

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
(MIAMI DIVISION)

*[Handwritten signature]* D.C.  
-6 AM 11:03  
MAIL ROOM  
DISTRICT  
FLA - MIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MICHAEL A. PUHR,

Defendant.

CASE NO. **00-2387**

CIV. KING

COMPLAINT FOR  
INJUNCTIVE  
AND  
OTHER RELIEF

MAGISTRATE JUDGE  
O'SULLIVAN

Plaintiff, Securities and Exchange Commission ("SEC") alleges as follows:

INTRODUCTION

1. The SEC brings this action to enjoin Defendant from violating the federal securities laws by disseminating fraudulent information to the public and by filing materially false statements with the SEC.

DEFENDANT

2. Michael A. Puhr, age 47, resides in Westminster, Colorado. From September 1994 to October 1997, Puhr was the president and chief executive officer of Rocky Mountain Crystal Water, Inc. ("Crystal Water"), a company that merged with another company, Olympus Ventures, Inc. ("Olympus") in the fall of 1997 to form Rocky Mountain International Limited ("Rocky Mountain"). From Rocky Mountain's inception to late-October, 1997, Puhr was the president and chief executive officer of Rocky Mountain.

OTHERS

3. Rocky Mountain International Limited ("Rocky Mountain") is a Washington corporation with no current operations. When it was created in 1997, Rocky Mountain had its principal place of business in Fort Lauderdale, Florida. Rocky Mountain was formed as a result of

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a September 1997 merger between Olympus and Crystal Water. Rocky Mountain's securities were registered, and the company filed periodic reports with, the SEC. In addition, the Company's common stock was quoted on the OTC Bulletin Board between July 26, 1995 and December 22, 1997.

4. **Crystal Water** was incorporated in Wyoming in 1994 by Puhr and others, and had its principal place of business in Denver, Colorado. Before its fall 1997 merger with Olympus, Crystal Water was a privately held company that bottled and sold natural spring water.

5. **Olympus**, a Washington corporation, was the predecessor to Rocky Mountain. At the time that it merged with Crystal Water, Olympus purported to be a garment manufacturer based in Ft. Lauderdale, Florida. Olympus, and subsequently Rocky Mountain, registered its securities with the Commission pursuant to Section 12 of the Securities Exchange Act of 1934 ("Exchange Act"), and filed periodic reports with the Commission pursuant to Section 13(a) of the Exchange Act.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d), 78u(e) and 78aa.

7. Certain of the acts and transactions constituting violations of the Exchange Act have occurred within the Southern District of Florida.

8. Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails, in connection with the acts, practices, and courses of business complained of herein.

### **THE MERGER BETWEEN CRYSTAL WATER AND OLYMPUS**

9. Pursuant to a merger agreement dated September 24, 1997, Crystal Water and Olympus agreed to a merger that made Crystal Water a wholly-owned subsidiary of Olympus. Under the terms of the merger, Olympus changed its name to Rocky Mountain and Puhr became the president and chief executive officer of the newly-created company.

10. At the time of the merger, Olympus purported to be a garment manufacturing company, and Crystal Water purported to bottle and sell natural spring water.

### **THE FALSE PUBLIC ANNOUNCEMENTS AND FILINGS**

11. After Crystal Water and Olympus entered into their merger agreement, the newly-formed Rocky Mountain made several public announcements and filings about the merger. On October 1, 1997, Rocky Mountain issued a press release that announced the merger and its terms. Rocky Mountain attached this press release to a Form 8-K that it filed with the Commission on October 8, 1997 (“the Form 8-K”). The Form 8-K, which Rocky Mountain filed to report the merger, also included an unaudited balance sheet for Rocky Mountain. Puhr drafted or signed these documents, each of which contained several misrepresentations or omissions, described below.

#### **The October 1, 1997 Press Release and October 8, 1997 Form 8-K**

12. On October 1, 1997, Rocky Mountain issued a press release announcing the merger between Crystal Water and Olympus. The press release described Rocky Mountain’s asset base as “in excess of Twenty Million Dollars (\$21,010,431).” The vast majority of the \$21,010,431 value placed on Rocky Mountain’s assets consisted of 4 million shares of stock in another

company that Crystal Water allegedly owned. Rocky Mountain valued these 4 million shares at \$14 million. In fact, Crystal Water may not have owned that stock, and, in any event, the stock was worth far less than \$14 million.

13. Prior to the merger, Puhr knew, or was reckless in not knowing, that the other company disputed Crystal Water's ownership of the 4 million shares of its stock, which Crystal Water purportedly obtained in connection with an earlier, failed merger. However, Puhr did not disclose this fact in the October 1, 1997 press release.

14. In addition, the actual value of the 4 million shares was far less than \$14 million. In fact, the shares were worth, at most, \$1.5 million at the time of the October 1, 1997 press release. Again, this fact was not disclosed in the October 1, 1997 press release.

15. On October 8, 1997, Rocky Mountain filed a Form 8-K with the SEC that Puhr signed as the company's president and chief executive officer. The Form 8-K described the highlights of the merger between Olympus and Crystal Water, and attached a consolidated financial statement of the two entities, a copy of the September 24, 1997 merger agreement, and the October 1, 1997 press release.

16. The October 8, 1997 Form 8-K contained the unaudited combined balance sheet of Olympus and Crystal Water as of June 30, 1997. The balance sheet listed the combined entity's assets at just over \$16 million, with the largest single asset of \$14 million (the 4 million shares of another company) described as "Investments." Neither the notes to the balance sheet nor any other document in the Form 8-K disclosed the questions concerning the value of the shares or the doubts about Rocky Mountain's ownership of those shares.

**The October 3, 1997 Press Release**

17. In an October 3, 1997 Rocky Mountain press release, the company claimed that its operations included manufacturing active wear. Rocky Mountain claimed to have manufacturing facilities in, among other places, Hialeah, Florida and Managua, Nicaragua. In reality, the Hialeah factory, which had been corporate headquarters for Olympus, had not been operated by Olympus since at least June 1996. Rather, since that time, Olympus subleased the factory to an unrelated manufacturer for \$6,000 per month in rent.

18. Moreover, at the time of the October 3, 1997 press release, Rocky Mountain was involved in a dispute with the managers and former owners of its Nicaraguan plant, the Company's largest manufacturing facility. Even before Rocky Mountain's October 3, 1997 press release, Olympus had already filed a lawsuit to rescind its agreement to purchase that facility. As president and chief executive officer of Rocky Mountain, Puhr knew, or recklessly disregarded, these facts. However, Puhr never disclosed Olympus' lack of garment manufacturing operations or the lawsuit regarding the Nicaraguan manufacturing plant in the October 3, 1997 press release.

**COUNT I**

**FRAUD IN VIOLATION OF  
SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5**

19. The SEC repeats and realleges all of the foregoing allegations of this Complaint.

20. Between October 1, 1997 and at least October 8, 1997, Defendant Puhr, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails, and of any facility of any national securities exchange, in connection with the purchase or sale of the securities, as described herein, knowingly, willfully or recklessly: (i) employed devices,

schemes or artifices to defraud; (ii) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (iii) engaged in acts, practices and courses of business which operated and will operate as a fraud upon the purchasers of such securities.

21. By reason of the foregoing, Defendant Puhr, directly or indirectly, violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder.

## **COUNT II**

### **VIOLATIONS OF SECTION 13(a) OF THE EXCHANGE ACT AND RULES 13a-11 AND 12b-20**

22. The SEC repeats and realleges all of the foregoing allegations of this Complaint.

23. Section 13(a) of the Exchange Act requires all issuers subject to the reporting requirements of the Exchange Act to file periodic and other reports with the SEC containing such information as the SEC's rules prescribe. Rule 13a-11, promulgated pursuant to Section 13(a), requires issuers to file with the SEC special reports on Form 8-K. In addition to any required information in a statement or report, Rule 12b-20 requires the addition of such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

24. At all relevant times, Rocky Mountain was an issuer subject to these reporting requirements, and Puhr, directly or indirectly, controlled Rocky Mountain.

25. Puhr, as a control person of Rocky Mountain, caused Rocky Mountain to file with the SEC materially false financial and information statements in the special report on Form 8-K filed by Rocky Mountain on or about October 1, 1997.

26. By reason of the foregoing, Defendant Puhr, directly or indirectly, violated, and unless enjoined, will continue to violate, Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules 13a-11 and 12b-20 thereunder, 17 C.F.R. §§ 240.13a-11 and 240.12b-20.

### COUNT III

#### **VIOLATIONS OF SECTIONS 13(b)(2)(A) AND 13(b)(5) OF THE EXCHANGE ACT AND RULE 13b2-1**

27. The SEC repeats and realleges all of the foregoing allegations of this Complaint.

28. Section 13(b)(2)(A) of the Exchange Act requires issuers with a class of securities registered under Section 12 of the Exchange Act to maintain books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the issuer's assets. Section 13(b)(5) of the Exchange Act prohibits any person from, among other things, knowingly falsifying any book, record or account subject to Section 13(b)(2). Rule 13b2-1 prohibits any person from, directly or indirectly, falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A).

29. At all relevant times, Rocky Mountain was an issuer subject to these reporting requirements, and Puhr, directly or indirectly, controlled Rocky Mountain.

30. Puhr, as a control person of Rocky Mountain, caused Rocky Mountain to file with the SEC materially false financial and information statements in the special report on Form 8-K filed by Rocky Mountain on or about October 1, 1997.

31. By reason of the foregoing, Defendant Puhr, directly or indirectly, violated, and unless enjoined, will continue to violate, Sections 13(b)(2)(A) and 13(b)(5) of the Exchange Act, 15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(5), and Rules 13b2-1 thereunder, 17 C.F.R. § 240.13b2-1.

**RELIEF REQUESTED**

**WHEREFORE**, the SEC respectfully requests that the Court:

**I.**

**Declaratory Relief**

Declare, determine and find that Defendant Puhr committed the violations of the federal securities laws alleged herein.

**II.**

**Permanent Injunctive Relief**

Issue a Permanent Injunction, restraining and enjoining Defendant Puhr, his agents, servants, employees, attorneys, and all persons in active concert or participation with him, and each of them, from violating Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(5) of the Exchange Act, 15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A) and 78m(b)(5), and Rules 10b-5, 12b-20, 13a-11 and 13b2-1, thereunder, 17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-11 and 240.13b2-1.



**III.**

**Penalties**

Issue an Order directing Defendant Puhr to pay civil fines and/or penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d) and Section 21(d) of the Exchange Act, 15 U.S.C. § 78(d)(3).

**IV.**

**Further Relief**

Grant such other and further relief as may be necessary and appropriate.

**V.**

**Retention of Jurisdiction**

Further, the SEC respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may hereby be entered, or to entertain any suitable application or motion by the SEC for additional relief within the jurisdiction of this Court.

Respectfully submitted,

July 6, 2000



Mitchell E. Herr  
Regional Trial Counsel  
SD Fla. A-5500-259  
Attorneys for Plaintiff  
**SECURITIES AND EXCHANGE  
COMMISSION**  
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Facsimile: (305) 536-7465

JS 44  
(Rev. 12/96)

# CIVIL COVER SHEET 00-2387

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

**MICHAEL A. PUHR**

**W. KING**  
MAGISTRATE JUDGE  
O'SULLIVAN

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

(EXCEPT IN U.S. PLAINTIFF CASES)

*A. Dade | 1:00cv 2387 | King | O'Sullivan*

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

**ADAMS**

(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)

**Mitchell E. Herr, Esq., (305) 982-6336  
SEC, 1401 Brickell Avenue, Suite 200  
Miami, Florida 33131**

ATTORNEYS (IF KNOWN)

**S. Lee Terry, Jr., Esq.**

(d) CIRCLE COUNTY WHERE ACTION AROSE: **(DADE)** MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE, HIGHLANDS

### 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 (Indicate Citizenship of Parties in Item III)

### III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |                                         |                            |                            |                                                               |                            |                            |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
|                                         | PTF                        | DEF                        |                                                               | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation                                                | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

### IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

### V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT	A TORTS	FORFEITURE/PENALTY	A BANKRUPTCY	A OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input checked="" type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>A PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>B SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions A OR B
A REAL PROPERTY	A CIVIL RIGHTS	PRISONER PETITIONS	A LABOR	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input checked="" type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl Ret Inc Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

### VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY  
**15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5; 15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.13a-11 and 240.12b-20; 15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(5) and 17 C.F.R. § 240.13b2-1.**  
 LENGTH OF TRIAL **Violations of the federal securities laws.**  
 via \_\_\_ days estimated (for both sides to try entire case)

### VII. REQUESTED IN COMPLAINT:

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

**DEMAND \$ Perm. Inj. and civil penalties**

CHECK YES only if demanded in complaint. **JURY DEMAND:**  YES  NO

### VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE *7/6/00* SIGNATURE OF ATTORNEY OF RECORD

**Mitchell E. Herr, Regional Trial Counsel**

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_