

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	Hon. John P. Fullam
	:	Civil Action No.:
v.	:	04-CV-2742
	:	
MICHAEL L. HERSHEY, ROBERT D. LEAR,	:	
LANDIS ASSOCIATES, LLC, and	:	
TREMONT MEDICAL, INC.,	:	
	:	
Defendants.	:	

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**COMPLAINT**

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

**SUMMARY**

1. Defendant Michael L. Hershey (“Hershey”), individually and through Defendant Landis Associates, LLC (“Landis”), a registered investment adviser, egregiously misused client funds and breached his fiduciary duty to a wealthy client (the “Defrauded Client”) by investing that client’s funds in a privately held “start up” company, Defendant Tremont Medical, Inc. (“Tremont”), of which Hershey was a director and shareholder. Hershey continued to make these investments long after it was clear that the Defrauded Client’s account was Tremont’s only source of capital and that these investments were worthless.

2. Between 1998 and 2001, Hershey used his full discretion over the Defrauded Client’s investments to authorize undocumented, uncollateralized, and

interest-free cash advances of \$8.1 million, which were falsely characterized as purchases of Tremont common stock, in addition to authorizing cash advances to Tremont on an open-ended line of credit totaling \$4.5 million, which transactions were effected for Tremont through its Chief Financial Officer, Robert D. Lear (“Lear”).

3. As a result, the Defrauded Client’s managed account was overvalued by more than \$30 million, falsely representing ownership of approximately 9.9 million shares of Tremont stock, when, in fact, the Defrauded Client owned only 1.9 million shares of Tremont stock, all of which was purchased prior to 1998, and all of which was worthless.

4. Because Hershey liquidated many of the Defrauded Client’s other investments to make cash available for transfer to Tremont, by the time the Defrauded Client’s account with Landis and Hershey was closed in June 2001, the Defrauded Client’s account had lost nearly 70% of its value and the Defrauded Client had lost all of the money that Hershey invested in Tremont.

5. By knowingly or recklessly engaging in the conduct described in this Complaint, defendants Landis, Hershey, Tremont, and Lear violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. § 77q(a); 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. § 240.10b5, thereunder.

6. By engaging in the conduct described in this Complaint defendants Landis and Hershey have violated, and defendants Tremont and Lear have aided and abetted violations of, and unless restrained and enjoined will continue to violate or aid and abet

violations of, Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

7. By engaging in the conduct described in this Complaint defendant Landis has violated, and defendants Hershey, Tremont, and Lear have aided and abetted violations of, and unless restrained and enjoined will continue to violate or aid and abet violations of, Section 204 of the Advisers Act, 15 U.S.C. § 80b-4, and Rules 204-2(a)(3) and (7), 17 C.F.R. § 275.204-2(a)(3) and (7), thereunder.

### **JURISDICTION AND VENUE**

8. The Commission brings this action pursuant to Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), Sections 21(d) and (e) of the Exchange Act, 15 U.S.C. §§ 78u(d) and (e), and Sections 209(d) and (e) of the Advisers Act, 15 U.S.C. §§ 80b-9(d) and (e), to enjoin such acts, transactions, practices, and courses of business; obtain disgorgement and civil penalties; and for other appropriate relief.

9. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and Section 214 of the Advisers Act, 15 U.S.C. § 80b-14.

10. Certain of the acts, transactions, practices, and courses of business constituting the violations alleged herein occurred within the Eastern District of Pennsylvania and elsewhere, and were effected, directly or indirectly, by making use of the means and instruments of transportation or communication in interstate commerce, or the means and instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange.

## DEFENDANTS

11. **Landis Associates, LLC** is a Pennsylvania limited liability company with its principal place of business in Kennett Square, Pennsylvania. Landis has been registered with the Commission as an investment adviser since 1986 and, at all relevant times, Landis served as investment adviser to the Defrauded Client.

12. As of March 2003, Landis had assets under management of approximately \$97 million, approximately \$69 million of which was attributable to the Henlopen Fund, a registered investment company founded by Hershey in 1992. Although Landis had approximately 4 clients in addition to the Defrauded Client, the Defrauded Client's assets represented the majority of private client funds under management.

13. **Michael L. Hershey**, age 66, resides in Kennett Square, Pennsylvania, and is the founder, president, and 90% owner of Landis. Hershey also serves on the Board of Trustees of the Henlopen Fund and is responsible for its daily management. Hershey's financial relationship with the Defrauded Client dates to 1975 and, at all relevant times, Landis and Hershey served as financial adviser to the Defrauded Client.

14. Hershey also served on the Board of Directors of Tremont Medical, Inc. and maintained a financial interest in the company during the time of the Defrauded Client's investments. Hershey resigned from Tremont's Board in the summer of 2001, after the Defrauded Client's account with Hershey and Landis was terminated.

15. **Tremont Medical, Inc.** was incorporated in Delaware in 1992 and is a privately owned corporation with its principal place of business in Aston, Pennsylvania. Tremont designs, manufactures, and sells mobile point-of-care computers and workstations that use wireless technology to provide patient information to medical

professionals. According to its most recent audited financial statements, from 2000, Tremont had negative working capital, a shareholders' deficit of almost \$12 million, and a loss of more than \$6 million.

16. **Robert D. Lear**, age 58, resides in Warrington, Pennsylvania, and was the Chief Financial Officer of Tremont from 1997 to 2002.

### **BACKGROUND**

17. Hershey and the Defrauded Client first became acquainted in the late 1950's. Their financial relationship dates to 1975, when Hershey formed Landis and first began serving as the Defrauded Client's investment adviser.

18. Over time, the Defrauded Client's investments under Hershey's management appreciated substantially and, by 1990, Hershey was managing investments for the Defrauded Client valued at approximately \$30 million, in a well-diversified portfolio comprised of over 80 publicly traded stocks with a market value of approximately \$25 million, shares or units of the Henlopen Fund valued at \$1.7 million, and a few private investments valued at \$2.5 million.

19. On Hershey's recommendation, the Defrauded Client established a trust account, for Hershey to manage, with approximately \$15 million of his assets (the "Trust Account"). According to the written agreements, Landis was the adviser to the Trust Account and the Defrauded Client was the trustee. Landis was paid a fee of one percent of the market value of assets under management. A bank served as the Trust Account custodian (the "Bank").

20. The investment advisory agreement between Landis and the Defrauded Client gave Landis full discretion to direct the Defrauded Client's investments. By

separate agreement, the Defrauded Client appointed Landis as agent and attorney-in-fact on behalf of the Trust Account. Through these two agreements, Landis and Hershey had complete authority to make and execute investments for the Defrauded Client's Trust Account.

21. In the late 1990's, the Defrauded Client's health was deteriorating and, in February 2001, his domestic partner ("Defrauded Client's Partner") assumed responsibility for the Defrauded Client's financial affairs and was named as successor trustee of the Trust Account.

### **The Initial Investments in Tremont**

22. In 1994, Hershey recommended an initial investment in Tremont.

23. Based on the Tremont business plan, the Defrauded Client and Hershey decided that Tremont would be a good investment. Hershey had agreed not to charge any fees on private investments made for the Defrauded Client's account, since there was no reliable market value of such investments and, so, Hershey would wait to receive compensation for the investment until Tremont went public.

24. Shortly after the first investment of the Defrauded Client's money into Tremont in November 1994, Hershey accepted a position on Tremont's Board of Directors and Tremont issued to him 40,000 shares of common stock. During the course of Hershey's long tenure on the Tremont Board, additional common stock, stock options, and warrants were awarded to Hershey.

25. During the period from November 1994 to 1998, \$6 million of the Defrauded Client's money was invested in Tremont through a series of purchases of common and preferred stock. In addition, during this time, the Defrauded Client lent

Tremont \$900,000. Other than a small amount of funding from outside sources obtained in 1998, Hershey's infusions of the Defrauded Client's money represented Tremont's sole source of capital.

26. Significantly, in 1995, Hershey advised the Tremont CEO that the Defrauded Client was "invested up to his comfort level." However, Tremont's CEO communicated to Hershey the company's continuing need for cash, and Hershey made additional investments of the Defrauded Client's money in Tremont.

27. Again, in 1998, Hershey advised Tremont's CEO that further substantial investment from the Defrauded Client's account was unlikely. However, Tremont's CEO continued to seek additional funding for his cash-starved company. Inexplicably, these requests for cash were met with additional investment in Tremont by Hershey from the Defrauded Client's account.

28. The transactions from the Trust Account to Tremont during this 1994-1998 time period are all well documented. Stock was purchased using stock subscription agreements that listed the amount of stock purchased and the prices, and these purchases ultimately were reflected by stock certificates. All of these 1994-1998 transactions were recorded in Tremont's stock ledger.

29. The 1994-1998 transactions also were recorded by the Bank that serviced the Trust Account, on the Trust Account's monthly statements, as purchases of stock at the prices set forth in the subscription agreements.

30. The statements, reflecting all of the transactions in the Trust Account, were sent, by the Bank, to both the Defrauded Client's accountant and to Hershey.

31. Internally, these 1994-1998 transactions were generally recorded as stock purchases on the Landis general ledger.

32. In terms of reporting to his client, Hershey's practice was to incorporate the Bank's Trust Account statements into the Landis monthly reports, by attaching a cover sheet, on Landis letterhead, that highlighted only certain, selected holdings. Information about the holdings featured in the Landis cover sheet also was included in the Bank's far more complete Trust Account statements, and Hershey used the Bank's statements as a resource and for validation of his own Landis statement.

33. Finally, the loans made to Tremont from the Defrauded Client's funds were evidenced by demand notes bearing interest rates ranging between 6.8% and 7%. When the loans were made, Tremont specifically advised the Bank that the transaction was for a loan, rather than a purchase of stock, and the Bank wired the funds to Tremont upon receipt of a promissory note. These transactions were recorded by the Bank in the Trust Account as "Demand Notes," and that is also what was reflected on the Trust Account statements.

### **The Fraudulent Investments**

34. Despite these constant infusions of the Defrauded Client's money, Tremont remained cash starved. For the year ended December 31, 1999, Tremont had a net loss of \$3.5 million; at the end of 2000, it had a net loss of \$6 million.

35. Given Tremont's dire financial circumstances, in one memorandum, dated July 1998, a Tremont director straightforwardly questioned whether "it made sense for [the Defrauded Client] to continue to invest money given the financial condition of Tremont."

36. Hershey was fully aware of Tremont's poor financial condition; however, he never disclosed this circumstance to the Defrauded Client, and Tremont's poor financial condition did not stop Hershey and Landis from continuing to use their discretion and authority to invest the Defrauded Client's money in this wholly unprofitable venture.

37. By 1997 and 1998, as Tremont was attempting to raise capital through a private offering of preferred stock.

38. It is believed and, therefore, averred that the Defrauded Client's substantial holdings of debt and equity presented a problem for the company: although Tremont continued to need and seek cash from the Defrauded Client, through Hershey and Landis, if Tremont were to issue more stock to him, it could result in pricing and dilution problems for its planned equity offering; and if it were to issue more debt, that would have a negative impact on Tremont's financial statements, which could turn away potential investors.

39. In order to continue to use the Defrauded Client's money to keep the company afloat, Hershey and Tremont changed the structure of future investments to straight cash advances. Hershey concealed this change in structure from the Defrauded Client, by, among other things, sending the Defrauded Client monthly account statements that Hershey knew to be false. Lear assisted Hershey in this scheme by failing to disclose the true nature of the transactions to the Bank.

40. In July 1998, Hershey began to increase the amount and frequency of investments in Tremont, at times authorizing bi-weekly transfers of cash from the Defrauded Client's Trust Account.

41. To raise cash for these transfers, Hershey sold off many of the Defrauded Client's long-term assets, blue chip stocks, and shares of the Henlopen Fund held in the Trust Account.

42. Between July 1998 and July 2000, Hershey authorized forty-six transfers of the Defrauded Client's money to Tremont, totaling \$8.1 million. These transfers were unsecured advances of money for which Tremont issued neither shares of stock nor promissory notes.

43. In contrast to prior transactions, these transactions were made without adequate documentation to properly memorialize them: they were identified in Tremont's records as unstructured cash advances; they were recorded in the Bank's records and, thus, on the Defrauded Creditor's account statements, as purchases of common stock; and, although Landis represented these transactions as purchases of common stock on its monthly statements sent to the Defrauded Client, internally, Landis recorded these transactions as cash transfers.

44. In or before July 1998, Hershey authorized Lear, Tremont's CFO, to contact the Bank directly to request cash from the Defrauded Client's Trust Account, and these forty-six transfers were initiated with false wire instructions sent by Lear to the Bank, requesting the release of funds from the Defrauded Client's Trust Account. The wire instructions documented authority from Hershey and falsely claimed that the sums requested were for the purchase of Tremont common stock, the details of which remained to be finalized.

45. Upon receipt of Lear's instructions and authorization from Hershey as to the amounts, the Bank processed these transactions as purchases of Tremont common

stock, recording them as such in the Defrauded Client's Trust Account. Thus, on the Trust Account's monthly statements, each of these transactions was reflected as a purchase of common stock.

46. Lear's false instructions regarding these transactions, and the Bank's recording of these transactions in reliance on those instructions, rendered false and misleading the account statements for the Defrauded Client's Trust Account. By way of example, the Trust Account statement for November 2000 showed that the account held approximately 10 million shares of Tremont common stock with a market value of approximately \$33 million. In fact, the Defrauded Client's true stock ownership was 1.9 million shares of Tremont common stock, with no demonstrable market value.

47. When employees of the Bank inquired of Lear, periodically, regarding the stock certificates and transaction details, Lear responded that the documentation was forthcoming. It never arrived.

48. The erroneous Trust Account statements, which were routinely sent to Hershey by the Bank, conflicted with Tremont's records, which Hershey also received, since he was a Board member. Tremont's records reflected these transactions not as common stock purchases but, rather, as unstructured cash advances.

49. Landis's own records also conflicted with Lear's false wire instructions and with the Trust Account statements it was receiving from the Bank. Landis recorded these transactions as transfers of cash, and Hershey instructed his staff to reconcile the cash component of each transaction recorded in Landis's internal account records with the corresponding cash component on the Bank's Trust Account statements.

50. Notwithstanding Landis's internal accounting of these transactions and Hershey's own actual knowledge that these transactions were unstructured cash advances, Hershey continued to incorporate the Bank's, now erroneous, Trust Account statements into the monthly statements he sent to the Defrauded Client. Thus, each month throughout this period, Hershey sent his client an account statement that Hershey knew to be false, since it reflected substantial additional "purchases" of Tremont stock – "purchases" Hershey knew to be nonexistent.

51. Because Tremont could not complete its financial statements due to the unstructured nature of the transactions, by April 2000, Tremont and Hershey were exploring ways to structure the investments of the Defrauded Client's money. They decided to capture the cash advances in two separate promissory notes that would operate retroactively.

52. With the unanimous consent of Tremont's Board of Directors, Tremont issued two promissory notes to the Defrauded Client. The first note was unsecured, bore an interest rate of 5.74%, was backdated to December 31, 1999, and captured all of the cash advances made to Tremont up until that date. The second note was structured as an open-ended line of credit, also unsecured, and was backdated to January 1, 2000. Both notes were due and payable on January 1, 2002.

53. Hershey signed both of these Tremont notes on behalf of the Defrauded Client.

54. Thereafter, in July 2000, Lear changed his instructions to the Bank; when seeking the release of funds, he now advised: "This investment in Tremont is made in

accordance with the terms and conditions of the convertible promissory note dated January 1, 2000.”

55. At the time, though, Lear did not advise the Bank of the existence of the first note backdated to December 31, 1999, nor did he provide the Bank with copies of the notes, nor did he make any arrangement to correct the prior instructions, which had resulted in the recording of all cash advances since July 1998 as stock purchases.

56. In November 2000, the Bank, once again, requested from Lear the Tremont stock certificates relating to the prior cash advances. Only then, did Lear specifically advise of the change in instruction and provide copies of the notes to the Bank.

57. Thus, as late as June 2001, the Defrauded Client’s Trust Account statements were incorrect and continued to improperly reflect the assets held in the Trust Account, incorrectly listing the market value of these assets at over \$43 million, nearly 85% of which represented investments in Tremont, which had no discernable market value.

58. Although he knew this information to be incorrect, Hershey presented these false statements as fact in the Landis account statements, which he sent every month to the Defrauded Client.

59. By June 2001, Hershey had authorized investments of the Defrauded Client’s money in Tremont totaling almost \$19 million. Prior to July 1998, \$6 million dollars had been invested. From July 1998 forward, there were \$12.6 million in fraudulent transactions: \$8.1 million of unstructured cash advances, now recharacterized

and captured in two backdated promissory notes; and \$4.5 million in additional funds advanced pursuant to the open-ended line of credit.

60. As a result, Hershey had reduced the Defrauded Client's \$25 million diversified portfolio, previously comprised of over 80 stocks and other investments, to just seven holdings with a market value of approximately \$6 million, representing more than a 70% reduction in the value of the Defrauded Client's Trust Account.

61. As the Defrauded Client's health began to worsen in the fall of 2000, the Defrauded Client's Partner became more involved in the Defrauded Client's financial affairs, assuming responsibility for the management of the Trust Account, as successor trustee, in February 2001.

62. Because the account statements from the Bank and from Landis falsely reflected stock holdings with a market value of over \$43 million, the Defrauded Client's Partner did not know the truth about the condition of the Trust Account. Notwithstanding his obligations to his client, Hershey did not tell the Defrauded Client's Partner the truth about the Tremont investments or the financial condition of the Trust Account.

63. In March 2001, the Defrauded Client's Partner received a tax bill reflecting a tax liability of \$500,000. Thereafter, the Defrauded Client's Partner learned that Hershey had liquidated almost all of the Defrauded Client's blue chip stocks and sold off much of his holdings in the Henlopen Fund, resulting in an enormous capital gains tax liability to the Defrauded Client.

64. The Defrauded Client's Partner inquired further, ordering copies of the financial statements and attending a series of meetings in March and April 2001, with

Hershey and the Bank, during which time the Defrauded Client's Partner never was told that the account statements had been incorrect for more than two years.

65. In June 2001, after examination of the Defrauded Client's assets by a new financial advisor, the Defrauded Client's Partner was advised of the unlimited line of credit extended to Tremont. On June 8, 2001, the Defrauded Client's Partner instructed Hershey not to wire any more cash to Tremont and, on June 21, 2001, Hershey and Landis were fired.

66. Hershey never disclosed to the Defrauded Client or to the Defrauded Client's Partner what had actually occurred in the Defrauded Client's Trust Account.

### **FIRST CLAIM FOR RELIEF**

#### **Violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder**

67. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 66, inclusive, as if the same were fully set forth herein.

68. From at least July 1998 and continuing through June 2001, Landis, Hershey, Tremont, and Lear, knowingly or recklessly, in connection with the offer, purchase, or sale of securities, directly or indirectly, by use of the means or instruments of transportation or communication in interstate commerce, or the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

(a) employed devices, schemes or artifices to defraud;

(b) obtained money or property by means of, or 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; and

(c) engaged in acts, transactions, practices, or courses of business that operated as a fraud or deceit upon offerees, purchasers, and prospective purchasers of securities.

69. By engaging in the foregoing conduct, Landis, Hershey, Tremont, and Lear violated Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b); and Rule 10b-5, 17 C.F.R. § 240.10b5, thereunder.

## **SECOND CLAIM FOR RELIEF**

### **Violations of Sections 206(1) and 206(2) of the Advisers Act**

70. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 69, inclusive, as if the same were fully set forth herein.

71. From at least July 1998 and continuing through June 2001, defendants Landis and Hershey made use of the means and instrumentalities of interstate commerce and of the mails while acting as investment advisers.

72. From at least July 1998 and continuing through June 2001, as a direct result of the conduct alleged herein, defendants Landis and Hershey, aided and abetted by Tremont and Lear, directly or indirectly, by use of the mails and means and

instrumentalities of interstate commerce, employed devices, schemes, and artifices to defraud investment advisory clients, and engaged in transactions, practices and courses of business which operated as a fraud and deceit upon such clients.

73. By reason of the foregoing, defendants Landis and Hershey have violated, and defendants Tremont and Lear have aided and abetted violations of, Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

### **THIRD CLAIM FOR RELIEF**

#### **Violations of Section 204 of the Advisers Act and Rules 204-2(a)(3) and (7) thereunder**

74. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 73, inclusive, as if the same were fully set forth herein.

75. From at least July 1998 and continuing through June 2001, defendant Landis, in connection with its business as an investment adviser, failed to make and keep true, accurate, and current, certain books and records relating to its investment advisory business, in violation of Section 204 of the Advisers Act, and Rules 204-2(a)(3) and (7) thereunder.

76. As part of and in furtherance of this conduct, defendant Landis failed to make and keep true, accurate, and current books and records of the Trust Account, including confirmations of all trades and transactions made therein; failed to obtain and keep all records involving the investments made in Tremont through the Trust Account, including the wire transmittal requests issued by Lear and Tremont that were authorized and approved by Hershey, as well as any other documentation to substantiate the transactions made in the Trust Account, and the valuations of those transactions.

77. By reason of the foregoing, defendant Landis has violated, and defendants Hershey, Tremont, and Lear have aided and abetted violations of, Section 204 of the Advisers Act, 15 U.S.C. § 80b-4, and Rules 204-2(a)(3) and (7), 17 C.F.R. § 275.204-2(a)(3) and (7), thereunder.

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

**I.**

Permanently restrain and enjoin defendants Landis, Hershey, Tremont, and Lear, and their agents, officers, servants, employees, attorneys, and those persons in active concert or participation with them, directly or indirectly, singly or in concert, from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b); and Rule 10b-5, 17 C.F.R. § 240.10b5, thereunder.

**II.**

Permanently restrain and enjoin defendants Landis and Hershey and their agents, officers, servants, employees, attorneys, and those persons in active concert or participation with them, directly or indirectly, singly or in concert, from violating, and defendants Tremont and Lear and their agents, officers, servants, employees, attorneys, and those persons in active concert or participation with them, directly or indirectly, singly or in concert, from violating or aiding and abetting violations of, Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

### **III.**

Permanently restrain and enjoin defendant Landis and its agents, officers, servants, employees, attorneys, and those persons in active concert or participation with them, directly or indirectly, singly or in concert, from violating, and defendants Hershey, Tremont, and Lear and their agents, officers, servants, employees, attorneys, and those persons in active concert or participation with them, directly or indirectly, singly or in concert, from violating or aiding and abetting violations of, Section 204 of the Advisers Act, 15 U.S.C. § 80b-4, and Rule 204-2(a), 17 C.F.R. § 275.204-2(a), thereunder.

### **IV.**

Order defendants Landis, Hershey, Tremont, and Lear to disgorge any and all ill-gotten gains, together with prejudgment interest, derived from the activities set forth in this Complaint, in accordance with a plan of disgorgement acceptable to the Court and to the Commission.

### **V.**

Order defendants Landis, Hershey, Tremont, and Lear to pay civil penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e), in an amount to be determined by the Court.

**VI.**

Pursuant to Section 308 of the Sarbanes-Oxley Act of 2002, enter an order providing that the amount of civil penalties ordered against Landis, Hershey, Tremont, and Lear be added to and become part of a disgorgement fund for the benefit of the victim of the violations alleged herein.

**VII.**

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

Respectfully submitted,

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Attorneys for Plaintiff

**SECURITIES AND EXCHANGE  
COMMISSION**

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Dated: June \_\_\_, 2004