

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

BRUCE A. MACDONALD and ROBERT A.
MARESCA,

Defendants,

and

BRUCE K. BOHLANDER,

Relief Defendant.

CIVIL ACTION NO.

JURY TRIAL
REQUESTED:

FILED
2008 FEB -1 P 12:39
U.S. DISTRICT COURT
NEW HAVEN, CT

COMPLAINT

Plaintiff Securities and Exchange Commission ("SEC") alleges the following against Defendants Bruce A. Macdonald ("Macdonald") and Robert A. Maresca ("Maresca") and Relief Defendant Bruce K. Bohlander ("Bohlander"):

SUMMARY

1. Between July 12, 2007 and April 4, 2008, while in possession of material, nonpublic information concerning events leading up to the acquisition of Memry Corporation ("Memry" or the "Company"), Macdonald engaged in insider trading when he purchased shares of Memry common stock in his small business account, as well as in an account belonging to Bohlander. Macdonald also tipped three other individuals, including Maresca, all of whom purchased shares of Memry common stock between September 26, 2007 and April 3, 2008.

2. On June 24, 2008, Memry announced that it had been acquired. Its stock price increased \$0.94 per share (or 64%) that day, from a close of \$1.45 per share on June 23 to a close of \$2.39 per share on June 24. Macdonald's illegal trading generated an ill-gotten gain of

\$25,508 in Bohlander's account, as well as a small gain in the small business account. Maresca received ill-gotten gains of \$12,335 on his purchases of Memry shares, while the other two individuals tipped by Macdonald had ill-gotten gains totaling \$7,307.50.

3. By engaging in the conduct alleged herein, Macdonald and Maresca engaged in fraud in connection with the purchase or sale of securities, in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

4. Accordingly, the SEC seeks the following relief as to each Defendant: (i) entry of a permanent injunction prohibiting that Defendant from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; (ii) disgorgement of that Defendant's ill-gotten gains (including, in the case of Macdonald, the gains of his tippees), plus prejudgment interest thereon; and (iii) the imposition of a civil monetary penalty. In addition, as to Relief Defendant Bohlander, the SEC seeks disgorgement of his ill-gotten gains, plus prejudgment interest thereon.

JURISDICTION

5. The SEC brings this action pursuant to the enforcement authority conferred upon it by Sections 21(d) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1]. This Court has jurisdiction over this action pursuant to Sections 21(e), 21A and 27 of the Exchange Act [15 U.S.C. §§ 78u(e), 78u-1 and 78aa]. Additionally, many of the acts and practices alleged herein occurred within the District of Connecticut, which is also where Defendants Macdonald and Maresca reside.

6. In connection with the conduct described in this Complaint, Defendants directly or indirectly made use of the means or instrumentalities of interstate commerce, of the mails, of

the facilities of a national securities exchange, and/or of the means and instruments of transportation or communication in interstate commerce.

7. Unless enjoined, Defendants Macdonald and Maresca will continue to engage in the acts, practices, transactions and courses of business alleged herein, or in acts, practices, and courses of business of similar object and purpose.

DEFENDANTS AND RELIEF DEFENDANT

8. **Macdonald**, age 58, is a resident of Wilton, Connecticut. Macdonald's wife has been Memry's corporate secretary and vice president of human resources since approximately 2000.

9. **Maresca**, age 59, a resident of Bridgeport, Connecticut, is an attorney and a friend of Macdonald's.

10. **Bohlander**, age 58, a resident of Katonah, New York, is a childhood friend of Macdonald's.

RELEVANT ENTITY

11. **Memry**, incorporated in Delaware and headquartered in Bethel, Connecticut, is a manufacturer of plastics for medical applications. Its common stock traded on the American Stock Exchange until its September 29, 2008 acquisition by SAES Getters S.p.A. ("SAES"), a company headquartered in Milan, Italy.

FACTS

Memry's Acquisition

12. Starting in 2006 at the latest, Memry's Board of Directors (the "Board") was seeking to sell the Company and in 2007, it began looking for an investment bank to lead that effort and to examine other strategic alternatives.

13. At a meeting on July 12, 2007, the Board received a report detailing a schedule for interviewing potential investment banks. Memry's senior management, including Macdonald's wife, held an internal meeting concerning the investment bank selection process on July 27, 2007, and met with representatives of the candidate banks in July, August and early September 2007.

14. The Board ultimately selected an investment bank on September 20, 2007, and from October 2007 through January 2008, Memry solicited bids to acquire the Company. In early February 2008, Memry received initial bids and indications of interest from bidders who conducted due diligence at the Company in late February and early March 2008.

15. Three finalists were selected in March and additional diligence was conducted in early April 2008. After final bids were made, the Board agreed in early-to-mid June to be acquired by SAES.

16. The acquisition was announced on June 24, 2008. As a result, Memry's stock price rose \$0.94 per share (or 64%), from a close of \$1.45 per share on June 23 to a close of \$2.39 per share on June 24.

Macdonald Trades on Basis of Non-Public Information

17. During 2007 and 2008, Macdonald had trading authority over several brokerage accounts, including an account in the name of a small business he owned. Macdonald also did all the trading in the account of his childhood friend, Bohlander.

18. Beginning no later than July 2007, Macdonald's wife regularly provided Macdonald with updates as to the progress of the Memry's efforts to be acquired. Macdonald's wife was intimately involved in the due diligence process and she informed her husband about it at the time it was occurring. Among other things, Macdonald's wife told him the names the

three final bidders. By virtue of their marital relationship, Macdonald owed his wife a duty of trust and confidence with regard to the information she provided him about Memry.

19. In connection with its efforts to find a buyer, Memry had instructed its senior employees, including Macdonald's wife, on September 30, 2006, that they were subject to an "blackout" prohibiting them from trading in Memry shares indefinitely. Memry circulated an additional blackout notices on September 30, 2007 and November 16, 2007. The trading blackout was not lifted until after the Company's June 24, 2008 announcement of its acquisition. Because her husband did all the trading in the family's brokerage accounts, Macdonald's wife had a practice of informing Macdonald of these blackout notices.

20. Without telling his wife, and in violation of the duty of trust and confidence he owed her, Macdonald purchased shares of Memry common stock in his small business account and in Bohlander's account while in possession of material, nonpublic information about the Company.

21. Macdonald made an initial purchase of 1000 shares in the small business account on July 13, 2007, and thereafter, between July 31, 2007 and April 4, 2008, purchased 24,000 shares in Bohlander's account.

22. The timing of Macdonald's trades coincided with significant non-public events at Memry in the process leading to the acquisition. For example, Macdonald traded on the following dates:

- July 13, 2007, the day after the Board meeting concerning the process for hiring an investment bank;
- July 31, 2007, two business days after a meeting between Macdonald's wife and the candidate investment banks;
- August 3, 2007, the day Macdonald's wife received a comprehensive email updating the progress of the investment bank selection process;

- September 13, 2007, the day final presentations were sent to Macdonald's wife and others at Memry by the candidate investment banks;
- September 21, 2007, the day after the Board's selection of the investment bank to sell the Company;
- February 6, 2008, the day Macdonald's wife received copies of the initial bids and indications of interest from prospective acquirers; and
- February 29, 2008, the day the on-site due diligence process began.

23. As a result of his illegal trading, Macdonald generated ill-gotten gains when the acquisition was announced of \$25,508 in Bohlander's account and \$890 in his small business account.

Macdonald Tips Others to Purchase Memry Stock

24. In violation of the duty of trust and confidence he owed his wife, Macdonald also tipped three friends (Maresca and two others) and advised them to purchase Memry stock.

25. In early 2008, based on public sources, Maresca noted a decline in the price of Memry stock and knowing that Macdonald's wife worked in a senior position at Memry, he called Macdonald to learn more. Macdonald told him to "[b]uy Memry stock. You don't want to know why." Macdonald instructed him to structure his purchases over a period of time because Memry had a "thin float" (*i.e.*, a small number of tradeable shares outstanding) and a big purchase would affect share price. He also asked Maresca to keep this information confidential.

26. Between March 7, 2008 and April 3, 2008, Maresca purchased 9,000 shares of Memry stock.

27. Macdonald also tipped two other friends, who purchased a total of 8,250 shares of Memry stock on September 26, 2007, October 23, 2007, and March 31, 2008.

28. As a result of this illegal trading, Maresca received ill-gotten gains when the acquisition was announced of \$12,335, and the other tippees received gains in the aggregate of \$7,307.50.

FIRST CLAIM

**Unlawful Insider Trading
(Macdonald and Maresca)**

29. The SEC repeats and realleges paragraphs 1 through 28 above.

30. By reason of the foregoing, Macdonald and Maresca each directly or indirectly, by use of means or instrumentalities of interstate commerce or of the mails, or any facility of any 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; or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any persons, in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM

**Claim for Unjust Enrichment
(Bohlander)**

31. The SEC repeats and realleges paragraphs 1 through 28 above.

32. As set forth above, Relief Defendant Bohlander has received funds and property from Defendant Macdonald, which are the proceeds, or are traceable to the proceeds, of Defendant Macdonald's insider trading.

33. Relief Defendant Bohlander has obtained the funds and property alleged above as

part of and in furtherance of the securities violations alleged above, and under circumstances in which it is not just, equitable or conscionable for it to retain the funds and property. As a consequence, Relief Defendant Bohlander has been unjustly enriched.

PRAYER FOR RELIEF

34. Accordingly, the SEC respectfully requests that this Court issue a Final Judgment of Permanent Injunction and Other Relief:

A. Permanently restraining and enjoining each Defendant, their agents, servants, employees, attorneys, successors and assigns, and those persons in active concert or participation with them, and each of them, from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

B. Ordering each Defendant to disgorge the ill-gotten gains from their illegal conduct (including, with respect to Macdonald, the ill-gotten gains of his tippees), plus prejudgment interest;

C. Ordering each Defendant to pay civil penalties, pursuant to the Insider Trading Sanctions Act of 1984, codified at Section 21A of the Exchange Act, as amended [15 U.S.C. § 78u-1];

D. Ordering Relief Defendant Bohlander to disgorge his ill-gotten gains, plus prejudgment interest thereon;

E. Retaining jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

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

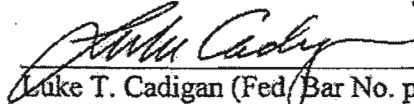
JURY DEMAND

The SEC hereby demands a trial by jury on all claims so triable.

Respectfully submitted,

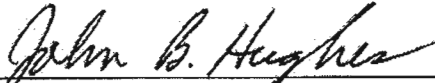
**SECURITIES AND EXCHANGE
COMMISSION,**

By its attorneys,



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