

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF COLUMBIA

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

CASE NUMBER 1:97CV00878  
JUDGE: June L. Green  
DECK TYPE: Civil General  
DATE STAMP: 04/29/97

Plaintiff,

v.

DAVID A. SCHMIDT and  
WILLARD A. WHITEHURST,

Defendants.

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: COMPLAINT  
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Plaintiff Securities and Exchange Commission alleges:

SUMMARY

1. This case involves insider trading in the common stock of Purolator Products Company ("Purolator") prior to the October 3, 1994 announcement that Mark IV Industries, Inc. ("Mark IV") and Purolator had entered into a definitive merger agreement, pursuant to which a tender offer would be commenced. On the day of the announcement, the price of Purolator stock closed at \$24-5/8, up \$6-5/8 over the previous trading day's close. Defendant Willard A. Whitehurst obtained material, nonpublic information about the negotiations between Mark IV and Purolator by virtue of his employment with Dayco Products Inc. ("Dayco"), a wholly-owned subsidiary of Mark IV. At the time that he learned of the negotiations, Whitehurst understood that such information was confidential.

2. Whitehurst, while in possession of material, nonpublic information about the negotiations between Purolator and Mark IV, asked his son-in-law, defendant David A. Schmidt, to purchase \$10,000 of the common stock of Purolator and tipped Schmidt about the negotiations.

3. After obtaining the information from Whitehurst, Schmidt purchased 575 Purolator shares for Whitehurst and 4,325 shares for himself between September 20 and September 23, 1994. Schmidt also recommended Purolator to three persons who thereafter purchased a total of 10,273 shares. Collectively, Whitehurst, Schmidt and Schmidt's tippees purchased 15,173 Purolator shares and realized profits of approximately \$109,483.

4. By engaging in such conduct, each of the defendants has violated, and unless restrained and enjoined will continue to violate, Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78j(b), 78n(e)] ("Exchange Act") and Rules 10b-5 and 14e-3 [17 C.F.R. §§ 240.10b-5, 240.14e-3] promulgated thereunder.

#### JURISDICTION

5. The Court has jurisdiction of this action pursuant to Sections 21(e), 21A and 27 of the Exchange Act [15 U.S.C. §§ 78u(e), 78u-1, and 78aa].

6. The defendants made use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of national securities exchanges, in connection with the acts, practices, and courses of business alleged herein.

### PARTIES

7. The Commission brings this action pursuant to authority conferred on it by Sections 21(d), 21(e) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78u-1].

8. Defendant David A. Schmidt, 38, lives in Little Rock, Arkansas.

9. Defendant Willard A. Whitehurst, 59, lives in Little Rock, Arkansas. At all relevant times, Whitehurst was employed by Dayco and resided in Spring Valley, Ohio. Whitehurst is the father-in-law of defendant Schmidt.

### OTHER PERSONS

10. Purolator Products Company was a Delaware corporation with headquarters in Tulsa, Oklahoma. Purolator was a manufacturer, distributor and marketer of filtration products and systems, including a broad range of automotive filters. Its securities were registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C § 781(g)]. Purolator common stock was traded on Nasdaq.

11. Mark IV Industries, Inc. is a Delaware corporation with headquarters in Amherst, New York. Mark IV manufactures products for three markets: power and fluid transfer; transportation; and professional audio. Mark IV's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. § 781(b)].

12. Dayco Products, Inc. is a wholly-owned subsidiary of Mark IV headquartered in Miamisburg, Ohio.

### THE UNDERLYING TRANSACTION

13. Early in the summer of 1994, Mark IV informed Purolator that it was interested in acquiring Purolator in a negotiated transaction involving a tender offer at a purchase price of \$22 per share. In September 1994, Mark IV conducted a due diligence review of Purolator. After further negotiations, Mark IV increased its offer to \$25 per share. On October 3, Mark IV and Purolator jointly announced that they had entered into a merger agreement, pursuant to which Mark IV would commence a tender offer for all Purolator shares for \$25 per share. On October 3, the stock closed at \$24-5/8, up \$6-5/8 over the previous trading day's close.

### WHITEHURST LEARNS OF THE MARK IV/PUROLATOR NEGOTIATIONS

14. Between September 12, 1994 and September 23, 1994, several Dayco employees participated in Mark IV's due diligence of Purolator. Whitehurst learned of the Mark IV/Purolator negotiations as a result of a conversation with one of his coworkers who was involved in the due diligence and also through observations of his coworkers.

### WHITEHURST, SCHMIDT, AND OTHERS PURCHASE PUROLATOR COMMON STOCK

15. Whitehurst, in violation of a fiduciary or similar duty of trust and confidence to Dayco and Mark IV, misappropriated material, nonpublic information concerning the Mark IV/Purolator transaction by causing Schmidt to purchase 575 shares of Purolator common stock for Whitehurst through a retail brokerage account opened by, and in the name of, Schmidt.

16. Whitehurst, in violation of a fiduciary or similar duty of trust and confidence to Dayco and Mark IV, misappropriated material, nonpublic information concerning the Mark IV/Purolator transaction by communicating such information to Schmidt, knowing, or reasonably expecting, or recklessly disregarding the likelihood that Schmidt would trade in the securities of Purolator. Schmidt knew or should have known that the information was communicated to him in breach of a duty.

17. While in possession of material, nonpublic information concerning the Mark IV/Purolator transaction that had been communicated to him by Whitehurst, Schmidt purchased 4,325 shares for himself.

18. While in possession of material, nonpublic information concerning the Mark IV/Purolator transaction that had been communicated to him by Whitehurst, Schmidt also recommended Purolator to three other persons, knowing, or reasonably expecting, or recklessly disregarding the likelihood that these persons would trade in the securities of Purolator. Subsequently, the three persons purchased a total of 10,273 shares of Purolator stock.

19. Subsequent to the public announcement of the Mark IV/Purolator transaction on October 3, 1994, Whitehurst, Schmidt and the three other persons to whom Schmidt recommended Purolator sold or tendered 15,173 shares of Purolator common stock, realizing total profits of about \$ 109,483. Whitehurst realized

profits of \$4240.62; Schmidt realized profits of \$31,171.87; and Schmidt's tippees realized profits of \$74,070.12.

FIRST CLAIM

Violations of Exchange Act Section 10(b) and Rule 10b-5  
by Whitehurst and Schmidt in Connection with  
Purchases of Purolator Stock

20. Paragraphs 1 through 19 are realleged and incorporated herein by reference.

21. In September and October 1994, each of the defendants, directly or indirectly, by use of the means or instrumentalities of interstate commerce, of the mails or of the facilities of national securities exchanges, in connection with the purchase or sale of securities: (1) employed devices, schemes, or artifices to defraud; (2) made untrue statements of material fact, or 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/or (3) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon the purchasers or sellers of the securities of Purolator or upon other persons.

22. By reason of the foregoing, defendants Whitehurst and Schmidt each violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder.

SECOND CLAIM

Violations of Section 14(e) of the Exchange Act  
and Rule 14e-3 Promulgated Thereunder  
by Whitehurst and Schmidt in Connection with  
Trading in Purolator Stock

23. Paragraphs 1 through 19 are realleged and incorporated herein by reference.

24. In September and October of 1994, after the commencement of a tender offer, or the taking of a substantial step or steps to commence a tender offer, for the securities of Purolator, Whitehurst and Schmidt each purchased or caused to be purchased the securities of Purolator, while in possession of material information relating to the tender offer, which information they knew or had reason to know was nonpublic and which information they knew or had reason to know was obtained, directly or indirectly, from the offering person, the issuer Purolator, or a person acting on behalf of the offering person or Purolator; and Whitehurst and Schmidt each communicated material, nonpublic information relating to the Purolator tender offer to other persons under circumstances in which it was reasonably foreseeable that such communications were likely to result in the purchase or sale of the securities of Purolator.

25. By reason of the foregoing, defendants Whitehurst and Schmidt each violated Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

enter judgment in favor of the Commission finding that defendants Whitehurst and Schmidt violated the securities laws and rules promulgated thereunder as alleged herein;

II.

permanently enjoin Whitehurst and Schmidt from violating Sections 10(b) and 14(e) [15 U.S.C. §§ 78j(b), 78n(e)] of the Exchange Act and Exchange Act Rules 10b-5 and 14e-3 [17 C.F.R. §§ 240.10b-5, 240.14e-3];

III.

order defendants Whitehurst and Schmidt to account for and disgorge the profits they realized as a result of the illegal conduct alleged herein and to pay prejudgment interest thereon;

IV.

order defendants Whitehurst and Schmidt to account for and disgorge all profits realized by persons to whom they unlawfully communicated material, nonpublic information and to pay prejudgment interest thereon;

V.

order defendants Whitehurst and Schmidt each to pay a civil penalty to the United States of America under Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

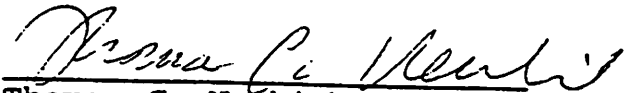


VI.

grant other such relief as this Court may deem just and proper.

Dated: April 29, 1997

Respectfully submitted,



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