ADMINISTRATIVE PROCEEDING
FILE NOS. 3-1950, 3-1951,
3-1952, 3-2073

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

ALBERT TELLER AND CO., INC. (8-9578)
ALBERT TELLER
MORTON GOLDFIELD
ARNOLD M. KRELL
RICHARD C. SPANGLER, INC. (8-8876)
RICHARD C. SPANGLER
NASSAR AND CO., INC. (8-12746)
GEORGE M. NASSAR
EMMANUEL L. JENKINS

FILED
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SECURITIES & EXCHANGE COMMISSION

INITIAL DECISION

(Private Proceedings)

July 20, 1972
Washington, D.C.

Sidney Ullman
Hearing Examiner

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INITIAL DECISION

(Private Proceedings)

APPEARANCES: William R. Schief, formerly Assistant Regional Administrator, now Regional Administrator and Marvin S. Davis, Attorney, Washington Regional Office, Thomas R. Beirne, Attorney, New York Regional Office, for the Division of Trading and Markets.

Fred C. Aldridge, Jr. and Philip J. Fina, Stradley, Ronon, Stevens and Young, Philadelphia, Pa., for respondents **Albert Teller & Co. Inc., and Albert Teller; Morton Goldfield** and Arnold M. Krell (initially represented by Norman H. Fuhrman, thereafter *pro se*).

Carl L. Shipley, John Barry Donahue, Jr. and Moreland G. Smith, Shipley, Ackerman, Pickett, Stein and Kaps, Washington, D.C., and Robert S. Daniels, Alter, Wright and Barron, Pittsburgh, Pa., for respondents Nassar and Co., Inc. and George M. Nassar.

Maurice J. Mahoney, Pittsburgh, Pa., for respondents Richard C. Spangler, Inc. and Richard C. Spangler, Jr.

Emmanuel L. Jenkins (initially represented by Donald E. Klein, New York City, thereafter *pro se*).

BEFORE: Sidney Ullman, Hearing Examiner

The Proceedings

These private proceedings were instituted initially by three separate Commission orders for proceedings dated April 14, 1969, against three broker-dealer firms and certain of their associates for alleged violations of the anti-fraud provisions of the securities laws. Each of the orders provided that the proceedings would be consolidated with the others as to common questions of law and fact. Two of the firms, Richard C. Spangler, Inc. ("Spangler, Inc.") and Nassar and Co., Inc. ("Nassar, Inc."), are located in Pittsburgh, Pennsylvania, and the third, Albert Teller and Co., Inc. ("Teller, Inc."), is in Philadelphia, Pennsylvania. Thereafter, on July 16, 1969, the Commission instituted proceedings against a fourth broker-dealer firm, Dreyfus & Company ("Dreyfus") of New York City, and three associates of that firm, and by Commission order dated February 6, 1970 the Dreyfus proceedings were consolidated with the prior consolidated proceedings as to common questions of law and fact.

All of the proceedings were instituted pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act") [1/] to determine whether respondents violated the antifraud provisions of the securities laws in connection with offers and sales of the common stock of Interamerican Industries, Ltd. ("Interamerican"), and if so, the remedial sanctions, if any, appropriate in the public interest. The

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1/ The proceedings against Teller, Inc. and Dreyfus were also instituted pursuant to Section 19(a)(3), which relates to membership in a national securities exchange.

orders for proceedings charged the several respondents with violations of the antifraud provisions in the offer and sale of Interamerican by making false and misleading statements and by omitting to state material facts concerning the company, its products, its business and its potential. The Teller and Dreyfus firms and principals thereof also were charged with failure to reasonably supervise registered representatives of their respective firms.

By Commission order dated May 21, 1970, the proceedings were settled and discontinued as to one registered representative employed by the Dreyfus firm,[2/] and by Commission order dated July 27, 1970, they were settled and discontinued as to Dreyfus and one of its associates.[3/] The proceedings continued as to a single registered representative previously employed by the Dreyfus firm (Jenkins), and as to the three other broker-dealer firms and the principals and associates named as respondents.

Following a pre-hearing conference in Washington, D.C., evidentiary hearings commenced in Philadelphia on February 12, 1970, and continued intermittently in Philadelphia, Pittsburgh and New York until closed on June 21, 1971.[4/] After the filing of post-hearing documents by the Division of Trading and Markets ("Division") on November 19, 1971, the Commission issued an order directing the under-

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2/ Securities Exchange Act Release No. 8890

3/ Securities Exchange Act Release No. 8943

4/ In order to obviate the need for the attendance of all respondents and counsel at the frequent and protracted sessions (held generally in the city most convenient for the respondents and the witnesses to be called), the evidence of violations generally was limited to that which could affect only specified respondents, and pursuant to instructions of the undersigned, respondents were so advised by counsel representing the Division of Trading and Markets. Accordingly, some witnesses were recalled for cross-examination at locations more convenient to the respondents.

signed to re-open the hearing to permit the Spangler respondents to present evidence in their defense. Accordingly, orders were issued by the undersigned, and a re-opened hearing was held and concluded in Pittsburgh on January 25, 1972. Thereafter, additional post-hearing documents were filed on behalf of these respondents, and a response thereto was filed by the Division.[5/]

Previously, on April 23, 1970, during the course of the hearing, the order for proceedings issued with respect to the Teller respondents and respondents Goldfield and Krell had been amended on motion of the Division made pursuant to Rule 6(d) of the Commission's Rules of Practice and granted by the undersigned. The amendment added a charge that Teller, Inc., aided and abetted by the three individual respondents named in that order for proceedings, Albert Teller ("Teller"), Morton Goldfield ("Goldfield") and Arnold M. Krell ("Krell"), had failed to complete purchases of Interamerican orders paid for by its customers, and had converted their funds. The language of this added charge is in paragraph II B of the amended order, and is quoted herein in the margin.[6/]

5/ The Division earlier had filed its reply brief on November 23, 1971, in response to the post-hearing documents filed by respondents prior to the Commission order that the hearing be re-opened for the further Spangler evidence.

6/ "II B. During the period from about April 1, 1967 to May 18, 1967 registrant willfully violated and Teller, Goldfield and Krell willfully aided and abetted such violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in that registrant, as aided and abetted by Teller, Goldfield and Krell, effected transactions in and induced the purchase and sale of securities, namely the common stock of I.A., and in connection therewith, engaged in acts, practices, and a course of business which would and did operate as a fraud and deceit upon certain persons, made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading and directly and indirectly employed devices, schemes and artifices to defraud and obtain money and property. As a part of the aforesaid conduct and activities,

An initial decision by the undersigned was requested by counsel for the Teller respondents, as was oral argument. The argument was held on April 14, 1972 by counsel representing the Teller respondents and by Division counsel in opposition. No other parties were represented. (Counsel representing respondents Goldfield and Krell had died during the course of the proceedings and thereafter these respondents appeared _pro se_. Inasmuch as they are vice presidents of Teller, Inc., the defense of that firm necessarily involved their defense and at least in part served their advantage, but no post-hearing documents were filed directly by or for them. Respondent Jenkins was represented by counsel early in the proceedings, but he appeared _pro se_ from the commencement of the hearing, and no post-hearing documents were filed by him or in his behalf.)

6/ (Continued)
registrant, as aided and abetted by Teller, Goldfield and Krell, among other things, would and did:

(1) fail and refuse despite repeated customer demands therefor to complete purchases and transfers of securities fully paid for and belonging to such customers,

(2) convert to the use of registrant monies paid to registrant by customers for the purchase of securities."

(The amending order also changed the lettering of two subsequent paragraphs charging failure to supervise and the use of the mails and instruments of interstate commerce in connection with the alleged violations.)

Interamerican

The name Oscar Hausner appears throughout the transcript of testimony and the record in these proceedings. Hausner was the organizer of the complex of companies which included Interamerican, whose name, prior to change in 1964 had been Canadian West Mining Company. Hausner had no formal medical or pharmaceutical training but for many years prior to the events discussed herein he had been interested in oral contraceptives. In 1953, Frank M. Bardani had developed the "Bardani process" -- one which slowly and over a relatively extended period of time released the ingredients of a pill into the human system. At the time of the hearing the Bardani process was one of 11 or 12 patented sustained release processes. It was patented in the United States, in Great Britain and in Canada. (Tr. 1629; Div. Ex. 121 A, B and C).

Hausner and Bardani met in 1965 and worked on a birth control pill they called Di-Ornane. Bardani signed contracts giving to Interamerican Pharmaceuticals, a subsidiary of Interamerican, the right to use his process in the manufacture of the pill. He later learned from one John Accardi that the basic birth control ingredient of the Di-Ornane pill was Norethisterone, or 19 Nor, a drug which Syntex had patented around 1963. (Tr. 1645-6). John Accardi, prior to 1967, had been a quality control director for Syntex, and subsequently as an independent consultant he performed tests for Hausner to determine whether the Di-Ornane pill's basic ingredient was in fact slowly released. In January 1967 he informed Hausner of the existing Syntex patent on Norethisterone (Tr. 1655). Hausner

considered the manufacture in Italy of a pill using Norethisterone, inasmuch as Italy did not recognize United States patents. However, to avoid problems with Syntex he decided to use another drug as the basic ingredient.

Accordingly, Interamerican began using "Di-Ornane E," which had been marketed as unpatented for about 40 years. The basic ingredient was Ethisterone, a drug which caused such side effects as nausea, vomiting and dizziness. But Hausner hoped that if the ingredients were released slowly under the Bardani process the side effects would be less severe. (Tr. 1662).

In March 1967, Hausner and several other interested persons, including respondent Spangler, met in New York at the home of Seymour Jeffries, an attorney with some expertise in drug-marketing problems, and those present were advised that approval by the Food and Drug Administration of a New Drug Application (for practical purposes a requisite for sale in the United States, Canada, or Great Britain) would cost between $800,000 and $1 million, and could not come earlier than 3 to 5 years from filing (Tr. 1598-1604). Hausner continued to direct his attention to foreign markets in over-populated countries, and the emphasis in his "selling" of the pill as a safe and effective oral contraceptive and of Interamerican as a potentially profitable venture resided with his claims of the pill's effectiveness and safety and his false rumors of potential sales and contracts in over-populated areas, particularly through such groups as the World Health Organization and the United Nations.

Hausner's questionable and manipulative activities involving Interamerican included the organizing of corporations and transferring worthless assets from one to another in order to create the appearance of worth. They are reflected in documentary evidence and in testimony of Hausner as a witness for Division counsel. For example, Hausner organized and owned all stock in a Panama corporation, Consolidated Enterprises, Ltd., which entered into an agreement for exploitation of timberlands in Paraguay on December 6, 1962. A subsequent agreement authorized (and required) the corporation to cut timber and required payment of at least $60,000 (Canadian) per year commencing three and one-half years from the date of the agreement, i.e., on May 18, 1967. No payments were ever made, nor was any timber ever cut. Nevertheless on January 31, 1965, Consolidated Enterprises assigned to Interamerican this valueless agreement for exploitation of the timberlands.[7/]

Again, Interamerican had previously been Canadian West Mining Corporation, Ltd., a Canadian corporation organized by Hausner. The name was changed in 1964. In 1963, Canadian West Mining had created a subsidiary, International Pharmaceuticals, Ltd., a Canadian company, in order to continue work on oral contraceptives conducted by Hausner over a long period of time. Canadian West Mining also had entered into an exploratory concession in iron ore deposits in Bolivia through a Bolivian subsidiary, East Bolivian Mining Company, S.A.

7/ Four months later, Interamerican assigned the agreement to Great Atlantic Development Corp., another Hausner company, in exchange for 1,575,000 shares. In 1966 the lumber exploitation rights were reacquired by Interamerican together with all other assets of Great Atlantic for 182,140 shares, and since Interamerican then controlled Great Atlantic, this was in fact a liquidation of that subsidiary. (Div. Exs. 110, 111, 140). Hausner had just returned from a trip to Paraguay and had concluded that transporation problems, among others, precluded profitable activity under the agreement. (Tr. 1384-5). **With the liquidation of Great Atlantic, Charles O. Brown, Jr., who had been elected president by Hausner, resigned.**

Although this corporation had hired a mining engineer to evaluate the deposits and report thereon, no mining was ever undertaken.[8/] Hausner testified to problems assertedly precluding such mining efforts, including internal political problems in Bolivia. Nevertheless, the exploratory concession and the timberland agreement were reflected as valuable assets of Interamerican (through its subsidiaries) in financial statements included within the "1966" and "1967" annual reports of Interamerican, and together with its "investment" in the oral contraceptive, these assets were falsely stated to have a worth of approximately one million and half dollars. (Div. Exs. 71, 76, and 144). The reports were certified by Aaron Landau, a CPA whom Hausner had known for 35 years and with whom he had worked as employee and as partner for many years. (Landau died during the course of the proceedings and did not testify at the hearing).

Interamerican stock was listed on the Calgary Exchange and was sold over-the-counter in the United States. The evidence does not disclose in any detail the nature or extent of Hausner's transactions in the stock. How much of his large holdings (over 1,000,000 shares at one time) he sold, or at what prices, is not deducible from the record.[9/] However, it is clear that apart from sales effected in

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8/ The report of the mining engineer is referred to in a letter to Spangler which is discussed, *infra*.

9/ The evidence does indicate that Interamerican was a wholly inactive shell in 1961, when it was acquired by Trust Company of the Americas, S.A. ("Trust S.A."), which was wholly owned by Hausner and it appears that Trust S.A. caused to be distributed over 334,100 shares of Interamerican between January 1967 and May 18, 1967, to more than 500 American investors through over 100 brokerage firms in the United States.
(Continued)

this country he also sold through his Trust Company of the Americas, S.A. ("Trust S.A."), a large number of shares on the Calgary Exchange.

Hausner's deception becomes especially apparent in a release to Interamerican stockholders issued by him in January 1968, following court proceedings instituted by the Commission (Div. Ex. 144), and from an independent audit of Hausner's companies in the corporate complex. (Div. Ex. 140). (As indicated below, the Hausner release is attached as an Appendix). I find that Interamerican was a massive fraud. If it did not originate as such, it certainly developed into it as a result of Hausner's misinformation concerning the pill. Hausner-created rumors fed upon themselves in 1966 and 1967 and with a rise in the price of the stock they became gospel to many investors, particularly in the Pittsburgh metropolitan area, where the activities and transactions of the Spangler and Nassar respondents beginning in 1966 helped foster the belief that the price of the stock could move only in one direction.

The manner and extent to which, as well as the circumstances under which the respondent broker-dealers and salesmen participated in the fraud are matters which bear upon the sanctions that should be imposed, and accordingly justify and require analysis. What is involved in this effort is an examination and explication of Hausner's activities in Interamerican, and particularly in his convincing many persons that Interamerican had assets with great potential. I

9/ Continued
(Div. Ex. 144). The purchases were based on rumor and falsification. As discussed in the text, the extensive over-the-counter trading by many brokerage houses in this country during the relevant period and for a long time prior thereto is urged by counsel for some of the respondents as a defense to the charges instituted by the Commission against only the four broker-dealer respondents named in these proceedings and one other broker-dealer, because of asserted "selected prosecution."

find that the pill at one time looked valuable to persons working with it, but that it became apparent to them and to Hausner that the patent problem, among many others, made it impossible to manufacture and sell it as originally planned. The change in the formula was made, efforts to test and sell the pill were made, and although Hausner recognized that the pie in the sky had disappeared he continued to tout the pill's potential by devious tactics and evasion. His activities, together with those of other persons including respondents herein, produced a rise in the price of the stock from pennies to approximately $20 per share in relatively heavy trading. Testimony indicated that at the time of the hearing the bid on the stock had dropped to one cent.

Thus, at the time of the transactions which are the basis for the charges herein, Interamerican's assets, through its subsidiaries, consisted of its process for manufacture of the birth control pill, its timber interests in Paraguay and its iron ore interests in Bolivia. A Calgary lawyer, Alex Williamson, was made president of Interamerican by Hausner, but as indicated below, he was merely a figurehead appointed to give apparent stature to the corporation. Hausner was the sole operating employee of all of the corporations in the complex. His control of Interamerican was total, and this was obvious to anyone really interested.

The company's assets, and particularly the pill, were the subject of a report commonly referred to as the "Dreyfus letter", (Div. Ex. 26), prepared in May 1967 by Jenkins on the letterhead of Dreyfus & Company, and this letter is the substantial basis for the charges herein against Jenkins. The substance of the letter was a basis for buying

and selling of Interamerican stock in May 1967 by respondents Goldfield, Krell and Teller, Inc. Their activity began around May 8 and continued until May 18, when trading was suspended by order of the Commission. The Dreyfus letter also was used in some of the last selling transactions by respondents Nassar and Spangler. Because of the significance of Jenkins' research and/or the Dreyfus letter to the activities of and charges against all of the respondents in these consolidated proceedings and especially their significance to the charges involving Jenkins, Goldfield, Krell and the Teller respondents, it seems advisable to discuss, initially, this research and letter and the charges against Jenkins, thereafter the charges asserted against Goldfield, Krell, and the Teller respondents, and ultimately tne charges against the Nassar and Spangler respondents, despite the fact that the selling of Inter-American shares by both Nassar and Spangler commenced long before publication of the Dreyfus letter in May 1967.

Jenkins and the Dreyfus Letter

Jenkins had been a registered representative with Dreyfus and Company since 1960, but had resigned and was not employed at the time of the hearing. He received his B.S. degree in Pharmaceutical Chemistry (Pharmacy) and after graduation had worked as a registered pharmacist for six months before beginning employment with Dreyfus in 1960.

Jenkins first learned of Interamerican in April 1967, when a co-worker at Dreyfus asked him to obtain some information on the company. He told Jenkins that Interamerican had available to it the patented Bardani sustained release process which released a drug slowly into the human system. Jenkins checked with the Patent Office

in Washington and made arrangements to have a copy of the patent sent to him. He also obtained a Dun & Bradstreet report ("D&B") on Interamerican (Jenkins Ex. 10) and a copy of the company's annual report which was marked "1967" (Div. Ex. 76).[10/] He then called the company president, Alex Williamson, in Canada, on or about April 23, but received no information of significance other than confirmation of a D&B statement that the company's plant in Ireland was to open in May 1967 for production of the pill.[11/] Williamson advised that the company's United States representative would communicate with him. He received a letter dated April 24, 1967 from Hausner on the stationery of a Hausner company, World-Wide Export Co. (Jenkins Ex. 1), and he had several telephone calls from Hausner on the same day.

Here began the series of written and oral pieces of misinformation and half truths originating with Hausner. Hausner advised that Interamerican was negotiating with a company named U.S. Summit for distribution of its birth control pills in Southeast Asia, and Jenkins obtained a D&B on that company. He called a Mr. Rothman, listed therein as its president, but found that Rothman was "sort of evasive" as to the company's connection with Interamerican and he was asked to put his questions in writing. Jenkins did so, and his letter of

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10/ The company's "1967" annual report contained financial statements as of December 31, 1966: its "1966" annual report contained no current information and the financial statements were as of January 31, 1966.

11/ Jenkins testified that the information from Williamson was probably in response to "a leading question from me . . . having read [this in] the Dun & Bradstreet report."

April 26 to U.S. Summit was answered by Hausner's letter of April 28, again on World Wide Export stationery. (Jenkins Ex. 3A). The letter indicated that through its sustained release process the company would make a tablet which would have no side effects and which could be used in combatting tuberculosis.

Jenkins also had been told that, as stated above, John Accardi was being retained by Interamerican as a control chemist and previously had been employed in a similar capacity by Syntex. Jenkins was familiar with Syntex and its oral contraceptive as well as the dramatic rise in the price of its stock. He confirmed that Accardi had been employed by Syntex and on or about April 26 he telephoned Accardi, who lauded the Bardani process for its reduction of the side effects of the oral contraceptive. He told Jenkins that the Interamerican pill was being produced in Canada for clinical testing, that it should be a good saleable item in **underdeveloped countries**, and he mentioned that if the company got approval of a New Drug Application from the Food and Drug Administration the pill would be saleable in the United States. 12/ About a week later Accardi called Jenkins and told him of pills being produced at the Empire Laboratory in Canada for clinical testing.

Jenkins was deceived by the glib talk of Hausner when he visited the office of World-Wide Export in Rye, New York, probably in early May. Hausner gave him some sample tablets and printed wrappers in

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12/ As indicated in the text, supra, for reasons entirely apart from the question of efficacy or safety of Interamerican's pill it would have been impossible for the company to obtain approval of a New Drug Application (Tr. 1598-1604).

which the tablets were to be packaged, as well as information on reports of clinical tests performed in Panama. Hausner also showed Jenkins a letter from an official of Syntex which, as supplemented by Hausner's conversation, suggested that Syntex was interested in negotiating for the use of the Bardani process. There was no basis for such suggestion without the false Hausner supplementation.[13/] However, before Jenkins prepared the Dreyfus letter he spoke with Martin Katz, of Syntex Corporation, and inquired with respect to the interest of Syntex in Interamerican's pill. (Apparently, Katz had recommended that his father buy Interamerican stock and a purchase had been made by the father through Dreyfus and Company, which previously had acted as his broker). Katz told Jenkins that he had prepared a report on Interamerican for Syntex, and that he could not speak with Jenkins about the company until he had discussed his report with Syntex officers. Jenkins testified that on April 28, 1967, after hearing this, he took his first position in Interamerican. His transactions for himself and for relatives and other customers are discussed briefly below.

In his first letter to Jenkins, Hausner had enclosed two documents. Jenkins Exhibit 4 was an undated and unsigned two-page typewritten "Excerpt from C.B. Taft Report: On Anhydrohydroxyprogesterone". Taft was described in Hausner's letter as a doctor, and the excerpt proclaimed the effectiveness of the estrogen-progestin drugs which were basic ingredients of Interamerican's Di-Ornane-E pill. It stated that the sustained release factor almost obliterated side effects

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13/ Conversely, on March 30, 1967, Hausner had written to Syntex refusing to furnish information on Interamerican's patents and clinical data, for practical purposes thus terminating any "negotiations" with Syntex. He did not show Jenkins a copy of this letter, Division's Exhibit 146.

resulting from "a straightforward table [sic] formulation." The second enclosure, Jenkins Exhibit 5, was an undated and unsigned report on "DI-ORNANE-E, A SUSTAINED RELEASE ORAL CONTRACEPTIVE," purportedly written by (Dr.) Bernard L. Kabacoff, on stationery of World-Wide Export. It lauded the pill and particularly its sustained release process as found in "Extensive clinical studies." Jenkins could not recall Hausner's response to his inquiry concerning both the stationery and the lack of a signature by (Dr.) Kabacoff or anyone else.

The annual report received by Jenkins contained financials certified by Aaron Landau which were utterly inaccurate, as suggested above. The report carried Interamerican's "investment" at $1,444,213 and the notes to the financial statements stated that the "Investment in wholly-owned subsidiary, International Pharmaceuticals, Ltd. . . . which is the owner of a formulation for an oral contraceptive drug" and a 50-year lease with an option to renew for lumber rights in Paraguay were worth $1,404,221.95, and that the investment in the East Bolivia mining company was worth $39,892.79. The D&B obtained by Jenkins was equally inaccurate and completely unreliable. It stated "Strong financial condition is displayed with cash well in excess of all debt . . ." and the "Summary" reported

WORTH	$1,548,247
RECORD	CLEAR
CONDITION	STRONG

It also stated that the company was to open a plant in Ireland, with facilities expected to be producing in excess of two million pills per day by the end of May 1967 "to fill prospective orders."

The D&B and the annual report obviously contained misinformation from the same source. These reports and the mass of additional information which Jenkins received, both in writing and orally, indicated to him that the pill had been tested and found to be safe and effective, with minimal side effects on women who had used it, and that it was ready for production and marketing outside the United States. The Dreyfus letter was written on the assumption that this information was valid. Because of its significance to these proceedings, a copy of that letter is attached as Appendix A and incorporated herein.

Jenkins distributed the Dreyfus letter to his customers, to prospective customers, and to several broker-dealers, some of whom made and distributed copies. Jenkins testified that it was printed on a Dreyfus letterhead because he "was proud of it", although his superior had given him permission to send it to his customers and prospective customers only, on plain stationery and not as an apparent product of the Dreyfus research department. (Tr. 1844). Although the undistributed copies were impounded by Jenkins' superior on May 15, the letter already had received fairly wide distribution.

Shortly after distribution of the Dreyfus letter, and more specifically on May 15, 1967, a New York City attorney, Morton Schimmel, general counsel for Interamerican among other Hausner corporations, wrote a letter which made some "corrections" in its factual statements. (Jenkins Ex. 6). Schimmel advised that Jenkins' reference to "patent formula and process" was not correct, inasmuch

as the formula was not patentable, but that the pill's sustained release process was covered by several patents; also that the Dreyfus letter was "somewhat inaccurate in that as of February 1, 1967 the company's wholly owned subsidiary, International Pharmaceuticals of Ireland, Ltd., had acquired a plant in Ireland which now is equipped and ready for operation. This Irish subsidiary has the right to and will take advantage of a ten year tax free arrangement with the Republic of Ireland." This was not correct, no "plant" having been acquired and no such tax-free arrangement ever having been made.[14/] (Tr. 1783-4; Div. Ex. 135).

Perhaps the Dreyfus letter appended hereto was Jenkins' effort to report accurately what he had heard and read in the course of his research on Interamerican. Unfortunately, much of its information had its origin in Hausner's falsification, exaggeration, obfuscation and rumor. It is especially unfortunate that Jenkins published the letter on Dreyfus stationery, contrary to the authorization of his superior. Without the Dreyfus firm name and the implication that the letter was a product of the Dreyfus research department, it would not have had the substantial significance accorded it by other broker-dealers including Feller, Inc., by their registered representatives and by many of their customers.

14/ Bardani purchased some machinery and sold it to Interamerican. It was shipped to Ireland, where Bardani and a partner, Peter O'Neill, had rented space to produce pharmaceutical products under the name Controlled Medications. Interamerican shipped additional machinery to the rented space. (Tr. 1573). Interamerican received from the Inspector of Taxes at Dublin a form for income tax assessment, but of course its Irish subsidiary never had any taxable income. (Div. Ex. 135).

During the period April 28 to May 16, 1967, Jenkins made infrequent, small purchases of Interamerican for members of his family and relatives at prices from 8 1/8 to 17 per share. The largest of these purchases was made for the account of a brother--100 shares on May 4 at 10; the smallest purchase was 10 shares, made on May 16 as custodian for his daughter at 17. To May 18, 1967, when trading in Interamerican stock was halted by Commission action, Jenkins had purchased for members of his family, relatives, and other customers approximately 4,140 shares. (Tr. 2168, Div. Ex. 147).

Four investor witnesses testified to purchases of Interamerican shares from Jenkins. A. B., a warehouse supervisor, was told that Interamerican's new birth control process would be used in a pill that would be sold in underdeveloped countries, that the company would build a new plant in Ireland, and that the stock should move in price. (Tr. 1228). Mr. B. bought 100 shares at 9 on May 3, 1967. Thereafter, Jenkins advised that the stock was moving up in price, that he was writing a report on Interamerican, and that he thought the price of the stock would appreciate further. Mr. B. bought an additional 100 shares on May 9 at 12 7/8.

B. K., a detective, was told by Jenkins that he could make money in Interamerican, and that its pill might be subsidized by the governments of underdeveloped countries and possibly by the U.N. The witness purchased 100 shares at 13 after several conversations in which Jenkins spoke enthusiastically about the prospects for appreciation in the price of the stock.

Miss O'C., an accountant, learned of Interamerican from Jenkins in April 1967 and as a result of the favorable information he related,

she bought 100 shares at 8 1/8 on April 28.

A. S. is also a lady accountant who was called by Jenkins and was told that Interamerican was a good stock to buy for growth. He advised that the pill seemed to eliminate the side effects characteristic of other oral contraceptives and that he thought the price of the stock would move up. The witness bought 200 shares at 8 1/8 on April 28. Jenkins telephoned again several days later and advised another purchase since the price was moving up, and on May 8, she bought 300 shares at 10 7/8.

Jenkins did not advise his customers of the deficits Interamerican had sustained over the years. He used the prospect of a price increase to be occasioned by the forthcoming Dreyfus letter as a basis for predicting a rise in the price of the stock. That letter, because it was unauthorized as a letter of the Dreyfus firm and because of the author's lack of restraint and his failure to recognize inaccuracies and distortions in the information given him, such as an asserted "change in management" of Interamerican, contained materially false and misleading information which contributed to the harm caused many investors and broker-dealers in the securities industry. One of the most glaring misstatements of the letter related to the prospective marketing of a tablet to be used in the treatment of tuberculosis. Jenkins' background in pharmacy and his intelligence should have precluded the dissemination of such false information. Proper restraint and regard for the requirement of clinical testing, among other requirements, would have kept Jenkins from making so broad and unwarranted a statement-- one which did not even limit the asserted marketability potential

to areas other than the United States. (Div. Ex. 26, p. 3). Fraud also was inherent in the unwarranted representations in the Dreyfus letter that the sales estimate "for the first year's production alone . . . would be in excess of $6,000,000," and that "These sales would accrue only from oral contraceptives and would be tax free." There was no basis for either statement.

On January 8, 1968 Trust S.A. and Hausner were enjoined by the United States District Court for the Second District of New York from further violation of section 5(a) and 5(c) of the Securities Act of 1933 in the offer, sale and delivery of the unregistered stock of Interamerican. Hausner consented to this order on behalf of himself and Trust S.A. The order also provided for the appointment of a receiver of funds of Trust S.A. which were apparently held by a receiver in Alberta, Canada, pursuant to an action brought by the Alberta Securities Commission. These funds appeared to be in excess of $600,000. They resulted from the sale in Canada of Interamerican shares owned by Trust S.A. The United States receiver was empowered by the court order to collect funds remaining after the satisfaction of Canadian claims. He also was empowered by the court to distribute such funds to persons who had purchased the shares between June 1, 1966 and May 18, 1967, pursuant to a plan to be approved by the court. (S.E.C. Litigation Release No. 3902, January 24, 1968; Div. Ex. 8).

Litigation Release No. 3902 (Div. Ex. 8) was an enclosure transmitted by Teller, Inc. to some of its customers by letter dated January 31, 1968 in response to requests or demands for the repayment of their

monies. The letter explained the action taken in the Southern District of New York in connection with the permanent injunction of Trust S.A. and Hausner, and also advised that the Securities and Exchange Commission had released a statement by Hausner correcting misrepresentations previously made about Interamerican. His statement uncovers a great deal of the Hausner fraud, corrects much of the misinformation circulated by Hausner and used by respondents in selling the shares, and it gives the lie to some of the statements in the Dreyfus letter.[15] Accordingly, it is attached hereto as Exhibit B, in juxtaposition to the Dreyfus letter, and is incorporated herein as an integral part of this decision.

15/ By way of example, the Dreyfus letter contains the unwarranted and misleading statement that "The company hopes to soon market a sustained release tablet of isoniazid which is used in the treatment of tuberculosis . . . laboratory tests indicate that these side effects are eliminated and the patient only has to take tablets twice daily." Jenkins based this representation on statements from Hausner. (e.g., see Jenkins Ex. 3A). Hausner's correcting letter states "That Interamerican has never undertaken the testing or manufacture of morning-after pills, birth control implants or tuberculosis pills;".

The Teller Respondents; Goldfield and Krell

Teller, Inc. is a Pennsylvania corporation which became registered as a broker-dealer in June 1961. The firm is a member of the Philadelphia-Baltimore-Washington Stock Exchange and of the NASD. Teller has been president, treasurer, a director and owner of 99% of the common stock of the firm since its formation. Goldfield has been a vice-president of the firm since April 1962 and Krell has been a vice-president since August 1964. Teller, Inc. also has offices in New London, Connecticut, in upstate Pennsylvania and in Pittsburgh. In 1967 approximately 70 per cent of the firm's business was in over-the-counter securities, and 30 per cent was in listed securities and mutual funds. Teller had been in the securities business for 25 years and had substantial experience with several broker-dealer firms prior to the establishment of his own firm in 1957 as a partnership.

The firm did not make it a practice to position over-the-counter securities overnight or to buy for its own account. Its trader would purchase shares on the basis of retail orders or, occasionally, a large block in anticipation of retail sales to be made during that day.

(a) Krell

Krell has been associated with the Teller firm for over 15 years. As vice-president, his functions in 1967 included the supervision of salesmen and consultation with Teller and Goldfield on securities coming to the firm's attention. (The firm did not have a research department).

Krell testified that on or about May 2, 1967, he received a telephone call from his nephew, Barry Kaplan, who was an employee of

a Philadelphia-based pharmaceutical concern. Krell was told that John Accardi, a control chemist for that concern, was a consultant for Interamerican and that Krell might be interested in its product. Krell was switched to Accardi, who described the Bardoni process and advised that in late May a meeting would be held before the United Nations or the World Council for Population Control, at which there would be discussed the products of three oral contraceptive manufacturers, G.D. Searle, Syntex and Interamerican. Accardi also stated that Interamerican's pill should be in production in late May and referred Krell to World Wide Export for a copy of the annual report. Goldfield telephoned for a copy and also asked to speak with a company officer, but was told that no one was available. (Tr. 513).

Krell and Goldfield checked the National Daily Quotation sheets ("pink sheets") back to January to see what firms were trading the stock, and thereafter they called the firm of E. L. Aaron, a market maker, in New York City. Edward Aaron verified what Krell had heard from Accardi, and said Dreyfus was coming out with a recommendation of the stock. He recommended retailing the stock before the report came out. On that day, May 5, Krell bought 400 shares of Interamerican for his own account at 9 7/8 (from Casper Rogers & Co. of New York City), and Goldfield bought 500 shares for his account at 10 (from E. L. Aaron & Co.).[16/] Goldfield, for Teller, Inc., also sold 100 shares on that day to a customer, I. B., at 10 1/8. (Div. Ex. 29).

16/ Krell and Goldfield testified that their shares were still owned by them at the time of the hearing.

These transactions were effected prior to the receipt of the Inter-american annual report. (Tr. 455).

Also on May 5, Goldfield had spoken to Jenkins, who verified the earlier information. Jenkins said he was working on a report, but according to Krell they received little information on its contents. Goldfield telephoned Jenkins on Monday, May 8, and received much of the information subsequently included in the Dreyfus letter concerning the pill, the proposed plant, and the company's deficits. Goldfield and Krell assumed Jenkins was a research man, inasmuch as he was preparing the report. Teller was not in the office during this period and did not return until May 12, but Goldfield had authority to institute trading in Teller's absence, and in conference with Krell they decided the situation represented "a suitable speculation, with risks . . ." or, as Goldfield testified, ". . . we decided that for certain clients of ours that normally assume a speculative interest in stocks of this nature, we felt it was a businessman's risk . . ." (Tr. 2337-8).

Goldfield bought for Teller, Inc. on May 8, a substantial amount of Interamerican (from E. L. Aaron and Grace Canadian Securities), and sold 2,325 shares at prices of 10 7/8 to 11 3/8 to eight customers. Krell sold only 50 shares on that day (to a lady, G. K., at 10½), but his selling activity increased thereafter through May 18. The selling activity of Goldfield continued through May 17.[17] With the exception of one sale of 50 shares made by another salesman of Teller,

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17/ The commissions of respondents Krell and Goldfield on Interamerican, as on over-the-counter securities in general, were 50 per cent of the firm's commissions and mark-ups.

Inc., only Goldfield and Krell sold Interamerican for the firm. Through May 18, when trading was stopped by the Commission, Teller, Inc. sold approximately 8,430 shares to retail purchasers at prices from 10 1/8 on May 5 to 20½ on May 11, for a total amount in excess of $110,000. Thereafter, the price of the stock declined to 13 on May 17, the day before trading was stopped. (Div. Ex. 29).

The Division produced five investor witnesses who testified with respect to transactions with Krell in Interamerican shares. L. S., a pharmacist, testified that he knew Krell socially but had not been a customer of the Teller firm. Krell called on May 10, 1967 and advised L. S. that his friend B. L., who was also in the pharmaceutical business, had made a large purchase of Interamerican stock. He stated that Interamerican was manufacturing or would manufacture an anti-pregnancy pill which had to be taken only once a month, that the stock was "a good thing" and that the customer would make money on it. He spoke of the United Nations being interested in the pill, and at a later time he stated that the Prime Minister of India had expressed interest in it. At the time of the initial telephone conversation L. S. bought 200 shares at 13½, and later that day, when he learned that more money was available to him, he purchased 250 additional shares at 14½. Despite requests made of Krell and through him to Teller, Inc., L. S. received neither his stock certificates nor return of monies paid for the stock.

The second witness with respect to transactions with Krell was Lawrence S., who had been dealing with Teller, Inc. for five or six

years. He called Krell on May 18, 1967 and placed an order for the sale of his shares in a certain security. During the conversation Krell recommended the purchase of Interamerican and the customer agreed to buy 265 shares at 14½ after Krell advised that it had potential growth and appreciation possibilities, as written up by Dreyfus. He spoke of potential sales in a foreign market and of production costs that might be lower than those of competitive companies.[18]

A. P., a general contractor, testified that on May 18, 1967, he and Krell were with a small group of men standing in front of a synagogue at 7:15 a.m. prior to morning prayers. Krell discussed Interamerican's process for the slow continuous release of drugs into the human system, which he stated made its pill better than anything else on the market as an oral contraceptive. (Tr. 251) He spoke of the interest of the United Nations in the pill and stated that a former Syntex chemist had said Interamerican was in a better position than Syntex at a comparable time, and that the interest of United Nations in the pill would be the basis for world-wide recognition and tremendous sales of Interamerican. He also said the company was able to produce the pill very cheaply and could sell it "cheaper than anything else on the market." The witness testified that Krell stated that the company was building a plant somewhere in

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18/ Lawrence S. brought suit against Teller, Inc. in the U.S. District Court for the failure of the firm to refund the purchase price of the shares which were not registered with the S.E.C. The suit was decided in favor of Teller, Inc.

Europe and that if A. P. bought the stock he could double his money within a few weeks. A. P. authorized a purchase of 200 shares, for which he paid 14½ per share.

A. P. had no account with the Teller firm prior to his transaction. When he agreed to buy the stock, Krell took the name and address in which the account was to be opened, along with other pertinent information, and the purchase was made without the signing of an account card by A. P.

One week after his purchase, A. P. learned of the suspension of trading. He demanded the return of his money, without success, on several occasions of Krell and on one occasion of Teller. Despite vigorous arguments by counsel for Teller against crediting the testimony of this witness and despite some apparent inconsistencies in the testimony, after careful evaluation of the demeanor of the witness and study of the record, including the contradicting testimony of Krell, I conclude that the testimony of A. P. was given with candor and is accurate and credible to the extent related above.

B. L., as mentioned above, is in the pharmaceutical business and is a cousin of Krell and a friend of Krell's customer, L. S. This witness heard of Interamerican for the first time in a telephone conversation with Krell on May 10, in which Krell stated that Interamerican's birth control pill would be manufactured in Ireland, that the company had acquired the services of a chemist formerly with Syntex, and that it projected sales of six million dollars for the next year. Krell mentioned the forthcoming Dreyfus letter and based on the

information from Krell, the customer ordered 1000 shares, for which he paid 13 3/8. Krell told B. L. that the Dreyfus letter had been read to him over the telephone and that he would send a copy to him when he received it. B. L. testified that the information given him by Krell at the time of his purchase conformed to what he thereafter read in the Dreyfus letter. When the customer learned that the Commission had suspended trading in Interamerican he communicated with Teller, who advised him not to worry, that everything would be taken care of, but he never received a refund of the purchase price which he requested. Subsequently, B. L. turned the matter over to an attorney who filed suit against Teller, Inc. for refund of the purchase price.

A. M., chief estimator for an industrial company, had dealt with Krell for approximately twelve years. On May 8 or 9, Krell called the customer and advised that Interamerican had forest land in South America and a new long-acting birth control pill. He also stated that a scientist from Syntex was joining the firm and that a paper concerning Interamerican was to be read before the United Nations. Krell also stated that purchase of Interamerican stock offered an opportunity to make a fast profit. On May 9 the witness bought 100 shares at 13 3/8.

Krell advised the customer of the suspension of trading but stated that it would be cleared up shortly, and that monies held in Canada would afford some kind of refund of the purchase price. The

witness did not receive his stock certificate or any refund of the purchase price.

This witness testified that Krell indicated to him that the basis of his discussion of Interamerican was information in the Dreyfus letter and that Krell stated that the stock was speculative.

The witness was a member of the Fernhill Investment Club, which was comprised of about 20 of his co-workers. He passed on to another member of the Club the information given him by Krell. The member communicated with the investment committee of the Club and a purchase of 40 shares of Interamerican was made on or about May 10, 1967. The Club did not receive a certificate evidencing the purchase nor a refund of the purchase price.

The credible evidence indicates that in his solicitation of sales, Krell did not mention the losses sustained by Interamerican in prior years, nor the incompleteness of the testing, nor the fact that the stock was not registered with the Commission. Of course, he mentioned none of the correcting statements or additional adverse factors concerning Interamerican which are included within Division's Exhibit 144, Hausner's letter sent to stockholders in January 1968, which is Appendix B hereto.

(b) Goldfield

Goldfield, as did Krell, testified as a witness for the Division and thereafter, during respondents' case, for himself and for Teller, Inc. His experience in the securities business began in 1957 and he had been with Teller, Inc. since that time. In 1967, as at the time of the hearing, his functions included the supervision of salesmen and the analysis of company reports and financial statements coming to the attention of the firm. He is a certified public accountant. (Tr. 2356). In Teller's absences, Goldfield supervised the firm's activities and operations.

Goldfield, as did Krell, testified regarding the substance of the first telephone conversation between Krell and Accardi as it was described by Krell, and he related Accardi's representation that Interamerican's pill was superior to that of competitive manufacturers in respect to side effects on the user. Goldfield also discussed the conversations with E. L. Aaron and with Jenkins, and testified that Aaron spoke of the interest in Pittsburgh in Interamerican stock and of a forthcoming meeting in late May 1967 of the World Council [on Population Control], at which the product of three companies would be discussed. According to Aaron, Goldfield testified, "Interamerican had a chance to be accepted at that time for their type of pill." (Tr. 2335).

Goldfield testified that Jenkins said he had been to Interamerican's office in Rye, New York, and had discussed the company with Hausner; that the pill had been tested on humans but was undergoing further tests because the company was not completely satisfied with them; and Goldfield stated that he got from Jenkins in that conversation "a briefing" of what Jenkins' report would contain. He believed that

the report was received three or four days after this conversation. (Tr. 2335). I find that this conversation took place on May 8, and that the Dreyfus letter was not received by Teller, Inc. until May 15.

The Division produced four investor witnesses who testified with respect to their transactions with Goldfield in Interamerican stock. J. H. P. is the owner of a manufacturing company. He testified that on May 10, 1967, Goldfield telephoned and described Interamerican as a company with a new formulation for manufacturing the pill. The witness at that time was concerned particularly about two aspects of an investment: firstly, he wanted to be sure that the product had passed out of the laboratory stage and was ready to be produced. As he put it, he got a "green light" on this from his conversation with Goldfield. Secondly, he testified, he got a "green light" on assurances that the market for the pill was the United States rather than foreign countries. On these two matters, he testified, there was no question in his mind but that Goldfield's statements gave him assurance that he would not be contravening two precepts he had followed in his investment activity over the years. He also testified that Goldfield said the stock was potentially a real winner, and that lower labor costs would provide the basis for profit because it would be manufactured outside the United States. In the initial telephone conversation Mr. P. bought 300 shares, for which he paid 13 7/8 for 100 shares and 14 1/8 for 200 shares. The witness never received the stock certificates or refund of the purchase price. He did receive from Teller, Inc. a letter dated January 31, 1968, which advised him of the

injunction obtained by the Commission against the Trust S.A. and Hausner with respect to violations of Section 5 of the Securities Act. He received with that letter a copy of Hausner's release of January 5, 1968 to stockholders, which related facts regarding the pill, Interamerican's assets and activities, and misrepresentations discussed therein.

Whether or not the witness was advised expressly that the pill could be sold in the United States is not sufficiently clear to support such finding. However, it is clear from the testimony that he was not advised by Goldfield that the pill could not be sold within the United States, and that he was told nothing about the financial condition of Interamerican or its losses. He testified to a very definite impression that the information given him by Goldfield indicated that the pill had been tested, was found satisfactory, and was at that time a marketable product. I find this testimony credible and conclude that Goldfield so represented the product of Interamerican to the witness, who had been a customer of Goldfield and the Teller firm for approximately 10 years prior to his purchase.

Mr. T. DeF., a semi-retired fruit merchant who had dealt with Goldfield for approximately 12 years, received a call on May 8, 1967, in which Goldfield advised that Interamerican was going to produce a birth control pill which could be sold overseas. He mentioned the Dreyfus letter as the source of his information and the witness believed he read some of its contents to him. (The letter was not yet received by Goldfield; it was not distributed by Jenkins until May 12). The witness testified that he bought 200 shares at 10 3/4, and

these shares were sold at 18 one week later when he decided to take the profit. (Tr. 214). Thereafter, however, at the suggestion of Goldfield on May 17 that the price might move up again, the witness bought 650 shares--400 at 13 5/8 and 250 at 13½. He testified that Goldfield advised initially that Interamerican people were talking to other countries and that there would be some contracts. Nothing was said by Goldfield to the witness concerning the incomplete state of testing of the pill.

Following the Commission's action with respect to Interamerican stock the witness wrote to Teller, Inc. on May 18, 1967 and requested that his money be refunded. When no response was received he wrote a second letter. Mr. T. DeF. received on September 7, 1967 a form letter sent by counsel for Teller, Inc. to many purchasers of Interamerican. The letter (Div. Ex. 18) stated that the Teller firm had requested advice and assistance of counsel with respect to the situation regarding Interamerican shares, that an order of the Securities and Exchange Commission prohibits any registered broker-dealer from having transactions in Interamerican securities, and that the law firm was "trying to obtain the pertinent facts surrounding this rather complex situation and to determine what course of action should be taken in the matter." Thereafter, a letter of January 31, 1968 from the Teller firm advised of the issuance "last week" by the S. E. C. of a release announcing the United States District Court's injunction against Trust S.A. and Hausner from further violations of the Securities Act in the offer and sale of Interamerican shares, and of the creation of the fund of $600,000 "to be distributed in an equitable manner to stockholders who purchased their shares between June 1, 1966 and May 18, 1967." These matters are discussed, <u>infra</u>.

Mr. E. K., a dress manufacturer, had dealt with Teller, Inc. in his wife's name as custodian for his son over a long period of time. He testified to a telephone call from Goldfield, who told him he had a good stock coming out, on which the witness could make some money very shortly. E. K. invited Goldfield to talk about it in person and shortly thereafter, on or about May 8, Goldfield visited his home. Goldfield stated that Interamerican was going to build a plant in Ireland where 2,000,000 pills per day would be produced; that the United Nations was going to consider a pill for poverty stricken nations; that Interamerican had a better outlook than Syntex because its pills would not have to be taken as frequently; and that he felt "within a very short time there would be something like a ten dollar profit that could be realized on the stock." About two days later E. K. bought 100 shares at 13 3/4.

Nothing was said to him by Goldfield about the financial condition of Interamerican or its deficits. The witness testified that prior to his purchase he was told by Goldfield about the Dreyfus recommendation, and thereafter received from Goldfield a copy of the Dreyfus letter. He also testified that Goldfield had advised that the pill was not approved for sale and distribution within the United States.

This witness, while not entirely accurate in his testimony, is a cousin of Mr. Goldfield by marriage, and was making every effort to be truthful. His testimony is credited to the extent reported herein, including Goldfield's prediction of a profit. I reject Goldfield's suggestion and testimony to the contrary.

The Division relies also on the testimony of B. M., who had dealt with Teller, Inc. through Goldfield for approximately nine or ten years.

However, his testimony was replete with inaccuracies and exaggeration. At the outset, he testified that when Goldfield called early in May the stock was offered to him for 9 or 9½. This was inaccurate, for Goldfield's initial purchase for his own account on May 5 was at 10, and was made before any offers to customers. The price rose almost steadily thereafter to 20½ on May 11. Other inaccuracies and inconsistencies between the testimony of this witness and credible testimony followed. In addition, the witness refused to admit to having had a (perfectly proper) conversation with Division counsel prior to his appearance as a witness. B. M. testified that Goldfield pressured him with four or five telephone calls, had represented the stock as "another Syntex," and had predicted that it "could very well reach 100." However, after careful consideration, I am constrained to reject all of the above testimony of this witness as unworthy of credibility.

The record shows, however, that this witness bought 400 shares of Interamerican from Goldfield on May 10 at prices of 13 7/8 and 14¼, that he was refused a refund by Teller, Inc., and that he engaged an attorney who started suit for recovery but that no recovery was achieved.

Conversely, I do not accept Goldfield's testimony that he told "each and every client that the company had not had a profit, and had accumulated deficits of X number of dollars . . ." I conclude, moreover, that the deficits of Interamerican were not mentioned by either Goldfield or Krell to any of the investor witnesses; and that Goldfield did not point out to each customer that the sales estimate of six million dollars was predicated or conditioned upon the opening of the plant in Ireland, as he testified. (Tr. 2341). As was stated with respect to

Krell's solicitations, Goldfield did not mention the incompleteness of testing, the lack of registration, nor, of course, any of the adverse factors in Hausner's release to stockholders.

(c) Teller and Teller, Inc.

Teller testified that he returned to the office on or about May 12, 1967, and was advised by Goldfield and Krell with respect to their activity in Interamerican stock. He did nothing further to investigate or have Interamerican investigated, but relied on what had been done by Goldfield and Krell, since he considered their investigation, as reported to him, an adequate basis for the sale of the stock to "those accounts that knew it [as a speculation] and wanted to speculate." (Tr. 2566 T, U). He did not inquire of Goldfield or Krell with regard to the specific transactions in which they had engaged, nor did he ask what these salesmen had said (or had not said) to their customers about the company. He indicated that he relied on them, and would have been much surprised to learn of any misrepresentations made on their own or of any price predictions.

The credible evidence indicates that the Dreyfus letter had not been received at Teller, Inc. on May 12. Hence it appears that the only written material available to Teller (apart from notes of telephone conversations of the salesmen) was the annual report "1967" with its false information. Teller was not suspicious of it and, as indicated above, concluded on that day that the stock could be sold to certain accounts.

There is a suggestion in Teller's testimony that when he returned to the office he reviewed the records to see which customers had bought Interamerican. His testimony was intentionally vague --as to time and as to detail--but he did state that he learned from Krell that Mr. A. P. (a new account to the firm) was "a business man who knew a speculation." (Tr. 2566 X). Of course, no such review and conversation could have taken place prior to the suspension of trading, for the purchase by A. P. was made on May 18, the day of the suspension, and the intent of this testimony is not to suggest that the review took place after the suspension.

Teller also testified that he inquired about L. S. (also a new account). In effect, he said that when he was told that L. S. was a friend of B. L. he was satisfied that L. S. "loved to shoot crap with securities."

I must reject Teller's testimony concerning his asserted review of the records of transactions in Interamerican. I conclude that it constitutes an obvious and ineffectual effort to create an appearance of supervisory care and caution in the sale of a stock which he recognized as purely speculative.

Nor did Teller supervise the salesmen as he should have done to restrain the aggressiveness with which they sold the Interamerican shares. Assuming, as I do, that they believed the pill had good potential, and that the stock, although speculative, might rise substantially in price, Teller should have carefully monitored the enthusiasm of his salesmen. The requisite degree of care might have

prevented at least some of the highly enthusiastic recommendations and extravagant price-rise representations made after May 12, when Teller returned. It might also have precluded offers to new accounts, thus limiting the number of violations.

I am urged by counsel for the Tellers to find that the salesmen had regard for the speculative nature of Interamerican in their recommendation of the stock and that Teller was cautious in his supervision of their activity. I cannot so find. Conversely, I note that Goldfield and Krell purchased stock on the day that E.L. Aaron, the principal market maker, suggested they become active in retailing it; that sales of the stock continued even after the sharp decline in price from 20½ on May 11, 1967 to 13 on May 17, and that there is no indication in the record that anyone in Teller, Inc. learned the reason for that decline or ordered the discontinuance of sales pending the receipt of reassuring information with respect to it.[19]

The failure to state those adverse factors which Krell and Goldfield knew or should have known is magnified as fraudulent conduct by the aggressiveness with which they advocated the purchase of the stock, including, particularly, their predictions of price rises, the comparison of Interamerican with Syntex, the haste with which they solicited sales prior to receiving the Dreyfus letter, and the continued sales after the sharp price decline. Teller should have recognized the potential aggressiveness in the sale of this speculative security and responded to it.

19/ On May 17, 650 shares were sold by Goldfield to T. DeF. at 13½ and 13 5/8; on May 18, 200 shares were sold by Krell to A. P. at 14½ and 265 shares were sold to Lawrence S. at 14¼. No explanation of the drop in price was given these purchasers.

(d) <u>The Failure to Deliver Certificate or Refund Moneys</u>

The allegation of fraud by Teller, Inc. for failure to deliver stock certificates and for conversion of customer funds includes a charge that these violations were aided and abetted by Teller, Goldfield and Krell.

Teller testified that Teller, Inc. failed to receive 2,305 shares purchased from broker-dealers, and that there had been no demand by these selling firms for payment for these shares except with respect to a "couple of hundred shares." As to these, Teller refused to accept delivery of certificates and his firm did not honor the drafts. Teller tried to cancel the purchases for the 2,305 shares, but the selling brokers would not agree.

In other words, there were no drafts drawn on Teller, Inc. for payment for over 2,000 shares which it had not received, and no payment was made for 2,305 shares purchased for customers. Accordingly, Teller, Inc. had a fund of approximately '$30,000 to $32,000' which it regarded as money of its customers if the trades with the selling brokers could be cancelled, and which, according to Teller, he would pay to customers if he could determine the proper recipients. Teller stated that the problem was complicated by the fact that some customers had actually received certificates, while others who might have purchased Interamerican on the same day had not, inasmuch as their certificates had not been delivered by the selling brokers. If so, such occurrences were rare.

Teller testified that when he called the NASD he was advised that the matter of cancellation of trades was out of their hands. He

also said he was hoping the S.E.C. would take action to cancel the trades. Eventually, he consulted counsel to determine appropriate action and he indicated that he followed the advice of counsel in not refunding money to customers. Teller, Goldfield and Krell made unsuccessful efforts to obtain cancellation of the purchases from the selling broker-dealers in New York City.

Teller testified that sometime during July or August he learned that prior to the Commission action of May 18, substantial member firms (of the New York Stock Exchange and of other exchanges) who had their offices in New York City and Pittsburgh had been trading actively in Interamerican stock. His counsel had advised that a law suit would be very expensive, so he visited Pittsburgh to urge several broker-dealers to join with Teller, Inc. in a class action against the market makers from whom Interamerican stock had been purchased. He was unsuccessful in these efforts, since these firms were not concerned with the few complaints received from purchasers of Interamerican, although some of these Pittsburgh firms had engaged in substantial retail trading in the stock.

In response to questioning, Teller indicated that the fund of approximately $30,000 was commingled with other Teller moneys and invested in certificates of deposit which drew interest. He told no complaining customers that money was held at interest for purchasers of Interamerican, and there was no documentation in the firm's records of a fund for such purchasers, nor any indication that a portion of the moneys held in certificates of deposit represented a liability.

After the amendment of the order for proceedings by adding the fraud and conversion charge and during the course of the hearings, counsel for Teller, Inc. advised of action taken on April 3, 1970, to refund moneys to those customers who had not instituted lawsuits against the firm. The refundment was in the amount of $28,890, and it repaid approximately 50 per cent of the purchase price of those who shared in it. It did not include interest. Those customers who instituted lawsuits received the virtually worthless stock certificates representing their purchases.

The Division argues that the failure of a broker-dealer to consummate transactions promptly constitutes a course of business which operates as a fraud and deceit upon customers, citing cases in which there was no intent by the broker-dealer to consummate the transaction at the time the moneys were received.[20/] I cannot regard the cases or the principle urged by the Division as apposite to the facts of this case. There is no doubt that Teller, Inc. intended to and did purchase or already own the shares, and it would have delivered a certificate to any purchaser who wanted one. But the evidence indicates that customers wanted refundment of their moneys rather than the virtually worthless certificates. Moreover, the broker-dealers in the cited cases never incurred a potential liability for securities purchased from market makers, as did Teller, Inc. for the 2,305 shares. Accordingly, whether or not an adequate number of certificates rep-

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20/ Carl J. Bleidung, 38 SEC 518 (1958); Batkin & Co., 38 SEC 436 (1958); C. J. Montague, 38 SEC 463 (1958). For example, in another cited case, Jesse S. Lockaby, 29 SEC 271 (1949), the Commission said, at 273: "And prompt delivery to these customers, in accordance with the custom of the trade, was never contemplated. At no time did [the broker-dealer] own any of the securities sold nor did he ever enter into a contract to acquire [them]."

resenting purchased shares were available for delivery or were delivered by Teller, Inc. is not the real issue. Rather, the issue is whether the retention, for almost three years, of funds paid by its customers, the failure to set up an account for the customers, and the failure or refusal to pay interest earned on such funds constitutes a conversion of customer funds or other fraudulent activity by Teller, Inc., as charged.[21/]

The Division argues that Teller, Inc. had entered into oral executory contracts with its customers, under which it was obligated, as agent, to obtain the shares from a market maker and make delivery: that it declined to receive the stock and therefore was unable to make delivery. Presumably, this constituted a breach of contract, or gave to the customers a right of recission, although the Division does not spell out precisely the legal theory which it urges for a finding that Teller, Inc. was guilty of fraud and deceit.

I find that Teller, Inc. in almost all of the sales to the investor witnesses who demanded return of their funds had acted as a principal rather than as agent. The firm charged the customers a markup above its purchase price rather than a commission, and almost invariably it had purchased the stock in advance of the sales. (Div. Ex. 29). Accordingly, I cannot adopt the Division's theory.

21/ Any technical violation of the requirement that certificates be promptly delivered by the broker-dealer should not, _ipso facto_, be considered fraudulent activity within the intendment of securities Exchange Act Release No. 7020, July 19, 1966, which _permitted_ broker-dealers to conclude or consummate a purchase transaction and thus "complete his contractual obligations" even though trading in the security had been suspended. Had Teller, Inc. not refused to accept delivery of the virtually worthless shares it would have done a disservice to its customers, to whom it owed the duty of trying to cancel the trades in order that refundment might be made.

Nor can I adopt the argument of Teller, Inc. that the case of <u>Miller</u> v. <u>Dean Witter</u> [22/] is apposite. There the civil court dismissed a complaint based on a count of conversion for the wrongful withholding of certificates of stock and an added count for recission of the purchase because of defendant broker-dealer's failure to deliver the certificates. The court found that the broker-dealer was the agent of the purchaser, had carried out its assignment to purchase the stock, and in accordance with its contract had held the certificates in safekeeping until demanded.

But the instant proceedings are not, of course, an appropriate forum for deciding whether under the facts and circumstances of a particular purchase by a Teller customer there is liability to the customer for fraud or conversion. It is not within our province to determine that the customer could legally rescind the purchase and demand a refund, especially because Teller, Inc. may have had reasonable basis for concluding that the funds paid by the customers had become its property or that its potential liability to the firms from which it purchased the shares was an adequate reason for not then returning the moneys paid. I find that Teller, Inc. did not violate the antifraud provisions of the securities laws by not delivering the certificates or by not refunding the moneys paid by its customers prior to April 3, 1970, regardless of what its intent or position might have been, had not the order for proceedings been amended. [23/]

22/ '69-'70 C.C.H. Dec. ¶92, 733, N.Y. County Cir. Ct. (1970).

23/ The evidence indicates that subsequent to publication of an article in the New York Times indicating that Dreyfus was refunding moneys to its customers and that Interamerican shares were not registered with the Commission, Goldfield and Krell urged Teller to refund the moneys, but without success.

Nassar and Company, Inc. and George M. Nassar

Nassar, Inc. began operations in Pittsburgh in October 1964, initially as a sole proprietorship of Nassar, and was incorporated one year later with Nassar as president, director and sole stockholder. Prior to October 1964 he had been employed as a registered representative by brokerage firms in the Pittsburgh area. His firm has been registered with the Commission as a broker-dealer since March 5, 1966, and is a member of the NASD.

Nassar learned of Interamerican in 1964 in a telephone conversation with Sy Wilkes, chief trader of the broker-dealer firm S. J. Brooks & Co., of Toronto,Canada, in which Wilkes discussed Interamerican and the reasons for his interest in the stock. Nassar testified that inasmuch as S. J. Brooks & Co. and Wilkes enjoyed favorable reputations in the Pittsburgh area and were used by local broker-dealers in connection with Canadian security transactions, he thereafter frequently used the Canadian firm's direct telephone line to Pittsburgh and received from Wilkes information regarding the progress of the company, its management, the contraceptive pill and the status of production and potential contracts.

Nassar bought Interamerican stock frequently, at prices ranging from $1.25 per share to $8 per share. At the time of the hearing he owned 8,100 shares, all of which were purchased on the basis of information he received from Wilkes, as confirmed by numerous telephone conversations with Accardi, Charles O. Brown Jr., Bardani, and with Hausner.[24/]

24/ In the spring of 1965, Wilkes informed Nassar that Hausner would be in Pittsburgh and would visit him. Hausner visited Nassar and confirmed information previously given by Wilkes regarding Interamerican's lumber holdings in South America, the testing of the pill, and Hausner's scheduled trips to Israel, South America and Hong Kong to seek contracts.

Although he testified, in response to a question by counsel for the Division, that all of the information upon which he based his judgment originated with Hausner, I find that some of it came originally from persons such as Accardi and Bardani, whose background and experience provided an apparently more reliable basis for credibility in the technical areas regarding the Bardani process and the nature of the pill. Nassar also received and relied upon information from other brokers trading the stock during the period of its rising market prices.

Although much of the misinformation upon which Nassar acted originated with Hausner, Accardi testified that Nassar called him "many, many times" (Tr. 1687), and Bardani testified that Nassar telephoned and put to him specific questions regarding an overseas trip and the status of the company's machinery (Tr. 1579). One of the principal arguments supporting Nassar's acceptance of the information he received is the consistency, in his judgment, of what was told him by the several sources he contacted. He testified, for example, that the information in the "1966" and "1967" annual reports of Interamerican (which he received as a stockholder) was consistent with what was told him by Hausner and other company officials: he concluded, at a late stage in his activity in the stock, that the Dreyfus letter confirmed the information received from Wilkes, from company officials, from other broker-dealers trading the stock, as well as material contained in the annual reports. His counsel urges that he had no reason to believe that this information was in any way misleading or that it failed to contain material facts, and that Nassar was justified in furnishing such information to his customers.

All of the transactions by Nassar, Inc. were effected by Nassar himself. The firm's first purchase for a customer occurred in 1965, about six months after Nassar's first purchase of Interamerican shares for his own account. He testified that his transactions on behalf of customers were unsolicited and that when customers asked him to buy Interamerican stock he never thought of checking to see whether the company had registered or filed reports with the Commission, even though he knew the company was a Canadian corporation; that Interamerican had been listed in the pink sheets for a long period of time; that several sizeable and reputable broker-dealer firms had been making a market in the stock and that a Pittsburgh broker-dealer firm, Kay, Richards & Co. (now Parker-Hunter) had been recommending the stock in radio broadcasts.

Nassar points out that no sales of his own Interamerican shares were made, with the exception of a single sale of 2,000 shares sold at wholesale at a time when cash was needed by his firm. The Division asserts that during the period January 25, 1966 to May 18, 1967, the firm sold 39,598 shares of Interamerican to customers on a retail basis, for which it received gross commissions of $2670.18. (Tr. 1124; Div. Ex. 87).[25/] The Division also asserts that from July 13, 1966 to May 16, 1967, Nassar Inc. sold for retail customers on an agency basis approximately 5,750 shares, and that gross commissions of approximately $673.10 were earned thereby. (Tr. 1126; Div. Ex. 88). All of the above transactions apparently were at proper mark-up or commission

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25/ The order for proceedings charges violations by these respondents during a shorter period, i.e. from on or about April 1, 1966 to May 18, 1967.

rates, and no sales were made after trading was stopped by the Commission. Nassar's post-hearing documents state that during the relevant period April 1, 1966 to May 18, 1967, Nassar Inc. sold 45,348 shares of Interamerican to 75 customers for a total dollar volume of $215,690.13, for which commissions of $4,036.42 were received. (See Tr. 2247).

These post-hearing documents also concede that Nassar told customers that he believed the price of Interamerican stock could possibly rise to $100 per share, and this was also the testimony of Nassar. While he is to be commended for his forthrightness, his argument or suggestion that such opinion was based on an adequate foundation and that it "was strongly supported by the actual market performance of the stock which was rising rapidly" must be rejected. Such expression of opinion was entirely unwarranted and was not well-founded: and that the price of the stock was rising was undoubtedly the result, at least to some extent, of predictions such as those made by Nassar and by other persons.

Discussion of some of the testimony of investor-witnesses follows. M. S., a restaurant owner, met Nassar in May 1967 through a mutual friend. About a week later Nassar called and said that he had a "hot stock" which would go high. The witness at that time declined to purchase, but in a subsequent telephone call from Nassar he bought 100 shares at 13. On the same day, following another call in which Nassar said the stock had moved to 23 and then had gone down to 14½, the witness bought 200 shares at that price. Subsequently, when M. S. called

Nassar he was dissuaded from selling the stock; however, M. S. asked Nassar to sell 200 and agreed to keep 100 shares and Nassar effected this transaction. M. S. made a profit of about $600.

B. S., a scrap dealer, received a telephone call on or about May 10, 1967, in which Nassar stated that Interamerican stock would go to $50 per share. The witness testified that he had previously bought 200 shares through another broker-dealer on the basis of a strong recommendation made by his friend M. S., whose testimony is discussed above, but he made no purchase through Nassar.

Miss D. M. M., manager of a department at a sports car firm, met Nassar through a Corvette Club. She testified that Nassar called her two or three times prior to her purchase of 50 shares of Interamerican at 8½ on April 4, 1967. In these calls he stated that the stock was a good investment, that she would make money quickly--in a couple of months; that he expected the price of the stock to go to $32. In the first telephone conversation the witness said she would think about his suggestion. In the second or third call she advised that she had only a limited amount of funds to invest and when she spoke of $500, Nassar advised that he could sell her 50 shares and the purchase was made.

J. H. D. testified that around May 1, 1967, an insurance broker friend recommended Interamerican as a good buy which was starting to move in price, and was expected to go to the area of 100 in the near future when its pill would be approved by the United Nations. He suggested that Mr. D. get further information from Nassar. Mr. D. discussed Interamerican with his attorney, T. T. B., who advised that he,

himself, had made several transactions in the stock. On telephoning Nassar, Mr. D. was advised that United Nations approval of the pill for use in foreign countries was expected before the end of May and that the stock would go to the area of 100 on the announcement. Nassar also stated that the pill was being manufactured successfully, described it as unique and better than any other pill, and said that it had no side effects. He stated that there was marketing capability for the pill in all areas except in the United States, that he owned 9,200 shares, that the stock was booming in price and was hard to obtain, and that he did not know whether he could get any for J. H. D. but he would try. He sold 100 shares to J. H. D. at 12 3/4 on May 9, 1967. (Tr. 1035). The substance of the conversation was repeated several days later when J. H. D. brought to Mr. Nassar his check in payment for the purchase.

On or about May 18 the witness learned of the suspension of trading and called Nassar, who advised that the Canadian Government had dumped stock on the market and that in order to protect the value the S. E. C. had suspended trading. He advised that the matter should be cleared up in two weeks, after which he expected that the stock price would continue its upward trend. Nassar called the witness subsequently in an effort to sell other securities, and during these conversations he advised that the pills were being manufactured and sold. (Tr. 1041).

Mrs. B. J. S. was called in April 1967 by Nassar, who stated that Interamerican was a good Canadian company with a pill incomparable to any other; that it had a good foreign market, and that the stock would appreciate in value. He also stated that the pill had been tested and

would be shipped to India and Panama. On April 4, 1967, the witness purchased 50 shares at 8½ per share. Thereafter, Nassar called her and advised that the stock was moving up in price, and on his recommendation she purchased 50 shares at 14 3/4 on May 11, 1967. Between the two purchases Nassar compared Interamerican favorably with Syntex, which was then selling at around $90 per share. (Tr. 1054).[26/]

T.T.B., the attorney mentioned above, met Nassar at a party. Thereafter, in the Spring of 1967 he and other young attorneys had lunch with Nassar. On April 28, 1967, Nassar called T. T. B., stated that he owned 9,000 or 9200 shares of Interamerican, and said that the stock would go to 100. He advised that the United Nations was meeting in May to consider the use of the pill in India.

On May 4, the witness called a friend employed by the Pittsburgh broker-dealer firm then known as Kay, Richards & Co. and bought 20 shares of Interamerican. Subsequently, Nassar called T. T. B., advised that the stock was moving and that it would make the witness a millionaire: he repeated that it was going to 100. The witness bought 40 additional shares from Nassar at 12 3/4 on May 9, 1967. (Div. Ex. 80). When the stock reached 18½ around May 10, T. T. B. sold through Kay, Richards the 20 shares he had purchased through that firm. When it went to around 20 he called Nassar with the thought of selling his 40 shares but Nassar advised him to stay with the stock because it was going to 100, and no sale was made. When T. T. B. heard (through Kay, Richards) of the suspension of trading he called Nassar, who advised that the suspension was temporary and was due to some technical requirement of the S. E. C.

26/ A pre-hearing statement by Mrs. B. J. S. introduced into evidence by an attorney representing Nassar includes additional flagrant misrepresentations by Nassar.

R. S., an attorney, met Nassar in June or July 1966. Prior to his first purchase of Interamerican on July 27, 1966, Nassar had called him frequently--"often on a daily basis" advising that the price of the stock was rising. Nassar stated that he had bought Interamerican at around 50 cents per share, that it had gone to $1.75 and that it would go to $40 and ultimately to $100 per share. He advised the witness to buy the stock immediately and R. S. eventually bought 100 shares at 2 3/4.

Thereafter, Nassar told the witness that the process for the pill was to be negotiated for sale to a major pharmaceutical company; he compared the stock's action to that of Syntex and indicated that similar performance was expected. (Tr. 1094). He also spoke of prospective purchases by India of very large quantities of the pill as a solution to its population problem, and projected a dramatic rise in the price of the stock on the release of this news. He frequently referred to his own heavy investment in the stock. Nassar's aggressiveness and persistence in calling time and again with strong recommendations for further purchases was especially apparent in the testimony of this witness, who also testified that Nassar "consistently asked me to go to my friends, particularly doctors and other attorneys--and recommend him as a broker." The witness made a second purchase of 100 shares of Interamerican at 10 3/4 on May 8, 1967.

D. M. heard of Interamerican from friends who were taking Army basic training with him. He learned of profits in the stock and called Nassar on May 17, 1967 to buy 50 shares. Nassar advised that the stock was speculative, but D. M. made his first purchase of stock on that day. (50 shares at 5). In subsequent conversations Nassar reiterated his advice about the speculative nature of the stock, but

at the same time stated that it could be another Syntex. He also said that a factory would be established in Ireland, that it would turn out 100,000 pills per day, that Ford and Rockefeller grants were being made or considered for testing the pill, and that Interamerican was not selling in the United States because Syntex had a monopoly.

D. G. H. testified that Nassar recommended Interamerican as a good stock with great potential and stated that he'd be very surprised if within a year it wasn't up to $100 per share. He said that the only competition for the pill was that of Syntex and that Interamerican's pill was cheaper to manufacture; also that the pill was in production. The witness bought 200 shares at 5 1/8 on March 28, 1967. Thereafter, Nassar called frequently to report the rising price of the stock and advised that the witness (and his associates in the purchases) buy more. On May 15, 1967, Nassar spoke of current testing of the pill for its use in the United States, advised that the company was doing "very good" and that thousands and thousands of pills could be produced in a week's time. He also stated that if the stock continued to move it would be listed on the New York Stock Exchange. A purchase of 40 shares was made by the witness (and associates) on May 15, 1967 at 18 3/4.

Miss S. K., a systems engineer, learned of Interamerican from a colleague who suggested that she call Nassar. She did and she bought 70 shares at 8 3/4 per share on April 20, 1967, during conversations in which Nassar said that the stock probably would go to 100 even though the pills were not yet in production. (Tr. 1169). In one of

the conversations Nassar advised of a contract for shipment of one million pills to South America. After the suspension of trading, Nassar advised the witness not to sell if trading was again permitted, because the price of the stock would continue to rise.

In none of his conversations with the witnesses did Nassar advise of the financial condition of Interamerican or of its deficits in prior years; nor did he indicate that there had been no confirmed testing of its pill, that no plant existed in Ireland or elsewhere that could be used to produce an effective birth control pill, or that the stock had not been registered with the Commission. All of these matters were among the facts Nassar knew or should have known about Interamerican. Concededly, he made efforts to obtain information on Interamerican by frequent telephone calls to the persons associated with management.[27/] But even assuming that he believed most if not all of the misinformation and rumor he heard concerning the pill, his selling activity was gross and reckless and his violations of the anti-fraud provisions warrant the sanction discussed, _infra_. Prior to receiving the Dreyfus letter, Nassar relied on no written material other than Interamerican annual reports. He passed on to customers the false information therein indicating substantial value in lumber and iron ore deposits. The arguments in mitigation are unsupported.

27/ Accardi testified that he received calls from Nassar "many, many times during . . . February, March, April [1967]. Wanting to know about the pill, where we are at now, what are we doing?" He testified that he advised that the development of the pill "was still premature, we had only done some of the exploratory work. The clinical work was minimal. Our animal testing work was very minimal." (Tr. 1697). However, I find that Accardi was more enthusiastic about the pill and its potential than his testimony concedes, and that some of this enthusiasm was conveyed to Nassar and others who spoke with him during this period.

Richard C. Spangler, Inc. & Richard C. Spangler, Jr.

Richard C. Spangler, Inc. was organized as a Pennsylvania corporation in 1960, and has been registered as a broker-dealer since October 6, 1960. Spangler is president of the corporation, and he and his wife own 50% of the stock. The other 50% is owned by Dr. and Mrs. Russell E. Salton. The firm is a member of the NASD.

Spangler has been the sole active partner in the firm, and all of its sales of Interamerican were made by him. His testimony indicated that relatively little research is performed by the firm when a new issue or a new situation comes to his attention. His first source of reference would be to a Standard & Poor sheet for information on the company, if available. If not, Spangler testified that he would look to other sources of over-the-counter information, such as the underwriter of the issue. He testified that he might also call the issuer for financial reports if the information cannot be obtained elsewhere, or he may obtain and rely upon information from another broker.

In the instant situation Spangler relied to some extent upon the Dreyfus letter received in May 1967, but the substantial portion of the transactions of Spangler, Inc. in Interamerican took place long before his receipt of that letter. In June 1966 Spangler learned of Interamerican when Wayne Wilborn, the manager of the Spa Health Club in Pittsburgh, asked him to try to get some information on the company. In response to Spangler's letter to a Canadian broker-dealer firm, Doherty, Roadhouse & McCuaig Bros., he received from Darcy M. Doherty

a letter dated June 8, 1966 (Div. Ex. 70), indicating that very little information was available on the company because the stock was only recently listed on the Calgary Exchange and the principals were probably in New York. The letter expressed Mr. Doherty's concern about the quality and soundness of the company. The text of the letter is quoted "in the margin" on the following page.[28/] Spangler also received with this letter a copy of a telegram to Mr. Doherty, stating that one of Doherty's partners had spoken with Alex Williamson, president of Interamerican, but that Williamson knew very little about the principals in New York. Mr. Doherty's postscript written on the telegram advised Spangler that Williamson is a Calgary lawyer acting as "a legal figurehead at this stage." The text of the telegram to Doherty and his postscript thereon are also quoted "in the margin" on the following page.[29/]

Also enclosed by Mr. Doherty were (1) a "Listing Statement" dated May 16, 1966, which provided some information on Interamerican, and (2) the cover sheet and first page of a report on "Iron Ore Deposits of Mutun Bolivia--South America", dated December 15, 1962, prepared by "Dr. Han C. A. Swolfs, Foreign Exploration Consultant." On the cover sheet is written "this is first page. The whole thing weighs about 2 pounds."

Spangler used in his sales presentation (when prospective purchasers of Interamerican were interested) written material which he collected and assembled in a 3-ring binder. One item was an article in the "Canadian Forecaster"; other items are described in conjunction with the discussion of Spangler's sales presentation to his customers.

28/

Dear Dick:

Enclosed is all the material that I was able to round up on Interamerican Industries Ltd.

It is difficult to get an opinion in Canada as the stock has only recently been listed on the Calgary Exchange and the principals behind the deal are probably in New York. Alex Williamson is shown as President and he is a very able and highly respected lawyer in Calgary, but as his message shows, he has probably handled their listing application and at this stage, does not know too much about the inner workings of the company.

It looks a little "wild" to me with iron ore, birth control pills, lumber, etc. etc. It has the slight odor of a deal that has been fattened up with these glamorous sounding assets with probably the prime purpose of selling stock to the unsuspecting public.

Maybe they are going to sell 50,000,000 birth control pills per month to someone in Hong Kong thereby earning between $3.00 to $4.00 per share, but I personally would suggest that the stock should not be bought until some of these developments actually take place.

To sum up, I would class it as "highly speculative and very hairy".

Kindest regards,

Yours sincerely,

DMD/DR

(s) Darcy M. Doherty

29/

I talked to <u>Alex</u> he doesn't know to much abt the principals in NY. He is going down there towards end of month. As far as he knows there is a sizable deal and one of principals going to Hong Kong this month to tie it up

AHT/CA

<u>P.S.</u> This is msge from Calgary partner. He is referring to Alex Williamson a Calgary lawyer who is President. A legal figurehead at this stage.

DMD

Shortly after its publication and distribution, Spangler saw the August 19, 1966 issue of a periodical called "Canadian Forecaster (U. S. Edition)", which included an item on Interamerican. (Div. Ex. 41). It read, in part, following the caption "Interamerican Contract Signed!", as follows:

> "We received late last week telegraphic confirmation from the company's counsel that a contract had been signed with Chung Shin Shung Ltd., of Hong Kong for distribution of the oral contraceptive pill and that a sales contract calling for deliveries of 10-million pills a month initially and escalating to 50,000,000 a month later had been concluded. From the company's point of view this must be like having been given a key to Fort Knox!! . . . . The "pill" is a potential $375,000 income producer on the current contract--which extends for 5-years with options for further 5-year periods. . . ."

Thereafter, the article projected better than $3.25 per share earnings from the "contract,"[30/] and continued,

> "leave alone the potential profits from INTER-AMERICAN'S hardwood limits in Paraguay or the fabulous 50-billion ton iron ore mountain in Bolivia. . . ."[31/]

There is little question or issue as to the representations made by Spangler to his customers regarding Interamerican, its pill, and its South American timber and oil-interests. A host of false representations of material facts were made and Spangler omitted to state other material facts. Counsel for the Spangler respondents makes the arguments, among others, that nothing was told the customers except information received by Spangler from sources on which he had the right to rely, that the orders for more than 99 per cent of the shares

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30/ No time period, annual or otherwise, is mentioned in this projection.

31/ The Canadian Forecaster article in portions not quoted above discussed the price rise from $1.80 to $3.00 that had occurred "Since we were the discoverers of the stock. . ."

sold by Spangler, Inc. were unsolicited, and that the orders were based on recommendations and information furnished by business associates and friends of purchasers who had profits in the stock, rather than on unsolicited information from or representations by Spangler. I reject these arguments on the basis of the evidence of transactions with investor witnesses and the law and cases discussed below under the caption "Violations and Sanctions."

V. S., an automobile dealer, testified that in May 1966 Spangler and a mutual friend, Harold Stirling, were discussing with V. S. the automobile business when the subject of Interamerican stock came up. It was then quoted at around 2¼ and Spangler referred to it as one which he felt was going to be a real good stock. He said the company had acquired a patent for a slow release pill that would be used in birth control, and showed V. S. a three-ring binder with celluloid covers which contained photostats of various articles and clippings supposedly reflecting on the company's activities and on birth control pills generally. Division's Exhibit 53, one of these articles, is an excerpt from a tabloid-sized paper called the "National Enquirer" (undated except "1967"), which screams in a large headline (72 point Heavy Gothic Type) "BIRTH CONTROL PILLS PREVENT CANCER!" The lengthy article discusses reported results of experimentation with birth control pills, and some asserted physical as well as psychological advantages to women using the pill. However, no mention is made of the Interamerican pill or of its chemical formula: moreover, if a prospective investor took the time to read and analyze the text he would conclude that it does not support the headline. Another item in

Spangler's binder was a photostat from an August 1966 issue of Coronet Magazine's condensation of a book entitled "Feminine Forever", authored by Robert A. Wilson, M.D. The first page of the article is captioned "Medicine's New Fountain of Youth--Stay Sexually Young Forever." (Div. Ex. 72). The article discusses research which indicated to the author the effectiveness of birth control pills in connection with menopause and feminine sexuality. No mention is made of Interamerican's pill or of its formula, although other items in the binder related specifically to Interamerican and its pill.

Spangler also discussed with V. S. "some hope" that the pill would cure or prevent cancer. (Tr. 858). He expressed the view that Interamerican stock would go to at least 50 within a year, advised that the market intended for distribution was India and other Asian countries--a market in "billions of pills". V. S. stated that he had no funds available at that time for the purchase of stock.

Approximately one year later when Spangler and Stirling were again in the office of V. S., Stirling pointed out that the stock had risen to 9½, expressed the view that it would go higher, and recommended purchase by V. S. The recommendation was endorsed by Spangler. (Tr. 863). Again V. S. advised that he then had no available funds, but said he would have funds shortly. Spangler telephoned him several times within one month preceding May 10, 1967,(at which date V. S. bought 200 shares at 13½ and 800 shares at 13 5/8). Spangler advised in these calls that the stock was moving up and should be bought as quickly as possible. When V. S. responded on May 10 that he would not have funds until a certificate of deposit would mature on May 20, Spangler

advised that he could then buy the stock and that payment need not be made until May 20. In that conversation he also stated that tests of the pill were being completed in Panama, that Interamerican had acquired a plant in Ireland which had a tax-free status, that the World Health Organization of the United Nations had received Ford Foundation funds for the distribution of pills, and that sales would take off in large amounts almost immediately. He also said that the pills would be mass-produced at a very low cost and that Syntex was buying 20% of Interamerican in order to obtain patent rights for the slow release, without which its own pill would become obsolete.

F. F., an attorney, learned of Interamerican in August 1966 from a client and bought 100 shares through Kay, Richards & Co. The representative of that firm was unable to provide much information on Interamerican and referred F. F. to Spangler. F. F. called Spangler in August and during a series of three or four telephone conversations he purchased 300 shares at 3 on August 31. Spangler supplied him with a copy of the Canadian Forecaster article after having earlier apprised him of the information it contained. (Tr. 887). Spangler also stated that Interamerican had signed a contract under which ten million pills would be shipped to the Far East "momentarily"; that thereafter shipments would increase to fifty million pills per month and that public announcement of the contract would be made in the near future. He also stated that the company's patent on a sustained release process was unique and that the World Health Organization was extremely interested in the pill and was putting $250,000,000 into a project

involving the process. In subsequent conversations Spangler told the witness that the process was to be tested on Eskimo women for cure tuberculosis; that investigation might be made of the possible use of sustained release birth control pills with female dogs; and that Interamerican's process was the only one which required only one pill per month. He compared Interamerican to Syntex and the dramatic price rise of its stock and stated that Interamerican stock had a good possibility of reaching 50 to 100.

When F. F. received a call from a law student at the University of Pennsylvania advising him that although there was much action in the Pittsburgh area in Interamerican stock, it was not good, he sold 200 of the 400 shares he had purchased.

R. K., another attorney, testified that he learned of Interamerican from F. F., the previous investor-witness, and called Spangler in order to buy 50 shares. The purchase was made on September 21, 1966, at 2 [illegible] Thereafter, Spangler told R. K. that experiments were being conducted with Eskimo women; that a contract had been made with a Near East or Far East country for a large supply of the pills; that a Canadian chemist stated that the price of Interamerican would go to 10 but that Spangler thought it would go higher; that earnings of the company for an annual period would equal the current sale price (2 3/4); and that the company's timberland interests in Paraguay would enhance the value of the stock. He also stated that experimentation with the pills on female dogs, if effective, would obviate the need for spaying.

G. C., a sales manager, learned of Interamerican in the Fall of 1966 from Phillip Kaufman, an associate at Trane Company. Kaufman painted a bright picture of Interamerican and its pill and predicted that within two years the stock would go from the current 2-2½ to 100. On November 11, 1966, in the course of a telephone conversation with Spangler initiated by the witness, he bought 1,000 shares at $1.815 per share. Thereafter, he bought in seven transactions between November 18, 1966 and March 22, 1967, a total of 3900 shares at prices ranging from $1.815 to 4¼. During this period Kaufman was enthusiastic about the stock potential and the assets of the company, including the pill; he made earnings projections of $2.00 to $10.00 per share, and spoke of pill sales in the order of 10,000,000 to 12,000,000 per month in connection with a contract with India. He spoke also of sales of the pill in Panama, Santo Domingo, Israel, and all Far East countries except Japan, and mentioned other possible applications of the sustained release process, including preparations to test it for tuberculosis and using the process for other pills having side effects. G. C. testified that in conversations with Spangler during this period of several months, Spangler reiterated pretty much everything that Kaufman had said and indicated that he had obtained such information from Kaufman and from others. (G. C. estimated that approximately 90% of the information he received during this period came originally from Kaufman and about 10% came from Spangler. However, he made it clear that Spangler had confirmed the information from Kaufman).

F. C., vice president of Trane Company, learned of Interamerican in late 1966 through Kaufman, who gave him the same information he gave to his other associates. F. C. bought 100 shares at 7/8 on

January 3, 1967; 200 shares on January 23, 1967 at $2.7075 and 100 shares at 4 7/8 on March 27, 1967. In late 1966, Mr. F. C. called Spangler and discussed Interamerican with him. Spangler advised that the pill had undergone tests with favorable results on side effects, was relatively inexpensive to manufacture, and would benefit from the employment of a former chemist from Syntex. He spoke of prospective business with India and an expected rise in price to perhaps 10 by the end of 1967.

J. K., a salesman for an electrical company, knew Spangler for approximately 25 years. He testified that in September 1966, in a telephone call Spangler advised him of a profitable outlook for Interamerican in the manufacture and sale of birth control pills in the Far East and in its undeveloped timberlands in South America. Spangler advised that although no dividends were being paid, future profits looked good because of prospective pill sales primarily to Red China and Far East countries. In one of many telephone conversations (which continued over a long period), Spangler advised that the pills were to be sold through Canadian companies and were then being manufactured. Spangler also advised that tests of the pill had been satisfactory, that it had no side effects, and was superior to that of other companies. On October 11, 1966, J. K. bought 100 shares at $2.325 per share.

He was also told by Spangler that the United Nations and the World Health Organization were very much interested in the pill; that progress was being made in negotiating contracts with Red China and with South American countries; and that the pill was especially effective with oriental women because they required only small dosages.

Between his initial purchase in October 1966 and a second purchase on March 13, 1967 of 100 shares at 5, he was advised by Spangler that because of increased sales of the pill the price of the stock might go to 15 or 20. Spangler also told the witness that Oscar Hausner's large holdings of the stock limited sales and would tend to increase its price.

R. D. S., a commercial photographer, was a member of the Spa Health Club. In or around August 1966, Spangler advised him that Interamerican was one of the best stocks he had come across and suggested early purchase because the price soon would move. He described the "superior process" used in the manufacture of the pill and said it was not affected by the acidity or alkalinity of the human system. The witness was shown the August 19, 1966 issue of the Canadian Forecaster and its article on Interamerican. (Div. Ex. 41). He testified that ". . . it was one of the things that I got rather excited over, about Interamerican Industries" (Tr. 753); and that it "impressed me more about the stock." (Tr. 755). On August 22, 1966, R. D. S. bought 500 shares at 3 1/3. Thereafter he purchased 600 shares on August 29, 1966 at something over $3 per share, and 200 shares on September 30, 1966 at $2.58. Spangler had spoken of large undeveloped timber and ore resources in South America; of anticipated low cost of production of the pill; of the interest of Syntex in the Bardani process and of the expectation that this process might be used in a pill for tuberculosis. After the price of the stock increased, Spangler stated that it could probably go (from 15) to as high as 50. (Tr. 771). The witness had been told by Spangler

sometime prior to the date of the Dreyfus letter that its publication would increase the price of the stock.

(R. D. S. also had heard about Interamerican from the assistant manager of the health club and optimistic discussions of Interamerican took place amongst its members. He bought additional shares through the Pittsburgh firm of Arthurs LeStrange & Co. in December 1966).

V. K., a partner of the preceding witness, learned from him that one of the health club personnel had described the stock as a "mover". This witness and his partner engaged jointly in many telephone calls originated by Spangler, during which Spangler transmitted information on Interamerican. He advised that the pill had been tested and could be marketed throughout the world, except in the United States; that Interamerican was integrated for the manufacture and sale of the pill because it was comprised of a mining company which could produce raw material as well as a distribution center in New York. He stated that contracts were near the signing stage with India and other Asian countries except China, and projected that earnings should be approximately 90 ¢ to $1.00 per share. (Tr. 814).

The witness testified to frequent telephone calls from Spangler from September 1966 to the cessation of trading in the stock, with calls sometimes two or three times a day. In these calls Spangler stated that Syntex was interested in Interamerican and its slow release patent; that shipment of pills to Central or South American countries was imminent; that a side effect of the pill indicated that

it was a panacea for tuberculosis; and that the World Planned Parenthood group was convening in a Central or South American country and would discuss the pill. During the first two weeks in March he received telephone calls from Spangler, in one of which Spangler stated that the stock was then about 6, but with an endorsement by the World Health Organization it would be about 10 at the end of May.

C. S., assistant manager of a branch of Mellon National Bank, learned of Interamerican in January or February 1967 from a customer, and inquired about it of Spangler, who was also a customer at the bank. Spangler advised that the stock had very favorable prospects; that its process for the manufacture of the pill was exclusive and had an advantage over other pills in that it had no side effects. The witness bought 100 shares on March 22, 1967 at 4¾. Spangler told C. S. prior to the purchase that the company had assets of 1½ million dollars and unexploited timber rights or lands in South America. He advised that the pill was being tested, that the cost of production was low--approximately 1½ or 2¢ per pill.

Subsequent to the purchase Spangler advised that prospects for sale of the pill in Red China were good because of the low standards of that country. He also stated that Hausner had gone to New York to discuss with the World Health Organization the acceptance of the pill in other countries. Most of the information transmitted to the witness by Spangler was preceded by "I talked with Hausner," or similar language.

M. S., a district sales manager, heard of Interamerican from a friend, approached Spangler and bought 150 shares on April 21, 1967 at 8 7/8. Spangler advised that Interamerican's pill was produced and tested and was supposedly ahead of all others because it had no side effects. He advised that a purchase of Interamerican stock was a good investment and that the price of the stock could go to 70 or 80 in the not too distant future. Spangler also advised that the company had recently acquired "the Syntex chemist"; that the company was solid financially; that some pills had been sold in a South American country, but that the company was just getting ready to come on the market in a big way.

It is almost incredible that a broker-dealer with Spangler's years of experience should not have been more careful and more sophisticated in the use of company propaganda and obviously false information in his selling efforts. Spangler had met Hausner in September 1966 on a street corner in New York City pursuant to appointment arranged by Sy Wilkes, and was then told of the imminence of the execution of the contract for the sale of pills to the Hong Kong company. There is no indication of the extent (if any) to which Spangler then discredited the earlier Canadian Forecaster story of the executed contract, on learning that the contract had not in fact been closed as reported.

Again, in the above discussion of the activities of Hausner (at page 7, supra), mention was made of Spangler's presence at the meeting at the home of Seymour Jeffries in March 1967. Following this meeting, Spangler received from Jeffries a letter dated March 10, 1967, which purported to summarize the matters discussed. (Div. Ex. 74). The letter expresses a cautious view of Interamerican's prospects at several points.

For example, Jeffries wrote, in part:

> "As to clinical results and results on animals done by Mountainside, we all heard Oscars [sic] statement. I personally have not seen any 'written' clinical evaluations, nor have I any personal knowledge as to the investigational protocol employed other than Oscar's assurances that they conform to the highest standards of clinical investigational practices and procedures available. As to world-wide standardization of clinical investigational protocol, I brought the matter up to Oscar and you heard his assurances that this was already taken care of.
>
> 3. With respect to marketing. . . I have no knowledge as to the status of the Hong Kong Cheng, Shim Shun agreement in re. the Bamboo Curtain Countries (Red China) . . . . It was still in the negotiation stage as of Saturday, the day of the meeting, with respect to certain clauses. I have no reason to believe that it will not become an effective agreement. . . .
>
> 4. To sum up, cautious enthusiasm and optimism appears to me to be the keynote and guideline. We are all awaiting Interamericans [sic] report on progress as promised by Oscar." (underscoring as in original).

Especially in light of what Spangler knew about reports of the Hong Kong contract, the letter was no basis for the optimism thereafter exhibited by him in his Interamerican transactions. More importantly, although the Spangler brief states that "This meeting was in the nature of a full disclosure meeting, requested by Spangler, for the purpose of obtaining as much information as possible; . . .", neither in the Jeffries summary nor in the testimony of any of the several witnesses who attended the meeting is there any indication that Spangler inquired regarding the continuing delay in the Hong Kong contract adverted to in Doherty's letter of June 8, 1966, described in the Canadian Forecaster in August 1966 as a fait accompli reported by company counsel, and thereafter suggested as imminent by Hausner at the street corner meeting in New York City in September 1966. The "delay", continuing for a period in

excess of nine months, and with promise in March 1967 at Jeffries' home of still further delay before execution of the contract could be expected, should have been the basis for Spangler's suspicion and for persistent inquiry and investigation at that meeting.[32/] His subsequent irresponsible representations regarding this contract were reckless and reprehensible. Beyond this, Spangler's continued use of discredited publications in selling efforts was tantamount to intentional fraud, particularly in light of other factors known to Spangler which should have cast doubt on the stability and worth of the company and its management.[33/] These factors, together with his pressure on customers, his inexcusable excess of enthusiasm, his persistence in the offer and sale of shares, and his reprehensible representations of price rises, are the basis for the discussion of violations and appropriate sanctions required because of Spangler's activity in selling shares in a company which had no sales of pills and no income whatever.

32/ Actually, Interamerican entered into a totally illusory contract with the Chinese company on July 25, 1966. (Div. Ex. 117). The contract provided that if, within 18 months, the "Buyer" ordered regular monthly quantities of 3,750,000 pills, and continued such orders, it could act as sole distributor in the Far East, except India. The contract was on Syntex-patented Di-Ornane.

The "Buyer" agreed to place an order by October 15, 1966 for 10 million pills, and to order that quantity monthly until January 15, 1967; thereafter to order 50 million pills per month.

Because no damages or other remedy would follow from failure to place any order whatsoever, it is unnecessary to discuss other "escape clauses" in the illusory contract, such as the "Buyer's" right to receive clinical reports and to insist on further testing.

33/ For example, Spangler testified that he received so many collect telephone calls from Hausner beginning in the summer of 1966 and continuing through perhaps February 1967, that he ultimately refused to accept them. Thereafter, Hausner's calls were made primarily to Philip Kaufman, a layman investor who purchased a substantial number of shares of Interamerican. As stated above, he passed on to Spangler the information received from Hausner, and Spangler passed on this information to customers (Tr. 999-1001, 1011-1012)

Violations of the Anti-fraud Provisions, Sanctions and Public Interest [34/]

(a) Jenkins

In several respects with regard to Interamerican, this intelligent and gentlemanly salesman failed in his responsibility to his customers, to the investing public, and to his employer. He should have recognized, initially, that contrary to advice that a "change in management" had taken place in Interamerican, Hausner, in fact, had continued to dominate and control the company. Without adequate investigation he accepted at face value false information given by the smooth-talking Hausner. Some information he tried to confirm, but other information he accepted and published in the Dreyfus letter without attempt to confirm.[35/] His publication of much of the misinformation included in the Dreyfus letter was unjustified, and publication of the letter was unauthorized. In his sales of Interamerican, Jenkins omitted to mention the company's deficits or to advise that its stock was unregistered, among other material facts which he knew or should have known, and there was no basis for enthusiastic representations about a prospect for a rise in the price of the speculative shares.

Jenkins filed no post-hearing documents and asserted no defense of his actions. He resigned from his position with Dreyfus, left the

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34/ In the discussion which follows, as in preceding portions of this initial decision, findings and conclusions made under a caption relating to a named respondent suggest particular applicability to him, but may, if the facts found herein so indicate, also be applicable to any other respondent in these proceedings.

35/ By way of example only, there was no advantage, as asserted without justification in the Dreyfus letter, in the fact that the Interamerican pill had neither acidic nor basic groups. (Tr. 1860). Had Jenkins inquired of Accardi or otherwise investigated he would have been so informed. (Tr. 2017). Conflicting statements in the two attached Appendices disclose other items of unconfirmed information.

securities business voluntarily, and indicated that he has no intention of returning to it.

The evidence discloses that during a period beginning in April 1967 and extending to on or about May 18, 1967, Jenkins wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10 b-5 thereunder in connection with transactions in and activity with respect to Interamerican stock. It is concluded that it is in the public interest to bar Emmanuel Jenkins from association with a broker or dealer because of his violation of these anti-fraud provisions.[36/]

36/ The effect of the anti-fraud provisions as applicable to these proceedings is to make unlawful the use of the mails or means of interstate commerce in connection with the offer or sale of any security by use of a device to defraud, an untrue or misleading statement of a material fact or a failure to state such fact where necessary, or any act, practice, or course of business which operates or would operate as a fraud or deceit upon a customer or by means of any other manipulative or fraudulent device.

(b) Goldfield and Krell

These salesmen and Teller, having been in the securities business for many years prior to May 1967, had seen and undoubtedly experienced the "hot issue" markets of 1962 and of other years. They knew, or should have known of much fraud and irresponsibility in the offer and sale of speculative securities--especially of speculative Canadian securities. I find that Goldfield and Krell failed to respect the need for restraint in concluding that Interamerican shares were appropriate securities for their accounts who were willing to speculate; also in making that decision under pressure to get in "on the ground floor" before the Dreyfus letter was published, and in pressuring investors with the aggressive and enthusiastic selling techniques described above. Of course, it is no defense to their pressure and selling tactics that certain purchasers were in fact willing to speculate. The Commission in Ross Securities, Inc., 41 S.E.C. 509 (1963), at 514 made a statement which is apposite:

> "The predictions of short-term increases [in the price of Tamarac] and other favorable representations as to [its] prospects stand out as the central theme of respondents' sales efforts. These sales techniques served not to inform fairly but to lend to this highly speculative investment an unwarranted air of certainty as to future profits and to obscure the risks involved in such investment." 37/

Nor does the willingness to speculate with their own funds give to salesmen a license to pressure customers into buying or to make fraudulent statements or omissions to induce purchases. 38/

37/ Cf. Alexander Reid & Co. Inc., 41 S.E.C. 372, 377 (1963); James De Mammos, et al., Securities and Exchange Release No. 8090, June 2, 1967.

38/ Hayden Lynch & Co. Inc., Securities Exchange Act Release No. 7935 (August 10, 1966); Shearson, Hammill & Co., Securities Exchange Act Release No. 7743 (November 12, 1965), at [illegible].

The argument of respondents that the purchasers from Teller, Inc. recognized the speculative nature of Interamerican does not answer the requirement that such negative factors as the company's deficit should have been disclosed. The same Congress that adopted the Securities Exchange Act rejected such argument, and the House Committee wrote

> "[n]o speculator . . . can safely buy and sell securities. . . without having an intelligent basis for forming his judgment as to the value of the securities he buys or sells."
> H. Rep. No. 1383, 73d Cong., 2d Sess. (1934).

The optimism expressed by a seller of speculative securities in advising of their affirmative values or potential must be tempered by advice with respect to negative facts or uncertainties which he knows or should know. The courts and the Commission have held in similar situations that such adverse factors are material to the investment decision of a customer.[39/]

Some discussion of the failure of respondents to advise their customers that Interamerican was not registered with the Commission is appropriate. Counsel for some of the respondents point out that no charge is asserted that Section 5 of the Securities Act of 1933 was violated in the offer and sale of Interamerican by use of the mails or facilities of interstate commerce, and they urge that the failure to inform customers of non-registration was not a material omission constituting fraud. Clearly, the sales of all respondents involved the use of the mails and means and instrumentalities of interstate commerce. But counsel are correct that no charge of a Section 5 viola-

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39/ Hamilton Waters & Co., Inc., Securities Exchange Act Release No. 7725, (October 18, 1965); Leonard Burton Corp., 39 S.E.C. 211, 214 (1959); Securities and Exchange Commission v. Broadwall Securities Inc. 240 F. Supp. 962 (S.D.N.Y. 1965).

tion is made, and accordingly, no discussion of the exemptions from registration available under the Securities Act of 1933 is required. Nevertheless, I conclude that the failure to advise of non-registration was a material omission, and that this status of Interamerican shares affected their marketability. One demonstration of that fact is the action of the Commission on May 18, 1967 in suspending transactions in Interamerican, as well as the injunctive action of the court based upon the non-registration of the shares. (Div. Ex. 144). Beyond that, however, registration with the Commission affords some indication or suggestion that the stock issue has at least a measure of responsibility in that the Commission's records have not disclosed information which would support or require action to preclude the sale of the shares to the public. Failure to advise that this speculative Canadian stock had not been registered is in my view a material omission.

The test of materiality of a representation or omission is objective. It does not follow, as urged by counsel for several respondents, that because a certain investor-witness was not interested in the deficits of Interamerican or in some other fact that was misrepresented or omitted, that such fact was not material and that there was no violation of the anti-fraud provisions. In Securities and Exchange Commission v. Texas Gulf Sulphur Co., 401 F. 2d 833 (2 Cir. 1968), certiorari denied, 394 U.S. 976 (1969), the court said, at 849: "The basic test of materiality. . . is whether a reasonable man would attach importance. . . in determining his choice of action

in the transaction in question. . . This, of course, encompasses any fact. . . which in reasonable and objective contemplation _might_ affect the value of the corporation's stock or securities. . ." (emphasis in original).[40/] I conclude that not only sophisticated investors but also a reasonable person contemplating a purchase of a speculative Canadian stock would regard as significant the matter of its registration or non-registration with the Commission. The failure to inform customers of non-registration was, as to all respondents,[41/] a material omission in violation of the anti-fraud provisions of the securities laws. Other material misrepresentations and omissions are noted above.

In assessing necessary and appropriate sanctions I have taken into consideration the fact that these salesmen had been employed by Teller, Inc. for 15 years (Krell) and 10 years (Goldfield), and that their records are free from prior violations. While I find that Goldfield and Krell were misguided and reckless and that they violated very necessary and important protective measures in selling Interamerican without adequate investigation of the company, in originating material misrepresentations[42/] and in unreasonably failing to disclose adverse factors, nevertheless I do not believe that either man cannot or will

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40/ Quoting from _List_ v. _Fashion Park, Inc._, 340 F. 2d 457, 462 (2nd Cir., 1965), and from _Kohler_ v. _Kohler Co._, 319 F. 2d 634, 642 (7th Cir., 1963).

41/ Teller's responsibility flows from failure to supervise, as discussed below.

42/ e.g., the pill might be taken once a month; the Prime Minister of India was interested in it; price rises could be expected; the company had a better outlook than Syntex; the pill was ready for production.

not carry out his responsibilities as a salesman under proper supervision. I reach this conclusion after careful observation of these men and their demeanor, after observation of the witnesses, and after thorough evaluation of the evidence. It is my considered view that the public interest requires that each of them should be barred from association with any broker or dealer, with the proviso that after a period of four months each may return to the securities business on showing that he will be adequately supervised.

(b) Teller, Inc. and Teller

The Teller respondents complain, as indicated in the margin at pages 9 and 10, supra, that substantial broker-dealer firms, some of which are members of national exchanges, had traded Interamerican long before Teller, Inc., and that no charges have been brought against the

The Commission stated in Alexander Reid & Co. Inc., 41 S.E.C. 372 (1963) at 377, with regard to a similar defense: "Respondents appear to misconceive the charge against them. There was no allegation that it was improper or illegal to sell Woodland stock, only that it was improper to make false or misleading representations in connection with such sales." Here I find that the solicitation of purchases of Interamerican under the circumstances described above and in the manner followed by the salesmen in offering and selling the shares contravened the anti-fraud provisions as charged in the orders for proceedings.

Having found violations of the anti-fraud provisions by the two salesmen vice-presidents of Teller, Inc. during the course of their

employment, I conclude that similar violations were committed by their employer, Teller, Inc. In Sutro Bros. & Co., 41 S.E.C. 470 (1963), the Commission stated at 479: "Registrant as a firm can act only through its employees and agents, and the wilful violations of its employees in the course of its employment must be considered the wilful violations of the firm." Cf. H. F. Schroeder & Co., 27 S.E.C. 833, 837 (1948).

In sum, I find that Goldfield and Krell from on or about May 1 to May 18, 1967, singly and in concert wilfully violated, and wilfully aided and abetted violations by Teller, Inc. of the anti-fraud provisions of the securities laws in the offer and sale of Interamerican shares. By reason of his position and authority, Teller was under an obligation to exercise appropriate supervision of the activities of Goldfield and Krell. That he failed to do so is indicated by the evidence, including his own testimony that he did not inquire as to what they were telling (or not telling) customers about a speculative Canadian security. As indicated above, Teller, and also Goldfield and Krell, had been in the securities business long enough to have acquired knowledge of, if not experience with fraudulent Canadian stocks, and knew or should have known of the extensive publicity given them in Commission releases and in news media and financial services. The order for proceedings charges that Teller, Inc. and Teller failed reasonably to supervise Goldfield and Krell with a view to preventing the violations found above. I conclude that the charge is substantiated

by the evidence; that these respondents, during the period mentioned above, failed to maintain an adequate system of supervision and neglected to exercise reasonable diligence in assuring that investors were not made victims of a scheme to defraud or, indeed, of excessive pressures or irresponsible selling activity by their employees.[43/]

Conversely, I dismiss the charge of conversion asserted in the amendment of the "Teller" order for proceedings in paragraph II B for the reasons indicated above.

Despite the seriousness of the violations by Teller, Inc. and Teller, I do not believe the public interest requires that the firm be barred from the industry or that the sanction should be so drastic that its result would be to eliminate the firm from the business. It is my view that Teller can conduct the business of a broker-dealer in a manner which will serve the public fairly. I find the language of the Commission in Reynolds & Co., Inc. et al., 39 S.E.C. 902, at 919, appropriate:

> "Under all the circumstances, we do not believe that the public interest requires the revocation of registrant's registration or its expulsion from the NASD or the exchanges of which it is a member. In our opinion, however, the lack of adequate supervision shown by the record in this case was of so grave a nature that, notwithstanding the mitigating circumstances advanced by registrant, the imposition of a sanction is required in the public interest."

43/ Armstrong, Jones & Co. v. S.E.C., 421 F. 2d 359 (6th Cir. 1970), cert. denied, 398 U.S. 958; Reynolds & Co., et al., 39 S.E.C. 902, where the Commission stated, at 917: ". . . where the failure of a securities firm and its responsible personnel to maintain and diligently enforce a proper system of supervision and internal control results in the perpetration of fraud upon customers. . . such failure constitutes participation in such misconduct, and wilful violations are committed not only by the person who performed the misconduct but also by those who did not properly perform their duty to prevent it."

I believe that Teller is sufficiently intelligent and conscientious to establish adequate and effective supervisory procedures, if indeed he has not already done so. 44/ I conclude that it is appropriate in the public interest and for the protection of investors to suspend Teller, Inc. from membership in the NASD and in the Philadelphia-Baltimore-Washington Stock Exchange for a period of 50 days, and to suspend Teller from association with a broker or dealer for the same period. 45/

(c) Nassar & Co., Inc. and George M. Nassar

The Commission has frequently reiterated its view that vital to the relationship between the broker or dealer and his customer is the implied representation that the customer will be dealt with fairly and in accordance with the standards of the profession. 46/

The selling activity of Nassar reflects serious violation of fair dealing and of the standards required of a broker-dealer. Time and again the Commission has held that predictions of the likelihood of rises in the price of the securities of an unseasoned and speculative

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44/ Although there is no evidence in the record indicating that Teller will diligently police the sales activity of his firm's representatives to prevent a recurrence of the Interamerican type of activity, I must conclude that in light of these proceedings and the findings herein, such action has been or will be taken by this man.

45/ I reject the argument of counsel for the Teller respondents that the Commission's decision in Edgerton, Wykoff & Company, 36 S.E.C. 583 (1955), where the Commission found that under the facts of that case a reasonable investigation had been made and there was no dereliction of duty should control.
I reject also the argument that respondents have been denied due process and a fair and expeditious hearing.

46/ Duker v. Duker, 6 S.E.C. 386, 388 (1939); Louis H. Ankeny, 29 S.E.C. 514 (1949); N. Pinsker & Co., Inc., 40 S.E.C. 285, 291 (1960).

company such as Interamerican imply that adequate foundation exists for such ~~preparation~~ prediction.[47/] These representations of Nassar to his customers are clearly within the condemnation.

Nor is it correct, as urged on behalf of the Nassar respondents, that statements indicating the possibility of such price rises could not violate the anti-fraud provisions of the securities laws because they were not material to the sales. That the unfounded statements of price rise potentials were made by Nassar supports the findings of violations: whether or not the statements were relied on by customers is not determinative.[48/]

I do not agree that the test of "materiality" suggested on behalf of the Nassars is not met by the facts. Although Nassar exhibited some lack of sophistication in his investigation of Interamerican and in his selling methods, I do not believe he was so unsophisticated that he would volunteer a specific price rise opinion unless he believed it to be material to his selling effort. In any event, it clearly meets the more important and controlling objective test of importance to a reasonable man "in determining his choice of action in the transaction in question" as discussed, supra.

47/ In A. J. Caradean & Co. Inc., 41 S.E.C. 234 (1962), the Commission said at 238: "Recently, we noted that 'predictions of very substantial price rises to named figures with respect to a promotional and speculative security of an unseasoned company cannot possibly be justified.' In our experience such predictions have been a hallmark of fraud." (citing Alexander Reid & Co., Inc., 40 S.E.C. 986 (1962).

48/ A. J. Caradean & Co. Inc., supra, at 239, fn. 10, N. Sims Organ & Co., Inc., 40 S.E.C. 575 (1961), aff'd 293 F. 2d 78 (2d Cir., 1961), cert. denied 368 U.S. 968 (1962).

Nassar's reliance on information received from Hausner was unfortunate. I recognize his efforts to obtain corroboration and additional information from Accardi and Bardani, as I do his retention of the major part of the stock he purchased for his own account as factors urged by his counsel in his favor. But the flagrant and reckless predictions of price rises, totally without foundation as they were, the pressure to buy and to hold which he exerted on his customers, the omissions and the unwarranted misrepresentations which he originated[49/] and the unjustified comparisons with such companies as Xerox and Syntex require, in my considered opinion, that Nassar be barred from association with a broker or dealer. This sanction is required in the public interest and is warranted by Nassar's total disregard of Commission warnings and decisions and his gross and cavalier selling activity in wilful violation of the anti-fraud provisions during the period April 1, 1966 to May 18, 1967.[50/]

49/ e.g., that the stock was difficult to obtain, that its process was to be sold to Smith, Kline and French, that grants were being established, and that Interamerican was in good financial condition.

50/ All of the violations by respondents were willful within the meaning of the Securities Act and the Exchange Act, inasmuch as the acts and omissions were consciously and intentionally performed or omitted to be performed. A definition of "willfulness" was enunciated by the Second Circuit in Gearhart & Otis, Inc. v. S.E.C. 348 F. 2d 798 (CADC 1965), where the court stated:

> "It has been uniformly held that 'willfully' in this context means intentionally committing the act which constitutes the violation. There is no requirement that the actor also be aware that he is violating one of the Rules or Acts."

Cf. Crow, Brourman & Chatkin, Inc., Securities Exchange Act Release No. 7839 (March 15, 1966) and Tager v. S.E.C., 344 F. 2d 5 (2d Cir., 1965).
There is no doubt that each respondent knew that he was committing each act which he performed.

As indicated above, the violations of Nassar are those of Nassar, Inc. I find that during the period mentioned above they singly and in concert wilfully violated the anti-fraud provisions, and that the registration of Nassar, Inc. should be revoked and it should be expelled from the NASD, as required by the public interest.

(d) Richard C. Spangler, Inc. and Richard C. Spangler, Jr.

Spangler's activity in Interamerican despite the warning signals which long preceded the Dreyfus letter were in utter disregard of the requirement for fair dealing between a broker-dealer and his customers. That a broker-dealer is not operating a "boiler room" does not, of course, justify the kind of affirmative misrepresentations or failure to disclose information suggesting the need for caution in investing.[51]

Spangler deliberately ignored facts and warnings which he had a duty to know and took advantage of persons who had confidence in him because of his apparent expertise in the securities business. His use of misleading literature, his outrageous price predictions and his initiation of misrepresentations are among the many activities which are the basis for concluding that during the period ~~April 1~~ June 1966 to May 18, 1967, Spangler, Inc. and Spangler singly and in concert violated the anti-fraud provisions and that Spangler is not properly suited by training to engage in the securities business. I conclude that the public interest requires that the broker-dealer registration of Spangler,

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51/ *Richard J. Buck & Co.*, Securities Exchange Act Release No. 8452 (December 31, 1968), aff'd *sub. nom.* *Hanly, et al.* v. *Securities and Exchange Commission*, 415 Fed. 2d 589 (2d Cir. 1969).

Inc. should be revoked, that it should be expelled from the NASD, and that Spangler should be barred from association with a broker or dealer.[52]

I have also taken official notice of the fact that Spangler, Inc. and Spangler have previously been disciplined by the NASD for violation of its Rules of Fair Practice in engaging in business while in violation of the Commission's net capital rule.[52] (17 CFR. 240.15c 3-1). However that disciplinary action resulted from the Commission's suspension of trading in Interamerican shares, and inasmuch as these respondents apparently have atoned or "paid the penalty" for that violation, it seems inappropriate to consider it as a matter in the public interest in a proceeding involving trading in Interamerican shares. But an earlier violation of the net capital rule in 1966, unrelated to Interamerican, was the basis for censure by the NASD, and this violation is considered herein in the public interest.[53]

Accordingly, IT IS ORDERED that Emmanuel L. Jenkins is barred from being associated with a broker or dealer;

that Morton Goldfield and Arnold M. Krell are barred from being associated with a broker or dealer, provided, however, that after four months from the effective date of this order either (or both) may become associated with a registered broker-dealer upon an appropriate showing to the staff of the Commission that he will be adequately supervised;

that the registration of Albert Teller and Co., Inc. as a broker-

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52/ Spangler complains of the Division's alleged effort to bring him "into an umbrella like fold and status applicable to all respondents" by adopting a technique to obtain "a uniform objective of similar violations by all parties". He argues that substantive differences make untenable the application to him of the same legal principles applied to the other respondents. I cannot agree with this analysis or conclusion.

53/ See Richard C. Spangler, Inc., Securities Exchange Act Release No. 8531 (February 20, 1969, at p. 2).

dealer and its membership in the NASD and the Philadelphia-Baltimore-Washington Exchange are suspended for a period of 50 days from the effective date of this order;

that Albert Teller is suspended from association with a broker-dealer for a period of 50 days from the effective date of this order;

that George M. Nassar is barred from association with a broker or dealer; and the registration of Nassar and Co., Inc., as a broker-dealer is hereby revoked and it is expelled from membership in the NASD;

that Richard C. Spangler is barred from association with a broker or dealer; and the registration of Richard C. Spangler, Inc. as a broker-dealer is hereby revoked and it is expelled from membership in the NASD.

This order shall become effective in accordance with and subject to the provisions of Rule 17(b) of the Commission's Rules of Practice.

Pursuant to said Rule, this initial decision shall become the final decision of the Commission as to each party who has not, within 15 days after service of this initial decision on him, filed a petition for review thereof pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or if the Commission takes action to review as to a party, this initial decision shall not become final as to such party. 54/

Washington, D.C.

Sidney Ullman
Hearing Examiner

54/ The contentions and the proposed findings and conclusions of all parties have been considered. To the extent they are consistent with this initial decision they are accepted. Some have not been adopted because they are not supported by the credible evidence; others have been rejected as unnecessary.

APPENDIX A

DREYFUS & CO.
Members New York and American Stock Exchanges and other Principal Exchanges
TWO BROADWAY • NEW YORK, NEW YORK 10004 • BOWLING GREEN 9-9300
Cable Address "FUSDREY" New York

INTER-AMERICAN INDUSTRIES LTD.

Recent Price 16-1/2 by Emmanuel L. Jenkins

Inter-American was formed in 1954 in Alberta , Canada as a holding company for foreign investments. The company engaged in some mining (uranium) operations, however, was relatively inactive until 1964 when its name was changed from Canadian West Mining Corp. to Inter-American Industries Ltd. The new management team, headed by Alexander S. Williamson, acquired an exclusive from Frank M. Bardani to utilize the Bardani process for steroid and hormone preparations. The company also acquired in December 1966, the services of a chief control chemist from Syntex Corp.

Essentially the Bardani process is a method of making a tablet or capsule such that it releases its ingredients over a sustained period of time. It could be used for any potent drug or one that causes bad side effects if taken as ordinary tablets are taken. Sudden release or dumping of large quantities of medicament into the digestive system is most undesirable. First, the body cannot absorb large quantities of medicament in a short interval and much would be wasted. Second, and of greater concern, release of too great a quantity of medicament could place the person in a condition of shock and cause injurious side effects. Third, this process is used or applied with regular tablet making machinery, it requires no special machinery. Thus, Inter-American has quite an advantage price wise. This is an important consideration for the underdeveloped countries.

A "sustained release" tablet made by the Bardani process differs from the other tablets and capsules on the market in that its layers on the tablet, each act like semi-permeable membranes, that is, they release the ingredients gradually through pore like openings as the layer disintegrates.

The digestive tract varies in acidity and alkalinity over a wide range. The molecules of drugs are, for the most part, electrically charged, bearing either acidic or basic groups or both. For this reason the rate at which they are absorbed into circulation from the digestive tract varies greatly with the degree of acidity or alkalinity of the site in which they go into solution. Herein lies a

pitfall in the design of most slow release medications. No matter how steady the rate the tablet releases the drug to the digestive tract, the degree of acidity or alkalinity of the tract will largely determine the rate at which it enters the circulation system or blood system. Fortunately, tablets made by the Bardani process contain neither acidic nor basic groups. For this reason, absorption will not depend on the environmental acidity or alkalinity. In this sense, they are ideal for the sustained release form of medication.

Inter-American through International Pharmaceuticals Ltd., a wholly owned subsidiary, holds the world wide and exclusive license to incorporate and use in the development, manufacture, commercial use and sale of its oral contraceptive pills or capsules and its hormones and medications relating to oral contraceptives, the "sustained release" or "protracted effect" formula and process protected by patents issued in Great Britain, the United States and Canada.

Tests of this company's oral contraceptive compounds, which carry the trade marks "Di-ornane" and Di-ornane-E" respectively, indicate that this patented formula and process is highly effective in minimizing the unpleasant side effects (such as nausea and sub-cutaneous hemorrhage) often associated with the use of oral contraceptives. Human clinicals have shown Di-ornane to be effective in preventing pregnacies with a significant minimization of adverse reactions and side effects characteristic of other oral contraceptive preparations. Di-ornane-E, according to clinicals, is superior to di-ornane in reducing side effects, i.e., nausea, vomiting, sub-cutaneous hemorrhaging and intermenstural bleeding. This would gain wide acceptance in underdeveloped or culturally backward countries where the spread of rumors about illness resulting from the taking of a tablet would adversely affect population control campaigns.

Research and Development

Advanced research is being conducted on the birth control inplant and the "morning after" pill. Inter-American is rather optimistic in this area because of the high amounts of hormones that must be administrated the side effects are rather severe, however, utilizing the sustained release process eliminates these side effects completely, or reduces them to such a point that only one person out of a hundred might still show side effects according to clinicals gathered so far.

The company hopes to soon market a sustained release tablet of 150 milligrams of isoniazid which is used in the treatment of tuberculosis. This area represents potentially an even larger market since approximately 20 per cent or one out of five persons in under-developed countries have tuberculosis. The usual dosage of this drug is 50 milligrams, must be given several times a day and causes itching, vomiting and severe side effects, etc. Laboratory tests indicate that these side effects are eliminated and the patient only has to take tablets twice daily.

The company is to open a plant May 1967 in Ireland which is to have a production capability of two (2) million tablets a day. Inter-American has a ten year tax-free arrangement with the Republic of Ireland.

Contracts have been negotiated between International Pharmaceuticals Ltd. and a distributor for the distribution of its oral contraceptives under its trade markes in South and Central America and Asia, except India and Japan.

The company does not at this time have FDA approval to sell in the U.S. nor does it intend to apply for an N.D.A. at this time. It is felt that the expense involved and the resulting potential market does not warrant it at this time. However, several U.S. companies are seeking a license from Inter-American to utilize the "Bardani slow release" process with their own drugs. At this time, Inter-American is considering several requests.

Inter-American has 1,440,140 shares issued and outstanding. The stock is traded in Canada on the Calgary Exchange and Over-The-Counter in this country in U.S. and Canadian funds. The company has shown deficits from its inception through December 1966 of $37,840.58 on development cost and less than $50,000 of sales.

Assuming that production connences as indicated, the sales estimate from the first years production alone, assuming no increase in capacity, would be in excess of $6,000,000. This sales figure estimate is assuming that the company sells their tablets for less than $1.00 per 100 tablets. Other companies sell their tablets for about $3.40 per 100 tablets to institutions and clinics. These sales would accrue only from oral contraceptives and would be tax free.

Inter-American's stock has had a wide range recently in that it sold for less than $2.00. The stock is therefore recommended for those accounts willing to assume the risk commensurate with the potential gain anticipated, assuming the foregoing developments come to fruition.

Material prepared May 11, 1967

APPENDIX B

3/22/71

INTERAMERICAN INDUSTRIES, LTD.

To Stockholders and Others Who May Be Interested:

This release is being issued by Interamerican Industries, Ltd. ("Interamerican"), an Alberta, Canada corporation whose stock was traded over-the-counter in the United States until trading was suspended by the United States Securities and Exchange Commission ("Commission") on May 18, 1967. This release is being issued for Interamerican by Oscar L. Hausner ("Hausner"), its controlling stockholder, to summarize material concerning Interamerican's business, and to clarify previous statements made by or concerning Interamerican.

Interamerican has been in existence since 1954. It was wholly inactive and remained a shell until it was acquired by Trust Company of the Americas, S.A. ("Trust S.A.") in 1961. Trust S.A., a Panamanian corporation, is wholly owned by Hausner, a certified public accountant from White Plains, New York who is its sole stockholder. From 1961 to the present

date Hausner, through Trust S.A., controlled Interamerican and decided what business, if any, Interamerican would undertake.

On August 18, 1967, Interamerican, Hausner and Trust S.A. consented to the entry of a preliminary injunction enjoining them from further sales of unregistered Interamerican stock in violation of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"). The Commission alleged in its affidavit filed in support of its motion for that injunction, that between January 3, 1967 and May 18, 1967 defendant Trust S.A. which owned over 1,100,000 shares of Interamerican stock out of 1,440,000 shares issued and outstanding, caused a distribution of Interamerican stock in violation of the Securities Act. During this period more than 500 American investors purchased over 334,100 shares from more than 100 brokerage firms in the United States. Many such purchases were made on the basis of information which this release intends to clarify.

BUSINESS OF INTERAMERICAN

Interamerican's sole business is that of manufacturing an oral contraceptive pill. The company has no lumber interests

and its mining interests are totally inactive. Interamerican's product, called Di-Ornane E, is being developed for sale primarily to underdeveloped countries. This product is composed of an active birth control ingredient which has been on the market for over thirty years and cannot be patented, and a variation of a sustained release formulation which is patented in its original form by its inventor, Frank M. Bardani. The purpose of combining this active birth control ingredient with a sustained release formulation is to produce an oral contraceptive which the company believes will eliminate many side effects such as nausea and sub-cutaneous hemorrhage sometimes associated with the taking of such pills. Further substantial testing is necessary to determine whether such side effects are in fact reduced or eliminated. The sustained release feature does not reduce the frequency with which the pills must be taken. Di-Ornane E must still be taken on a daily basis.

At the present time, Di-Ornane E has only been clinically tested, in the Republic of Panama, on sixty women for three months. Accordingly, the product has not been sufficiently

tested to permit any valid claim to be made about its proved efficacy. Similarly, this absence of sufficient testing makes it impossible at this time to make any claim that Di-Ornane E performs any differently from any of the other oral contraceptive pills already on the market.

The Bardani process has only been used in one other commercial product, on a non-exclusive basis, since its conception in 1960. The patents only cover the United States, Great Britain and Canada. Accordingly, Interamerican is not protected from patent infringement in any country in which it intends to market it's product.

Di-Ornane E is currently being manufactured only in Canada. The facilities established in the Republic of Ireland have never been utilized and it is not known whether they will ever be utilized.

At the present time Di-Ornane E cannot be sold legally anywhere in the world except in the Republic of Panama. Future sales of the product must be preceded by approval of governmental health authorities in each country, which approval has not been forthcoming in any country except Panama. When

such approval is obtained, Interamerican must then negotiate distribution and sales contracts. At the present time, Interamerican's only contracts, in Latin America and South Africa-Rhodesia do not provide for guaranteed minimum orders. The only sale thus far by the company is for a contract price of $1500 for 100,000 pills; and even with respect to this sale, payment has not been received.

Finally, it should be noted that Interamerican may not have sufficient funds to carry on its business. The company has not obtained any financing nor does it have any commitments for financing. Prior statements by the company respecting a commitment for it to obtain financing neglected to state that Trust S.A. from which Hausner was to provide the company with funds did not have sufficient resources to meet the claimed obligation. As of June 30, 1967 Interamerican had only $42,370 in cash.

EXPLANATION OF PAST STATEMENTS

In addition to the above statements explaining Interamerican's current business, certain past statements must be clarified.

In particular, attached to both the 1966 and 1967 annual reports of Interamerican were financial statements prepared and certified by Aaron Landau, a certified public accountant of New York, New York. Interamerican's current assets are valued at $147,221 as opposed to $1,592,739 in the 1967 annual report. Moreover, Interamerican's affiliates and subsidiaries, all of which were founded at Hausner's direction, presently neither have assets nor independent value.

Information correcting past statements included, among other things:

(a) That there has been no confirmed testing of Di-Ornane E other than the tests conducted in Panama;

(b) That contracts previously claimed to be in existence have either been cancelled or were never in existence;

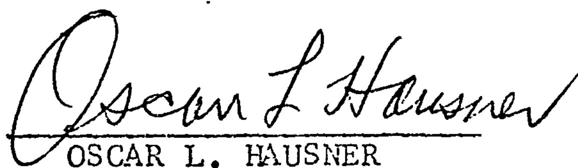
(c) That no United States companies have ever sought a license for the use of the Bardani patent;

(d) That the development of a product called Di-Ornane was abandoned by Interamerican even before a claim about it was made in the March 1967 annual report, because Di-Ornane's active ingredient was patented by another company;

(e) That Interamerican has never undertaken the testing or manufacture of morning-after pills, birth control implants or tuberculosis pills;

(f) That although Interamerican has acquired the services of a former chief control chemist from Syntex Corporation, the chemist's function is solely to achieve chemical consistency of the product for testing purposes;

(g) That neither the United Nations nor the World Health Organization has ever expressed an interest in, or been connected with, Interamerican's product.



OSCAR L. HAUSNER

Dated: New York, New York
January 5th, 1968