

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	Civil Action No.
	§	3:08-CV-1013-G
vs.	§	
	§	FIRST AMENDED COMPLAINT
ROBERT WAYNE TEDDER, JOSEPH WAYNE TEDDER, PHILLIP BRIAN GUNN, GREGORY CARL GUNN, AND BRIAN PATRICK CARR,	§	
	§	
Defendants.	§	
	§	
	§	

Plaintiff, Securities and Exchange Commission, alleges as follows:

SUMMARY

1. This case involves illegal insider trading by Defendants in the securities of Aviall, Inc. During March and April 2006, two Aviall employees, Robert Wayne Tedder and Brian Patrick Carr, obtained material, nonpublic information concerning the impending acquisition of Aviall. Robert Tedder tipped his father, Joseph Wayne Tedder, and a business associate, Phillip Brian Gunn. Phillip Gunn, in turn, passed on the material, nonpublic information concerning the acquisition of Aviall to his brother, Gregory Carl Gunn, a registered representative.

2. Between March 21, 2006 and April 28, 2006, the Defendants collectively purchased thousands of shares of Aviall common stock and Aviall call option contracts while in possession of material, non-public information related to the acquisition of Aviall. To pay for these purchases, Defendants liquidated all of their existing securities holdings, drew on the

equity in their homes, and/or borrowed money from relatives, including a retired father and young dependant children.

3. On May 1, 2006, Aviall publicly announced that it would be acquired by The Boeing Company for \$48.00 per share of common stock. As a result of the announcement, Aviall's share price increased \$9.26, or nearly 25%, from its \$37.70 closing price on Friday, April 28, 2006, to \$46.96 at the close of trading on Monday, May 1, 2006.

4. Immediately following the public announcement and resulting increase in the price of Aviall shares, each of the Defendants liquidated his entire position in Aviall common stock and call options. As a result of their trading in Aviall securities, the Defendants amassed profits totaling \$792,413.10.

5. By reason of these activities, Defendants 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] thereunder. Accordingly, the Commission seeks: (i) entry of permanent injunctions prohibiting Defendants from further violations of Section 10(b) and Rule 10b-5 thereunder; (ii) disgorgement of the profits from their insider trading, plus prejudgment interest; and (iii) the imposition of civil monetary penalties of up to three times the profits from their insider trading.

JURISDICTION AND VENUE

6. The Commission brings this action pursuant to the authority conferred upon it by Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

7. This Court has jurisdiction over this action pursuant to Sections 21(d), 21A and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1 and 78aa]. Defendants, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the acts, practices and courses of business described in this *Complaint*.

8. Venue is proper because transactions, acts, practices and courses of business described below occurred within the jurisdiction of the Northern District of Texas.

DEFENDANTS

9. **Robert Tedder**, age 53, is a resident of Flower Mound, Texas. During the relevant period, he was a warehouse operations analyst at Aviall's Dallas headquarters. As a consequence of his illicit trades, Aviall terminated Robert Tedder's employment in May 2006 for violating the company's Code of Business Conduct and Ethics ("Code of Conduct").

10. **Joseph Tedder**, age 77, is a resident of St. Louis, Missouri, and is Robert Tedder's father. During the relevant period, he was retired and did not work.

11. **Phillip Gunn**, age 45, is a resident of Arlington, Texas. During the relevant period, he was a real estate broker who worked closely with Robert Tedder to lease warehouse space for Aviall.

12. **Gregory Gunn**, age 47, is a resident of Oklahoma City, Oklahoma, and is Phillip Gunn's brother. Gregory Gunn is a registered representative with Primerica Financial Services Investments, a division of CitiGroup ("PFSI"), and holds the following securities industry licenses: Series 6, 26, and 63. Gregory Gunn currently is the branch manager of the Oklahoma City office of PFSI and has been associated with PFSI and its predecessor firms since 1980.

13. **Brian Carr**, age 47, is a resident of Argyle, Texas. During the relevant period, he was a warehouse supervisor at the Aviall's Dallas headquarters. As a consequence of his illicit trades, Aviall terminated Carr's employment in May 2006 for violating the Code of Conduct.

RELATED ENTITIES

14. **Aviall, Inc.**, a Delaware corporation headquartered in Dallas, Texas, produces and provides aviation parts and services. Before its acquisition by Boeing, Aviall's common stock was registered with the Commission under Section 12(b) of the Exchange Act and traded

on the NYSE under the ticker symbol "AVL." In addition, Aviall's options were traded on the Philadelphia Stock Exchange. In September 2006, Boeing completed its acquisition of Aviall, which is now a wholly-owned subsidiary of Boeing.

15. **The Boeing Company**, a Delaware corporation headquartered in Chicago, Illinois, is the world's largest manufacturer of commercial and military aircraft. Boeing's common stock is listed on the NYSE.

THE UNLAWFUL CONDUCT

Background

16. Between late January and early March 2006, senior executives of Boeing and Aviall discussed a possible merger of the two companies. The due diligence process commenced in mid-March 2006 and continued through April 2006. During the month of April, Boeing and Aviall negotiated the specific terms of the merger agreement. The directors of both companies approved the merger on Sunday, April 30, 2006. On the morning of May 1, before the markets opened, Boeing and Aviall publicly announced that their companies had signed a definitive merger agreement whereby Boeing would acquire Aviall in an all cash merger for \$48 per share.

17. Shortly after the merger announcement, the Philadelphia Stock Exchange alerted Aviall to suspicious trading in Aviall options. In response, the company conducted an internal inquiry in May 2006, which included interviews of Robert Tedder and Carr. At the conclusion of the internal inquiry, the company terminated Robert Tedder and Carr for violating the Code of Conduct.

18. During the several weeks prior to the public announcement of the acquisition, a number of internal events occurred that raised expectations among Aviall employees that a significant event involving the company would occur in the near future. These included:

- a. a trading blackout for Aviall's upper management, which did not include Robert Tedder or Carr, that remained in place for an extended period from year-end 2005 through May 2006 ("extended trading blackout");
- b. a March 8, 2006 tour by Boeing executives of Aviall's Dallas headquarters, including the corporate offices and adjoining warehouse, led by Aviall's CEO ("Boeing tour");
- c. closed-door meetings in April 2006 involving Aviall's in-house counsel and several Aviall management employees;
- d. unusual requests by upper management for data and documents, often in conjunction with offsite meetings by upper management;
- e. an April 11, 2006 e-mail from Aviall's CEO concerning a conference call among Aviall's board of directors, outside counsel, and the company's financial advisers to discuss the status of the due diligence process and draft merger agreement, with the purchaser referred to only by the code name "Andre," was sent inadvertently to 122 Aviall employees across the country, including Dallas warehouse employees, who should not have received it ("inadvertent e-mail"); and
- f. internal rumors that Boeing would acquire Aviall and that the acquisition was imminent.

Each of the Defendants was aware of one or more of these factors when they purchased Aviall securities.

Robert Tedder

Robert Tedder Acquired Material, Nonpublic Information

19. During March and April 2006, Robert Tedder acquired in the course of his Aviall employment, material, non-public information concerning the acquisition of Aviall. The information that Robert Tedder obtained was available only to an insider at Aviall and confirmed, for Robert Tedder, that Aviall was engaged in acquisition-related activity.

1. Extended Trading Blackout

20. Robert Tedder became aware of the extended trading blackout through numerous discussions he had with other Aviall insiders, including upper management. Robert Tedder and his supervisor, a member of upper management, had numerous conversations during the relevant period about the extended trading blackout, including a late March 2006 conversation in which Robert Tedder specifically questioned his supervisor about whether he was “still blacked out.” Robert Tedder viewed the extended trading blackout as unusual because of its timing and understood that the trading blackout likely meant that there was a “deal on the table” or a possible future announcement.

2. Boeing Tour

21. Robert Tedder was aware of the Boeing tour. He, along with Carr and others in the warehouse, received a series of e-mails from upper management about the Boeing tour before and after it occurred. On March 6, 2006, one of Robert Tedder’s supervisors sent an e-mail to Robert Tedder, Carr, and other warehouse employees announcing: “We have some VIP from Boeing Mil[itary] this Wed. [March 8]. Must be neat and clean.” On the next day, March 7, Robert Tedder received another e-mail, forwarded by his supervisor, in which Aviall’s COO stated: “On Wed. A.M. [March 8] probably early I will conduct a tour for the #2 guy in Boeing Defense (has been here before). . . .” After the Boeing tour, Robert Tedder received a March

17, 2006 e-mail from his supervisor thanking everyone for the excellent appearance of the warehouse and noting how impressed the “Boeing Executives” were during their recent [March 8] tour.

22. The Boeing tour was highly unusual because the company’s CEO led it – something he rarely did. Furthermore, this tour generated so much buzz and excitement in the Aviall warehouse that Aviall employees tried to find out who the “bunch of suits” were that were being led around the warehouse by Aviall’s CEO. Robert Tedder was present at the warehouse on the day the Boeing tour was conducted and admitted to company counsel during the internal inquiry, that he was also aware of an unusual series of visits by unidentified people in the main office and warehouse.

3. Closed Door Meetings Involving In-House Counsel

23. Robert Tedder was aware of closed door meetings involving in-house counsel and observed that in-house counsel was unusually busy during the relevant period. As a warehouse supervisor operations analyst, Robert Tedder routinely worked with Aviall’s in-house attorneys on leasing warehouse space across the country. In that capacity, Robert Tedder frequently met with Aviall’s in-house attorneys in the company’s corporate offices, which adjoined the warehouse, to finalize and execute various real estate documents. In a March 29, 2006 e-mail from Robert Tedder to a business associate, he noted that it could take a few days to obtain a copy of a signed lease because “our in-house attorneys are busy.” Furthermore, Robert Tedder noted in another e-mail to a business associate on April 13, 2006, that Aviall’s in-house attorney is behind closed doors every day. He also noted that the “deals they are working on should be complete soon.” The closed door meetings and offsite meetings involving upper management were unusual and intensified the expectations among the employees that something significant would soon occur.

4. Inadvertent E-mail

24. Robert Tedder was aware of the inadvertent e-mail from Aviall's CEO soon after it was sent on April 11. Robert Tedder heard that other company employees received the inadvertent e-mail in which Aviall's CEO was "saying something he shouldn't." In a discussion with his supervisor, Robert Tedder described the e-mail as having something to do with a merger agreement, which they then discussed in some detail. In addition, Robert Tedder told Phillip Gunn about an e-mail from a "manager" that mentioned the name of a New York attorney that helps companies with acquisitions.

25. The inadvertent e-mail sent the rumor mill into overdrive. Many employees discussed the inadvertent e-mail and what a "merger" meant, and discussed whether a merger would result in the loss of their jobs. In addition, warehouse personnel were asking about the identity of the e-mail recipients listed in the inadvertent e-mail, which included two partners in the New York office of Skadden, Arps, Slate, Meagher & Flom LLP that specialized in mergers and acquisitions. At least one Aviall employee "Googled" one of the e-mail recipients and learned that he was a New York lawyer.

5. Internal Rumors that Boeing was the Acquirer

26. Robert Tedder was aware of internal rumors that Aviall was going to be bought by Boeing. In order to confirm his suspicions about Boeing, Robert Tedder contacted a longtime friend, a toolmaker, who worked at Boeing's St. Louis facility. On April 5, 2006, Robert Tedder called his friend at Boeing to find out if he had heard any rumors about Boeing buying Aviall. According to the friend, Robert Tedder was convinced Boeing was buying Aviall and they discussed for several minutes if the acquisition made sense and when it might occur.

6. An Acquisition was Imminent

27. Robert Tedder told other Aviall employees in April 2006 that an announcement about a merger would be coming soon. Starting in mid-April, he began purchasing only May \$45.00 call options.

28. Robert Tedder's belief in April 2006 that Aviall would soon be acquired is further evidenced by his dealings with a co-worker. Robert Tedder told a co-worker that, at that time, he [Robert Tedder] could take \$5,000 and turn it into \$15,000 by investing in Aviall call options. Robert Tedder also told his co-worker that the options investment was a "sure deal."

Robert Tedder Traded on the Basis of Material, Nonpublic Information

29. Prior to acquiring non-public information, Robert Tedder was systematically liquidating the Aviall stock in his 401(k) account. As of February 1, 2006, his 401(k) account held over 10,000 shares of Aviall common stock. Between February 1 and March 16, however, he methodically sold off all of his Aviall common stock and used the proceeds to purchase other investments for his 401(k) account. He sold the last of his remaining shares of Aviall stock (1,027.454 shares) held in his 401(k) account on Thursday, March 16, 2006.

30. The next day, Friday, March 17, 2006, Robert Tedder received the e-mail from his supervisor noting how impressed the "Boeing Executives" were by the appearance of the warehouse during their recent [March 8] tour. Thereafter, Robert Tedder immediately and inexplicably reserved the course of his investment activity.

31. On March 21, 2006, he purchased \$333,001.95 of Aviall common stock using proceeds from the sale of mutual fund investments in his 401(k) account. After he purchased another \$41,961.79 of Aviall stock, Robert Tedder's 401(k) account, on March 30, 2006, held nearly \$375,000, or 95%, of its value, in Aviall common stock

32. In April 2006, Robert Tedder was “fully invested” in Aviall through his 401(k) account and had no liquid assets to make additional investments in Aviall. Nonetheless, he resorted to unusual measures to obtain access to funds in order to make additional purchases of Aviall securities: He borrowed more than \$21,000, including \$16,000 from his retired father and \$2,000 from his daughter, a college student, through a \$2,000 advance on her credit card; he obtained \$2,280 from a home equity credit line; and he took a \$1,500 cash advance on one of his own credit cards. With these funds and others, Robert Tedder purchased, between April 7 and April 28, \$28,567.54 of Aviall call options.

33. Following Aviall’s May 1, 2006, public announcement that it would be acquired by Boeing, Robert Tedder immediately liquidated all of his recently-accumulated Aviall securities. On May 1, 2006, he sold all of his Aviall call options for a profit of \$218,546.36. Later, on May 4, 2006, he liquidated all of the Aviall common stock in his 401(k) account for a profit of \$84,540.75. Robert Tedder’s profits from trading in Aviall securities totaled \$303,087.11.

34. Robert Tedder made purchases of Aviall securities on the basis of material, nonpublic information, and in breach of a duty of trust and confidence that he owed to Aviall.

Joseph Tedder

35. During March and April 2006, Robert Tedder tipped his father Joseph Tedder about the impending acquisition of Aviall. Robert Tedder told Joseph Tedder about the widespread conjecture among Aviall employees that Aviall would be taken over by Boeing. In April 2006, Joseph Tedder modified his brokerage account to allow him to trade options and subsequently purchased a total of \$46,549.94 of Aviall securities consisting of \$22,850.94 of Aviall common stock and \$23,699.00 of Aviall call options. Like his son, Joseph Tedder was so confident in the future value of Aviall securities that he went into debt to purchase them; he borrowed \$15,000 from his home equity line of credit to make the acquisitions.

36. Like his son, Joseph Tedder liquidated his entire portfolio of Aviall securities immediately after Aviall publicly announced its imminent acquisition by Boeing. Joseph Tedder sold his Aviall common stock and call options on May 1 and May 2, 2006, for a total profit of \$163,254.53.

37. Joseph Tedder knew that Robert Tedder worked at Aviall and knew, or was reckless in not knowing, that Robert Tedder was providing confidential information to him in breach of Robert Tedder's duty to Aviall.

Phillip Gunn

38. In April 2006, Robert Tedder tipped Phillip Gunn about the impending acquisition of Aviall. Robert Tedder told Phillip Gunn about the extended trading blackout, the inadvertent e-mail, and internal rumors that Boeing was the acquirer and that the acquisition of Aviall was imminent. Robert Tedder also told Phillip Gunn "the buyout [of Aviall] would occur within the second quarter of 2006." Later, Robert Tedder told Phillip Gunn that the buyout would take place sometime around May and that Boeing was the potential acquirer.

39. After Phillip Gunn learned the material, nonpublic information from Robert Tedder, he opened a brokerage account on April 21, 2006 and modified it on the same day to allow him to trade options. Phillip Gunn purchased a total of \$17,244.65 of Aviall securities consisting of \$2,199.40 of Aviall common stock and \$15,045.25 Aviall May call options.

40. Phillip Gunn sold his Aviall common stock and call options on May 1, 2006, for a total profit of \$76,286.26.

41. Phillip Gunn knew that Robert Tedder worked at Aviall and knew, or was reckless in not knowing, that Robert Tedder was providing confidential information to him in breach of Robert Tedder's duty to Aviall.

Gregory Gunn

42. Phillip Gunn tipped his brother Gregory Gunn, furnishing him with material, nonpublic information concerning the acquisition of Aviall. On the morning of April 12, 2006, Phillip Gunn called his brother to discuss buying Aviall securities. During the course of their telephone call, Gregory Gunn included another PFSI employee in the call. Phillip Gunn advised Gregory Gunn to sell his current stock holdings and buy Aviall securities because Aviall was in negotiations, discussions or talks with another company, perhaps Boeing, about a possible merger or acquisition. Phillip Gunn informed his brother that he acquired his information from his friend, "Bob" [Robert Tedder], who worked at Aviall.

43. Even before hanging up from the April 12 telephone call with his brother, Gregory Gunn commenced the process of aggressively buying Aviall securities. At the end of the telephone call, he instructed the PFSI employee to sell his entire portfolio, add the options trading feature to his account, and start buying Aviall securities. Beginning at approximately 10:00 a.m. on April 12, 2006, the PFSI employee, at Gregory Gunn instruction, began selling all of Gregory Gunn's blue chip stock holdings, garnering approximately \$100,000 in gross proceeds.

44. Beginning on April 17, 2006, Gregory Gunn purchased \$110,487.16 of Aviall securities consisting of \$75,512.97 of Aviall common stock and \$34,974.19 of Aviall call options. Starting on April 19, Gregory Gunn began purchasing only May call options because Phillip Gunn said that "Bob" [Robert Tedder] believed that May would likely be the month in which the merger or acquisition would occur.

45. Gregory Gunn sold his Aviall securities on May 1, 2006, resulting in a profit of \$108,587.87.

46. As a registered representative employed by PFSI, a Commission-registered broker-dealer, Gregory Gunn was familiar with insider trading rules. PFSI's insider trading policy was contained in its compliance manuals, which Gregory Gunn had read, and discussed in the training he received. PFSI's insider trading policy prohibits PFSI employees from trading in securities of a company if they have "inside information" about that company. Specifically, the PFSI insider trading policy states that inside information includes information related to "possible acquisitions."

47. Gregory Gunn knew that Robert Tedder worked at Aviall and knew, or was reckless in not knowing, that Robert Tedder was providing confidential information to him in breach of Robert Tedder's duty to Aviall.

Brian Carr

Carr Acquired Material, Nonpublic Information

48. During March and April 2006, Carr acquired in the course of his Aviall employment, material, nonpublic information concerning the acquisition of Aviall. Carr concluded that Aviall was going to be acquired based on his own observations of unusual activities at the company, together with frequent conversations about the rumored acquisition with Robert Tedder and other Aviall insiders.

49. Carr, like Robert Tedder, received the series of e-mails in March 2006 announcing the March 8 Boeing tour and the March 17, 2006 e-mail from his supervisor noting how impressed the "Boeing Executives" were during the March 8 tour. Carr was also aware of the inadvertent e-mail sent out in April 2006 by Aviall's CEO. A warehouse co-worker told Carr that he had received an inadvertent e-mail that was addressed to "someone in New York City to do with mergers" and included the phrase, "status of merger." Carr was at work in the

warehouse when the Boeing tour was conducted and when the inadvertent e-mail was sent out and was aware of the conjectures and expectations created by both events.

Carr Traded on the Basis of Material, Nonpublic Information

50. While Carr was aware of this material, nonpublic information, he invested heavily in Aviall securities. He modified his brokerage account on March 29, 2006 to allow him to trade options, something he had not done since 1998. In a five-week period, Carr purchased a total of \$41,110.75 of Aviall securities, consisting of \$28,564.50 of Aviall common stock and \$12,546.25 of Aviall call options. Demonstrating a remarkable confidence in the future performance of Aviall securities, Carr withdrew \$40,000 from his children's college funds to acquire the Aviall securities.

51. Following the public announcement that Boeing would acquire Aviall, Carr, between May 1 and 4, 2006, sold all of the Aviall holdings in his brokerage account for a profit of \$141,197.33.

52. Carr made his purchases of Aviall securities on the basis of material, nonpublic information, and in breach of a duty of trust and confidence that he owed to Aviall.

Robert Tedder and Carr were Aware of Aviall's Insider Trading Prohibition

53. Robert Tedder and Carr were aware of their duties and responsibilities with regard to material, nonpublic information concerning Aviall; they certified annually their understanding of, and agreement to abide by, the Code of Conduct. The Code of Conduct not only prohibited employees from trading Aviall's securities if they have "insider information," but also prohibited employees from providing insider information to other persons. Notably, the Code of Conduct states that insider information includes information related to "proposed acquisitions or mergers."

The Acquisition Announcement and Trading Profits

54. On May 1, 2006, before the markets opened, Aviall and Boeing announced that they had entered into a definitive agreement whereby Boeing would acquire Aviall. Aviall's share price increased more than \$9.00 on the day of the merger announcement, from \$37.70 per share at closing on April 28 to \$46.96 per share at closing on May 1. By selling the common stock and call options they purchased in March and April 2006, Defendants made the following profits following the May 1 public announcement:

Defendant	Total Profit	Profit from Trading in Aviall Stock	Profit from Trading in Aviall Call Options
Robert Tedder	\$303,087.11	\$84,540.75	\$218,546.36
Joseph Tedder	\$163,254.53	\$5,309.18	\$157,945.53
Phillip Gunn	\$76,286.26	\$614.11	\$75,672.15
Gregory Gunn	\$108,587.87	\$18,562.15	\$90,025.72
Carr	\$141,197.33	\$6,722.41	\$134,474.92

CLAIMS

Violations of 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

55. Plaintiff Commission repeats and incorporates by reference paragraphs 1 through 54 of this *Complaint* as if set forth *verbatim*.

56. Defendants, by engaging in the conduct described above, directly and indirectly, in connection with the purchase and sale of securities, and by use of the means and instrumentalities of interstate commerce and of the mails, have:

- a. employed devices, schemes and artifices to defraud;

- b. 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
- c. engaged in acts, practices or courses of business that have operated or will operate as a fraud and deceit upon other persons.

57. Defendants intentionally, knowingly or recklessly made the untrue statements and omissions and engaged in the devices, schemes, artifices, transactions, acts, practices and courses of business described above.

58. By reason of their foregoing acts and practices, Defendants 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.

REQUEST FOR RELIEF

The Commission respectfully requests that this Court enter a judgment:

- a. permanently enjoining Defendants from violating 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;
- b. ordering Defendants to pay civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1] for their violations of the federal securities laws as alleged herein;
- c. ordering Defendants to disgorge all ill-gotten gains from the conduct alleged herein, with prejudgment interest; and

d. granting such other relief as this Court may deem just and appropriate.

Dated and signed on the 17th day of June, 2008.

s/ Jeffrey B. Norris
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