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2012 MAR -2 AM 11:49

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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 vs.

15 WILLIAM F. DUNCAN,

16 Defendant.
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Case No. **CV 12 1785** -R
(AGRA)
**COMPLAINT FOR VIOLATIONS
OF THE FEDERAL SECURITIES
LAWS**

1 Plaintiff Securities and Exchange Commission (“Commission”) alleges as
2 follows:

3 **SUMMARY OF THE ACTION**

4 1. This case involves unlawful insider trading by Defendant William F.
5 Duncan (the “Defendant” or “Duncan”) in the securities of Hi-Shear Technology
6 Corp. (“Hi-Shear”) shortly before the September 16, 2009 announcement that
7 Chemring Group PLC (“Chemring”) planned to acquire Hi-Shear. Duncan was
8 the president of an insurance brokerage firm, ISU-The Olson Duncan Agency
9 (“Olson Duncan”), which provided insurance brokerage services to Hi-Shear. In
10 the course of providing insurance brokerage services to Hi-Shear, Duncan and
11 Olson Duncan learned material nonpublic information about Hi-Shear’s interest in
12 purchasing a tail policy, which provided directors and officers insurance coverage
13 after the sale of a company. In addition, through his long-term relationship with
14 Hi-Shear, Duncan had developed a relationship of trust and confidence such that
15 Hi-Shear regularly shared sensitive and confidential information with him,
16 including information about Hi-Shear’s interest in acquiring a tail policy. In
17 breach of those duties, Duncan misappropriated the material nonpublic
18 information about the tail policy from Olson Duncan and from Hi-Shear, and used
19 that nonpublic information to trade in Hi-Shear stock in advance of the public
20 announcement of its sale. As a result of his illegal trading on material nonpublic
21 information, Duncan realized illicit profits of approximately \$85,525 on the
22 purchase and sale of 10,000 shares of Hi-Shear stock.

23 2. By engaging in the conduct alleged in this Complaint, Duncan
24 violated the antifraud provisions of the federal securities laws, specifically Section
25 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §
26 § 78j(b), and Rule 10b-5(a) and (c) thereunder, 17 C.F.R. § 240.10b-5(a) and (c).
27 The Commission requests that the Court permanently enjoin Duncan from further
28 violation of the antifraud provisions of the federal securities laws, order him to

1 disgorge his unlawful profits and pay prejudgment interest thereon, and impose a
2 civil penalty.

3 JURISDICTION AND VENUE

4 3. This Court has jurisdiction over this action pursuant to Sections
5 21(d)(1), 21(e), 21A, and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d)(1), 78u(e),
6 78u-1 & 78aa. Duncan, directly or indirectly, made use of the means or
7 instrumentalities of interstate commerce, or the mails, or the facilities of a national
8 securities exchange in connection with the transactions, acts, practices, and
9 courses of business alleged in this Complaint.

10 4. Venue is proper in this district pursuant to Section 21(d), 21A, and 27
11 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u-1, and 78aa, because certain of the
12 transactions, acts, practices, and courses of business constituting violations of the
13 federal securities laws occurred within this district. As alleged in this Complaint,
14 Duncan's misappropriation of material nonpublic information occurred while he
15 was performing insurance brokerage services for Hi-Shear from his offices in
16 Torrance, California.

17 DEFENDANT

18 5. William F. Duncan, age 60, currently resides in Redondo Beach,
19 California. Duncan is president of Olson Duncan, a California insurance
20 brokerage firm. Duncan is licensed to sell insurance policies in California, and
21 has been an insurance broker for nearly 40 years.

22 OTHER RELEVANT ENTITIES

23 6. Chemring Group PLC is a company organized under the laws of
24 England and Wales. Chemring designs, develops and manufactures defense
25 solutions, including countermeasures, pyrotechnics and munitions.

26 7. Hi-Shear Technology Corp. was an issuer with its principal place of
27 business in Torrance, California. Until its acquisition by Chemring on November
28 24, 2009, Hi-Shear common stock was listed on the NYSE Amex under the ticker

1 symbol "HSR." Hi-Shear designed and manufactured pyrotechnic, mechanical
2 and electronic products for the defense and aerospace industries.

3 8. **Duncan Insurance Service, Inc., dba ISU – The Olson Duncan**
4 **Agency**, is an insurance brokerage firm based in Torrance, California. Olson
5 Duncan was Hi-Shear's broker for casualty and property insurance until Hi-Shear
6 was acquired by Chemring.

7 **FACTS**

8 A. **Duncan Owed a Duty of Confidentiality to Olson Duncan and**
9 **Had a Special Relationship of Trust and Confidence with Hi-**
10 **Shear**

11 9. As an employee and President of the insurance brokerage firm Olson
12 Duncan, Duncan was subject to the company's policies and procedures. Olson
13 Duncan's internal policies, set forth in its Procedure Manual, explicitly stated that
14 all personnel were to "regard all Agency information, data, and documents as
15 confidential and for Agency use only, and maintain the confidential nature of all
16 such information and material." Duncan admittedly knew that he was expected to
17 keep client information confidential and that he had a duty to avoid self-dealing.
18 Duncan owed a duty to Olson Duncan to keep client information confidential and
19 for agency use only.

20 10. In addition, Duncan had a special relationship of trust and confidence
21 with Hi-Shear. Olson Duncan, and Duncan, had a long-term relationship with Hi-
22 Shear. Olson Duncan, and Duncan, provided property and casualty insurance
23 brokerage services to Hi-Shear for at least 8-10 years before Hi-Shear was
24 acquired by Chemring. Duncan was the primary point of contact between Olson
25 Duncan and Hi-Shear, and had frequent communications with Hi-Shear requiring
26 its property and casualty insurance needs.

27 11. Hi-Shear shared sensitive information regarding its strategic business
28 plans and personnel information with Olson Duncan, and Duncan, and expected

1 them to maintain the confidentiality of that information. Duncan understood that
2 Hi-Shear relied on him and Olson Duncan to keep confidential Hi-Shear's
3 corporate information.

4 **B. Duncan Learned that Hi-Shear was Being Acquired**

5 12. In late 2008, Hi-Shear conducted a review of its directors and officers
6 ("D&O") insurance coverage and concluded that additional coverage was
7 warranted.

8 13. At around that time, Hi-Shear asked Olson Duncan to provide a
9 proposal for additional coverage. In January 2009, Olson Duncan presented Hi-
10 Shear with a proposal for expanded D&O coverage.

11 14. On or about March 26, 2009, Hi-Shear provided Duncan and Olson
12 Duncan with a legal memorandum that had been prepared by Hi-Shear's outside
13 counsel. The memorandum, dated February 27, 2009, was explicitly labeled
14 "CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED," and was titled: "H-
15 Shear Technology Corporation Directors and Officers Liability Insurance
16 Coverage Analysis." The February 27, 2009 memorandum discussed whether the
17 D&O coverage Olson Duncan obtained for Hi-Shear would protect Hi-Shear's
18 board and its executives against shareholder suits in the event of a "potential
19 strategic transaction." One section of the memorandum was titled: "Impact of a
20 Strategic Transaction on D&O Insurance Coverage," which addressed coverage
21 under the existing D&O policy "[i]f Hi-Shear is sold to a group of persons or
22 entities acting in concert who end up owning more than 50 percent of the voting
23 power of the stock"

24 15. On or about August 27, 2009, in an email with the subject "Hi-Shear
25 D&O Insurance," Hi-Shear asked Olson Duncan to obtain quotes "based upon our
26 current limits" "for a 6-year 'tail' policy." A "tail policy" is specific coverage to
27 extend a D&O policy when a company is acquired or sold. When a tail policy is
28 purchased, the target company's insurance carriers agree to hold open the D&O

1 liability insurance for a period of time, to protect the target's directors and officers
2 if a claim is brought post-closing.

3 16. On August 28, 2009, Olson Duncan responded to the request for
4 quotes on a tail policy in an email from Duncan to Hi-Shear. In the email, Duncan
5 provided an estimate for a six year tail policy and informed Hi-Shear that "the
6 carriers would have to look at the 'actual agreement of sale' or other details that
7 are prompting this request before they would provide a firm quote."

8 17. Hi-Shear's request for quotes on a tail policy for its D&O insurance
9 was made to Olson Duncan in its role as insurance agent for Hi-Shear. As such,
10 the information belonged to Olson Duncan, and was subject to Olson Duncan's
11 policies that client information was confidential and belonged to Olson Duncan.
12 In addition, the request for quotes on a tail policy was made to Olson Duncan, and
13 to Duncan, as part of the special relationship of trust and confidence between
14 Olson Duncan, Duncan, and Hi-Shear, based on the long-term relationship as Hi-
15 Shear's insurance agent.

16 18. The request for quotes on a tail policy was material non-public
17 information, because a tail policy is purchased in very limited circumstances,
18 usually involving the sale of a corporation.

19 C. **Duncan Traded on Material Non-Public Information in Breach of**
20 **his Duty to Olsen Duncan and Hi-Shear**

21 19. On Friday, August 28, 2009, the day after receiving Hi-Shear's
22 request for quotes on a tail policy, Duncan purchased 5,000 shares of Hi-Shear
23 stock at a total cost of \$52,008.48. Duncan paid an average price of
24 approximately \$10.40 per share. At the time of this purchase, Duncan had a cash
25 balance in this particular brokerage account of approximately \$3,910.00. On
26 September 4, 2009, the settlement date for this purchase, Duncan wired \$100,000
27 into this account to settle the trade.

28 20. On Wednesday, September 2, 2009, Duncan continued his

1 acquisition of Hi-Shear stock, and purchased 1,000 shares of Hi-Shear stock at a
2 total cost of \$10,211.90.

3 21. On Thursday, September 3, 2009, Duncan purchased another 1,000
4 shares of Hi-Shear stock at a total cost of \$10,450.00.

5 22. On Friday, September 4, 2009, Duncan purchased another 1,000
6 shares of Hi-Shear stock at a total cost of \$10,450.00.

7 23. On Tuesday, September 8, 2009, Duncan purchased another 1,000
8 shares of Hi-Shear stock at a total cost of \$9,650.00.

9 24. On Wednesday, September 9, 2009, Duncan purchased another 1,000
10 shares of Hi-Shear stock at a total cost of \$10,150.00.

11 25. In total, Duncan purchased 10,000 shares of Hi-Shear stock at a total
12 cost of \$102,920.38, or an average cost per share of approximately \$10.29.

13 26. On the morning of September 16, 2009, at approximately 9:13 a.m.
14 EDT (6:13 a.m. PDT), an announcement was made that Hi-Shear had agreed to be
15 acquired by Chemring for cash consideration of \$19.18 per share, or a total
16 purchase price of \$132 million.

17 27. On the morning of September 16, 2009, at approximately 6:24 a.m.
18 PDT, Duncan's contact at Hi-Shear emailed Duncan and Olson Duncan to inform
19 them that Hi-Shear had successfully signed a merger agreement, and attached the
20 announcement.

21 28. Two hours later, Duncan forwarded the email with the merger
22 announcement to an insurance company to finalize the quote for the tail policy.
23 Duncan included the following parenthetical: "(hope you picked up some of the
24 stock. . . it sold for a nice premium)."

25 29. On September 17, 2009, the day after the announcement, Duncan
26 sold all 10,000 shares of Hi-Shear he had purchased in the days preceding the
27 announcement for proceeds of approximately \$188,495. Duncan realized a profit
28 of approximately \$85,525 on his Hi-Shear trades.

1 nonpublic information from Hi-Shear about Hi-Shear's request for quotes for a
2 D&O tail policy. At all relevant times, Duncan owed Olson Duncan and Hi-Shear
3 a fiduciary duty, or similar duty of trust or confidence, to maintain such
4 information in confidence.

5 36. Duncan, in breach of a fiduciary duty, or similar relationship of trust
6 or confidence, owed to Olson Duncan and Hi-Shear, misappropriated such
7 material nonpublic information by trading on the basis of such information.

8 37. The misappropriated information was material because it would be
9 important to a reasonable investor in making his or her investment decision to
10 know that Hi-Shear was requesting quotes for a tail policy for D&O insurance
11 coverage, which is typically purchased when a company is acquired or sold.
12 There is a substantial likelihood that the disclosure of the misappropriated
13 information would have been viewed by a reasonable investor as having
14 significantly altered the total mix of information available to investors.

15 38. At all times relevant to this Complaint, Duncan acted knowingly
16 and/or recklessly by misappropriating information about Hi-Shear's request for
17 quotes on a tail policy and trading while in possession of such material nonpublic
18 information. At all relevant times, Duncan acted with scienter.

19 39. By engaging in the conduct described above, Duncan, directly or
20 indirectly, in connection with the purchase or sale of securities, by the use of
21 means or instrumentalities of interstate commerce, or the mails, or the facilities of
22 a national securities exchange, with scienter:

- 23 a. employed devices, schemes, or artifices to defraud; and/or
- 24 b. engaged in acts, practices, or courses of business which
25 operated or would operate as a fraud or deceit upon any person
26 in connection with the purchase or sale of any security.

27 40. By engaging in the foregoing conduct, Duncan violated, and unless
28 enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C.

1 § 78j(b), and Rule 10b-5(a) and (c) thereunder, 17 C.F.R. § 240.10b-5(a) and (c).

2 **PRAYER FOR RELIEF**

3 WHEREFORE, the Commission respectfully requests that the Court:

4 **I.**

5 Issue findings of fact and conclusions of law that Defendant committed the
6 alleged violations.

7 **II.**

8 Issue a judgment, in a form consistent with Fed. R. Civ. P. 65(d),
9 permanently enjoining Defendant and his officers, agents, servants, employees, and
10 attorneys, and those persons in active concert or participation with any of them,
11 who receive actual notice of the judgment by personal service or otherwise, from
12 violating Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5
13 thereunder, 17 C.F.R. § 240.10b-5.

14 **III.**

15 Order Defendant to disgorge, with prejudgment interest, the illegal trading
16 profits or ill-gotten gains received as a result of the conduct alleged in this
17 Complaint.

18 **IV.**

19 Order Defendant to pay a civil penalty under Section 21A of the Exchange
20 Act, 15 U.S.C. § 78u-1.

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V.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VI.

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: February 29, 2012



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