

SEC v. International Video Corp., et al., Civil
Action No. 78-2316 (DC Dec. 11, 1978)

The Commission filed a Complaint against International Video Corporation ("IVC") and two of its former presidents, Michael Moscarello ("Moscarello") and Ronald Fried ("Fried") alleging violations of the reporting requirements of the Exchange Act.

More specifically, the Complaint alleges that the defendants violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 promulgated thereunder in connection with certain quarterly reports filed with the Commission. The Complaint alleged that Moscarello caused IVC to materially overstate its sales and net income for the 1st and 2nd quarters of 1975 through the inclusion in reported sales of merchandise made after the end of these quarters. Further amendments to these quarterly reports were also false and misleading. According to the Complaint, Fried caused IVC to materially overstate its sales and net income for the third quarter of its 1976 fiscal year through the inclusion in reported sales of transactions with customers whose financial condition did not warrant a reasonable expectation of collection and in which customers were given rights to return merchandise.

The Court entered an order enjoining Moscarello and Fried from filing or causing to be filed with the Commission any reports containing false or misleading statements or not otherwise in compliance with statutory provisions governing periodic reports. The Court also ordered IVC to comply with the provisions governing periodic reports and further ordered IVC to comply with its undertaking to, for a period of five years, nominate or appoint to its Board of Directors persons satisfactory to the Commission to fill any vacancy or additional positions and to maintain an Audit Committee of its Board of Directors consisting of persons not employed by or in the management of IVC. The defendants consented to the entry of the orders by the Court without admitting or denying the allegations in the Commission's Complaint.

SEC v. LTV Corporation, et al., (Civil Action No.
3-78-1269-C) (N.D. Tex., October 16, 1978)

The Commission's Complaint alleged that the LTV Corporation ("LTV") Jones and Laughlin Steel Corporation ("J&L"), LTV's wholly owned subsidiary and James Paulos

("Paulos") Senior Vice President and Chief Financial Officer of LTV violated the antifraud and reporting provisions of the Exchange Act.

The Commission's Complaint alleged that LTV and J&L included false and misleading financial statements in various filings and periodic reports by overstating their income and retained earnings in material amounts for the years 1975 and 1976. The Complaint alleged that this overstatement arose because J&L misapplied certain last-in first-out (LIFO) inventory valuation accounting procedures. This alleged LIFO misapplication in 1975 and 1976 caused an overstatement in J&L's inventory and therefore, a corresponding overstatement of both J&L and LTV's income for these years as well as causing cumulative overstatement of retained earnings for both companies in 1978. With respect to Paulos, the Commission alleged that he failed to institute necessary internal accounting control procedures to stop the alleged LIFO misapplication and prevent future LIFO misapplications.

The Court entered Final Judgments permanently enjoining the defendants from future violations of the antifraud and reporting provisions and appointment of a Special Officer to investigate and prepare a report concerning the acts alleged in the Complaint and the restatement of earnings, the adequacy of LTV's internal control procedures, any action to be taken in the event that any individual is found to have engaged in material misconduct and the adequacy of the Audit Committee's process and procedures for evaluation of internal and independent auditors performance of their duties.

The Final Judgment also required LTV's Director of Internal Audit, under the supervision of a senior LTV official, to file an annual report to LTV's Audit Committee concerning the manpower and resources that had been assigned to the internal audit function as well as any evidence of material misconduct relating to the preparation of financial statements and the accuracy of the books and records of LTV and J&L. Each of the defendants consented to the entry of the Final Judgment without admitting or denying the Commission's allegations.

On July 10, 1978 the Commission filed a Complaint in the United States District Court for the District of Columbia against Aydin Corporation, Ayhan Hakimoglu, President, Chief Executive Officer and Chairman of the Board of Directors of Aydin, Jay N. Landis, Treasurer and Comptroller of Aydin and David N. Dry, Executive Vice President and a Director of Aydin and President of Aydin Energy Systems, a division of Aydin.

The Commission's Complaint alleges that, beginning in or about April 1975, in order to avoid reporting losses by the Energy Systems division of Aydin, in both quarterly and year-end figures, Hakimoglu instructed Landis, Dry and other Energy employees to record entries on Energy's books which were not in accordance with either generally accepted accounting principles ("GAAP") or Aydin's prior accounting practices. Such entries postponed the recognition of losses and instead resulted in the reporting of profits, which profits under GAAP should not have been reported or accrued. The Complaint alleged that the principal improper accounting practices included the combining for accounting purposes of a contract on which losses were projected with an unrelated contract on which profits were projected; the improper writing up of inventory purchased from Martin Marietta Corporation in connection with Aydin's purchase of a microwave radio product line from Martin Marietta; and the improper inventorying of residual material on another contract prior to the completion of the job. The Complaint further alleges that these practices had the effect of enabling Aydin to report materially higher earnings for the second and third quarters of 1975, i.e., \$.64 per share reported versus \$.25 per share actual for the first two quarters of 1975 and \$.89 per share reported versus \$.35 per share actual for the first three quarters of 1975.

The Complaint also alleges that on or about April 14, 1975 and November 11, 1975, defendants Aydin, Hakimoglu, Landis and Dry filed and caused to be filed with the Commission quarterly reports on Form 10-Q and disseminated and caused to be disseminated to Aydin shareholders and the investing public quarterly reports of Aydin which were false and misleading in that they overstated Aydin's pretax earnings for the second and third quarters of fiscal 1975 by approximately \$858,000

and \$1,197,000, respectively, as a result of the improper conduct alleged in the Complaint. The Complaint further alleges that a report filed in 1976 purporting to amend such reports failed to disclose the circumstances resulting in such prior overstatements of earnings.

After a trial on the merits, the court made findings that Aydin, Hakimoglu and Dry violated the anti-fraud and periodic reporting provisions of the Exchange Act and entered an Order permanently enjoining Aydin, Hakimoglu and Dry from further violations of such provisions. The Court also entered an Order directing Aydin to institute and continue in full force and effect certain procedures, policies and controls including:

1) That Aydin's officers and/or employees consult with its independent auditors before deciding any accounting question or policy;

2) That Aydin retain independent auditors to perform quarterly reviews of all financial reports prior to public issuance;

3) That Aydin maintain a staff of internal auditors retained by and responsible to the Audit Committee of the Board of Directors;

4) That Aydin's internal auditors shall report to the Audit Committee on a quarterly basis; and

5) That Aydin maintain an Audit Committee of the Board of Directors comprised of at least three independent directors who are not members of management and have no business dealings or financial, monetary or other equity interest in or with Aydin.

SEC v. Berg Enterprises, Inc., Civil Action No. 78-0877 (DDC May 16, 1978)

On May 16, 1978 the Commission filed a civil injunctive action in the United States District Court for the District of Columbia against Berg Enterprises, Inc. ("BEI"), a real estate brokerage and mortgage banking concern with its headquarters in New Jersey.

The Commission's Complaint alleged violations of the Federal securities laws in connection with a 1972 land sale transaction. The Complaint charged that BEI

improperly recognized income of approximately \$114,000 on the sale, which amount represented approximately 10% of BEI's net income, in its 1973 fiscal year. At the time of income recognition, the Complaint alleges, no down payment was made by the purchasers; BEI made concurrent loans to a corporation controlled by the purchasers and these purchasers were suffering from serious cash flow problems. The Commission charged that the recognition of income in connection with the transaction was inconsistent with generally accepted accounting principles. The Commission charged that BEI prepared and filed an annual report on Form 10-K, three quarterly reports on Form 10-Q, and a registration statement, each of which failed to fairly and completely disclose certain material matters concerning the 1972 land sale transaction.

Simultaneously with the filing of the Complaint, the Court entered a Final Judgment of Permanent Injunction restraining and enjoining BEI from further violations of the anti-fraud and reporting provisions of the securities laws. In addition to the entry of the Final Judgment of Permanent Injunction against BEI, the Court ordered BEI to correct and amend its annual and periodic reports on file with the Commission. BEI consented to the entry of the Court's Judgment and Order without admitting or denying the allegations in the Commission's Complaint.

SEC v. Eugene Farrow, et al., Civil Action No. 78-0208 (DCD February 7, 1978)

The Commission's Complaint alleges that Eugene Farrow ("Farrow"), Kenneth Klein ("Klein"), Husnu Ozyegin ("Ozyegin"), and Sidney Kessler ("Kessler"), all former officers and directors of Co-Build Companies, Inc. ("Co-Build"), violated the antifraud and reporting provisions of the Exchange Act.

The Complaint alleges that during the period 1970-1973, the defendants, former officers or directors of the now bankrupt Co-Build, engaged in a scheme to misrepresent Co-Build's true financial condition through the issuance of false financial statements. It further alleges that this was largely accomplished through the formation of a purportedly non-affiliated construction company which deliberately understated billings to Co-Build for the construction of houses, thereby enabling the defendants to report inflated earnings;

through the improper recognition of revenues from sales of real estate entered into for the sole purpose of generating revenues; and through the failure to report losses incurred by three subsidiaries through their sale in a sham transaction.

Simultaneous with the filing of the Complaint, defendants Farrow, Klein and Kessler consented to the entry of final judgments of permanent injunction restraining them from further violations of the reporting and anti-fraud provisions of the Federal securities laws, without admitting or denying the Commission's allegations. These defendants also undertook not to become associated as an officer or director of any publicly held corporation without first obtaining the Commission's approval.

Stephen H. Korfeld, a former Co-Build officer and not a defendant in this action, entered into a voluntary stipulation with the Commission concerning his future relations as an officer or director of, and his responsibilities with respect to, publicly held corporations.

SEC v. Sharon Steel Corp., et al., Civil Action No. 77-1631 (DDC, Sept. 20, 1977)

On September 20, 1977, the U.S. District Court for the District of Columbia permanently enjoined Sharon Steel Corporation ("Sharon"), Victor Posner ("Posner"), NVF Company ("NVF"), Steven Posner ("S. Posner"), Gail Posner Cohen ("Cohen"), Walter Gregg ("Gregg"), Bernard Krakower ("Krakower"), and DWG Corporation ("DWG") from certain violations of the anti-fraud, reporting, and proxy solicitation provisions of the Federal securities laws, and ordered certain ancillary relief. The Court also permanently enjoined Fingal Bloom ("Bloom"), from violations of the reporting and anti-fraud provisions of the Federal securities laws. Guy McCracken ("McCracken"), was made subject to a Final Order relating to filings with the Commission. In addition, Pennsylvania Engineering Corp. ("PECOR") has been permanently enjoined from future violations of the proxy provisions of the Federal securities laws. Two other public companies, Southeastern Public Service Co. ("SEPSCO") and Wilson Brothers ("Wilson"), subsidiaries of DWG while not named as defendants, consented to the jurisdiction of

the Court and undertook to comply with certain ancillary relief ordered with respect to the defendant corporations. All defendants consented to the entry of the Order, without admitting or denying the allegations in the Commission's Complaint.

Posner is Chairman of the Board and Chief Executive Officer of Sharon, NVF, DWG, PECOR, SEPSCO, Wilson, all of which are listed on the New York Stock Exchange or the American Stock Exchange and their subsidiaries. S. Posner is Posner's son and Vice Chairman of the board and Chairman of the Executive Committee of such companies. Cohen is Posner's daughter and an officer and/or director of such companies. Greeg is Vice Chairman of such companies. Krakower is a Senior Vice President and principal legal officer of such companies. Bloom was formerly Treasurer of Sharon and Vice President of Sharon and NVF. McCracken is Executive Vice President and Chief Operating Officer of Sharon.

The Complaint further alleges that Sharon, its parent, NVF, its treasurer, Bloom, its Vice Chairman, Gregg, and its chief operating officer, McCracken, violated the antifraud provisions of the Federal securities laws in 1974 and 1975 when Sharon improperly valued and misrecorded major inventory items, misrecorded certain transactions as sales, shifted income and expenses from one year to another, and improperly transferred steel products among inventory accounts, all of which resulted in the falsification of their financial statements. The financial statements of Sharon and NVF for 1974 and 1975 were restated in 1977 with respect to these matters.

The Complaint further alleges that in 1975 Sharon, which reported \$25.6 million in pre-tax earnings, overstated these earnings by approximately \$13.9 million. The Complaint further alleged that Sharon increased its reported 1975 pre-tax earnings by \$4,929,000 by improperly revaluing virtually its entire inventory of iron ore through the treatment of a certain type of iron ore pellet called TPV as a "new item" in inventory, when such treatment was inconsistent with Sharon's past practice and, under generally accepted accounting principles, did not qualify for treatment as a new item.

The Complaint further alleges that in the last two months of 1975, Sharon purchased 9,948 tons of iron scrap with purchase orders and invoices which falsely showed that the scrap was of higher price and grade than it actually was, this resulted in the increase of 1975 ending inventory and pre-tax earnings by \$722,000. The Complaint further alleges that Sharon recorded 1976 sales of steel as 1975 sales which resulted in an overstatement of 1975 pre-tax earnings of \$463,000.

The Complaint further alleges that Sharon improperly shifted \$2,331,000 of pre-tax earnings from 1974 by prepaying a 1975 insurance premium and charging it against 1974 expenses rather than 1975. The Complaint further alleged that in 1974 Sharon accounted for 3,255 tons of stainless steel in an improper inventory account which had the effect of shifting \$2,821,000 of 1974 Sharon improperly treated certain iron ore called "reserve pellets" which had the effect of shifting \$739,000 of 1974 pre-tax earnings to 1975. The Complaint further alleges that in 1971, 1972 and 1973 Sharon improperly valued various of its iron ore inventories so as to increase reported earnings.

As part of the relief, Sharon, NVF, DWG, and PECOR were ordered by the Court and, as part of the settlement of the action, SEPSCO and Wilson have also agreed, to appoint two new independent directors satisfactory to the Commission, and to set up a new three member Audit Committee with the two independent directors comprising two of its three members. Such Audit Committees are directed, among other things, to adopt financial controls and accounting procedures designed to prevent occurrence of matters alleged in the Complaint, to supervise such procedures, to examine the matters in the Commission's Complaint, to recommend appropriate action, including legal action, and to file such recommendation with the Commission. The respective boards of directors are further directed to consider and act on all Audit Committee recommendations and file with the Commission a report with an explanation of the action taken and the reasons any such recommendation (or part thereof) were not adopted. These provisions will be in effect for a four-year period.

Such companies are also ordered to submit for two years, their proxy statements and their Annual Reports filed with the Commission to independent counsel familiar with the Federal securities laws for

review. Such corporations are further to make any amendments necessary to correct prior filings with the Commission. Such corporations are further to include a copy of the Complaint, Stipulation and Consent, and Judgment in their respective proxy statements for their next annual meeting.

As part of the settlement, defendant Krakower has stipulated that he will not practice before the Commission for any company other than a company related to Posner for one year. During such time the Commission has agreed not to bring proceedings against him pursuant to Rule 2(e) of the Commission's Rules of Practice based solely on the matters in the Complaint, or the entry of the Final Judgment.

The Judgment also enjoins Sharon, NVF, DWG, PECOR, Posner, S. Posner, Cohen and their agents from making false entries on the books of public companies controlled by the Posners. McCracken is made subject to an Order of the Court by which he is ordered not to make false and misleading statements about accounting matters.

SEC v. FISCO, Inc., et al., Civil Action No. 77-1426 (DDC, August 18, 1977)

On August 18, 1977, the Commission filed a civil injunctive action in the United States District Court for the District of Columbia against FISCO, Inc. ("FISCO"), a Pennsylvania Corporation, William Rush, ("Rush"), a founder, director and former president of FISCO; Robert J. Reilly ("Reilly"), a director and former officer of FISCO; Leonard J. Connolly ("Connolly"), a former officer of FISCO and its sole employee; Richard C. Mitchell ("Mitchell"), a former officer of FISCO; Robert K. Greenfield ("Greenfield"), formerly FISCO's Chairman of the Board and a member of a law firm which represented FISCO; and Lawrence J. Lee ("Lee"), also a former member of that law firm. The injunctive action involves allegations of violations of the anti-fraud and reporting provisions of the Federal securities laws.

FISCO, an automobile insurance holding company, made a public offering in November, 1970 and a second public offering in December, 1971. From the time of its first public offering, FISCO reported substantial increases in income. FISCO initially reported income of approximately \$1.9 million for the first six months

of 1973. However, in October 1973 FISCO reported that it would incur substantial losses for the first three quarters of 1973 and for the year. In early 1974, FISCO reported that, for the year 1973, it had operating losses of approximately \$39 million. That loss completely wiped out all previous earnings.

The Commission's Complaint alleges that, during the period in which it was reporting substantial increases in earnings, in fact, FISCO should have been reporting substantial losses. As a result, all of FISCO's filings with the Commission, including the prospectus used in FISCO's second public offering were materially false and misleading. In addition, the prospectus and other filings and public statements of FISCO, according to the Complaint, contained materially false and misleading statements and omissions concerning, among other things, the nature of FISCO's business.

The Commission's Complaint also alleges that the prospectus, as well as other public statements of FISCO, was materially false and misleading as a result of failing to disclose the true state of facts in connection with the transfer of liability for a substantial block of insurance to FISCO's wholly-owned insurance subsidiary, Gateway Insurance Company, on September 30, 1971. According to the Complaint, the reserves for claims attributable to such insurance, as audited by an independent certified public accounting firm, were materially deficient. As a result, FISCO's income for the current period reflected in the prospectus was overstated by approximately \$4 million.

The Complaint further alleges that, in order to report income improperly, FISCO used a variety of devices, primarily the understatement of reserves for losses. The methods by which FISCO understated loss reserves ranged from management orders to reduce reserves to the deliberate adoption of computer programs designed to prohibit reserve increases.

The Complaint alleges that Lee prepared and Greenfield reviewed opinions with respect to FISCO's acquisition of Prestige Casualty Company, and Illinois Insurance Company. The opinions contained certain statements which Lee and Greenfield knew or should have known were actually false. According to the Complaint, the opinions were one of the bases upon which FISCO's

accountants permitted FISCO wrongfully to include in its financial statements material amounts of Prestige's income. As a result, FISCO's income for the year 1972 was materially overstated.

Simultaneously with the filing of the Commission's Complaint, each of the defendants, without admitting or denying the allegations in the Complaint except as to jurisdiction, consented to the entry of Judgments of Permanent Injunction enjoining them from violations of the anti-fraud and reporting provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934.

In addition to the Judgments of Permanent Injunction, the Court ordered that, except with respect to FISCO, Messrs. Rush, Reilly and Connolly shall not act as officers or directors or make any significant policy decision or prepare or be responsible for the preparation of financial statements of any publicly held company. The Court also ordered that Mitchell shall not act as an officer or director of any publicly held company.

Messrs. Lee and Greenfield represented, in stipulations filed with the Court, that they do not practice before the Commission. They agreed to give prior written notice to the Commission in the event that they intend to practice before the Commission and that, in the event that such prior written notice is given within three (Greenfield) or two (Lee) years, the Commission may use the entry of the Judgment as the sole basis for a proceedings pursuant to Rule 2(e) of the Commission's rules of practice. They also represented that there were certain mitigating facts. The Commission represented that it has not present intention of instituting proceedings under Rule 2(e). Rule 2(e) is the Commission's rule governing suspension and disbarment of persons appearing before the Commission.

SEC v. SCA Services, Inc. et al, (Civil Action
No. 77- (DDC August 8, 1977)

The Commission's complaint alleges that SCA Services, Inc. ("SCA"); Christopher Recklitis ("Recklitis"), former President, treasurer and director of SCA; Berton Steir ("Steir"), founder, former Chief Executive Officer and President of SCA; Carlton Hotel

Corporation ("Carlton"), a privately held corporation owned primarily by Recklitis; and four other defendants all violate the antifraud, reporting and proxy solicitation provisions of the federal securities laws.

The Complaint alleged that from January 1972 through July 1975, Recklitis, while an officer of SCA, aided and abetted by Steir and other, diverted nearly \$4 million of SCA's assets for his personal and Carlton's use and benefit. The diverted funds then were used to purchase properties which were resold to SCA at values inflated by approximately \$2.5 million. The Complaint further alleged that accounts receivable due from Carlton were misrepresented in SCA's financial statements and that material facts concerning the alleged activities were omitted from SCA's reports, proxy materials, registration statements and prospectuses.

The Court entered a judgment of Permanent Injunction enjoining the defendants from future violations of the above-mentioned provisions of the federal securities laws. SCA, Recklitis, Carlton and one other defendant consented to the injunction without admitting or denying the Complaints' allegations.

SEC v. Forest Laboratories, Inc. et al., Civil Action No. 77-2745 (SDNY June 7, 1977)

The Commission's Complaint alleges that Forest Laboratories, Inc. ("Forest"); Hans Lowey ("Lowey"), former chairman of the board and president; Ian Stewart ("Stewart"), former treasurer; Milton Dorison ("Dorison"), former president; and Robert Sein ("Sein"), manager of a Forest subsidiary all violated the antifraud, reporting and proxy provisions of the federal securities laws.

The Commission's Complaint alleged violations of the Federal securities laws in connection with Forest's falsely inflating revenues recorded on its books and records by approximately \$4 million in connection with sales and purported sales by Forest to three of its major European customers. This was accomplished, in part, by the preparation and maintenance of two sets of invoices, one set for the customer shipper which reflected the true price of the goods sold, and the other set for recordation on the books and records of Forest, which reflected an inflated price for the goods

sold, in some cases two, three or more times the true price. The Complaint alleged that the above schemes resulted (in most years from 1963 through 1973) in reported earnings of Forest being inflated to levels substantially higher than the true earnings of Forest for such years.

Forest consented to the entry of a Permanent Injunction enjoining it from further violations of the above-mentioned provisions of the Federal securities laws and ordering certain other relief without admitting or denying the allegations of the Commission's Complaint. The Court's order provides that Forest's counsel and independent public accountants shall conduct an investigation and prepare a report covering the period from April 1, 1963 to the date of the entry of the Judgment, encompassing the matters set forth in the Complaint. Under the terms of the Court's Order, such investigation will be reviewed by a Special Review Counsel. In September 1977, Sein consented to the entry of a similar Permanent Injunction without admitting or denying the allegations of the Complaint. The remaining defendants, without admitting or denying the allegations in the Commission's Complaint consented to the entry of Final Judgments of Permanent Injunction.

SEC v. Potter Instrument Company, Inc., et al,
Civil Action No. 77-_____ (DDC March 9, 1977)

The Commission's complaint alleges that Potter Instrument Company, Inc. ("PICO"), and John Potter ("Potter"), chairman of the board and largest shareholder of PICO violated the antifraud and proxy solicitation provisions of the federal securities laws.

The Complaint alleges that the defendants attempted to conceal PICO's deteriorating financial condition during 1974 by issuing false and misleading press releases and by filing interim reports with the Commission which failed to reflect necessary adjustment for obsolescence in its inventory and rental equipment. The court entered a judgment of permanent injunction against the defendants enjoining further violations of the Federal securities laws.

In addition to consenting to the entry of the Judgment of Permanent Injunction against it, PICO undertook to prepare and disseminate to its shareholders a report containing a summary of recent

corporate developments and the allegations in the Commission's Complaint. PICO further undertook to establish certain committees, including an audit committee, from among the members of its present board of directors, and to appoint only outside directors approved by the Commission to fill any vacancies on its board of directors for a period of three years. The Court's Judgment and Order against Potter placed certain permanent restrictions upon the scope of his activities at PICO and prohibited him from voting his shares to defeat any motion, resolution or course of action recommended by a majority of PICO's board of directors for a period of three years. Both defendants consented to the entry of the permanent injunction without admitting or denying the Commission's allegations.

SEC v. Vanguard Security Funding Corporation,
Civil Action No. 77-0455 (DCD March 16, 1977)

The Commission's Complaint alleged that Vanguard Security Funding Corporation ("Vanguard") violated the antifraud and reporting provisions of the federal securities laws.

The Complaint alleged that in 1974, in order to report an improved legally-required surplus, Vanguard's subsidiary entered into sham transactions in which it acquired real estate in exchange for surplus debentures. The obligation to pay the surplus was contingent upon achievement of predetermined levels of the state statutory surplus. The Complaint further alleged that by reason of certain accounting treatment given to the sham transactions, real estate and subordinated debt were substantially overstated and net loss and retained earnings deficit were substantially understated in financial statements of Vanguard's subsidiary included in the Form 10-K and that footnote assertions therein that the transactions removed an impairment of capital were false. The Complaint also alleged that Vanguard failed to disclose: 1) that the fair market value and cost of the real estate was substantially less than reported, 2) the existence of an agreement providing for reversion of title to certain of the real estate should the subsidiary be placed in receivership and 3) that Vanguard filed false and misleading statutory surplus reports with the Alabama Department of Insurance.

The court entered a judgment of permanent injunction enjoining Vanguard from future violations of the antifraud and reporting provisions. Vanguard consented to the entry of judgment without admitting or denying the Commission's allegations.

SEC v. Emersons Ltd., et al., Civil Action No.
76-_____ (DDC May, 1976)

The Commission's Complaint alleges that Emersons Ltd. ("Emersons"), John Radnay ("Radnay"), a former President and Chairman of the Board, and Eli Levi ("Levi"), former treasurer and executive vice president violated the antifraud, reporting and proxy provisions of the Exchange Act.

The Complaint alleged that Radnay in order to conceal the use of a part of the payments from one beer supplier for his own purposes at the end of 1974 falsified certain of Emersons' records and made false statements verbally and in correspondence sent to agents of the Bureau of Alcohol, Tobacco and Firearms and gave false testimony with respect to the payments to the SEC. In addition, Radnay caused Emersons to issue a false and misleading press release with respect to the payments. In order to support his testimony in the SEC investigations, Radnay aided by Levi, caused employees of Emersons to falsify additional records and to prepare false affidavits, copies of which were given to the Internal Revenue Service and later withdrawn by the Company.

The Commission's Complaint further alleged that Emersons' financial statements for the 1974 and 1975 fiscal years, the interim periods in the 1975 fiscal year and the income statement for the first quarter of Emersons' 1976 fiscal year were false and misleading. After the end of the 1974 fiscal year, Emersons stated reported net income by improperly capitalizing about \$100,000 in advertising costs which had been expenses during the year, in order to achieve projections of income previously issued by the Company.

The Commission's Complaint further alleged that the unaudited quarterly financial statements of Emersons during the 1975 fiscal year were false and misleading in that among other things, the reported earnings were contrived to meet previously published projections rather than reflect actual results of operations.

In connection with the 1975 fiscal year financial statements, according to the Complaint, Radnay and Levi caused year end meat inventories to be overstated by about \$200,000, accounts payable to be understated by about \$200,000 and pre-tax income to be overstated by about \$400,000 in connection with a shipment of meat shortly before the end of the year.

The Commission further alleged that the 1975 fiscal year financial statements were false and misleading in that additional costs were improperly capitalized including substantial amounts of advertising and computer software costs, at least \$100,000 representing an insurance claim was improperly included in the accounts receivable balance without disclosure, the accounting method used for inventory valuation was changed from that used in 1974 without disclosure and various items in year-end inventory were arbitrarily increased.

The Commission's Complaint further alleged that shortly after the end of the first quarter of 1976 fiscal year, Radnay and Levi, in order to increase the reported income, caused the reversal of about \$180,000 of costs which had been expensed during the quarter. The Commission also alleged that Emersons also improperly capitalized about \$50,000 of costs which had been expensed during the quarter and failed to disclose the use of an accounting method in the treatment of lease maintenance costs inconsistent with that previously used.

The Commission further alleged that Emersons filed with the Commission and disseminated to its shareholders and the public false and misleading annual reports for fiscal years 1974 and 1975, quarterly reports for 1975 and the first quarter of 1976, proxy statements for the 1973, 1974 and 1975 annual meetings, various press releases and a registration statement filed in January 1976 which has not been declared effective.

The Court granted a permanent injunction against further violations and also: enjoined Emersons from making false bookkeeping entries, receiving unlawful payments or creating false invoices; ordered the appointment of three independent directors; ordered the creation of a Special Committee to the Board of Directors; and ordered the appointment of a Special Counsel to investigate the alleged matters and correct

previous Commission filings. Furthermore, Radnay and Levi were enjoined from holding certain positions, were required to make an accounting and turn over to Emersons those monies and assets personally used. Additionally, Radnay had to place all of his securities in a voting trust for five years. The defendants consented to the Court's judgment without admitting or denying the Commission's allegations.

SEC v. Giant Stores Corp., et al., Civil Action
No. 76-1641 (DDC September 2, 1976)

On September 26, 1976, the Commission filed a Complaint in the United States District Court for the District of Columbia against Giant Stores Corp. ("Giant"), a Massachusetts corporation, Theodore Kaufman ("Kaufman"), formerly Chairman of the Board and Chief Executive Officer of Giant, Benjamin Lieberman ("Lieberman"), formerly a Director, Vice President and Treasurer of Giant, Arthur D. Altman ("Altman"), formerly a Director of Giant and a partner in the law firm which served as Giant's General Counsel, Jack H. Shapiro ("Shapiro"), formerly a Director and President of Giant, Gerald Silverstein ("Silverstein"), formerly Controller and Assistant Treasurer of Giant, Martin Levin ("Levin"), formerly Assistant Controller of Giant, Rozefsky Incorporated ("Rozefsky Inc."), formerly a Giant supplier, Harold Rozefsky ("Harold Rozefsky"), Treasurer of Rosefsky, Herbert Hoffman ("Hoffman"), formerly President of New England Overall Company, a defunct corporation which did business under the name of Biltwell Company, and was formerly a Giant supplier, Halco Sales Company ("Halco"), formerly a Giant supplier, Maurice A. Halperin ("Halperin"), President of Halco, Plastic Distributors Incorporated ("Plastic"), formerly a Giant supplier, Saul Simon ("Simon"), President of Plastic; and Michael Porter ("Porter"), formerly public relations counsel to Giant.

The Complaint charged that Giant, certain of its officers and directors and others engaged in a fraudulent course of business to falsify its financial statements for the fiscal year ending January 29, 1972, including the recording of false supplier credits, false future rebates, allowances and other considerations from suppliers, false advertising credits and false health and beauty aids credits. Giant also concealed records pertaining to accounts payable and

made numerous false filings with the Commission. The Complaint alleged that as a result of these activities, Giant's earnings for the fiscal year ended January 29, 1972 were overstated by at least \$2,500,000. The Complaint further alleged that during the distribution of Giant securities in connection with Giant's 1971 and 1972 public offerings Giant and certain of its officers and others engaged in a manipulation of the market price of the securities and, in turn, raise the price at which Giant securities would be sold pursuant to the public offerings. In addition, the Complaint alleges that Giant, in its filings with the Commission, failed to fully disclose insider property interests in store sites which were leased to Giant, or instances of misappropriation of corporation funds by Giant officials.

The Court entered a Judgment of Permanent Injunction restraining and enjoining Kaufman and Lieberman from violations of the anti-fraud and anti-manipulative provisions of the Federal securities laws and ordering certain ancillary relief, and restraining and enjoining Altman, Shapiro, Silverstein, Levin, Rozefsky Inc., Harold Rozefsky, Hoffman, Plastic, Simon and Porter from violations of the anti-fraud provisions of the Federal securities laws, and with respect to certain of the defendants, ordering certain ancillary relief. Defendants Kaufman and Lieberman consented to the entry of the judgments without admitting or denying the allegations contained in the Complaint.

In addition to the entry of the Judgments of Permanent Injunction mentioned above, certain ancillary relief was ordered by the Court and/or undertaken by a number of the defendants, including the following:

1. An order compelling Kaufman to comply with his undertaking not to be associated with any corporation whose securities are publicly held as an officer, director, executive or like capacity, without obtaining the prior approval of the Commission;
2. An order compelling Lieberman to comply with his undertaking not to be associated with any corporation whose securities are publicly held as an officer, director, or, with respect to certain financial responsibilities, an executive or like capacity, without the prior approval of the Commission;

3. An order directing Altman to comply with his undertaking not to serve as an officer, director or executive of any company whose securities are publicly held for a period of three years, after which time he may apply to the Court to be allowed to accept such association. Altman may retain any such association which he presently has provided that, (a) the Boards of Directors of such companies are given copies of the Commission's Complaint, and (b) if his name is submitted to shareholders for re-election as a director, or if he is retaining a corporate office, the new proxy statements relating to a meeting for the election of directors will disclose the substance of the Complaint and Judgment as they relate to Altman. In addition, Altman, who is an attorney, is resigning from practice before the Commission and his resignation will remain in effect until Altman applied to the Commission and the Commission approves his application;
4. An undertaking by Silverstein, who is a certified public accountant, not to practice before the Commission without the prior approval of the Commission;
5. An order compelling Levin to comply with his undertaking not to be associated with any corporation whose securities are publicly owned as an officer or director for a period of two years, without the prior approval of the Commission;
6. An order compelling Kaufman, Lieberman, Altman, Shapiro, Silverstein and Levin to comply with their undertakings to forebear from receiving any assets, properties or monies of Giant in any distribution they would be entitled to participate in as security holder or creditors of Giant; and
7. An order compelling Porter to adopt within 60 days, implement and maintain certain policies and procedures relating to his public relations activities which are reasonably calculated to prevent the recurrence of the matters complained of in this action.

On June 24, 1977 the United States District Court for the District of Columbia entered a Judgment of Permanent Injunction against Halco Sales Company, ("Halco") a Massachusetts corporation and Maurice A. Halperin ("Halperin"), President of Halco, restraining and enjoining Halco and Halperin from violations of the anti-fraud provisions of the Federal securities laws. Halco and Halperin consented to the entry of the Judgment of Permanent Injunction without admitting or denying the allegations of the Commission's Complaint.

The Judgment of Permanent Injunction enjoins Halco and Halperin from violations of the anti-fraud provisions of the Federal securities laws with respect to Giant, and further enjoins Halco and Halperin from issuing false credits or invoices of Halco Sales Company to Giant Stores Corp. or any other issuer, or issuing false confirmations of Halco Sales Company to auditors of Giant Stores Corp. or any other issuer.

SEC v. Omni-Rx Health Systems, et al., Civil
Action No. 76-1623 (DC, September 1, 1976)

On September 1, 1976 the Commission filed a Complaint in the United States District Court for the District of Columbia seeking injunctive and ancillary relief against Omni-Rx Health Systems ("Omni-Rx"), four of its principal officers and an affiliate and Farmers and Merchants Bank of Long Beach ("Farmers and Merchants Bank"), a California state chartered bank. The defendants, apart from Omni-Rx and the Farmers and Merchants Bank, are Imperial West Medical Group, one of Omni-Rx's affiliated medical groups; Dr. Edward R. Dickstein, President and Chairman of Omni-Rx; Dr. Myron Koch, Treasurer, and a director of Omni-Rx; Dr. Alvin Markovitz, Secretary and director of Omni-Rx. The Complaint alleged that Doctors Dickstein, Markovitz and Koch control Omni-Rx and are the partners in Omni-Rx's affiliated medical groups.

The Complaint alleges that the defendants violated the anti-fraud, reporting and other provisions of the Federal securities laws in connection with false and misleading disclosures in Omni-Rx's filings with the Commission concerning, among other things, the uses of the proceeds of a public offering of Omni-Rx securities, the financial condition of Omni-Rx and its affiliates and a manipulation of the securities of Omni-Rx.