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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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SECURITIES AND EXCHANGE COMMISSION,)	DISTRICT COURT
)	DISTRICT OF MASS.
)	
Plaintiff,)	
)	
v.)	C.A. No. _____
)	
)	
THOMAS J. BUCKNUM,)	
)	
Defendant.)	

06-10065 PBS

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") alleges the following against defendant Thomas J. Bucknum ("Bucknum"):

SUMMARY

1. This enforcement action involves Bucknum's insider trading in the securities of Biogen Idec Inc. ("Biogen"), a publicly-traded biotechnology company headquartered in Cambridge, Massachusetts. During the relevant period, Bucknum was Biogen's executive vice president and general counsel.

2. At approximately 8:45 a.m. on February 18, 2005, Bucknum had a telephone conversation with his broker in which he told the broker that he wanted to exercise options to purchase 89,700 shares of Biogen stock and sell the shares from that exercise. As a result of that conversation, the broker understood that Bucknum wanted to sell the shares at a price of \$68 per share or better.

3. At approximately 12:00 p.m. that day, Bucknum attended a meeting at which he and other senior officers of Biogen learned that a patient participating in a clinical trial of Biogen's multiple sclerosis drug had been diagnosed with a rare and fatal brain disease, and that another patient also may have contracted the disease. This was material, nonpublic information which had a significant negative impact on Biogen's stock price when Biogen later announced it to the public.

4. At approximately 1:30 p.m. that day, Bucknum had a telephone conversation with his broker's associate in which he instructed the broker's associate to sell the 89,700 shares of his Biogen stock at the market price, which was then around \$67 per share. Bucknum's shares were sold shortly thereafter.

5. By virtue of his conduct, Bucknum engaged in fraud in the offer or sale of securities in violation of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], and in connection with the purchase or sale of securities in violation of Section 10(b) of the Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. Accordingly, the Commission seeks the following relief against Bucknum: (i) the entry of a permanent injunction prohibiting Bucknum from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and 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]; (ii) disgorgement of Bucknum's ill-gotten gains from his insider trading, plus prejudgment interest thereon; (iii) the imposition of a civil monetary penalty; and (iv) an order prohibiting Bucknum from acting as an officer or director of a publicly-traded issuer.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)] and Sections 21, 21A and 27 of the Exchange Act [15 U.S.C. §§ 78u, 78u-1, 78aa].

7. The Commission seeks a permanent injunction and disgorgement pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)]. The Commission seeks the imposition of a civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. The Commission seeks an order prohibiting Bucknum 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 with the Commission pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)], pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)].

8. Venue is proper in this District because Biogen, the publicly-traded issuer, is located here, and many of the activities alleged in this Complaint took place here.

9. In connection with the conduct described in this Complaint, Bucknum directly or indirectly made use of the mails or the means or instruments of transportation or communication in interstate commerce or the means or instrumentalities of interstate commerce or the facilities of a national securities exchange.

DEFENDANT AND RELEVANT ENTITY

10. **Bucknum**, age 59, was Biogen's general counsel from June 1999 through March 2005, when he resigned. He is currently a resident of Centerville, Delaware, but was a resident of Boston, Massachusetts during the relevant period.

11. **Biogen** is a biotechnology company with headquarters in Cambridge, Massachusetts. Biogen's common stock is (and was during the relevant period) registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 78l(g)] and is traded on the NASDAQ National Market System.

STATEMENT OF FACTS

Background Regarding Bucknum's Transaction

12. At approximately 8:45 a.m. on February 18, 2005, before the opening of the market, Bucknum had a telephone conversation with his stock broker. Bucknum told the broker that he wanted to exercise options to purchase 89,700 shares of Biogen stock and sell the shares from that exercise. As a result of that conversation, the broker understood that Bucknum wanted to sell the shares at a price of \$68 per share or better. Biogen's common stock had closed at a price of \$67.57 per share on the previous day.

13. Biogen's trading policies and procedures required that Bucknum obtain clearance from Biogen's legal department before trading Biogen stock. Following his conversation with Bucknum, the broker instructed his associate to contact Biogen's legal department, obtain the necessary clearance and complete Bucknum's transaction.

14. The broker's associate received clearance from Biogen's legal department for Bucknum's transaction at approximately 10:00 a.m. Within the next hour, the broker's associate

telephoned Bucknum in an attempt to verify the details of the transaction before completing it. The broker's associate did not reach Bucknum but left a message for him.

Bucknum Learns Material, Nonpublic Information

15. At approximately 12:00 p.m. that day, Bucknum and other Biogen senior officers attended a meeting at which they learned that a patient participating in a clinical trial of Biogen's multiple sclerosis drug, Tysabri, had been diagnosed with progressive multifocal leukoencephalopathy ("PML"), a rare and often-fatal brain disease, and that another patient participating in a Tysabri clinical trial had an unconfirmed PML diagnosis. Various Biogen medical, regulatory and drug safety personnel attended this meeting.

16. The information regarding the confirmed and unconfirmed PML diagnoses was material, nonpublic information that was likely to have a negative impact on Biogen's stock price. The information in fact did have such an impact after Biogen disclosed it publicly and suspended the marketing of Tysabri ten days later.

17. Immediately following the noon meeting, which ended at approximately 1:00 p.m., Bucknum met with Biogen's chief executive officer and executive chairman, and they decided to schedule an emergency telephonic meeting of Biogen's Board of Directors for later that day to inform the Board of the confirmed and unconfirmed PML diagnoses.

Bucknum Sells Biogen Stock

18. At approximately 1:30 p.m., Bucknum returned to his office and telephoned the broker's associate, and they spoke for a few minutes. The broker's associate told Bucknum that he had received clearance from Biogen for Bucknum's transaction and that the stock was trading near \$68. Bucknum then instructed the broker's associate to sell his shares at the market price.

19. The broker's associate filled out an order ticket for the sale of Bucknum's 89,700 shares of Biogen stock at the market price, time-stamped the order ticket at 1:37 p.m. and sent the order ticket to the trading desk at the same time.

20. The sale of Bucknum's 89,700 shares of Biogen stock occurred shortly after 2:00 p.m. The average sale price of the shares was \$67.12 per share. Bucknum's gross profit on his transaction was \$1,938,465.

**Biogen Publicly Announces the Information
and Biogen's Stock Price Declines**

21. Ten days later, prior to the opening of the market on February 28, 2005, Biogen and its development partner announced that they were suspending the marketing of, and all clinical trials involving, Tysabri, because of the confirmed and unconfirmed PML diagnoses.

22. On the trading day immediately preceding the announcement, the closing price of Biogen's stock was \$67.28 per share. The closing price of Biogen's stock on the day of the announcement was \$38.65 per share. This was a decline of \$28.63 per share, or more than 42%.

**Bucknum Breached his Fiduciary Duty to Biogen and its Shareholders
When He Sold Biogen Stock While in Possession of Material, Nonpublic Information**

23. At all relevant times, Bucknum was a Biogen insider who had a fiduciary duty to the company and its shareholders not to trade in the company's securities while in possession of material, nonpublic information about the company. Bucknum was subject to Biogen's insider trading policy, which prohibited trading on the basis of material, nonpublic information.

24. Bucknum violated his fiduciary duty to Biogen and its shareholders when he instructed his broker to sell Biogen stock after learning material, nonpublic information concerning the confirmed and unconfirmed PML diagnoses.

25. Bucknum knew or was reckless in not knowing that when he sold Biogen stock while in possession of material, nonpublic information, he breached a duty that he owed to Biogen and its shareholders.

CLAIMS FOR RELIEF

First Claim for Relief **(Violation of Section 17(a) of the Securities Act)**

26. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 25 of the Complaint as if set forth fully herein.

27. As set forth above, Bucknum obtained material, nonpublic information about Biogen and then sold shares of Biogen stock while in possession of that information in breach of his fiduciary duty to Biogen and its shareholders. Bucknum profited by selling his Biogen stock before Biogen's stock price declined following the public disclosure of the information.

28. By reason of the foregoing, Bucknum, directly or indirectly, acting intentionally, knowingly or recklessly, by use of the means or instruments of transportation or communication in interstate commerce or of the mails, in the offer or sale of securities: (a) employed a device, scheme or artifice to defraud; (b) obtained money or property by means of an untrue statement of material fact or omitting to state a material fact necessary to make the statement made, in light of the circumstances under which it was made, not misleading; or (c) engaged in a transaction, practice or course of business which operated as a fraud or deceit upon purchasers of Biogen stock.

29. As a result, Bucknum violated Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

Second Claim for Relief
(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder)

30. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 25 of the Complaint as if set forth fully herein.

31. As set forth above, Bucknum obtained material, nonpublic information about Biogen and then sold shares of Biogen stock while in possession of that information in breach of his fiduciary duty to Biogen and its shareholders. Bucknum profited by selling his Biogen stock before Biogen's stock price declined following the public disclosure of the information.

32. By reason of the foregoing, Bucknum, directly or indirectly, acting intentionally, knowingly or recklessly, by use of the means or instrumentalities of interstate commerce or of the mails or of the facilities of a national securities exchange, in connection with the purchase or sale of securities: (a) employed a device, scheme or artifice to defraud; (b) made an untrue statement of material fact or omitted to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not misleading; or (c) engaged in an act, practice or course of business which operated as a fraud or deceit upon other persons, including purchasers of Biogen stock.

33. As a result, Bucknum violated 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].

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that this Court:

- A. Enter a permanent injunction prohibiting Bucknum from directly or indirectly violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and 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. Require Bucknum to disgorge the ill-gotten gains from his insider trading, plus prejudgment interest thereon;
- C. Order Bucknum to pay a civil monetary penalty;
- D. Prohibit Bucknum 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 with the Commission pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)];

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

F. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,



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