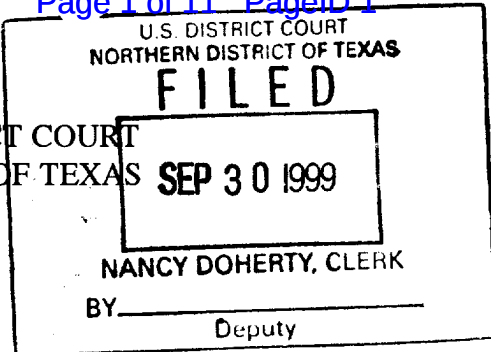


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ORIGINAL



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GLEN RICHARD LEBLANC
WILLIAM SCOT REINKE
TIMOTHY ALAN WILSON,

Defendants.

CIVIL ACTION NO.

3-99 CV 2222-D

COMPLAINT

Plaintiff, Securities and Exchange Commission ("Commission"), for its Complaint against defendants Glen Richard LeBlanc ("LeBlanc"), William Scot Reinke ("Reinke"), and Timothy Alan Wilson ("Wilson") (where appropriate collectively referred to as "Defendants") alleges and states that:

1. Defendants have engaged in unlawful insider trading by purchasing the common stock of Fay's, Inc., while in possession of material, non-public information concerning Penney's, Inc.'s potential acquisition of Fay's, Inc.. Accordingly, Defendants, directly or indirectly, have engaged in acts, practices and transactions which have constituted, constitute and will constitute violations of Section 10(b) of the Securities Exchange Act of 1934, as amended ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder.

2. The Commission, pursuant to authority conferred upon it by Sections 10(b) and 23(a) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78(w)], has promulgated Rule 10b-5 [17

C.F.R. § 240.10b-5], which rule was in effect at all times relevant herein and remains in effect.

3. Defendants, unless restrained and enjoined by this Court, will continue to engage in the acts, practices and courses of business alleged herein, and in acts, practices and courses of business of similar purport and object.

JURISDICTION AND VENUE

4. The Commission brings this action pursuant to authority conferred upon it by Section 21 of the Exchange Act [15 U.S.C. § 78u] to: a) permanently restrain and enjoin the Defendants from engaging in the acts, practices and courses of business alleged herein; b) obtain ancillary equitable relief from the Defendants in the form of an order of disgorgement of unjust profits; and c) impose a civil penalty against each of the Defendants.

5. This Court has jurisdiction and venue over this action pursuant to Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa].

6. The Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, of the mails or of the facilities of a national securities exchange, in connection with the acts, practices and courses of business alleged herein; certain activities occurred within the Northern District of Texas.

PARTIES

7. The Commission is the federal government agency created to enforce the federal securities laws for the protection of investors.

8. Defendant LeBlanc, age 39, is a resident of Coppell, Texas. At all relevant times herein, LeBlanc was a close friend of Reinke and a co-worker of Wilson.

9. Defendant Reinke, age 39, is a resident of Dallas, Texas.

10. Defendant Wilson, age 38, is a resident of Cedar Hill, Texas.

OTHER ENTITIES

11. Fay's, Inc. ("Fay's") was a New York corporation with its principal executive offices located in Liverpool, New York, and operated discount drug stores located primarily in upstate New York. At all relevant times herein, Fay's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange ("NYSE") until its acquisition by J.C. Penney Company, Inc., ("Penney's") was completed on October 14, 1996.

12. Penney's is a Delaware corporation with its principal executive offices located in Plano, Texas, and retails general merchandise through stores and a catalog operation. Penney's also operates various drug stores subsidiaries, including Thrift Drug, Inc. ("Thrift Drug"). Penney's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the NYSE.

13. Thrift Drug is a Delaware corporation with its headquarters in Pittsburgh, Pennsylvania, and an indirectly, wholly-owned subsidiary of Penney's. Thrift Drug operates a chain of approximately 650 drug stores predominately in Pennsylvania, New Jersey, and North Carolina.

STATEMENT OF FACTS

The Penney's-Fay's Merger Transaction

14. In mid-April 1996, Thrift Drug and Fay's representatives met to discuss the preliminary aspects of a possible merger or other corporate transaction and executed a confidentiality agreement on April 22, 1996. By April 30, 1996, Penney's became involved in

the merger negotiations and the formulation of an initial valuation of Fay's. Between May 15 and June 7, 1996, Thrift Drug and Penney's reviewed information provided by Fay's and its investment banker to develop an initial offer. On June 7, 1996, Penney's presented Fay's, subject to due diligence, an initial offer. On June 13, 1996, Penney's delivered to Fay's its initial due diligence request list. A week later, Penney's made a second offer to Fay's in a conference call.

15. On July 1, 1996, Fay's informed Penney's that it would accept consideration valued at \$12.75 per share of Fay's stock, and Penney's notified Fay's the following day that, subject to due diligence, it was prepared to go forward with the transaction at \$12.75. On July 9, 1996, Penney's sent Fay's a first draft of the merger and acquisition agreement letter.

16. On July 10, 1996, Fay's made its first public statement that it was in merger negotiations with Penney's and its Thrift Drug subsidiary and that it would make no further announcements until the deal was closed or abandoned. Following this announcement, the closing price of Fay's common stock increased 20 percent from \$8.625 on July 9, 1996, to \$10.375 for the two trading days following the announcement.

17. On August 6, 1996, Penney's announced that it was acquiring Fay's in a stock deal valued at \$272 million with each Fay's shareholder receiving \$12.75 in Penney's common stock for each share of Fay's.

**LeBlanc Misappropriates And Trades On Material,
Non-Public Information Concerning the Fay's Acquisition.**

18. On or shortly before June 10, 1996, LeBlanc misappropriated material, non-public information concerning Penney's negotiations with and planned acquisition of Fay's (the "Acquisition").

19. While in possession of this material, non-public information and for his own benefit, LeBlanc purchased on margin 1700 shares of Fay's common stock at an average price of \$7.785 per share between June 10, 1996, and July 5, 1996.

20. On Friday, August 2, 1996, LeBlanc sold his entire position in Fay's at \$10.75 per share. As a result of his unlawful purchases between June 10 and July 5, 1996, LeBlanc profited by \$4,250.

LeBlanc Tips Reinke

21. On or about June 10, 1996, LeBlanc tipped Reinke that Penney's was in negotiations to acquire Fay's and likely to be bought out. LeBlanc further informed Reinke about the circumstances of his misappropriation of the material, non-public information concerning the Acquisition.

22. On June 11, 1996, Reinke used two different accounts to make the first of several purchases of Fay's common stock based on LeBlanc's tip. Between June 11 and June 17, 1996, Reinke purchased 4000 shares of Fay's common stock at an average price of \$8.11 per share. As alleged above in Paragraph 16, Fay's common stock closed at \$10.375 for two trading days following Fay's announcement of the merger negotiations. Through his unlawful purchases, Reinke netted profits of \$9,062.50.

**LeBlanc Enters Into An Agreement To The Split Trading
Profits and Tips A Co-Worker – Wilson**

23. On or shortly before June 25, 1996, LeBlanc approached Wilson, a co-worker and friend, with a proposition. LeBlanc offered to provide Wilson with certain information about a company, if Wilson agreed to purchase 1,000 shares of the company's stock and split the profits. To further induce Wilson, LeBlanc offered to protect Wilson against any losses. Wilson agreed to the proposal.

24. On or about June 25, 1996, LeBlanc tipped Wilson that Penney's was in negotiations to acquire Fay's and about the circumstances of his misappropriation of the material, non-public information concerning the Acquisition.

25. Between June 25 and July 9, 1996, Wilson purchased 1,000 shares to be split with LeBlanc and an additional 5,000 shares at an average price of \$7.90 per share. Based on Fay's closing price of \$10.375 following the Acquisition announcement, Wilson's unlawful purchases between June 25 and July 9, 1996, resulted in profits of \$13,750. Sometime after August 16, 1996, Wilson calculated the profits on the first 1,000 shares (\$2750) and gave LeBlanc half of the net proceeds in cash.¹

¹ The Commission is seeking \$1,375 from LeBlanc representing his share of the gross profits from his profit sharing agreement with Wilson and is not seeking disgorgement of this \$1,375 from Wilson.

FIRST CLAIM

**LeBlanc's 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**

26. Paragraphs 1 through 25 above are hereby realleged and incorporated herein by reference.

27. Between June 10 and July 5, 1996, defendant LeBlanc, directly and indirectly, by use of the means and instrumentalities of interstate commerce, of the mails or of the facilities of a national securities exchange, in connection with the purchase and sale of securities in the form of Fay's common stock: (1) employed devices, schemes, or artifices to defraud; (2) made untrue statements of material facts, 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 (3) engaged in acts, practices or courses of business which operated as a fraud or deceit upon sellers of Fay's common stock.

28. On or shortly before June 10, 1996, defendant LeBlanc misappropriated material non-public information concerning Penney's negotiations with and planned acquisition of Fay's.

29. Defendant LeBlanc failed to disclose the material non-public information he possessed to the seller(s) of the Fay's common stock, while he was under a legal duty either to disclose the material non-public information in his possession or to abstain from trading until the material nonpublic information was publicly disclosed.

30. As part of and in furtherance of his violative conduct, defendant LeBlanc directly and indirectly, purchased Fay's common stock on his own behalf while in possession of material non-public information, as described in paragraph 18.

31. In connection with the allegations contained in this claim, defendant LeBlanc acted knowingly, intentionally, or recklessly.

32. By reason of the foregoing, defendant LeBlanc has 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 promulgated thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM

Reinke's 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

33. Paragraphs 1 through 25 above are hereby realleged and incorporated herein by reference.

34. Between June 11 and June 17, 1996, defendant Reinke, directly and indirectly, by use of the means and instrumentalities of interstate commerce, of the mails or of the facilities of a national securities exchange, in connection with the purchase and sale of securities in the form of Fay's common stock: (1) employed devices, schemes, or artifices to defraud; (2) made untrue statements of material facts, 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 (3) engaged in acts, practices or courses of business which operated as a fraud or deceit upon sellers of Fay's common stock.

35. On or about June 10, 1996, defendant LeBlanc provided or "tipped" defendant Reinke material non-public information concerning Penney's negotiations with and planned acquisition of Fay's and provided information about the circumstances of his misappropriation.

36. Defendant Reinke failed to disclose the material non-public information he possessed to the seller(s) of the Fay's common stock, while he was under a legal duty either to disclose the material non-public information in his possession or to abstain from trading until the material nonpublic information was publicly disclosed.

37. As part of and in furtherance of his violative conduct, defendant Reinke directly and indirectly, purchased Fay's common stock on his own behalf while in possession of material non-public information, as described in paragraph 18.

38. In connection with the allegations contained in this claim, defendant Reinke acted knowingly, intentionally or recklessly.

39. By reason of the foregoing, defendant Reinke has 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 promulgated thereunder [17 C.F.R. § 240.10b-5].

THIRD CLAIM

Wilson's 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

40. Paragraphs 1 through 25 above are hereby realleged and incorporated herein by reference.

41. Between June 25 and July 9, 1996, defendant Wilson, directly and indirectly, by use of the means and instrumentalities of interstate commerce, of the mails or of the facilities of a national securities exchange, in connection with the purchase and sale of securities in the form of Fay's common stock: (1) employed devices, schemes, or artifices to defraud; (2) made untrue statements of material facts, 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 (3) engaged in acts, practices or courses of business which operated as a fraud or deceit upon sellers of Fay's common stock.

42. On or about June 25, 1996, defendant LeBlanc provided or "tipped" defendant Wilson material non-public information concerning Penney's negotiations with and planned acquisition of Fay's and provided information about the circumstances of his misappropriation.

43. Defendant Wilson failed to disclose the material non-public information he possessed to the seller(s) of the Fay's common stock, while he was under a legal duty either to disclose the material non-public information in his possession or to abstain from trading until the material nonpublic information was publicly disclosed.

44. As part of and in furtherance of his violative conduct, defendant Wilson directly and indirectly, purchased Fay's common stock on his own behalf and for defendant LeBlanc while in possession of material non-public information, as described in paragraph 18.

45. In connection with the allegations contained in this claim, defendant Wilson acted knowingly, intentionally or recklessly.

46. By reason of the foregoing, defendant Wilson has 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 promulgated thereunder [17 C.F.R. § 240.10b-5].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Grant a permanent injunction restraining and enjoining defendants LeBlanc, Wilson and Reinke, their affiliates, nominees, agents, officers, directors, employees, servants, successors, attorneys, assigns, corporations and other persons or entities under their control, and those persons in active concert or participation with them, and each of them from violating 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.

II.

Order defendants LeBlanc, Wilson and Reinke to disgorge the amounts they were unjustly enriched as a result of their illegal conduct as alleged by the Commission herein, plus prejudgment interest thereon.

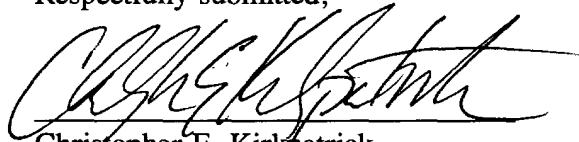
III.

Order defendants LeBlanc, Wilson and Reinke to pay a civil penalty.

IV.

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

Respectfully submitted,



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