

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE**

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<b>SECURITIES AND EXCHANGE COMMISSION,</b>	:	
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<b>Plaintiff,</b>	:	<b>Case No. 13-cv-2153</b>
	:	
<b>v.</b>	:	
	:	
<b>MICHAEL DALE LACKEY,</b>	:	
	:	
<b>Defendant.</b>	:	
	:	

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**COMPLAINT**

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

**NATURE OF THE ACTION**

1. This is an insider trading case. Between May 2, 2011 and June 1, 2011, Michael Dale Lackey (“Lackey” or “Defendant”), then a Vice President and General Manager of International Paper Company (“International Paper”), violated the federal securities laws by misappropriating material, non-public information concerning International Paper’s potential acquisition of Temple-Inland, Inc. (“Temple-Inland”) and purchasing 9,000 shares of Temple-Inland common stock on the basis of that material, non-public information. Through this illegal conduct, Lackey realized ill-gotten gains of \$56,533.89.

2. On April 30, 2011, Lackey learned during a conversation with an International Paper Executive (“Executive A”) that there was a good chance that

International Paper would acquire Temple-Inland. After obtaining this material, non-public information, in breach of a duty owed to his employer International Paper, Lackey purchased common stock of Temple-Inland. On June 6, 2011, after the end of regular trading on the New York Stock Exchange, International Paper publicly announced that it had made a \$3.31 billion hostile takeover bid for Temple-Inland and had offered \$30.60 per share, a 46% premium to Temple-Inland's closing share price that day of \$21.01 a share. As a result, Temple-Inland stock rose to \$30.40 by 4:26 p.m. on June 6, 2011, and opened on June 7, 2011 at \$29.97 per share. On June 7, 2011, Lackey sold all 9,000 shares of Temple-Inland common stock for a profit of \$56,533.89.

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

### **JURISDICTION**

4. The Commission brings this action pursuant to Sections 21(d) and 21A of the Exchange Act [15 U.S.C. §§78u(e) and 78u-1] to enjoin such transactions, acts, practices, and courses of business, and to obtain disgorgement, prejudgment interest, civil money penalties, an officer and director bar, and such other and further relief as the Court may deem just and appropriate.

5. 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].

6. Venue is proper in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. §78aa]. Certain of the transactions, acts, practices, and courses of business

constituting the violations alleged herein occurred within the Western District of Tennessee and elsewhere, and were effected, directly or indirectly, by making use of any means or instrumentality of interstate commerce or the mails, or of any facility of any national securities exchange in connection with the acts, practices, and courses of business alleged herein.

## **FACTS**

### **Defendant**

7. Michael Dale Lackey (“Lackey”), age 58, is a resident of Memphis, Tennessee. During the relevant time period, Lackey was employed as a Vice President and General Manager of International Paper. Lackey’s employment at International Paper was terminated on November 30, 2011.

### **Relevant Entities**

8. International Paper is a New York corporation headquartered in Memphis, Tennessee. International Paper is the world’s largest pulp and paper company. International Paper’s common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act. International Paper files periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder. International Paper’s common stock is traded on the New York Stock Exchange.

9. Temple-Inland, originally formed as a Delaware corporation, was a corrugated packaging and building products manufacturer whose common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act until it was acquired by International Paper on February 13, 2012. Temple-Inland also filed

periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) the Exchange Act and related rules thereunder. Temple-Inland is now a subsidiary of International Paper. Until February 2012, Temple-Inland's common stock traded on the New York Stock Exchange.

### **International Paper's Tender Offer**

10. In mid-2009, International Paper's Board of Directors ("Board") asked its senior managers to consider what types of strategic transactions made sense for the company. By July 2010, International Paper's senior managers were focusing on five companies, including Temple-Inland, as potential targets for acquisition.

11. In the fall of 2010, a small group of International Paper senior managers, including Executive A, with assistance from an outside financial adviser and an outside law firm, began to prepare a proposal for a transaction with Temple-Inland to be presented to the International Paper Board at its annual Strategy Meeting in March 2011.

12. On February 25, 2011, International Paper contacted an outside law firm for antitrust advice on a possible transaction with Temple-Inland.

13. From March 6 to 8, 2011, the International Paper Board held its annual Strategy Meeting, during which the potential acquisition of Temple-Inland was discussed.

14. During the last week of March 2011, International Paper contacted an additional law firm to assist with its potential acquisition of Temple-Inland.

15. On April 14, 2011, International Paper contacted another financial adviser concerning financing for the potential acquisition of Temple-Inland.

16. On May 4, 2011, International Paper held an internal Strategy Council meeting and discussed pricing and terms for the potential acquisition of Temple-Inland.

17. On May 10, 2011, the International Paper Board held a regular meeting during which the Board discussed the potential acquisition and the valuation of Temple-Inland.

18. On May 13, 2011, the International Paper Board held a special meeting to further discuss the potential acquisition and range of potential prices and authorized an offer for a takeover of Temple-Inland.

19. On May 17, 2011, International Paper Company made a non-public takeover proposal to Temple-Inland. Following two meetings and correspondence between the companies' chairmen, Temple-Inland's Board in a June 4, 2011 letter unanimously rejected the offer.

20. On June 6, 2011, after the end of regular trading on the New York Stock Exchange, International Paper publicly announced that it made a \$3.31 billion hostile takeover bid for Temple-Inland and had offered \$30.60 per share, a 46% premium to Temple-Inland's closing share price that day of \$21.01 a share. As a result, Temple-Inland stock rose to \$30.40 by 4:26 p.m. on June 6, 2011. The following day, on June 7, 2011, Temple-Inland stock opened at \$29.97 and closed at \$29.49, on total volume of approximately 26 million shares, compared to Temple-Inland's historical average daily volume of approximately 1.3 million shares.

**Lackey Obtained Confidential, Non-public Information  
Regarding the Possible Acquisition**

21. On April 30, 2011, Lackey and Executive A attended a charity event in Memphis, Tennessee at which they engaged in a private conversation and discussed the possible acquisition of Temple-Inland by International Paper.

22. During this conversation, Lackey learned that there was a good chance that International Paper would acquire Temple-Inland.

**Lackey's Profitable Trading in Temple-Inland Common Stock**

23. After the April 30<sup>th</sup> charity event, between May 2, 2011 and June 1, 2011, Lackey made multiple purchases of Temple-Inland common stock totaling 9,000 shares in two accounts that were in his name and under his control.

24. On June 7, 2011, immediately after the public announcement of the takeover bid, Lackey sold all 9,000 Temple-Inland shares for a realized profit of \$56,533.89.

**Lackey Breached His Duty to International Paper and Violated International Paper's Policies**

25. As an employee at International Paper, Lackey owed his employer a fiduciary duty, or an obligation arising from a relationship of trust and confidence, to maintain the confidentiality of International Paper's information regarding its strategic transactions and to refrain from misappropriating information regarding International Paper's potential acquisition targets for his own personal profit.

26. During the relevant time period, International Paper had policies and procedures in place imposing an obligation on its employees to maintain the confidentiality of its information and prohibiting its employees, including Lackey, from trading on material, non-public information. In particular, International Paper's insider trading policy prohibited its employees from buying or selling securities of International Paper, or any other company, if they became aware of material, non-public information about that company obtained in the course of their employment with International Paper.

27. By misappropriating International Paper's confidential information regarding its interest in acquiring Temple-Inland and then trading in Temple-Inland stock based on this material, non-public information, Lackey breached his duty to International Paper as well as International Paper's stated policies and procedures regarding confidentiality and securities trading.

28. At the time of each illegal trade identified in this Complaint, the misappropriated information was confidential and non-public.

29. The misappropriated information was material and there is a substantial likelihood that the disclosure of the misappropriated information would have been viewed by a reasonable investor as having significantly altered the total mix of information available to investors.

30. Lackey traded on the basis of this material, non-public information.

31. At all times relevant to this Complaint, Lackey acted knowingly and/or recklessly.

**Lackey Traded in Connection With a Tender Offer  
While in Possession of Material Non-Public Information**

32. By May 2, 2011, the date on which Lackey began his illegal trading in Temple-Inland stock, one or more substantial steps had been taken to commence International Paper's tender offer for Temple-Inland.

33. When Lackey traded in Temple-Inland stock, he was in possession of material, non-public information relating to the tender offer for Temple-Inland securities and, as a Vice President and General Manager of International Paper, he knew or should have known that the information was non-public and had been acquired, directly or indirectly, from the party making the tender offer.

## COUNT I

### **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] promulgated thereunder**

34. Paragraphs 1 through 33 are realleged and incorporated by reference herein.

35. As more fully described in paragraphs 1 through 33 above, Lackey, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or by the use of the mails, directly or indirectly: employed devices, schemes, or artifices to defraud; 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 engaged in acts, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers and sellers of such securities.

36. Lackey acted with scienter.

37. By engaging in the foregoing conduct, Lackey 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 thereunder [17 C.F.R. §240.10b-5].

## COUNT II

### **Violations of 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**

38. Paragraphs 1 through 33 are realleged and incorporated by reference herein.

39. As more fully described in paragraphs 1 through 33 above, prior to the public announcement of International Paper's tender offer for Temple-Inland, and after a

substantial step or steps to commence the tender offer had been taken, Lackey purchased securities of Temple-Inland while in possession of material information relating to the tender offer, which information he knew or had reason to know was non-public and had been acquired directly or indirectly from a person acting on behalf of the offering person; the issuer of the securities sought or to be sought by the tender offer; or an officer, director, partner, employee, or other person acting on behalf of the offering person or such an issuer.

40. By reason of the foregoing, Lackey violated, and unless enjoined will continue to violate, Section 14(e) of the Exchange Act [15 U.S.C. §78n(e)] and Rule 14e-3 thereunder [17 C.F.R. §240.14e-3].

### **RELIEF REQUESTED**

**THEREFORE**, the Commission respectfully requests that this Court:

#### **I.**

Issue findings of fact and conclusions of law that the Defendant committed the violations charged and alleged herein.

#### **II.**

Grant an Order of Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant from violating 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].

**III.**

Grant an Order of Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant from violating Section 14(e) of the Exchange Act [15 U.S.C. §78n(e)] and Rule 14e-3 thereunder [17 C.F.R. §240.14e-3].

**IV.**

Issue an Order requiring Defendant to pay to the Commission disgorgement of his ill-gotten gains from his illegal conduct, gained directly or indirectly from the transactions complained of herein, together with prejudgment interest thereon.

**V.**

Order Defendant to pay to the Commission civil penalties pursuant to Section Section 21A of the Exchange Act [15 U.S.C. §78u-1].

**VI.**

Prohibit Defendant from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

**VII.**

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.

**VIII.**

Grant an Order for such further relief as the Court may deem appropriate.

Dated: March 11, 2013

Respectfully submitted,

s/ Dee A. O'Hair

DEE A. O'HAIR

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