

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
DIVISION

Case No. ~~00-9109~~

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

KEITH GREENBERG, and
COYOTE CONSULTING AND
FINANCIAL SERVICES, LLP,

Defendants.

CIV - HURLEY

MAGISTRATE JUDGE
LYNCH

Injunctive Relief Sought

RECEIVED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
JAN 11 2001
JL

COMPLAINT

The plaintiff, Securities and Exchange Commission (the "Commission"), for its
Complaint alleges as follows:

SUMMARY OF ALLEGATIONS

1. During the period 1995 through mid-1996, Keith Greenberg, a *de facto*
officer of US Diagnostic, Inc. ("USDL" or the "Company"), prepared or directed the
preparation of numerous Commission filings and public statements by USDL which
contained material omissions. USDL's public statements and Commission filings failed
to disclose that Greenberg served as a *de facto* officer of the Company, is a convicted
felon, and had been enjoined from violating the antifraud provisions of the federal

securities laws in a prior Commission enforcement action. Although Greenberg operated as an officer, was represented as an officer in certain documents disseminated to the press and investors, and held himself out as an officer, Greenberg either was not identified at all in filings with the Commission, or was identified merely as an employee of a consulting firm retained by the company to assist with acquisitions. Accordingly, USDL's public statements and filings with the Commission were materially false and misleading.

2. Coyote Consulting and Financial Services, LLP ("Coyote"), through the activities of Greenberg, (i) identified possible acquisitions for USDL, (ii) proposed financial arrangements involving the purchase, sale, or exchange of securities in connection with these acquisitions, and (iii) participated in negotiations on behalf of USDL regarding the structure of the transactions and securities to be issued in connection therewith. As payment for these services, Coyote received transaction-based compensation.

3. As described more fully below, Greenberg has 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)], and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. Greenberg also aided and abetted violations of, and unless restrained and enjoined will continue to aid and abet violations of, Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13].

4. As a result of the foregoing, Coyote has violated, and unless restrained and enjoined will continue to violate, Section 15(a)(1) of the Exchange Act [15 U.S.C. §

78o(a)(1)]. Greenberg, as a control person of Coyote, is liable for Coyote's violations of Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)].

JURISDICTION

5. 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(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and (e) and 78aa].

DEFENDANTS

6. Defendant Keith Greenberg, age 42, who resided in Palm Beach Gardens, Florida at all relevant times, co-founded USDL. He provided services to USDL through Coyote, until January 1997, when the Company terminated its relationship with him and Coyote as a result of the facts described below.

7. Coyote is a Florida limited liability company owned by Greenberg's wife and a family trust and was the vehicle through which Greenberg structured his employment arrangement with USDL.

RELEVANT ENTITIES

8. USDL is a Delaware corporation headquartered in West Palm Beach, Florida. It was the largest operator of outpatient diagnostic imaging centers in the country, with over 120 facilities in eighteen states. During all relevant times, its common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 781(g)] and traded on the NASDAQ National Market System. USDL filed a Form SB-2 Registration Statement with the Commission for an initial public offering, which went effective in October 1994.

FACTS

9. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 8 above.

Prior Proceedings Against Greenberg

10. On June 1, 1993, the Commission filed a Complaint against Greenberg alleging, as president and founder of a public company, Advanced Marketing Technology Corporation, he aided and abetted violations of the antifraud provisions of the federal securities laws.¹ Greenberg, without admitting or denying the allegations in the Complaint, consented to the entry, on June 8, 1993, of a permanent injunction enjoining him from future violations of the antifraud provisions. On August 4, 1994, in a related matter, Greenberg was charged by the U.S. Attorney for the Southern District of New York with conspiracy to commit mail fraud and defrauding the Internal Revenue Service.

11. On September 13, 1994, Greenberg pleaded guilty to one felony count of conspiracy to commit mail fraud and to defraud the Internal Revenue Service and one felony count of conspiracy to commit mail fraud. He was sentenced on August 29, 1995, to thirty days imprisonment, two years supervised release, and 300 hours of community service.

Greenberg Was a *De Facto* Officer of USDL

12. Greenberg and USDL's former CEO founded USDL in 1993 and shortly thereafter merged it with an inactive private company owned by USDL's former CEO and

¹ See SEC v. Leonard J. Messina, Keith G. Greenberg et al., 93 Civ. 3650 (PNL) (S.D.N.Y. filed June 1, 1993); Litig. Release No. 13920 (Dec. 30, 1993).

Greenberg's wife. Greenberg played an instrumental role in helping USDL raise initial capital.

13. From December 1994 through October 1996, Greenberg performed policy-making functions for USDL, had responsibility for matters with USDL usually associated with high-ranking corporate officers, served on USDL's executive committee, and received stock options in amounts similar to those of other officers of the Company.

14. From at least September 1995 through October 1996, in negotiations with diagnostic centers USDL was seeking to acquire, Greenberg repeatedly represented himself as an Executive Vice President of USDL and signed correspondence, letters of intent, and confidentiality agreements in that capacity. From at least early 1995 through late 1996, Greenberg distributed business cards that described him as Executive Vice President of USDL.

15. Greenberg conducted wide-ranging aspects of the Company's business, including: (i) interviewing, hiring, and terminating officers and other employees of the Company, (ii) negotiating leases for USDL's headquarters and at least one of its diagnostic centers, and (iii) reviewing and authorizing expense reports of Company employees.

16. During 1995 through May 1996, Greenberg assumed a major role in coordinating USDL's public relations strategy and was responsible for selection of, and liaison with, USDL's public relations firm. In this role, Greenberg (i) oversaw the preparation of press releases and other public statements about USDL, (ii) reviewed and edited scripts for USDL's television commercials, (iii) supervised the design of items to be printed with USDL's logo, (iv) edited USDL's press releases announcing its

acquisitions, and (v) represented USDL in interviews with the media set up by the public relations firms.

17. During 1995 and early 1996, USDL disseminated an “executive summary,” as part of a promotional kit for investors and the press, which described Greenberg as a co-founder and a consultant since the Company’s inception who “became full time Executive Vice President in December, 1994.”

18. In its 1995 Annual Report to Shareholders, USDL identified Greenberg as a co-founder of USDL and “Director of Marketing, Mergers and Acquisitions” and listed him as a member of USDL’s “Management Team.” Greenberg oversaw the drafting of this report.

19. USDL represented Greenberg to the press as an officer and/or co-founder of the Company and Greenberg was identified as such on numerous occasions in newspaper and magazine articles.

20. The materials, documents, and reports discussed above in paragraphs 17-19 purported to describe Greenberg’s employment history and professional experience yet failed to mention his criminal conviction and previous civil injunction.

USDL’s Consulting Agreement with Coyote

21. Greenberg organized Coyote in his wife’s name and used it as a vehicle for a purported consulting arrangement with USDL in an attempt to avoid disclosing his criminal conviction and civil injunction in USDL’s public filings.

22. Greenberg informed USDL that the Company could avoid disclosing his conviction if he provided the services as a consultant through Coyote. USDL entered into a consulting agreement with Coyote in December 1994, which provided that Coyote

would serve as an advisor and consultant on all financial-related matters and render advice on acquisition expansion and new business projects. In return, Coyote was to be paid \$125,000 per year and, through later amendments, a fee equal to two percent of the aggregate price of any entity acquired by USDL as a result of Coyote's introduction.

23. Through acquisition negotiations and transactions on behalf of USDL, Coyote acted as a broker without registering with the Commission. In connection with these acquisitions, Coyote, through Greenberg, (i) introduced the parties to each other, (ii) negotiated terms of the transactions involving, among other things, the purchase and sale of securities, and (iii) received transaction-based compensation for introducing entities to USDL. Coyote, through Greenberg, was responsible for at least thirty-two acquisitions by USDL.

24. As compensation for these brokerage services, Greenberg, through Coyote, received, among other things, over \$3.8 million in transaction-based compensation (including the base consulting fee) with respect to fifteen acquisitions.

The False SEC Filings

25. During the relevant time period, USDL filed its reports with the Commission as a "small business issuer" and was therefore subject to certain requirements of Regulation S-B. Specifically, Item 401 of Regulation S-B requires companies to disclose (i) the names, ages, positions, and business experience during the past five years of its officers and directors; and (ii) certain legal proceedings during the

past five years that are “material to an evaluation of the ability and integrity” of such persons including a conviction in a criminal proceeding.²

26. From December 1994 through the end of 1996, USDL failed to disclose in its filings with the Commission that Greenberg was an officer of USDL and that he had previously had legal problems. Specifically, USDL failed to identify Greenberg as an officer and failed to disclose Greenberg’s criminal and employment history in both its 1995 Form 10-KSB (filed March 15, 1996) and June 1996 Registration Statement on Form S-3 (filed June 6, 1996).

27. Greenberg, as a *de facto* officer, knew the filings were false and failed to act to correct them.

FIRST CLAIM

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

28. The Commission realleges and incorporates by reference Paragraphs 1 through 27 above.

29. The Securities Act and the Exchange Act prohibit use of a manipulative or deceptive device in connection with the purchase or sale of stock.

30. Greenberg prepared or directed the preparation of releases and statements disseminated to the public that failed to disclose that Greenberg was a convicted felon and an enjoined securities law violator. Many of these releases and statements identified Greenberg as an officer and co-founder of USDL and as a member of the Company’s

² Item 9 of Form 10-KSB and Item 10 on Form SB-2 require the information required by Item 401 of Regulation S-B.

“Management Team”, and purported to discuss his background, yet failed to provide material information regarding his criminal conviction and civil injunction.

31. USDL filed periodic reports and a registration statement with the SEC that failed to disclose Greenberg’s status as an officer of the Company and his criminal conviction and civil injunction. Greenberg knew these filings were false and failed to act to correct them when he had a duty to do so.

32. By reason of the foregoing, Greenberg directly violated 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 promulgated thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM

Violations of the Corporate Reporting Provisions

33. The Commission realleges and incorporates by reference Paragraphs 1 through 32 above.

34. The Exchange Act and the rules promulgated thereunder require every issuer of a security registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] to file periodic reports with the Commission. The Exchange Act and rules promulgated thereunder require that such reports be accurate.

35. USDL filed false and misleading annual reports, and a registration statement with the Commission that failed to disclose Greenberg’s role as an officer of USDL and failed to disclose that Greenberg is a convicted felon and had been previously enjoined from violating the securities laws. Greenberg, as a *de facto* officer, knew the filings were false and failed to act to correct them when he had a duty to do so.

36. By engaging in the activity discussed above, Greenberg willfully aided and abetted USDL's violations, and unless restrained will continue to willfully aid and abet violations, of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§240.12b-20, 240.13a-1, and 240.13a-13].

THIRD CLAIM

Coyote's Violations of Section 15(b)(6)(B)

37. The Commission realleges and incorporates by reference Paragraphs 1 through 36 above.

38. Defendant Coyote engaged in the business of effecting transactions in securities for the accounts of others and thus acted as a broker within the meaning of Section 3(a)(4) of the Exchange Act [15 U.S.C. § 78(c)(a)(4)] without registering with the Commission.

39. By reason of the foregoing, defendant Coyote violated Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

FOURTH CLAIM

Greenberg Is Liable as a Controlling Person for the Violations of Section 15(a) of the Exchange Act by Coyote

40. The Commission realleges and incorporates by reference Paragraphs 1 through 39 above.

41. Greenberg directly and indirectly controlled Coyote and thus was, and is, a controlling person of that entity within the meaning of Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)].

42. By reason of the foregoing, Greenberg is liable for the violations of Section 15(a) of Exchange Act [15 U.S.C. § 78o(a)] by Coyote.

PRAYER FOR RELIEF

43. Wherefore, the Commission respectfully requests that this Court:

I.

Permanently enjoin Greenberg from violating, directly or indirectly, 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 Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5], and from aiding and abetting violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13];

II.

Enter an Order, 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)], permanently barring Greenberg 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)];

III.

Permanently enjoin defendants Greenberg and Coyote from violating, directly or indirectly, Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)];

IV.

Order Greenberg and Coyote to pay disgorgement of all monies received in compensation for activities engaged in which violate Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)], plus prejudgment interest thereon;

V.

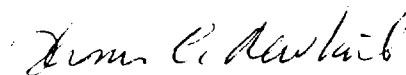
Order Greenberg and Coyote to pay a civil penalty under Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

VI.

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

Dated: December 20, 1999

Respectfully submitted,



Thomas C. Newkirk
A. Lynne Wiggins (Lead Trial Attorney)
James T. Coffman
David Frohlich
Britt K. Collins
Attorneys for Plaintiff
Securities and Exchange Commission
450 Fifth Street, NW
Washington, D.C. 20549-0801
(202) 942-4523 (Wiggins)

00-9109

JS 44
(Rev. 3/89)

CIVIL COVER SHEET

CIV. HURLEY

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

U.S. Securities & Exchange Commission

DEFENDANTS

Keith Greenberg, and

**MAGISTRATE JUDGE
LYNCH**

Coyote Consulting & Financial Services, LLP

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Palm Beach County, Florida

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

A-WPB/ocw 9109/Hurley/Lynch

(IN U.S. PL...)
NOTE: IN LAND CONDEMNATION CASES... TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Lynne Wiggins (See Attachment)
SEC
450 5th Street, NW, Washington, DC 20549-0808

ATTORNEYS (IF KNOWN)
[Redacted]

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Motor Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 161 Medicare Act <input type="checkbox"/> 162 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 163 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 164 Stockholders' Suits <input type="checkbox"/> 165 Other Contract <input type="checkbox"/> 166 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 318 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 348 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 358 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 368 Personal Injury — Product Liability <input type="checkbox"/> 369 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 410 Agriculture <input type="checkbox"/> 420 Other Food & Drug <input type="checkbox"/> 425 Drug Related Seizure of Property 21 USC 851 <input type="checkbox"/> 430 Liquor Laws <input type="checkbox"/> 440 R.R. & Truck <input type="checkbox"/> 450 Airline Regs. <input type="checkbox"/> 460 Occupational Safety/Health <input type="checkbox"/> 465 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 761 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 430 Copyrights <input type="checkbox"/> 435 Patent <input type="checkbox"/> 440 Trademark SOCIAL SECURITY <input type="checkbox"/> 451 HRA (1996) <input type="checkbox"/> 452 Black Lung (BCL) <input type="checkbox"/> 453 OWB/DWW (406(g)) <input type="checkbox"/> 454 SSDI Title XVI <input type="checkbox"/> 455 RSI (406(g)) FEDERAL TAX SUITS <input type="checkbox"/> 470 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 471 IRS — Third Party 28 USC 7639	<input type="checkbox"/> 460 Base Reapportionment <input type="checkbox"/> 461 Arbitration <input type="checkbox"/> 462 Banks and Banking <input type="checkbox"/> 463 Commercial Codes/Sec. <input type="checkbox"/> 464 Depository <input type="checkbox"/> 465 Federal Insurance and Credit Organizations <input type="checkbox"/> 466 Securities/Commodities/Exchange <input type="checkbox"/> 467 Securities Exchange Act <input type="checkbox"/> 468 Securities Exchange Act <input type="checkbox"/> 469 Securities Exchange Act <input type="checkbox"/> 470 Securities Exchange Act <input type="checkbox"/> 471 Securities Exchange Act <input type="checkbox"/> 472 Securities Exchange Act <input type="checkbox"/> 473 Securities Exchange Act <input type="checkbox"/> 474 Securities Exchange Act <input type="checkbox"/> 475 Securities Exchange Act <input type="checkbox"/> 476 Securities Exchange Act <input type="checkbox"/> 477 Securities Exchange Act <input type="checkbox"/> 478 Securities Exchange Act <input type="checkbox"/> 479 Securities Exchange Act <input type="checkbox"/> 480 Securities Exchange Act <input type="checkbox"/> 481 Securities Exchange Act <input type="checkbox"/> 482 Securities Exchange Act <input type="checkbox"/> 483 Securities Exchange Act <input type="checkbox"/> 484 Securities Exchange Act <input type="checkbox"/> 485 Securities Exchange Act <input type="checkbox"/> 486 Securities Exchange Act <input type="checkbox"/> 487 Securities Exchange Act <input type="checkbox"/> 488 Securities Exchange Act <input type="checkbox"/> 489 Securities Exchange Act <input type="checkbox"/> 490 Securities Exchange Act
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V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Violations of Sections 10(b), 15(a), and 13a of Securities & Exchange Act [15 U.S.C. §§ 78j(b), 78o(a), and 78m(a)]; Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 Injunction, Demand for Permanent Disgorgement, Penalties, and Damages. CHECK YES only if demanded in complaint: **JURY DEMAND:** YES NO

VIII. RELATED CASE(S) IF ANY

JUDGE _____ DOCKET NUMBER _____

DATE: December 18, 2000 SIGNATURE OF ATTORNEY OF RECORD: *A. Lynne Wiggins*

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING FFP _____ JUDGE _____ MAG. JUDGE _____

ATTACHMENT
Civil Cover Sheet

(c) Attorneys

United States Securities & Exchange Commission

A. Lynne Wiggins, Asst. Chief Litigation Counsel

Thomas C. Newkirk, Associate Director, Division of Enforcement

James T. Coffman, Asst. Director, Division of Enforcement

David Frohlich, Branch Chief, Division of Enforcement

Britt K. Collins, Senior Counsel, Division of Enforcement

JS 44 Reverse
(Rev. 3/99)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the **Clerk of Court for each** civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) (County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P, which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 I.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, ER.Cv.P

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.