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UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

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SECURITIES AND EXCHANGE COMMISSION

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

-----X  
SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

GARNER ANTHONY,

Defendant.  
-----X

CIVIL NO. CV 06 00195 DAEKSC

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

Plaintiff Securities and Exchange Commission (“Commission”) alleges the following against Defendant Garner Anthony (“Anthony” or “Defendant”):

**SUMMARY**

1. This action involves insider trading in the securities of Cox Communications, Inc. (“Cox”) by Anthony.
2. On July 28, 2004, Anthony purchased 10,000 shares of Cox while in possession of material nonpublic information regarding a potential tender offer from Cox’s privately held parent company, Cox Enterprises, Inc. (“Enterprises”), conveyed to him directly from an officer and director of Enterprises.
3. On August 2, 2004, Enterprises publicly announced its tender offer to Cox, and the price of Cox shares increased substantially. Later that day, Anthony sold the recently acquired shares, resulting in a trading profit of \$50,900.
4. Anthony, directly or indirectly, engaged in acts, practices, and courses of business which have constituted and will constitute violations of Section 14(e) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder.
5. The Commission, pursuant to authority conferred upon it by Sections 14(e) and 23(a) of the Exchange Act [15 U.S.C. §§ 78n(e) and 78w(a)], has

promulgated Rule 14e-3 [17 C.F.R. § 240.14e-3] which was in effect at all times relevant herein and remains in effect.

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

### **JURISDICTION AND VENUE**

7. The Commission brings this action pursuant to Sections 21(d), 21(e) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d)-(e) and 78u-1] seeking to permanently enjoin the Defendant from engaging in the transactions, acts, practices and courses of business alleged in this Complaint, and transactions, acts, practices and courses of business of similar purport and object, for disgorgement of illegally obtained funds together with prejudgment interest thereon, civil money penalties, and other equitable relief.

8. Anthony, directly or indirectly, has made use of the means and instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the acts, practices, and courses of business alleged herein.

9. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] as Anthony is a resident of this district.

**DEFENDANT AND RELEVANT ENTITIES**

10. **Garner Anthony**, 76, was at all relevant times, and remains, a resident of Honolulu, Hawaii. Anthony was the chairman and chief-executive of Enterprises from 1974 through 1987.

11. Cox is a Delaware corporation with its headquarters in Atlanta, Georgia. Cox was a publicly traded company engaged in the business of providing cable television distribution, telephone, and internet access services. The stock of Cox was traded on the New York Stock Exchange and was registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 78l(g)]. Enterprises ultimately acquired Cox through a successful tender offer in December 2004 at a price of \$34.75 per share.

12. Enterprises, a privately held Delaware corporation, is headquartered in Atlanta, Georgia.

**FACTS**

**A. Enterprises' Tender Offer for Cox**

13. Beginning in June 2004, executives of Enterprises and Cox began discussing a potential acquisition of the publicly traded shares of Cox by Enterprises. Discussions regarding the potential tender offer were kept confidential and progressed through various substantial steps, including the

retaining of legal counsel and investment bankers to analyze and assist in the potential tender offer.

14. On July 30, 2004, Cox's stock closed at \$27.58 per share, on volume of 2,619,200 shares.

15. On August 2, 2004, before the market opened, Enterprises publicly announced its tender offer to Cox at \$32.00 per share.

16. On August 2, 2004, Cox's stock closed up \$5.58 from the previous day to \$33.16 per share (a more than 20% increase) on volume of 28,788,100 shares (a more than 1,000% increase).

**B. Anthony's Knowledge and Trading in Cox**

17. On July 19, 2004, after Anthony had been advised regarding a favorable research report on Cox issued by the securities firm with which Anthony maintained accounts, Anthony purchased 100,000 shares of Cox for his primary securities account.

18. On July 27, 2004, Anthony met with an officer and director of Enterprises, who informed Anthony that Enterprises was considering a potential tender offer to Cox. Anthony knew or had reason to know that the information provided to him by the officer and director of Enterprises regarding the potential tender offer was nonpublic information.

19. On July 28, 2004, the morning after learning of Enterprises' potential acquisition of Cox, Anthony instructed his broker to purchase a further 10,000 shares of Cox at \$28.29 for an additional securities account that he controlled. This additional securities account had existing holdings of 20,000 shares of Cox (10,000 shares that had been acquired on October 30, 2003 and 10,000 shares that had been acquired on February 19, 2004). Anthony traded in this additional securities account which he controlled while in possession of material nonpublic information relating to Enterprises' potential tender offer to Cox.

20. After Enterprises' public announcement on August 2, 2004 of its tender offer to acquire Cox at \$32.00 per share, Anthony sold all 130,000 shares of Cox in securities accounts he controlled at \$33.38 per share, including: (a) the 10,000 shares in the additional securities account he controlled that had been purchased on October 30, 2003; (b) the 10,000 shares in the additional securities account he controlled that had been purchased on February 19, 2004; (c) the 100,000 shares in his primary securities account that had been purchased on July 19, 2004; and (d) the 10,000 shares in the additional securities account he controlled that had been purchased on July 28, 2004.

21. The 10,000 shares of Cox that Anthony purchased on July 28, 2004 were purchased after Anthony learned of the material nonpublic information concerning Enterprises' potential tender offer to Cox, but prior to Enterprises'

public announcement of its tender offer. When sold on August 2, 2004 following Enterprises' public announcement, Anthony realized a profit of \$50,900 on these 10,000 shares of Cox purchased on July 28, 2004.

**COUNT I**

**Violation 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]**

22. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 21, above.

23. On July 28, 2004, Anthony, in connection with a tender offer or request or invitation for tenders in which a substantial step or steps to commence such tender offer had been taken, by use of the means or instrumentalities of interstate commerce or by use of the mails, or of any facility of any national securities exchange, directly and indirectly purchased or sold or caused to be purchased or sold the securities sought or to be sought in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities, while in possession of material information relating to such tender offer that Anthony knew or had reason to know was nonpublic and knew or had reason to know had been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee or other person acting on behalf of the offering person of such issuer.

24. Anthony engaged in the aforementioned purchase or sale of securities sought or to be sought in such tender offer, after a substantial step or steps to commence such tender offer had been taken, while in possession of material information relating to such tender offer that Anthony knew or had reason to know was nonpublic and knew or had reason to know had been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or an officer, director, partner, employee or other person acting on behalf of the offering person of such issuer.

25. By reason of the foregoing, Anthony, directly or indirectly, violated and unless enjoined will continue to violate, 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, Plaintiff Commission respectfully prays that the Court:

I.

Make findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure.

II.

Issue a permanent injunction enjoining Anthony, and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of the order by personal service or otherwise, and each of



them, from violating 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].

III.

Issue an Order requiring Anthony to disgorge all ill-gotten gains and losses avoided as alleged in the Commission's Complaint, plus pay prejudgment interest thereon.

IV.

Issue an Order requiring Anthony, pursuant to Sections 21(d)(3) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d)(3) and 78u-1], to pay a civil monetary penalty.

V.

Issue an Order that retains jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may have been entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

VI.

Grant such other and further relief as may be necessary and appropriate.

DATED: April 10, 2006, at Atlanta, Georgia.

RESPECTFULLY SUBMITTED,

William P. Hicks

William P. Hicks  
DISTRICT TRIAL COUNSEL

Aaron W. Lipson  
STAFF ATTORNEY

COUNSEL FOR PLAINTIFF  
SECURITIES AND EXCHANGE COMMISSION