

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

Nancy Jewell, Kristin Mays, and
Matthew B. Murphy, III,

Defendants.



COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission" or "SEC") alleges
for its Complaint, as follows:

SUMMARY

1. This is an insider trading case. Shortly before noon on July 6, 2007, a member of the Board of Directors of First Indiana Corporation ("the Director") received a phone call advising him of a special Board meeting scheduled for Sunday, July 8, 2007. The Director has a longstanding relationship in which a history, pattern or practice of sharing confidences exists with each of the defendants: Nancy Jewell, Kristin Mays, and Matthew Murphy, III. During his interactions with the defendants following receipt of this call, the Director complained to each that he was upset that a special Board meeting was taking place on a Sunday and was ruining his scheduled plans for that day. Based upon this information, which they misappropriated from the Director, each of the defendants purchased First Indiana common stock on the afternoon of July 6, 2007. Before the start

of trading on Monday, July 9, 2007, First Indiana announced it had agreed to be acquired by Marshall & Ilsley Corporation ("M&I") for a price of \$32 per share, a nearly \$10 per share increase over First Indiana's closing price on July 6, 2007, the previous business day.

2. Jewell, Mays, and Murphy realized ill-gotten gains of \$8,888, \$7,960, and \$9,078, respectively, as a result of the increase in value of their First Indiana common stock after the public announcement.

3. The defendants, unless restrained and enjoined, will continue to engage in transactions, acts, practices, and courses of business as set forth in this Complaint, or in similar illegal acts and practices.

4. The Commission requests that this Court permanently enjoin Jewell, Mays, and Murphy from violating the federal securities laws, order each of them to disgorge all of their ill-gotten gains from insider trading in the securities of First Indiana, order each of them to pay prejudgment interest on those ill-gotten gains, impose a civil money penalty on each of them, and order such other and further relief as the Court may deem appropriate.

JURISDICTION

5. 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) and (e) and 78aa].

6. In connection with the transactions, acts, practices, and courses of business described in this Complaint, the defendants, directly and indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, and/or of the means and

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

DEFENDANTS

7. **Nancy A. Jewell**, age 52, resides in Indianapolis, Indiana. She is the Chief Executive Officer of a non-profit health coalition. Jewell and the Director have maintained a close friendship for more than 20 years. In addition, she is employed by a privately held company owned by the Director as a property manager for some of the Director's outside investments, including a rental home and a nightclub property.

8. **Kristin Mays**, age 33, resides in McCordsville, Indiana. She is the daughter of the Director. She is also the Assistant to the President at the privately held company owned by the Director.

9. **Matthew B. Murphy, III**, age 51, resides in Indianapolis, Indiana. Murphy and the Director are business partners in a real estate venture. Murphy is also the Director of Finance and Administration at the privately held company owned by the Director. Murphy's responsibilities include oversight of various outside business investments of the Director.

RELEVANT ENTITIES

10. **First Indiana Corporation** was a bank holding company based in Indianapolis, Indiana. Its common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and was traded on the NASDAQ Global Select Market under the ticker symbol "FINB."

11. **Marshall & Ilsley Corporation** is a bank holding company based in Milwaukee, Wisconsin. Its common stock is registered with the Commission pursuant to

Section 12(b) of the Exchange Act and trades on the New York Stock Exchange under the ticker symbol "MI."

STATEMENT OF FACTS

Background

12. On June 25, 2007, First Indiana held a special meeting of its Board of Directors during which it authorized its Chief Executive Officer to explore potential mergers for the company. The Director attended this meeting and was aware that the bank was soliciting offers. Following a bidding process, First Indiana's Executive Committee met and decided to accept an offer from M&I.

13. On July 6, 2007, at 11:58 a.m. the Chairman of First Indiana's Executive Committee spoke with the Director and informed him of a special meeting of First Indiana's Board of Directors scheduled for Sunday, July 8, 2007.

14. Over the course of that afternoon, the Director complained to several individuals, including each of the defendants, that the special Board meeting was going to ruin his Sunday afternoon plans.

15. At the close of trading on July 6, 2007, First Indiana shares were priced at \$22.05.

16. At the Sunday special Board meeting, First Indiana's Board met and approved an agreement whereby M&I would acquire First Indiana for a price of \$32 per share.

17. Prior to the start of trading on Monday, First Indiana and M&I issued a press release announcing the agreement.

18. At the close of trading on July 9, 2007, the first trading day following the announcement, First Indiana's stock price increased to \$31.27 per share. This represented a 42 percent increase over its closing price on July 6, 2007.

Nancy Jewell

19. Jewell has been a close friend of the Director's for more than 20 years and employed by the Director's privately owned company since 2003. Jewell provides property management and other services for some of the Director's outside investments. One of her main functions, in addition to collecting rental income, is handling sensitive and important tasks for the properties, such as the liquor license and sales tax issues for a restaurant in which the Director is invested. These two individuals have a history, pattern, and practice of sharing confidences.

20. Prior to July 6, 2007 the Director advised Jewell that he was a member of First Indiana's Board of Directors.

21. After speaking with the Director several times on July 6, 2007, and learning of the special Board meeting, Jewell called her registered representative. The call resulted in the purchase of 1,000 shares of First Indiana common stock. Jewell purchased the 1,000 shares of First Indiana at \$22.22 per share. The General Securities Order Ticket for the purchase was marked "unsolicited."

22. Although Jewell had an open brokerage account, she had not purchased securities in the account since at least 2004. Moreover, she did not have sufficient funds in the account to cover the First Indiana purchase. As of July 1, 2007, Jewell had only \$5,400 in her brokerage account. The purchase price of her First Indiana shares exceeded the cash balance in her account by more than \$17,000.

23. In order to cover her purchase, Jewell obtained a private loan for \$20,000 on Monday, July 9, 2007, the first business day following her purchase.

24. After the July 9, 2007, announcement of the merger agreement, Jewell realized ill-gotten gains of \$8,888.

Kristin Mays

25. Mays is the daughter of the Director and was employed by the Director's company as Assistant to the President. In that role, she was trusted to be a trouble shooter, addressing various problems as they arose. Mays also participated in annual meetings with the trustees for her father's trust accounts. Mays and her father have a history, pattern and practice of sharing confidences.

26. Mays was going through a divorce in 2007. She had discussions with her father about receiving a loan "for expenses associated with the upcoming divorce." On July 6, 2007, she asked her father for that loan, and her father wrote her a check in the amount of \$20,000. While he was writing the check, Mays heard her father complaining about an "impromptu emergency" First Indiana Board meeting that was scheduled for Sunday, July 8, 2007. She was aware that her father was a member of First Indiana's Board of Directors.

27. Mays believed this information meant that a significant event was taking place with respect to First Indiana. She briefly checked Internet Web sites to try and learn more. Then, based on the fact that the company was holding a special Board meeting, she made the decision to purchase First Indiana stock. Mays had never purchased First Indiana securities prior to July 6, 2007.

28. Mays believed that the information about the special Board meeting had a limited life span and that she needed to purchase First Indiana stock before the emergency Board meeting occurred.

29. Mays began calling registered representatives and checking with online brokers to find out if she could open an account and purchase stock in the account before it was funded. She also spoke with her registered representative at a broker-dealer where she maintained an account, who assured her that she could place the trade through her daughter's Uniform Transfers to Minors Act account and send in a check subsequently.

30. In order to ensure that she would have cash available by settlement, Mays converted the \$20,000 check her father had given her (for divorce expenses) into a cashier's check at one bank and then deposited the cashier's check into her account at another bank to ensure no holds would be placed on the money.

31. On July 6, 2007, at 1:31 p.m., she purchased 890 shares of First Indiana common stock at \$22.227 per share.

32. After the July 9, 2007, announcement of the merger agreement, Mays realized ill-gotten gains of \$7,960.

Matthew B. Murphy, III

33. Murphy and the Director are business partners in a real estate venture. Murphy has been employed since 1996 by a privately held company owned by the Director. He is the company's Director of Finance and Administration and reports directly to the Director. Murphy's role is to provide financial oversight and track the financial performance of the Director's business ventures. In this role, Murphy has access to the

confidential financial information of both the Director and the company. Murphy and the Director have a history, pattern, and practice of sharing confidences.

34. Murphy knew that the Director was a member of First Indiana's Board of Directors.

35. On Friday July 6, 2007, Murphy learned from the Director's administrative assistant that the Director had been called and asked to attend a special meeting on July 8, of First Indiana's Board of Directors. Murphy subsequently confirmed the existence of the meeting with the Director.

36. Murphy made the decision to purchase First Indiana common stock because of the existence of the meeting. He believed a transaction involving First Indiana was under discussion and that First Indiana was likely being acquired. He knew that Indiana had lost a number of locally owned banks to out-of-state acquirers, and he believed that it was likely that First Indiana would be acquired.

37. Although Murphy decided that he was going to trade because of the meeting, he did not have a brokerage account. In fact, prior to trading in First Indiana, Murphy had never owned a stock outside of those in a 401(k) plan account.

38. Within an hour of learning about the existence of the Board meeting, Murphy called a registered representative whom he had known for 15 to 20 years, but with whom he had never previously done business.

39. Murphy then opened a brokerage account in order to trade First Indiana stock. Between 3 and 4 p.m. on July 6, 2007, he spoke with the registered representative and the registered representative's assistant numerous times in order to get an account opened and place the order.

40. On July 6, 2007, at 3:58 p.m., Murphy purchased 1,000 shares of First Indiana at \$22.03 per share.

41. Murphy not only did not have a brokerage account – he also did not have sufficient cash for the July 6 purchase. Murphy specifically asked the registered representative whether he could execute a trade in a new account without first funding the account. Murphy was assured that he could provide a personal check prior to settlement.

42. Murphy was confident that he would be able to obtain the necessary funds via a loan from his employer. On July 9, 2007, he approached the Chief Operating Officer of his employer and asked about receiving a loan in the amount of \$22,200 for “personal financial reasons.” Murphy’s loan was approved, and he used the loan to fund his account.

43. After the July 9, 2007, announcement of the merger agreement, Murphy realized ill-gotten gains of \$9,078.

**VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT
[15 U.S.C. § 78(b)] AND RULE 10b-5 [17 C.F.R. § 240.10b-5]**

44. Paragraphs 1 through 43 are realleged and incorporated herein by reference.

45. At all relevant times, Jewell, Mays, and Murphy each knew, or were reckless in not knowing, that the information they misappropriated from the Director concerning a special meeting of First Indiana’s Board of Directors was material and nonpublic.

46. At all relevant times, the Director, Mays’ father, expected that Mays would keep confidential any non-public information she learned about the special meeting of First Indiana’s Board of Directors.

47. At all relevant times, the Director and each of Jewell, Mays, and Murphy, had a history, pattern or practice of sharing confidences, such that each of Jewell, Mays, and

Murphy knew, or reasonably should have known, that the Director expected that each would maintain the confidentiality of the non-public information about the special meeting of First Indiana's Board of Directors.

48. In addition, Mays knew, or was reckless in not knowing, that she violated the duty of trust and confidence owed to her father by trading in First Indiana common stock before the July 8, 2007 special Board meeting on the basis of material non-public information that she misappropriated from her father.

49. Jewell, Mays, and Murphy each knowingly, or were reckless in not knowing, violated a duty of trust and confidence owed to the Director by trading in First Indiana common stock before the July 8, 2007 special Board meeting on the basis of material nonpublic information misappropriated from the Director.

50. By reason of the foregoing, defendants Jewell, Mays, and Murphy each violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Permanently restrain and enjoin Nancy Jewell from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

II.

Permanently restrain and enjoin Kristin Mays from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

III.

Permanently restrain and enjoin Matthew Murphy, III from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

IV.

Order each of the defendants to account for and disgorge all ill-gotten gains, and prejudgment interest thereon, that he or she obtained as a result of the conduct described above.

V.

Order each of the defendants to pay a civil penalty under Section 21A(a) of the Exchange Act [15 U.S.C. § 78u-1(a)].

VI.

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

Dated: August 24, 2009

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Mark A. Adler", is written over a solid horizontal line.

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