R. § 240.14e-1] by Jeffrey Leach, Hubert Leach and LMC

44. Paragraphs 1 through 43 are re-alleged and incorporated herein by reference.

45. Rule 14e-1(d) [17 C.F.R. § 240.14e-1(d)] makes it unlawful to extend the length of a tender offer without publicly disclosing the approximate number of securities deposited to date in response to the offer.

46. By engaging in the conduct alleged herein, Jeffrey Leach and LMC violated Rule 14e-1(d) [17 C.F.R. § 240.14e-1(d)] by extending the Fleming offer on March 24, 1999 without disclosing the approximate number of securities deposited to date in response to the offer.

47. Rule 14e-1(b) [17 C.F.R. § 240.14e-1(b)] makes it unlawful to increase or decrease the consideration offered in a tender offer unless such tender offer remains open for at least ten business days from the date that notice of such increase or decrease is first published or sent or given to security holders.

48. By engaging in the conduct alleged herein, Jeffrey Leach, Hubert Leach and LMC violated Rule 14e-1(b) [17 C.F.R. § 240.14e-1(b)] when Carnegie amended the Fruit of the Loom offer to decrease the offer price while giving shareholders less than two days to respond, and when

Carnegie amended the Mattel offer to increase the offer price without holding the amended offer open for at least ten business days.

49. Rule 14e-1(c) [17 C.F.R. § 240.14e-1(c)] makes it unlawful to fail to pay the consideration offered or return the securities deposited by or on behalf of the security holders promptly after the termination or withdrawal of a tender offer.

50. By engaging in the conduct alleged herein, Jeffrey Leach and LMC violated Rule 14e-1(c) [17 C.F.R. § 240.14e-1(c)] when they failed to pay the consideration offered or return the securities deposited by or on behalf of the tendering security holders promptly after termination of the Fleming tender offer.

51. By engaging in the conduct alleged herein, Jeffrey Leach, Hubert Leach and LMC violated Rule 14e-1(c) [17 C.F.R. § 240.14e-1(c)] when they failed to pay the consideration offered or return the securities deposited by or on behalf of the tendering security holders promptly after termination of the Fruit of the Loom and Mattel tender offers.

THIRD CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5] by Jeffrey Leach, Hubert Leach and LMC

52. Paragraphs 1 through 51 are re-alleged and incorporated herein by reference.

53. By engaging in the conduct alleged herein, Jeffrey Leach, Hubert Leach and LMC, directly or indirectly, by use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of national securities exchange, in connection with the purchase or sale of securities: (a) employed devices, schemes, or artifices to defraud; (b) 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/or (3) engaged in acts, practices or transactions which operated as a fraud or deceit upon purchasers or sellers of securities or upon other persons.

54. Jeffrey Leach, Hubert Leach and LMC knew or recklessly disregarded the fact that their statements and/or conduct with respect to the tender offers described herein included the material false statements and omissions described herein.

55. By reason of the foregoing, Jeffrey Leach, Hubert Leach and LMC violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5].

FOURTH CLAIM FOR RELIEF

Claim Against Relief Defendant Mary Leach

56. Paragraphs 1 through 55 are re-alleged and incorporated herein by reference.

57. Mary Leach has been and is, upon information and belief, in possession, custody or control of certain assets of Jeffrey Leach, Hubert Leach, and LMC. These assets include title to real property at 6334 Woodbine Avenue, Philadelphia, Pennsylvania, 19151 ("6334 Woodbine Avenue"), which includes a house where Hubert Leach presently resides.

58. Jeffrey Leach caused LMC to purchase 6334 Woodbine Avenue for \$154,650 on or about December 30, 1999. The funds used to pay the purchase price of the property were derived from, and are traceable to, the profits from the fraudulent Fleming tender offer. On or about April 17, 2000, Hubert Leach caused title to the property to be transferred to Mary Leach for no consideration.

59. Mary Leach should be ordered to disgorge all assets of Jeffrey Leach, Hubert Leach, and LMC within her possession, custody or control, including but not limited to 6334 Woodbine Avenue.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter final judgment:

I.

Permanently restraining and enjoining defendants Jeffrey Leach, Hubert Leach and LMC, and each of them, from violating Sections 10(b) and 14(e) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78n(e)] and Rules 10b-5 and 14e-1 promulgated thereunder [17 C.F.R. §§ 240.10b-5 and 240.14e-1].

II.

Ordering defendants Jeffrey Leach, Hubert Leach and LMC, and each of them, to account for and disgorge all proceeds they have obtained as a result of their illegal conduct, plus prejudgment interest thereon.

III.

Ordering defendants Jeffrey Leach, Hubert Leach and LMC, and each of them, to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

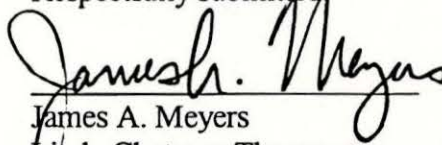
IV.

Ordering relief defendant Mary Leach to disgorge all assets of defendants Jeffrey Leach, Hubert Leach and LMC within her possession, custody or control, including but not limited to the real property and all structures located at 6334 Woodbine Avenue.

V.

Granting such other and further relief as this Court may deem just and appropriate.

Respectfully submitted,



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Dated: November 20, 2000