

USDC SCAN INDEX SHEET



WTM 2/11/00 13:25

3:00-CV-00305 SEC V. NEWMARK

\*1\*

\*CMP.\*

ORIGINAL

1 SANDRA J. HARRIS, Cal. Bar # 134153  
2 GREGORY GLYNN, Cal. Bar # 39999  
3 DIANA K. TANI, Cal. Bar # 136656  
4 MICHELE WEIN LAYNE, Cal. Bar # 118395  
5 TODD BRILLIANT, Cal. Bar # 147727

6 Attorneys for Plaintiff  
7 Securities and Exchange Commission  
8 Valerie Caproni, Regional Director  
9 5670 Wilshire Boulevard, 11th Floor  
10 Los Angeles, California 90036-3648  
11 Phone: (323) 965-3998  
12 Fax: (323) 965-3908

FILED  
00 FEB 11 AM 11:09  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
B. J. Janda DEPUTY

13 UNITED STATES DISTRICT COURT

14 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

15 SECURITIES AND EXCHANGE COMMISSION,

16 Plaintiff,

17 vs.

18 ANDREW JAY NEWMARK,

19 Defendant.

Case No. '00 CV

305 JM (JFS)

COMPLAINT FOR INSIDER TRADING  
IN VIOLATION OF THE FEDERAL  
SECURITIES LAWS

20 Plaintiff Securities and Exchange Commission ("Commission")  
21 alleges:

22 JURISDICTION AND VENUE

23 1. This Court has jurisdiction over this action pursuant to  
24 Sections 21(d), 21(e), 21A(a)(1) and 27 of the Securities Exchange  
25 Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d), 78u(e),  
26 78u-1(a)(1) and 78aa].

27 2. Defendant Andrew Jay Newmark ("Newmark" or "Defendant"),  
28 directly or indirectly, made use of the means or instrumentalities  
of interstate commerce, of the mails, and/or the facilities of a  
national securities exchange, in connection with the transactions,

Handwritten initials

Handwritten vertical line

1 acts, practices and courses of business alleged in this Complaint.

2 3. This Court is an appropriate venue for this action  
3 pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa].  
4 Certain of the transactions, acts, practices and courses of business  
5 constituting violations of the laws alleged herein occurred within  
6 the Southern District of California.

7 **SUMMARY**

8 4. This matter involves insider trading in the securities of  
9 DH Technology, Inc. ("DH Technology") by Defendant Andrew Jay  
10 Newmark. After Axiohm, S.A. ("Axiohm") had taken a substantial  
11 step or steps to commence a tender offer for DH Technology, Newmark  
12 acquired material information about the Axiohm proposal that he knew  
13 or had reason to know was non-public and had been acquired directly  
14 from DH Technology's Chief Executive Officer, William Gibbs  
15 ("Gibbs").

16 5. In late 1996, Newmark introduced DH Technology to Axiohm  
17 for the purpose of their discussing a possible merger. On April 3,  
18 1997, Newmark learned from Gibbs that the merger discussions had  
19 advanced to the point that the companies had discussed a possible  
20 price at which Axiohm would acquire DH Technology.

21 6. Between April 3 and 11, 1997, Newmark bought 30,000 DH  
22 Technology shares for \$513,125. On July 15, 1997, DH Technology  
23 announced that Axiohm would acquire it via a tender offer. Newmark  
24 sold his DH Technology shares on July 16 and 17, 1997, realizing  
25 profits of \$173,895.38.

26 **THE DEFENDANT**

27 7. Andrew Jay Newmark, age 41, resides in Greenwich,  
28 Connecticut. Since 1989, Newmark has been Chairman of CoStar

1 Corporation, a manufacturer of label printers and a pre-merger  
2 client of both DH Technology and Axiohm.

3 **RELATED ENTITIES AND PERSON**

4 8. DH Technology, Inc., prior to its merger with Axiohm, was  
5 a California corporation with its principal place of business in San  
6 Diego. It designed, manufactured, and distributed credit card  
7 receipt and bar code printers. Its stock was registered with the  
8 Commission pursuant to Section 12(g) of the Exchange Act and was  
9 traded on Nasdaq.

10 9. Axiohm, S.A., prior to its merger with DH Technology, was  
11 a privately-held French company with its headquarters in Montrouge,  
12 France. After the merger and a series of exchanges with two of its  
13 subsidiaries and its holding company, the company registered as a  
14 California corporation, Axiohm Transaction Solutions, Inc. It  
15 designs, manufactures, and distributes credit card receipt printers,  
16 including printers that appear at pay-at-the-pump gasoline stations.  
17 It is traded on Nasdaq.

18 10. William Gibbs, age 55, was the Chairman, CEO and President  
19 of DH Technology until January 1998.

20 **SUBSTANTIAL STEP OR STEPS**

21 11. On October 25, 1996, Newmark met with Axiohm's Co-  
22 President and presented his idea for an Axiohm-DH Technology merger.  
23 On November 14, 1996, Newmark met with Gibbs and made a similar  
24 presentation. Gibbs asked Newmark to obtain financial information  
25 concerning Axiohm, set up a meeting between the companies and  
26 arrange a tour of DH Technology's facilities for Axiohm's officers.  
27 Gibbs preserved the confidentiality of the tours, even from DH  
28 Technology's own employees, by creating cover stories for the

1 visits. The tours took place on December 12 and 13, 1996. On April  
2 2, 1997, DH Technology and Axiohm officers met and, for the first  
3 time, discussed a range of prices in the mid-\$20s per share at which  
4 Axiohm would be willing to acquire DH Technology.

5 **NEWMARK'S KNOWLEDGE**

6 12. On April 3, 1997, Gibbs told Newmark that the merger  
7 discussions with Axiohm were continuing and that Axiohm had  
8 discussed a range of prices in the mid-\$20s per share at which it  
9 would be willing to acquire DH Technology. At the time, DH  
10 Technology's stock was trading at approximately \$17 per share.  
11 Newmark responded with a letter to Gibbs, stating in part: "I'm glad  
12 things are moving along with Axiohm. The combination will be a  
13 powerhouse."

14 13. Newmark knew, or had reason to know, that the information  
15 regarding Axiohm's proposal to acquire DH Technology was non-public  
16 and was acquired directly from an officer of DH Technology.

17 **NEWMARK'S PURCHASES OF DH TECHNOLOGY STOCK**

18 14. While in possession of this material, non-public  
19 information, Newmark engaged in the following transactions: On  
20 April 3, 1997 Newmark purchased 13,000 shares of DH Technology at  
21 \$17 per share, for a total purchase price of \$221,000. The next  
22 day, Newmark purchased an additional 10,000 shares at \$17.3125 per  
23 share, for a total purchase price of \$173,125. On April 7, 1997,  
24 Newmark purchased 2,000 additional shares at \$17 per share, for a  
25 total purchase price of \$34,000. Finally, on April 11, 1997,  
26 Newmark purchased an additional 5,000 shares at \$17 per share, for a  
27 total purchase price of \$85,000.

28

**PUBLIC ANNOUNCEMENT OF AXIOHM'S TENDER OFFER**

15. On July 15, 1997, DH Technology publicly announced that it had signed a definitive merger agreement with Axiohm. The agreement provided that a wholly-owned subsidiary of Axiohm would commence a cash tender offer no later than July 21, 1997 to acquire between 6,500,000 and 7,000,000 shares of DH Technology at \$25 per share.

16. Following the public announcement of the tender offer, DH Technology's stock rose from a closing bid of \$15.875 on July 14 to a closing bid of \$23 on July 15, an increase of nearly 45%, on volume of 887,000 shares. The volume was 60 times the 13,000 average daily volume for DH Technology stock measured during the three week period prior to the public announcement.

**NEWMARK'S SALE OF DH TECHNOLOGY STOCK**

17. On July 16, 1997, one day after the public announcement of the Axiohm tender offer, Newmark sold 10,000 shares of DH Technology at \$22.875 per share, for a total sale price of \$228,750. The next day, Newmark sold the rest of his DH Technology shares in four lots: 13,000 shares at \$23 per share, 3,000 shares at \$23.25 per share, 2,000 shares at \$23.0625 per share, and 2,000 shares at \$23.25 per share. Newmark realized \$173,895.38 in profits from these sales of DH Technology stock.

**FIRST CLAIM**

**Violations of Section 14(e) of the Securities**

**Exchange Act of 1934 [15 U.S.C. § 78n(e)]**

**and Rule 14e-3 [17 C.F.R. § 240.14e-3] thereunder**

18. Paragraphs 1 through 17 are realleged and incorporated herein by reference.

1 19. By April 2, 1997, Axiohm had taken substantial steps  
2 towards commencing its tender offer for the securities of DH  
3 Technology, including among other things, holding several  
4 confidential meetings and discussions with representatives of DH  
5 Technology, exchanging financial information for the purpose of  
6 facilitating such meetings and discussions, and ascertaining an  
7 approximate price at which it was prepared to acquire DH Technology.

8 20. Newmark purchased DH Technology stock, as described above,  
9 while he possessed material non-public information relating to a  
10 tender offer or request or invitation for a tender offer for DH  
11 Technology stock. At the time that he purchased the DH Technology  
12 stock, Newmark knew or had reason to know that the information he  
13 possessed concerning the DH Technology stock was non-public and had  
14 been acquired directly or indirectly from DH Technology, which was  
15 the issuer of the securities to be sought by the offering person,  
16 Axiohm.

17 21. The material, non-public information relating to the tender  
18 offer for DH Technology stock was not publicly disclosed by press  
19 release or otherwise within a reasonable time prior to the Newmark's  
20 purchase.

21 22. By reason of the foregoing acts, practices, and course-of-  
22 business, Newmark violated Section 14(e) of the Exchange Act [15  
23 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated  
24 thereunder.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, the Commission respectfully requests that this  
27 Court:

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

**I.**

Issue findings of fact and conclusions of law that the Defendant committed the violations charged and alleged herein.

**II.**

Permanently enjoin Newmark from violating Section 14(e) of the Exchange Act and Rule 14e-3 thereunder.

**III.**

Order Newmark to disgorge all improper gains from his unlawful conduct, gained directly or indirectly from the transactions complained of herein, together with prejudgment interest thereon.

**IV.**

Order Newmark to pay a civil money penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

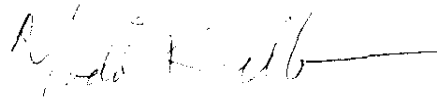
**V.**

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

**VI.**

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: FEBRUARY 11, 2000



---

Todd Brilliant  
Attorney for Plaintiff  
Securities and Exchange Commission



CIVIL COVER SHEET

ORIGINAL

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

SECURITIES AND EXCHANGE COMMISSION

DEFENDANTS

ANDREW JAY NEWMARK

00 FEB 11 AM 11:09

CLERK, U.S. DISTRICT COURT DISTRICT OF CONNECTICUT

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Connecticut (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Todd Brilliant Securities and Exchange Commission 5670 Wilshire Blvd., 11th Floor Los Angeles, CA 90036-3648 (323) 965-3998

ATTORNEYS (IF KNOWN) David E. Nachman, Esq. Solomon, Zauderer, Ellenhorn, Frischer & Sharp 45 Rockefeller Plaza New York, NY 10111 (212) 424-0789

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicates Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business in This State
Incorporated and Principal Place of Business in Another State
Foreign Nation

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND STATE A BRIEF STATEMENT OF CAUSE)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY

15 U.S.C. Section 78n(e) and Rule 17 C.F.R. 240.14e-3. Andrew Jay Newmark engaged in fraudulent, deceptive, or manipulative acts or practices in connection with a tender offer.

V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

Table with columns: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, PROPERTY RIGHTS, OTHER STATUTES.

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

Transferred from another district (specify)
Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION DEMAND \$ UNDER F.R.C.P. 23

Check YES only if demanded in complaint: JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE DOCKET NUMBER

DATE February 11, 2000

SIGNATURE OF ATTORNEY OF RECORD

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

### Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs - Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

**(b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved).

**(c) Attorneys.** Enter firm name, address, telephone number, and attorney or record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8 (a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

**United States plaintiff.** (1) Jurisdiction is based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

**United States defendant.** (2) When the plaintiff is suing the United States, its officers or agencies, place an X in this box.

**Federal question.** (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

**Diversity of citizenship.** (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause.

**V. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**VI. Origin.** Place an "X" in one of the seven boxes.

**Original Proceedings.** (1) Cases which originate in the United States district courts.

**Removed from State Court.** (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

**Remanded from Appellate Court.** (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

**Reinstated or Reopened.** (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

**Transferred from Another District.** (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

**Multidistrict Litigation.** (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

**Appeal to District Judge from Magistrate Judgment.** (7) Check this box for an appeal from a magistrate's decision.

**VII. Requested in Complaint. Class Action.** Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

**Demand.** In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

**Jury Demand.** Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS-44 is used to reference relating pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.