

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

vs.

**HCC INSURANCE HOLDINGS, INC.,  
STEPHEN L. WAY, AND CHRISTOPHER L.  
MARTIN**

**Defendants.**

**Civil Action No.: \_\_\_\_\_-cv-\_\_\_\_\_  
ECF**

**COMPLAINT**

Plaintiff Securities and Exchange Commission ("Commission") alleges as follows against Defendants HCC Insurance Holdings, Inc. ("HCC" or the "Company"), Stephen L. Way, and Christopher L. Martin:

**SUMMARY OF ALLEGATIONS**

1. From 1997 through 2005, Defendant Way engaged in the backdating of stock-option grants at Defendant HCC, a New York Stock Exchange-listed insurance company based in Houston, Texas. Throughout this period, Way served as HCC's chief executive officer and as the chairman of HCC's board of directors. Defendant Martin, who served as HCC's general counsel throughout the period, helped facilitate Way's scheme to backdate stock-option grants at the Company.

2. The backdating of options gave the appearance that HCC had granted *at-the-money* options when, in fact, HCC had granted *in-the-money* options. *At-the-money* describes an option whose exercise price equals the underlying security's market price on the option's grant date, while *in-the-money* describes an option whose exercise price is less than the underlying

security's market price on the option's grant date. The exercise price is the amount the option owner must pay to exercise the option and receive the underlying security.

3. Among other things, the backdating of options rendered HCC Commission filings misleading as to material facts. Under generally accepted accounting principles ("GAAP") in effect throughout the relevant period, HCC was required to record an expense in its financial statements for any *in-the-money* options. As a result of the options-backdating scheme, HCC did not record this expense. Consequently, HCC materially understated its expenses and materially overstated its income in certain Commission filings. Moreover, certain HCC Commission filings falsely stated, among other things, that HCC had not granted *in-the-money* options.

4. By committing the acts alleged in this Complaint, HCC directly and indirectly engaged in, and unless restrained and enjoined by the Court will continue to engage in, acts, transactions, practices, and courses of business that violate Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

5. By committing the acts alleged in this Complaint, Way directly and indirectly engaged in, and unless restrained and enjoined by the Court will continue to engage in, acts, transactions, practices, and courses of business that violate Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)], Sections 10(b), 13(b)(5), 14(a), and 16(a) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(b)(5), 78n(a), and 78p(a)], and Exchange Act Rules 10b-5, 13a-14, 13b2-1, 13b2-2, 14a-3, 14a-9, and 16a-3 [17 C.F.R. §§ 240.10b-5, 240.13a-14, 240.13b2-1, 240.13b2-2, 240.14a-3, 240.14a-9, and 240.16a-3]. Way aided and abetted HCC's violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§

78m(a), 78(m)(b)(2)(A), and 78(m)(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

6. By committing the acts alleged in this Complaint, Martin directly and indirectly engaged in, and unless restrained and enjoined by the Court will continue to engage in, acts, transactions, practices and courses of business that violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (a)(3)], Sections 13(b)(5) and 16(a) of the Exchange Act [15 U.S.C. §§ 78m(b)(5) and 78p(a)], and Exchange Act Rules 13b2-1, 13b2-2, and 16a-3 [17 C.F.R. §§ 240.13b2-1, 240.13b2-2, and 240.16a-3]. Martin aided and abetted HCC's violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act [15 U.S.C. §§ 78m(a), 78(m)(b)(2)(A), 78(m)(b)(2)(B), and 78n(a)] and Exchange Act Rules 12b-20, 13a-1, 13a-11, 13a-13, 14a-3, and 14a-9 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13, 240.14a-3, and 240.14a-9].

7. The Commission seeks judgment from the Court: (a) enjoining HCC, Way, and Martin from engaging in future violations of the sections of the federal securities laws that they violated; (b) requiring Way to pay a civil monetary penalty in the amount of \$200,000 and Martin to pay a civil monetary penalty in the amount of \$50,000, pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act [15 U.S.C. §§ 77t(d) and 78u(d)(3)]; and (c) prohibiting Way for five years following the date of entry of the Final Judgment from serving as an officer or director of any public company pursuant to Section 20(e) of the Securities Act and Section 21(d)(2) of the Exchange Act [15 U.S.C. §§ 77t(e) and 78u(d)(2)].

#### **JURISDICTION AND VENUE**

8. The Court has jurisdiction of this civil enforcement action pursuant to Section 22(a) of the Securities Act and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§

77v(a), 78u(d), 78(u)(e), and 78aa]. HCC, Way, and Martin made use of the means or instruments of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the acts, transactions, practices, and courses of business alleged in this Complaint.

9. Venue lies in the Southern District of Texas pursuant to Section 22(a) of the Securities Act and Section 27 of the Exchange Act [15 U.S.C. §§ 77v(a) and 78aa]. HCC published false and misleading current, quarterly, and annual reports, proxy statements, and registration statements, which were prepared in and transmitted from this District.

#### THE PARTIES

10. The plaintiff is the Securities and Exchange Commission, which brings this civil enforcement action pursuant to the authority conferred on it by Section 20(b) of the Securities Act and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 77f(b), 78u(d) and (e)].

11. Defendant HCC is a Delaware corporation based in Houston, Texas. The Company provides insurance coverage and related services to commercial customers and individuals. During the relevant period, the company's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange under the symbol HCC.

12. Defendant Way, age 59, lives in Houston, Texas. He founded HCC in 1974 and was its CEO from then until November 2006, when he resigned from that position, and its board chairman from 1974 until February 2007, when he retired from that position. While CEO and chairman, Way reviewed and signed periodic reports and registration statements, and reviewed proxy statements filed with the Commission and disseminated to investors.

13. Defendant Martin, age 41, lives in Houston, Texas. He served as general counsel to HCC between July 1997 and November 2006, when he resigned. While general counsel, Martin reviewed and signed proxy statements, and reviewed registration statements and periodic reports filed with the Commission and disseminated to investors.

### FACTS

#### **Background**

14. HCC compensated its employees, executives, and directors with stock options. Each option gave the grantee the right to buy one share of HCC common stock from the Company at a set price, called the *exercise price*, on a future date after the option vested. The option was *at-the-money* when its exercise price equaled the market price of HCC's stock on the option's grant date and *in-the-money* when its exercise price was less than the market price of HCC's stock on the option's grant date.

15. Throughout the relevant period, HCC's accounting policies provided that it would account for stock options using the intrinsic-value method described in Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25"). Under APB 25, employers were required to record as an expense on their financial statements the "intrinsic value" of a fixed stock option on its *measurement date*. The measurement date, as defined by APB 25, is the first date on which the following information is known: (i) the number of options that an individual employee is entitled to receive and (ii) the exercise price. An option that is *in-the-money* on the measurement date has intrinsic value, and the difference between its exercise price and the underlying security's market price must be recorded as compensation expense to be recognized over the vesting period of the option. Options that are *at-the-money* on the measurement date need not be expensed.

### HCC's Option Plans and Disclosures

16. From 1997 through 2005, HCC made approximately 1,400 stock-option grants. HCC purportedly made each grant pursuant to one of several stock-option plans the Company had over this period—the 1992 Incentive Plan, the 1995 Flexible Incentive Plan, the 1996 Non-Employee Director Plan, the 1997 Flexible Incentive Plan, the 2001 Flexible Incentive Plan, and the 2004 Flexible Incentive Plan (collectively, the “Stock Option Plans” or the “Plans”). HCC adopted these Stock Option Plans, as well as Amended and Restated versions of all of the Plans, after obtaining shareholder approval.

17. The Stock Option Plans generally provided that a committee of several board members, the Compensation Committee, would administer the Plans. The Plans gave the Compensation Committee authority to decide who would receive options and to set grant dates, exercise prices, option quantity, vesting schedules, and other terms and conditions subject to the provisions of the Plans. Each Plan prohibited HCC from granting options with exercise prices less than the stock's fair market value on the date of grant (that is, *in-the-money* options).

18. During the relevant period, HCC's Commission reports indicated that the Company did not issue *in-the-money* options. In its annual reports on Form 10-K for fiscal years 1997 through 2000, HCC stated, “[a]ll options have been granted at fixed exercise prices, generally at the market price of the Company's Common Stock on the grant date” and that “[a]ny excess of the market price on the grant date over the exercise price is recognized as compensation expense in the accompanying consolidated financial statements.” HCC's 2001 Form 10-K stated, “[a]ll options have been granted at fixed exercise prices at the market price of our common stock on the grant date.” The Forms 10-K for fiscal years 2002 and 2003 stated, “All options have been granted at fixed exercise prices at the market price of our common stock

at the grant date. Because of that, no stock-based employee compensation cost is reflected in our reported net income." HCC's 2004 and 2005 Forms 10-K stated, "We account for stock options granted to employees using the intrinsic value method, in accordance with [APB 25]." These filings further stated that all options were "granted at fixed exercise prices at the market price of our common stock on the grant date." HCC did not record any compensation expense for stock options from 1997 through 2005.

### **The Backdating of Options at HCC**

19. From at least 1997 through 2005, Way exercised *de facto* control over the selection of grant dates in HCC's options-granting process, despite provisions in the Stock Option Plans giving such authority to the Compensation Committee. Way disregarded and contravened the provisions of the Stock Option Plans in granting stock options. He looked back at HCC's historical stock prices and, with the benefit of hindsight, chose grant dates for the options that coincided with the dates of low closing prices for the stock. This backdating practice caused the options to be *in-the-money*. Way sought approval for certain grants from the Compensation Committee, but he did not disclose to the Compensation Committee that these grants were *in-the-money*.

20. At Way's direction or with his knowledge, Martin prepared documents indicating that HCC's option grants had been made on earlier dates when HCC's stock price had closed lower whereas in fact no such grants had been made on those dates. These inaccurate and misleading documents included written actions of the Compensation Committee, stock-option agreements, and Forms 4 reporting the grants to the SEC.

21. On at least 38 and as many as 58 occasions between 1997 and 2005, Way caused HCC to record inaccurately in its books and records that option grants occurred on dates when

the Company's stock traded at a relatively low price—often at a low for the quarter or the year. An option grant purportedly made on July 22, 2002, is illustrative of the backdating scheme. The Company purportedly granted approximately 800,000 options on that date, including 500,000 options for Way and 35,000 options for Martin. On July 22, 2002, the stock closed at \$20.39 per share, which was the second-lowest price of 2002. In reality, HCC did not grant any options on July 22, 2002. Rather, on various dates between December 28, 2002 and February 12, 2003, Way granted options backdated to July 22, 2002. In truth, the company's closing stock price between December 28, 2002, and February 12, 2003, fluctuated between \$22.95 and \$25.88 per share. Using any date in this time period as the measurement date, the July 22, 2002 options would have been *in-the-money* by between \$2.56 and \$5.49 per share. HCC did not, however, record any compensation expense in connection with these options.

22. On at least 38 and as many as 58 occasions between 1997 and 2005, Martin prepared company documents, including stock-option agreements and written actions of HCC's compensation committee, reflecting inaccurate grant dates. Generally, Martin prepared these documents at Way's direction while Martin had reason to know that the documents contained inaccurate grant dates. Often these inaccurate dates corresponded to dates on which the Company's stock price traded at or near a low for the quarter or the year.

23. For example, HCC purportedly granted 10,000 options to an employee on July 27, 2001. On that date, the stock closed at \$22.70 per share, which was the lowest price of the quarter. In reality, HCC did not grant any options on July 27, 2001. On September 4, 2001, Way directly or indirectly instructed Martin to select the date July 27, 2001, for the grant because HCC's stock price traded at a relative low on that date. On September 4, 2001, HCC's common stock traded at \$24.97 per share. Using September 4, 2001, as the measurement date, these



options were *in-the-money* by \$2.27 per share. As a result of the backdating scheme, however, HCC did not record any compensation expense in connection with these options.

24. Way personally received at least 1.3 million and as many as 3.6 million backdated options, thereby obtaining approximately \$5.5 million in compensation to which he was not entitled. He has since returned this compensation to HCC.

25. Martin personally received at least 75,000 backdated options totaling approximately \$100,000 in compensation to which he was not entitled. He has since voluntarily returned this compensation to HCC.

26. By virtue of the options backdating, HCC's books and records inaccurately reflected, among other things, the dates of option grants, the Company's stock-based compensation expenses, and the Company's financial condition. On December 27, 2006, HCC filed an amended Form 10-K, restating its financial statements for 2005 and stating that it had "used incorrect accounting measurement dates for stock option grants covering a significant number of employees and members of [its] Board of Directors during the period 1997 through 2005 and that certain option grants were retroactively priced." The amended Form 10-K indicated that HCC had failed to record approximately \$26.6 million in stock-based compensation expense in that period. As a result of this failure, HCC's annual net earnings, as originally reported in Forms 10-K from 1997 through 2005, were inflated by amounts ranging from 0.20% to 7.52%. These financial misstatements were caused by the backdating of options.

27. Way signed, as HCC's principal executive officer, certifications that were included in HCC's 2002, 2003, 2004, and 2005 annual reports on Form 10-K, as well as its quarterly reports filed on Form 10-Q for the quarters ended June 30, 2002, through March 31, 2006. He knew or was reckless in not knowing that these certifications were not accurate.

28. Way and Martin failed to ensure that HCC maintained a system of internal accounting controls sufficient to provide assurances that stock option grants were recorded as necessary to permit the proper preparation of financial statements in conformity with GAAP.

29. As a result of the options backdating, HCC provided false and inaccurate documentation to the Company's external auditors in connection with audits of HCC's financial statements. This documentation included management-representation letters which falsely stated that all of HCC's financial information was prepared and presented in conformity with GAAP. Relying on the false documentation supplied to them, the auditors concurred with HCC's assessment that no compensation expense should be recorded for option grants. Way and Martin knew or should have known that documentation provided the auditors contained false and inaccurate information.

30. As a result of the options backdating, Way and Martin filed Forms 4 and 5 with the Commission that did not contain accurate transaction dates with respect to options they received from HCC.

#### **FIRST CLAIM**

##### **(Violations of Exchange Act Section 10(b) and Exchange Act Rule 10b-5)**

31. The Commission realleges paragraphs 1 through 30.

32. Way, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, or of the facility of a national securities exchange, in connection with the purchase or sale of securities, and with knowledge or recklessness: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which

they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

33. Way violated Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 [15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5].

### **SECOND CLAIM**

#### **(Violations of Securities Act Section 17(a)(1))**

34. The Commission realleges paragraphs 1 through 33.

35. Way, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, in connection with the offer or sale of securities, and with knowledge, recklessness, or negligence, employed devices, schemes or artifices to defraud.

36. Way violated Section 17(a)(1) of the Securities Act [15 U.S.C. §§ 77q(a)(1)].

### **THIRD CLAIM**

#### **(Violations of Securities Act Sections 17(a)(2) and 17(a)(3))**

37. The Commission realleges paragraphs 1 through 36.

38. Way and Martin, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, in connection with the offer or sale of securities, and with negligence: (a) obtained money or property by means of untrue statements of material fact 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; or (b) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of HCC securities.

39. Way and Martin violated Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and (3)].

**FOURTH CLAIM****(Violations of Exchange Act 13(b)(5) and Exchange Act Rule 13b2-1)**

40. The Commission realleges paragraphs 1 through 39.

41. Way and Martin, directly or indirectly, knowingly circumvented or failed to implement a system of internal accounting controls at HCC, falsified books, records and accounts at the Company subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] and caused to be falsified, such books, records and accounts.

42. Way and Martin violated Section 13(b)(5) of the Exchange Act and Exchange Act Rule 13b2-1 [15 U.S.C. § 78m(b)(5); 17 C.F.R. § 240.13b2-1].

**FIFTH CLAIM****(Violations of Exchange Act Rule 13b2-2)**

43. The Commission realleges paragraphs 1 through 42.

44. Way and Martin, directly or indirectly, made or caused to be made a materially false or misleading statement, or omitted to state or caused another person to omit to state any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with the following: (i) any audit, review or examination of the financial statements of an issuer, or (ii) in the preparation or filing of any document or report required to be filed with the Commission; or took action, or directed another to take action, to coerce, manipulate, mislead, or fraudulently influence any independent public or certified public accountant engaged in the performance of an audit or review of an issuer's financial statements required to be filed with the Commission, while knowing or while it should have been known that such action, if successful, could result in rendering the issuer's financial statements materially misleading.

45. Way and Martin violated Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

**SIXTH CLAIM**

**(Violations of Exchange Act Rule 13a-14)**

46. The Commission realleges paragraphs 1 through 45.

47. Way, directly or indirectly, signed personal certifications indicating that he had reviewed periodic reports containing financial statements which an issuer filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and that, based on their knowledge, (a) these reports do not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report; and (b) that information contained in these reports fairly present, in all material respects, the financial condition and results of the issuer's operations. He knew or should have known that these certifications were wrong.

48. Way violated Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14].

**SEVENTH CLAIM**

**(Violations of Exchange Act Section 14(a) and Exchange Act Rules 14a-3 and 14a-9)**

49. The Commission realleges paragraphs 1 through 48.

50. Way and Martin, directly or indirectly, by use of the means or instruments of interstate commerce or of the mails, or of the facility of a national securities exchange, knowingly, recklessly or negligently solicited proxies by means of a proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing statements which, at the time and in light of the circumstances under which they were made, were false and misleading with respect to material facts, or which omitted to state material facts which were

necessary in order to make the statements made not false or misleading or which were necessary to correct statements in earlier false or misleading communications with respect to the solicitation of proxies for the same meeting or subject matter.

51. Way violated and Martin aided and abetted Way's violation of Section 14(a) of the Exchange Act and Exchange Act Rules 14a-3 and 14a-9 [15 U.S.C. § 78n(a); 17 C.F.R. § 240.14a-3; 17 C.F.R. § 240.14a-9].

#### **EIGHTH CLAIM**

##### **(Violations of Exchange Act Section 16(a) and Exchange Act Rule 16a-3)**

52. The Commission realleges paragraphs 1 through 51.

53. Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Exchange Act Rule 16a-3 [17 C.F.R. 240.16a-3] require officers, directors and beneficial owners of more than ten percent of any class of equity securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] to file periodic reports disclosing any change of beneficial ownership in those securities.

54. Way and Martin violated Section 16(a) of the Exchange Act and Exchange Act Rule 16a-3 [15 U.S.C. §78p(a); 17 C.F.R. § 240.16a-3].

#### **NINTH CLAIM**

##### **(Violations of Exchange Act Section 13(a) and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13)**

55. The Commission realleges paragraphs 1 through 54.

56. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Exchange Act Rules 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.13a-1, 240.13a-11, and 240.13a-13], require issuers of registered securities to file with the Commission factually accurate current, quarterly, and annual reports. Exchange Act Rule 12b-20 [17 C.F.R. § 240.12b-20] further provides that, in

addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they were made not misleading.

57. HCC filed with the Commission and disseminated to investors false and misleading current, quarterly, and annual reports. In doing so, HCC violated Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [15 U.S.C. § 78m(a); 17 C.F.R. §§ 12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

58. Way and Martin knowingly gave substantial assistance to HCC in its violations of these provisions.

59. Way and Martin aided and abetted HCC's violations of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.12b-20, 240.13a-1, 13a-11, and 13a-13].

#### **TENTH CLAIM**

##### **(Violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B))**

60. The Commission realleges paragraphs 1 through 59.

61. Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] requires issuers to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of its assets. Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain the accountability of assets.

62. HCC violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78(m)(b)(2)(B)].

63. Way and Martin knowingly gave substantial assistance to HCC in its failure to make and keep accurate books, records and accounts and its failure to devise and maintain a sufficient system of internal accounting controls.

64. Way and Martin aided and abetted HCC's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78(m)(b)(2)(B)].

### **PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that the Court:

#### **I.**

Permanently enjoin HCC from violating Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder;

#### **II.**

Permanently enjoin Way from violating Section 17(a) of the Securities Act and Sections 10(b), 13(b)(5), 14(a), and 16(a) of the Exchange Act and Exchange Act Rules 10b-5, 13a-14, 13b2-1, 13b2-2, 14a-3, 14a-9, and 16a-3 and aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13;

#### **III.**

Permanently enjoin Martin from violating Sections 17(a)(2) and 17(a)(3) of the Securities Act and Sections 13(b)(5) and 16(a) of the Exchange Act and Exchange Act Rules 13b2-1, 13b2-2, and 16a-3 and aiding and abetting violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and



14(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11, 13a-13, 14a-3, and 14a-9;

**IV.**

Order Way to pay a civil monetary penalty in the amount of \$200,000 pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act [15 U.S.C. §§ 77t(d) and 78u(d)(3)];

**V.**

Order Martin to pay a civil monetary penalty in the amount of \$50,000 pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act [15 U.S.C. §§ 77t(d) and 78u(d)(3)];

**VI.**

Prohibit Way for five years following the date of entry of the Final Judgment from serving as an officer or director of a public company pursuant to Section 20(e) of the Securities Act and Section 21(d)(2) of the Exchange Act [15 U.S.C. §§ 77t(e) and 78u(d)(2)]; and

**VII.**

Grant such other equitable relief as to which the Commission might otherwise show itself entitled.

Dated: Fort Worth, Texas  
July 21, 2008

Respectfully submitted,  
s/Timothy S. McCole  
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