

IN THE CIRCUIT COURT OF THE  
17TH JUDICIAL CIRCUIT, IN AND  
FOR BROWARD COUNTY, FLORIDA

**COPY**

MARK GINSBURG; SCOTT GINSBURG;  
RICKI ROBINSON and ROYCO, INC;

CASE NO. 99-08930 CACE (18)

Plaintiffs/Counter-Defendants,

vs.

BERNARD D. PACTHER,  
and PACTHER CORP., a Florida corporation,

MAY 10 2000

**ATLANTA COPY**

Defendants/Counter-Plaintiffs/Third-Party Plaintiffs,

vs.

ARTHUR ROSENTHAL; KENT MAHLKE  
and ROY BRESKE

Third-Party Defendants.

---

**ANSWER AND AFFIRMATIVE DEFENSES  
AND  
COUNTERCLAIMS AND THIRD PARTY COMPLAINT**

Defendants BERNARD D. PACTHER and PACTHER CORPORATION hereby answers  
the Complaint as follows:

1. Admit.
2. Admit.
3. Admit.
4. Admit that Royco was a 48% shareholder in RDDDL and that, in accordance with an established plan and good business judgment, caused that a substantial capital investment of substantial funds be made to RDDDL which, as a start-up company, required the infusion of capital

needed to, among other necessary goals, establish and qualify the laboratory, expand its facilities and equipment, staff the operations and generally meet the exceptional growth of the company and deny the remaining allegations of this paragraph.

5. Admit that a note, loan and security agreement was signed in the amount of \$5 Million but deny the remaining allegations in this paragraph.

6. Admit.

7. Deny.

8. Admit that all of the assets were purportedly transferred to Royco, but deny the remaining allegation of this paragraph.

9. Deny knowledge.

10. Deny.

11. Deny knowledge.

12. Deny.

13. Deny knowledge.

14. Deny.

15. Denies all other allegations not specifically admitted, controverted or denied.

WHEREFORE, the Defendants request that Court determine that the conduct of the alleged transactions amounted to a scheme to defraud the Defendants; that the Plaintiffs must divest themselves of the property taken; determine that the Defendants have legitimate claims against the Plaintiffs; for attorney fees and for such other and further relief as is just and proper.

#### **DEMAND FOR JURY TRIAL.**

The Defendants demand a jury trial on all issues and all matters to which they are entitled.

### FIRST AFFIRMATIVE DEFENSE

The Plaintiffs, together with others, owed a fiduciary duty to the Defendants by reason of their position with RDDDL and they breached that duty in an effort to deprive the Defendants of the assets and other benefits of his ownership interest in RDDDL.

### SECOND AFFIRMATIVE DEFENSE

The preparation and execution of the note, loan and security agreement were part of a scheme and artifice to defraud the Defendants because the Plaintiffs were aware that the significant capital infusion into the operations of RDDDL were part of the business plan for the establishment and phenomenal growth of RDDDL, which capital was not to be repaid until the sale of the company or upon consistent profitability of the corporation.

### THIRD AFFIRMATIVE DEFENSE

The conduct of the scheme and artifice to defraud amounted to a civil theft pursuant to Florida Statutes §§ 812 et seq. and 772.11 in which the assets of a valuable and ongoing business was taken as part of a scheme and fraudulent maneuvers calculated to deprive the Defendant of the value and benefit of his ownership interest in RDDDL.

### FOURTH AFFIRMATIVE DEFENSE

The Plaintiff, with others, were part of an enterprise which engaged in criminal activity that was part of a pattern of racketeering activity within the meaning of and in violation of Florida Statutes §§ 772 et seq. The pattern of criminal misconduct was done with the intent to defraud and to gain an improper advantage in business dealings, with the pattern of criminal activity involving criminal conduct in violation of law and part of which was to actively pursue a scheme to defraud the Defendants and deprive them of the value and benefits of their ownership interest in RDDDL.

## COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

Defendants/Counter-Plaintiffs/Third Party Plaintiffs BERNARD PACHTER and PACHTER CORP. sue Counter-Defendants, MARK GINSBURG, SCOTT GINSBURG, RICKI ROBINSON, and ROYCO, INC. and Third Party Defendants ARTHUR ROSENTHAL, KENT MAHLKE, ROY BRESKE and allege as follows:

### INTRODUCTION

1. This case includes claims for fraud; civil theft; the Florida Civil Remedies for Criminal Practice Act (RICO); breach of fiduciary duty and conversion.
2. The amount in controversy exceeds \$15,000.
3. Bernard Pachter is sui juris and is a resident of Broward County Florida.
4. At all relevant times, Pachter Corporation was a Florida Corporation wholly owned by Bernard Pachter.
5. At all relevant times, Counter-Defendant Royco, Inc was a Florida Corporation doing business in Broward County, Florida as is a Plaintiff in this action.
6. At all time pertinent to this action, RDDDL, INC. was a Florida corporation doing business in Broward County, Florida.
7. At times relevant to this action, RDDDL did business as ESRD Laboratory, a clinical testing laboratory that provides tests of blood and other bodily fluids primarily to persons suffering from end stage renal disease.
8. Mark Ginsburg, Scott Ginsburg, Ricki Robinson are siblings and are actively engage in business in Florida; have committed tortious acts in Broward County, Florida and are Plaintiffs in this action and have submitted to the jurisdiction of this court.
9. Kent Mahlke is sui juris and is a resident of Broward County, Florida and committed

tortious acts in Broward County, Florida.

10. Arthur Rosenthal is sui juris, is a resident of Broward County, Florida and committed tortious acts in Broward County, Florida.

11. Roy Breske is sui juris, is a resident of Broward County, Florida and committed tortious acts in Broward County, Florida.

#### JURISDICTION AND VENUE

12. Jurisdiction and venue are proper in Broward County because all of the defendants either reside in Broward County, have a principal place of business in Broward County and/or committed tortious acts in Broward County and because all or substantially all of the acts charged herein occurred in Broward County and the claims arose in Broward County, Florida.

#### GENERAL ALLEGATIONS

13. Beginning in about 1995, Mark Ginsburg, claiming that he was acting for and on behalf of Scott Ginsburg and Ricki Robinson, his brother and sister, contacted Bernard Pachter with a business proposal to start an independent dialysis laboratory.

14. At the time, Mark Ginsburg told Bernard Pachter that he was unable to personally participate because he was prohibited from directly competing with Gambro Healthcare Patient Services, his former employer, because of the obligations under a contract of non-competition.

15. Pursuant to the business plan agreed to by the parties, Scott Ginsburg and Ricki Robinson would totally fund the business and infuse all of the capital needed to establish and operate the laboratory for an extended period. These funds were characterized as capital contributions to the corporation that would be repaid when the business was sold or, earlier if the business and profits of the company were such that substantial profits were generated enough to effect a return of capital.

16. Mark Ginsburg insisted to Bernard Pachter that rather than have the stock ownership in the RDDI owned directly by individuals, it would be better if independent corporations own the stock in RDDI so that the individuals were not personally shareholders in RDDI.

17. From about May 1995, there was a development period during which the business of RDDI was located, outfitted, professionally staffed and made ready for operations.

18. RDDI began operations on about February 1996. Due primarily to the efforts of Bernard Pachter, over the period to about the end of the year, rather than servicing the predicted 25 clinics by the end of the year, the growth was spectacular and the projection was that the laboratory would be servicing approximately 90 clinics with gross income of nearly \$1 Million per month.

19. Inexplicably, despite the massive success of RDDI, Mark Ginsburg discharged Bernard Pachter as President and CEO in about November 1996 and proceeded with certain actions that made it clear that he was taking sole control of this very successful corporation and attempting to push Bernard Pachter out of operations, control and ownership.

20. Because of his actions, it became obvious that Mark Ginsburg was the true owner of Royco and had only used his siblings as nominees to conceal his violation of the contract with Gambro Healthcare.

21. In about December 1996, Bernard Pachter and Pachter Corp. sued Mark Ginsburg, Scott Ginsburg, Ricki Robinson, Arthur Rosenthal, Kent Mahlke, Royco, Inc., Daniel M. Landis and Tedesco & Landis, P.A. in Broward County Circuit Court, Case No. 96-16792 (21).

22. Thereafter, Gambro Healthcare Patient Services sued Mark Ginsburg, Scott Ginsburg, Ricki Robinson, RDDI, Inc. and Royco, Inc. for breach of contract and fraud in connection with the unlawful operations of RDDI in violation of the non-compete agreement with Gambro in Broward County Circuit Court, Case No. 97-9044 which case was consolidated with the Pachter case.

23. In or about July 1997, Royco, Inc. together with the other members of the Ginsburg family, while in total control of RDDDL, secretly concocted a plan whereby they would take over total control and ownership of the successful business and practice of RDDDL in an effort to eliminate the ownership and property rights of Bernard Pachter and Pachter Corporation.

24. In about July 1997, Royco, Inc. and the other Ginsburgs, unknown to Bernard Pachter and Pachter Corporation, forced RDDDL to sign a note, loan and security agreement that placed the entire business of RDDDL in jeopardy should there be a default on the note. This note, loan and security agreement was in contravention of the business plan and understanding of the parties when they entered into this business for the establishment of RDDDL.

25. As part of the plan, and pursuant to the criminal scheme, the Ginsburgs and their corporation engaged in a pattern of conduct to make it appear that RDDDL was unable to meet its obligations. There was a manipulation of the books and records of RDDDL such that it would be difficult, if not impossible, to meet the excessive demands of Royco, Inc. and the Ginsburgs under the terms of the note, loan and security agreement should it come to be that the holders of the note demanded immediate payment.

26. The information concerning the operations of RDDDL and the execution of the note, loan and security agreement was intentionally concealed from Bernard Pachter and Pachter Corporation.

27. As part of the scheme and artifice to defraud, Royco, Inc. and the Ginsburgs demanded immediate payment of the note, loan and security agreement knowing full well that RDDDL would be unable to pay the obligation. This was so because it was contrary to the business plan of RDDDL and also due to the manipulation of the business operation of RDDDL.

28. Without adequate notice to Bernard Pachter and Pachter Corporation, the Royco note,

loan as security agreement was called and the holder demanded immediate payment in full.

29. At about the time of this demand, the value of the business of RDDL was approximately \$50 Million based upon the number of clinics and patients who used RDDL as it renal dialysis laboratory.

30. As part of the scheme to defraud, the Ginsburgs and Royco, Inc. enlisted the help and participation of Arthur Rosenthal, Kent Mahlke, Roy Breske, and others unknown to the Counter Plaintiffs, in an effort to transfer all of the assets of RDDL.

31. At the time of this conspiracy, the Board of Directors of RDDL consisted of Mark Ginsburg, Scott Ginsburg, Ricki Robinson, Kent Mahlke, Arthur Rosenthal, Roy Breske and Bernard Pachter.

32. Upon information and belief, the minority shareholders of Arthur Rosenthal and Kent Mahlke received substantial value and benefit from Royco and the Ginsburgs by reason of their participation in this scheme to defraud Bernard Pachter and Pachter Corporation.

33. Because of the relationship of the parties, Mark Ginsburg, Scott Ginsburg, Ricki Robinson, Kent Mahlke, Arthur Rosenthal, Roy Breske and Royco, Inc. owed a fiduciary obligation to Bernard Pachter and Pachter Corporation.

34. Using the pretext of a business meeting of the Board of Directors, the Ginsburgs staged a complete takeover of the assets of RDDL for inadequate consideration and in violation of the rights of Bernard Pachter and Pachter Corporation.

35. As part of the scheme to defraud Bernard Pachter and Pachter Corporation, the participants in this scheme to defraud made up the pretext that they had tried to find a lender willing to loan the money to finance the defaulted loan and security agreement. Known to these participants was that this effort was never intended to be successful because the effort of the

scheme was to take all of the valuable assets of RDDDL and transfer them a corporation in which Bernard Pachter and Pachter Corporation had no control.

36. The actions of the co-conspirators were calculated to defraud Bernard Pachter and Pachter Corporation of their rightful ownership in a very successful business.

37. Upon information and belief, despite the conduct described in this complaint and the statements to Bernard Pachter and Pachter Corporation that the business of RDDDL Inc. has terminated and that it has no assets whatsoever, it appears that RDDDL has been conducting a business of operating ESRD Laboratory for profit with the details of this being totally concealed from Bernard Pachter and Pachter Corporation.

**COUNT I  
(CIVIL REMEDIES FOR CRIMINAL PRACTICES ACT-RICO)**

38. Counter-Plaintiff and Third Party Plaintiff realleges paragraphs 2 to 37 of this Counterclaim and Third-Party Complaint.

39. Beginning in about early 1995, the Counter-Defendants and Third-Party Defendants, with others known and unknown, devised and intended to devise a scheme and artifice to defraud and to obtain money and property from Gambro Healthcare, Bernard Pachter, Pachter Corporation, Medi-Soft and others by means of false and fraudulent pretenses, representations, testimony and promises. These actions were part of a pattern of racketeering activity with the calculated intent to defraud the Counter-Defendants and others in violation of Florida Statutes §§ 772 et seq.

40. The Counter-Defendants and Third-Party Defendants knew that the pretenses, representations, testimony and promises were false and fraudulent.

41. It was the essence of the scheme and artifice to defraud that Counter-Defendants engaged in a pattern of racketeering activity calculated to defraud others and to gain a business advantage in the operation of ESRD Specialty Laboratory. The Third Party Defendants actively

participated in part of the pattern of racketeering. The pattern included: (1) fraudulently concealing the true ownership of Royco, Inc in order to avoid the restrictions of the non-competition agreement with Gambro Healthcare and to use Bernard Pachter and Pachter Corporation to establish an laboratory entity that competed directly with Gambro Healthcare. (2) directing and causing a series of monetary transfers to be made in such a fashion as to conceal the true owner of the capital being used to finance RDDDL and the true ownership of Royco, Inc. (3) fraudulently operating the business of RDDDL in a manner to conceal the active participation of Mark Ginsburg and the Ginsburg family in operations of RDDDL (4) engaging in fraudulent activities including the subordination of perjury, violation of copyright laws and other misconduct calculated to defraud Medi-Soft in connection with its unique software and it advantageous business contract with RDDDL (5) fraudulent causing RDDDL to execute a note, loan and security agreement in a fraudulent effort to take the entire assets of RDDDL in order to deprive Bernard Pachter and Pachter Corporation of the value and benefits of his ownership interest in RDDDL (6) fraudulent operating the business in a manner as to make it virtually impossible for RDDDL to satisfy the note, loan and security interest so that the note would be in default and establish a pretext under which the entire assets of RDDDL would be wrongfully conveyed to Royco, Inc (7) fraudulent concealing that the business of RDDDL continued to be conducted but in a manner wholly concealed from and to defraud Bernard Pachter and Pachter Corporation and (8) engaging in the manipulation of the books and records of RDDDL and participation in the destruction of evidence.

42. The Counter-Defendants and the Third Party Defendants, for the purpose of executing and attempting to execute the aforesaid scheme and artifice, did knowing and intentionally cause a fraudulent series of transfers and manipulations to be accomplished in violation of law.

43. The Counter-Defendants and the Third Party Defendants looted and plundered RDDDL.

so that the assets of RDDL would be taken and transferred to Royco, Inc. with the intent to deprive Bernard Pachter and Pachter Corporation of the value and benefits of ownership in RDDL.

44. The multiple acts of racketeering activity by the Counter-Defendants and Third Party Defendants were interrelated and formed of the common and continuous pattern of fraudulent schemes, were perpetrated with the same or similar intent, were committed by the same or similar methods and has the same or similar victims. These activities were not isolated incidents and collectively constitute a pattern of racketeering.

45. By reason of the conduct of the Counter-Defendants and the Third Party Defendants and the violations of law, the enterprise harmed, among others, Counter-Plaintiffs Bernard Pachter and Pachter Corporation who were severely injured in their business in that they lost the value and benefits of their ownership interest in RDDL.

46. As a result of the conduct of the Counter-Defendants and the Third Party Defendants, the Counter-Plaintiffs have been forced to retain attorneys and expend considerable attorney fees.

47. All conditions precedent to this cause have occurred, have been performed or have been waived and excused and are not necessary to maintain this action.

WHEREFORE, Bernard Pachter and Pachter Corporation demand damages of this court equal to three times the actual damages together with attorney fees and costs and such other and further relief as to this court seems just and proper.

**COUNT II  
(CIVIL THEFT)**

48. Counter-Plaintiffs and Third Party Plaintiffs realleges paragraphs 2 through 37 of this Counterclaim and Third Party Complaint.

49. This action is for civil theft pursuant to Florida Statutes §812.014 and 772.11 (1997).

50. The Counter-Defendants knowingly concealed their plan to takeover control and management of RDDDL, Inc., thus depriving Bernard Pachter and Pachter Corporation of the value and benefits of the assets of his business venture.

51. The Counter-Defendants and Third-Party Defendants knowingly stole the assets of RDDDL, Inc. with the intent to permanently deprive Bernard Pachter and Pachter Corporation of the right to the value of RDDDL, Inc. all in violation of Florida Statutes

52. The preparation and execution of the note, loan and security agreement were part of a scheme and artifice to defraud the Defendants

53. The pretext of the demand for payment, the presentation of the resolution to abandon all of the assets of RDDDL, Inc. to Royco, Inc. together with the sham meeting of the Board of Directors was part of a scripted scheme and artifice to defraud Bernard Pachter and Pachter Corporation of the value of his property and benefits in RDDDL, Inc.

54. As a result of the conduct of the Counter-Defendants and the Third Party Defendants, the Counter-Plaintiffs have been forced to retain attorneys and expend considerable attorney fees.

55. All conditions precedent to this cause have occurred, have been performed or have been waived and excused and are not necessary to maintain this action.

WHEREFORE, Bernard Pachter and Pachter Corporation demand three times the damages and attorney fees against these defendants on this count of the complaint together with such other and further relief as to this court seems just and proper.

**COUNT III  
(BREACH OF FIDUCIARY DUTY)**

56. Defendant/Counterclaim Plaintiff and Third Party Plaintiff realleges paragraphs 2 through 37 of this Counterclaim and Third Party Complaint.

57. The Plaintiffs/Counter-Defendants Mark Ginsburg, Scott Ginsburg, Ricki Robinson

and Third-Party Defendants Arthur Rosenthal and Roy Breske were all members of the Board of Directors of RDDDL, Inc. and in that capacity owed a fiduciary duty to Bernard Pachter and Pachter Corporation as a Director and as a Shareholder.

58. The Plaintiffs/Counter-Defendants Scott Ginsburg and Ricki Robinson, whether personally or as a nominee of Mark Ginsburg, and Mark Ginsburg together with Third Party Defendants Kent Mahlke and Arthur Rosenthal, as majority shareholders in RDDDL owed a fiduciary duty of honest and fair dealing to Bernard Pachter and Pachter Corporation.

59. These parties identified in the previous paragraphs breached their duty to Bernard Pachter and Pachter Corporation in that they participated in a conspiracy to defraud and conducted the business of RDDDL in a manner so as to deprive Bernard Pachter and Pachter Corporation of the value and benefits of ownership of RDDDL.

WHEREFORE, Bernard Pachter and Pachter Corporation demand a judgment for damages against the parties named in this count of this complaint together with such other and further relief as to this court is just and proper.

#### COUNT IV (CONVERSION)

60. Counter-Plaintiff and Third Party Plaintiff realleges paragraphs 2 through 37 of this Counterclaim and Third Party Complaint.

61. During the period of time from about 1996 to the date of this complaint, the Counterclaim Defendants Mark Ginsburg, Scott Ginsburg, Ricki Robinson and Royco, Inc. converted to their own use and money and property of great value including the value of the RDDDL, Inc. to which Bernard Pachter and Pachter Corporation were entitled.

WHEREFORE, Bernard Pachter and Pachter Corporation demand damages on this count

of the complaint together with such other and further relief as to this court seems just and proper.

**DEMAND FOR JURY TRIAL**

The Plaintiffs demand a jury trial on all issues and all matters to which they are entitled.

Dated: May 8, 2000

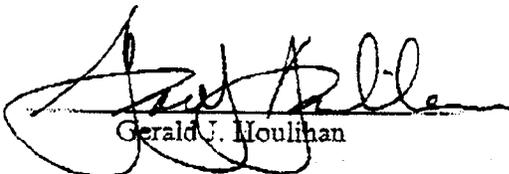
Respectfully submitted,

HOULIHAN & PARTNERS, P.A.  
2600 Douglas Road, Suite 600  
Miami, Florida 33134  
Telephone: (305) 460-4091  
Facsimile: (305) 460-4099

By:   
GERALD J. HOULIHAN  
Florida Bar No. 0458430

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. mail and facsimile on May 8, 2000, to: Stuart R. Michelson, Esq., 1111 Kane Concourse, Suite 517, Bay Harbor Islands, FL 33154.



Gerald J. Houlihan

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
DIVISION

Case No. \_\_\_\_\_ CIV \_\_\_\_\_

**CIV-RYSKAMP**

MAGISTRATE JUDGE  
VITUNAG

UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

Plaintiff,

v.

SCOTT K. GINSBURG,  
MARK J. GINSBURG, and  
JORDAN E. GINSBURG,

Defendants.

RECEIVED  
99 SEP - 9 AM 10:51  
COURT OF APPEALS  
SOUTHERN DISTRICT OF FLORIDA

COMPLAINT

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

SUMMARY OF ALLEGATIONS

1. This insider trading case involves Mark J. Ginsburg's ("M. Ginsburg") and  
Jordan E. Ginsburg's ("J. Ginsburg") unlawful trading in the securities of EZ  
Communications, Inc. ("EZ"), and M. Ginsburg's unlawful trading in the securities of Katz  
Media Group, Inc. ("Katz Media"). Defendants M. Ginsburg and J. Ginsburg traded while in  
possession of material nonpublic information that Scott K. Ginsburg ("S. Ginsburg") had  
tipped to them in breach of a duty that S. Ginsburg owed to Evergreen and in breach of a

RECEIVED

confidentiality agreement that S. Ginsburg had with EZ. S. Ginsburg and M. Ginsburg are brothers and are the sons of J. Ginsburg.

2. By their conduct, described herein, the defendants, directly and indirectly, engaged in acts, practices, and courses of business that violated the antifraud provisions of the federal securities laws, 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]. Defendants S. Ginsburg and M. Ginsburg also, directly and indirectly, engaged in acts, practices, and courses of business that violated the tender offer provisions of the federal securities laws, Exchange Act Section 14(e) [15 U.S.C. § 78n(e)] and Rule 14e-3 thereunder [17 U.S.C. § 240.14e-3].

3. The Commission brings this action pursuant to Sections 21(d), 21(e), and 21A of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78u-1] for an order permanently restraining and enjoining the defendants, ordering them to account for and disgorge all profits from the unlawful trading, granting other equitable relief, and imposing civil monetary penalties.

4. The defendants, unless restrained and enjoined, will continue to engage in transactions, acts, practices, and courses of business as set forth in this Complaint, or in transactions, acts, practices, and courses of business of similar purport and object.

#### JURISDICTION

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

6. In connection with the transactions, acts, practices, and courses of business described in this Complaint, each of the defendants, directly and indirectly, has made use of the means or instrumentalities of interstate commerce, of the mails, and/or of the means and instruments of transportation or communication in interstate commerce.

#### DEFENDANTS

7. Scott K. Ginsburg, age 46, resides in Dallas, Texas. S. Ginsburg founded Evergreen with his father, J. Ginsburg, other Ginsburg family members, and others in 1988. During the period from November 1995 through at least August 1997, S. Ginsburg was the chairman of the board of directors and chief executive officer of Evergreen.

8. Mark J. Ginsburg, age 48, resides in Boca Raton, Florida. He is a physician.

9. Jordan E. Ginsburg, age 74, resides in Boca Raton, Florida. J. Ginsburg was an original investor in, and, until 1991, was the chairman of the board of directors of, Evergreen. J. Ginsburg pleaded guilty in 1997 to a federal felony of making a false statement in connection with an application for a loan from First Commercial Bank of Florida in 1990, when he served as chairman of the bank's board of directors.

#### CORPORATIONS INVOLVED

10. Evergreen Media Corporation was a Delaware corporation with its corporate headquarters in Irving, Texas that owned and operated AM and FM stations nationwide. The common stock of Evergreen was registered with the Commission pursuant to Section 12(g) of the Exchange Act and was traded on the NASDAQ market system. On February 18, 1997, a merger agreement between Evergreen and Chancellor Broadcasting Corporation ("Chancellor Broadcasting") was announced. Chancellor Broadcasting also was a public company with its

securities registered with the Commission pursuant to Section 12(g) of the Exchange Act. On September 5, 1997, the merger was completed. The resulting entity, Chancellor Media Corporation ("Chancellor Media"), is a Delaware corporation with its headquarters in Irving, Texas.

11. EZ Communications, Inc. was a Virginia corporation with its headquarters in Fairfax, Virginia that owned and operated AM and FM radio stations in several markets across the United States. At all relevant times through July 1996, EZ stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and was traded on the NASDAQ market system.

12. Katz Media Group, Inc. was a Delaware corporation with its headquarters in New York, New York. Katz Media was a media representation company that sold advertising time on electronic media, such as radio, television, and the internet, to advertising agencies and other media buyers. At all relevant times through July 1997, Katz Media common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and was traded on the American Stock Exchange.

#### FIRST CLAIM FOR RELIEF

Violations of 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] by all defendants

Scott Ginsburg acquires material nonpublic information concerning EZ

13. Between May and mid-June, 1996, S. Ginsburg approached the chief executive officer of EZ and inquired whether EZ would consider some form of business combination with Evergreen. At that time, EZ's CEO told S. Ginsburg that EZ was not for sale.

14. Subsequently, between June 23 and July 1, 1996, S. Ginsburg sent EZ's CEO a written offer for Evergreen to acquire EZ. EZ's CEO responded to the offer, again advising S. Ginsburg that EZ was not for sale and noting that, in any event, the price that S. Ginsburg had proposed was too low. However, he also told S. Ginsburg that he would relay S. Ginsburg's offer to the chairman of EZ's board of directors.

15. EZ's CEO later met with S. Ginsburg on July 12, 1996. EZ's CEO asked that the conversation be kept confidential, and S. Ginsburg agreed. EZ's CEO then told S. Ginsburg that EZ was considering strategic alternatives that included a possible sale of the company and had hired Credit Suisse First Boston ("CSFB") to assist it. During the meeting, EZ's CEO and S. Ginsburg discussed a per share value for EZ. S. Ginsburg told EZ's CEO that he was interested in pursuing a transaction, and they agreed that CSFB would contact S. Ginsburg early in the following week to provide more detailed information, provided that Evergreen would execute a written confidentiality agreement.

16. On July 15, 1996, a representative of CSFB contacted S. Ginsburg and told him that, if Evergreen would execute a written confidentiality agreement, it would be provided with updated financial information concerning EZ. In order to obtain confidential updated financial information concerning EZ, S. Ginsburg told the CSFB representative to send a confidentiality agreement to Evergreen. On July 16, 1996, EZ sent a confidentiality agreement to Evergreen. On July 18, 1996, CSFB sent to Evergreen, by facsimile, updated financial information concerning EZ. Thereafter, S. Ginsburg directed the chief financial officer of Evergreen to analyze the financial information that he had obtained from EZ in order to determine what amount Evergreen should bid for EZ.

17. On July 24, 1996, CSFB contacted Evergreen and requested that it submit its bid for EZ by the close of business on July 26, 1996. On July 26, 1996, S. Ginsburg submitted a bid for Evergreen to purchase EZ for \$650 million. On July 29, 1996, a representative of CSFB contacted S. Ginsburg and told him that EZ was reviewing Evergreen's bid, along with other bids, and that he would be contacted after a final decision had been made.

18. At all relevant times, S. Ginsburg knew that he was subject to Evergreen's corporate policies that prohibited: (a) the use of confidential information for personal advantage; (b) buying stock or giving advice to buy stock, based on inside information, and, (c) discussing confidential information with family and relatives.

Scott Ginsburg tips Mark Ginsburg who purchases EZ stock

19. On Sunday, July 14, 1996, two days after he had met with EZ's CEO, S. Ginsburg spoke by telephone with M. Ginsburg and conveyed to M. Ginsburg material nonpublic information concerning EZ's plan to pursue strategic alternatives that included the possible sale of the company.

20. On July 15, 1996, the first trading day after the telephone conversation during which S. Ginsburg conveyed to M. Ginsburg material nonpublic information concerning EZ, M. Ginsburg purchased 3,800 shares of EZ stock in his individual retirement account at Dean Witter Reynolds, Inc.

21. On July 25, 1996, the day before Evergreen submitted its bid for EZ, S. Ginsburg again spoke with M. Ginsburg by telephone. During that call, S. Ginsburg conveyed to M. Ginsburg material nonpublic information concerning Evergreen's intention to

make an offer to purchase EZ.

22. Also on July 25, 1996, after his telephone conversation with S. Ginsburg, M. Ginsburg purchased 3,200 shares of EZ stock in an account that he held jointly with his wife at Alex. Brown & Sons, Inc (the "joint account").

23. On July 26, 1996, the day that Evergreen submitted its bid for EZ, M. Ginsburg purchased 11,800 shares of EZ stock in the joint account and in a trust account for his son, also at Alex. Brown (the "trust account").

24. S. Ginsburg spoke with M. Ginsburg by telephone on July 28, 1996, and again on the morning of July 29, 1996. During those calls, S. Ginsburg conveyed to M. Ginsburg material nonpublic information concerning EZ, including that Evergreen and others had submitted offers for EZ.

25. On July 29, 1996, after speaking by telephone with S. Ginsburg, M. Ginsburg purchased a total of 30,000 shares of EZ stock in the joint account and the trust account.

26. During the two-week period from July 15 to July 29, 1996, M. Ginsburg, while in possession of the material nonpublic information concerning EZ that had been divulged to him by S. Ginsburg, purchased a total of 48,800 shares of EZ stock for \$1,393,676.

Mark Ginsburg tips Jordan Ginsburg who purchases EZ stock

27. M. Ginsburg and his father, J. Ginsburg, are next door neighbors and were in regular contact with each other throughout the period from July 14, 1996 to August 5, 1996. Between July 14 and July 16, 1996, M. Ginsburg spoke to J. Ginsburg and divulged to him the material nonpublic information concerning EZ that S. Ginsburg had conveyed to M.

Ginsburg during their telephone conversation on July 14.

28. On July 16, 1996, J. Ginsburg called the branch manager of the broker-dealer where a trust account was maintained for the benefit of J. Ginsburg's wife's and ordered the purchase, on margin, of 20,000 shares of EZ stock. The order, however, was not executed until the following day, July 17, 1996, because the branch manager had to obtain confirmation that J. Ginsburg was authorized to trade in that account.

29. On July 29, 1996, J. Ginsburg purchased, on margin, 5,000 shares of EZ stock in the trust account in his wife's name.

30. During the period from July 17 to July 29, 1996, J. Ginsburg, while in possession of the material nonpublic information concerning EZ that S. Ginsburg had divulged to M. Ginsburg and that M. Ginsburg had, in turn, conveyed to him, purchased a total of 25,000 shares of EZ stock for \$640,250.

**M. Ginsburg and J. Ginsburg make \$1,076,899  
in trading profits on their purchases of EZ stock**

31. On August 5, 1996, prior to the opening of the market, EZ and American Radio Systems, Inc. ("ARS") announced that EZ would merge with ARS. Under the terms of the merger agreement, EZ shareholders would receive .9 share of ARS stock and \$11.75 in cash for each share of EZ common stock. After the announcement, the price of EZ common stock rose by 30% or \$9.625 per share and closed at \$42.125 on August 5, 1996.

32. Based upon the closing price of EZ common stock on August 5, 1996, the day that the merger between EZ and ARS was publicly announced, M. Ginsburg realized profits of \$664,024 from his trading in EZ common stock while in possession of material nonpublic

information that had been misappropriated by S. Ginsburg.

33. Based upon the closing price of EZ common stock on August 5, 1996, the day that the merger between EZ and ARS was publicly announced, J. Ginsburg realized profits of \$412,875 from his trading in EZ common stock while in possession of material nonpublic information that had been misappropriated by S. Ginsburg and tipped to him by M. Ginsburg

Violations:

34. S. Ginsburg, in knowing or reckless breach of the duties that he owed to Evergreen and EZ and for his personal benefit, misappropriated the material nonpublic information described above by communicating such information directly or indirectly to M. Ginsburg who then traded and tipped.

35. M. Ginsburg knew or should have known that the material nonpublic information concerning EZ that S. Ginsburg conveyed to him was divulged in breach of duties that S. Ginsburg owed to Evergreen and EZ.

36. J. Ginsburg knew or should have known that the material nonpublic information concerning EZ that M. Ginsburg had divulged to him had been conveyed to M. Ginsburg by S. Ginsburg in breach of duties that S. Ginsburg owed to Evergreen and EZ.

37. By their conduct, described above, defendants S. Ginsburg, M. Ginsburg, and J. Ginsburg, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, directly or indirectly, (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material facts 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; or (c) engaged in acts,

practices, or courses of business which operated as a fraud or deceit upon other persons.

38. By reason of the foregoing, defendants S. Ginsburg, M. Ginsburg, and J. Ginsburg 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]

**SECOND CLAIM FOR RELIEF**

Violations of 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]  
by defendants S. Ginsburg and M. Ginsburg

**Scott Ginsburg acquires material nonpublic information concerning Katz Media**

39. On February 18, 1997, Evergreen announced that it would merge with Chancellor Broadcasting. The merger was not completed, however, until September 5, 1997. The resulting entity was named Chancellor Media. Hicks, Muse, Furst & Tate ("Hicks Muse"), an investment firm that owned a majority interest in Chancellor Broadcasting, became the largest shareholder of Chancellor Media. S. Ginsburg became the chief executive officer of Chancellor Media.

40. On March 20, 1997, while the Evergreen / Chancellor Broadcasting merger was pending, S. Ginsburg was invited by the chairman of Hicks Muse to join a meeting with representatives of Hicks Muse and Katz Media. After S. Ginsburg joined that meeting, a discussion took place concerning the possible acquisition of Katz Media by the merged Evergreen / Chancellor Broadcasting entity. During the meeting, it was agreed that Katz Media would provide additional financial information to Hicks Muse after a confidentiality agreement was executed. On or about April 10, 1997, Hicks Muse executed a confidentiality agreement and Katz Media sent financial information to Hicks Muse.

41. On June 16, 1997, the president of Katz Media's Radio Division met with S. Ginsburg and encouraged S. Ginsburg to have Evergreen / Chancellor Broadcasting acquire Katz Media for a price of \$12 to \$14 per share. He asked S. Ginsburg to contact the chairman of Katz Media to discuss the matter further and told S. Ginsburg that Katz Media had held discussions with other potential acquirers and wanted to complete a transaction as soon as possible.

42. At all relevant times, S. Ginsburg knew that he was subject to Evergreen's corporate policies that prohibited (a) the use of confidential information for personal advantage; (b) buying stock or giving advice to buy stock, based on inside information; and (c) discussing confidential information with family and relatives.

**Scott Ginsburg tips Mark Ginsburg who purchases Katz Media stock**

43. On the evening of June 16, 1997, the day when S. Ginsburg met with the president of Katz Media's Radio Division and discussed Katz Media's ongoing and active efforts to be acquired by Evergreen / Chancellor Broadcasting or some other company, S. Ginsburg called M. Ginsburg. During this call, S. Ginsburg conveyed to M. Ginsburg material nonpublic information concerning Katz Media's ongoing efforts to be acquired.

44. On the following day, June 17, 1997, M. Ginsburg, while in possession of material nonpublic information concerning Katz Media that S. Ginsburg had conveyed to him, placed an order to purchase 150,000 shares of Katz Media stock for the joint account and the trust account. However, the order could not be filled in one day. Consequently, on June 17, the trust account purchased only 31,100 shares of Katz Media stock. On June 18, 1997, the joint account purchased 100,000 shares of Katz Media stock, and the trust account purchased

an additional 18,900 shares, filling the 150,000 share order. The total purchase price of the 150,000 shares was \$713,400.

M. Ginsburg makes \$729,200 in trading profits on his trading in Katz Media stock

45. After the close of trading on July 14, 1997, Katz Media, Evergreen, and Chancellor Broadcasting jointly announced that Evergreen and Chancellor Broadcasting would acquire Katz Media through a tender offer for all outstanding shares of Katz Media stock at \$11.00 per share.

46. Within three days after the public announcement of the tender offer, M. Ginsburg sold 132,500 shares of Katz Media stock and, subsequently, tendered the remaining 17,500 shares. M. Ginsburg realized total profits of \$729,200 from his trading in Katz Media stock while in possession of material nonpublic information that had been misappropriated by S. Ginsburg.

Violations

47. S. Ginsburg, in knowing or reckless breach of the duty that he owed to Evergreen and for his personal benefit, misappropriated the material nonpublic information described above by communicating such information directly or indirectly to M. Ginsburg who then traded.

48. M. Ginsburg knew or should have known that the material nonpublic information concerning Katz Media was divulged to him by S. Ginsburg in breach of a duty that S. Ginsburg owed to Evergreen.

49. By their conduct, described above, defendants S. Ginsburg and M. Ginsburg, in connection with the purchase or sale of securities, by the use of means or instrumentalities of

interstate commerce or of the mails, directly or indirectly, (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material facts 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; or (c) engaged in acts, practices, or courses of business which operated as a fraud or deceit upon other persons.

50. By reason of the foregoing, defendants S. Ginsburg and M. Ginsburg 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].

### THIRD CLAIM FOR RELIEF

**Violations of 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] by defendants S. Ginsburg and M. Ginsburg**

51. Paragraphs 39 through 46 above are hereby re-alleged and incorporated herein by reference.

52. By June 16, 1997, substantial steps had been taken towards a tender offer for the securities of Katz Media, including, among others, the confidential meeting of Katz Media, Hicks Muse, and Evergreen representatives, as well as meetings between Katz Media and other potential acquirers, the execution of a confidentiality agreement by Hicks Muse, the transmittal of confidential business information to Hicks Muse, Evergreen, and Chancellor Broadcasting for the purpose of facilitating an offer for Katz Media, and the meeting between S. Ginsburg and the president of Katz Media's Radio Division where the potential acquisition of Katz Media by Evergreen / Chancellor Broadcasting was discussed.

Violations

53. By his conduct described above, S. Ginsburg, after a substantial step or steps had been taken to commence a tender offer for the securities of Katz Media, engaged in fraudulent, deceptive, or manipulative acts or practices in connection with said tender offer, by communicating material nonpublic information relating to a tender offer for Katz Media to M. Ginsburg under circumstances in which it was reasonably foreseeable that M. Ginsburg would purchase Katz Media securities.

54. By his conduct described above, M. Ginsburg, after a substantial step or steps had been taken to commence a tender offer for the securities of Katz Media, engaged in fraudulent, deceptive, or manipulative acts or practices in connection with said tender offer, by purchasing Katz Media securities, while in possession of material nonpublic information relating to said tender offer, which information he knew or had reason to know was nonpublic and had been obtained, directly or indirectly, from the offering person, the issuer, or a person acting on behalf of the offering person or said issuer.

55. By reason of the foregoing, defendants S. Ginsburg and M. Ginsburg violated 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].

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

I.

Enter a Final Judgment of Permanent Injunction and Other Relief that:

A. Permanently enjoins Scott K. Ginsburg, Mark J. Ginsburg, and Jordan E. Ginsburg, and their respective agents, servants, employees, and attorneys, and those persons in active concert or participation with each of them, from violating, directly or indirectly, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

B. Permanently enjoins Scott K. Ginsburg and Mark J. Ginsburg, and their respective agents, servants, employees, and attorneys, and those persons in active concert or participation with each of them, from violating, directly or indirectly, Section 14(e) of the Exchange Act and Rule 14e-3 thereunder;

C. Orders the defendants to account for and disgorge all profits, and prejudgment interest thereon, that they obtained or caused others to obtain as a result of the conduct described above; and

D. Orders each of the defendants to pay a civil penalty pursuant to Section 21A of the Exchange Act.

|||

|||

|||

|||

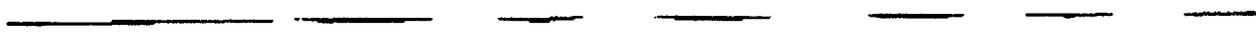
|||

|||

|||

|||

|||

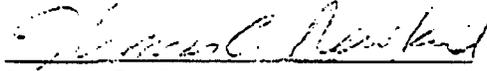


II.

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

Dated: September 9, 1999

Respectfully submitted,



Thomas C. Newkirk  
Yuri B. Zelinsky (Lead Trial Attorney)  
James I. Coffman  
Thomas D. Silverstein  
Paul W. Sharratt  
Attorneys for Plaintiff  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, DC 20549-0808  
(202) 942-4890 (Zelinsky)

