



shares were traded on July 5, compared to the historical average daily volume of approximately 36,000 shares.

3. In June 2007, while employed by an ACR Group, Inc. affiliate, Michael Biello learned that Watsco, Inc. had offered to buy ACR Group. He then tipped his brother, advising him to purchase ACR Group's stock. Without disclosing the details of the information he had learned, Defendant told his brother, among other things, that ACR Group was a likely merger candidate. His brother promptly purchased 3,300 shares of ACR Group stock.

4. By reason of their activities, Defendant violated Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") [[15 U.S.C. §§ 78j(b) and 78n(e)] and Rules 10b-5 and 14e-3 [17 C.F.R. § 240.10b-5 and 17 C.F.R. § 240.14e-3] thereunder. The Commission, in the interest of protecting the public from any further violations of the federal securities laws, brings this action against Defendant seeking permanent injunctive relief, appropriate civil money penalties, and disgorgement of ill-gotten gains plus prejudgment interest.

## **II. Jurisdiction and Venue**

5. The Commission brings this action pursuant to the authority conferred upon it by Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]. The Commission seeks the imposition of civil penalties pursuant to Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

6. This Court has jurisdiction over this action under Sections 21(d), 21A and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1 and 78aa].

7. Defendant, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the acts, practices and courses of

business described in this Complaint.

8. Venue is proper because certain of the transactions, acts, practices and courses of business described below occurred within the jurisdiction of the Southern District of Texas.

### **III. Defendant**

10. Michael Biello, age 30, resides in Katy Texas. During the relevant period, he was an accountant employed by an ACR Group subsidiary.

### **IV. Related Entities**

11. During the relevant time period, Watsco was a large distributor of air conditioning, heating and other HVAC-related products based in Miami, Florida. Its securities are registered with the Commission pursuant to Section 12(g) of the Exchange Act and its common stock trades on the New York Stock Exchange, with the trading symbol "WSO."

12. During the relevant time, ACR Group, Inc., was a publicly traded company based in Houston that distributed air conditioning, heating and other HVAC-related products. Its securities were traded on the American Stock Exchange, under the symbol "BRR."

### **V. Statement of Facts**

13. On July 5, 2007, at 8:00 a.m., it was publicly announced that ACR Group had executed a definitive agreement with Watsco, pursuant to which Watsco would acquire ACR Group's outstanding common stock in a tender offer for \$6.75 per share in cash. On July 5, the closing last sale price of ACR Group was \$6.61, a roughly 44% increase from the previous day's closing price. On July 5, approximately 2.3 million ACR Group shares were traded, compared to ACR Group's historical daily trading volume of approximately 36,000 shares.

14. Michael Biello was an accountant with ACR Supply, a subsidiary of ACR Group.

While temporarily assigned to ACR Group's corporate offices in April 2007, he learned that ACR Group was considering a possible merger with Watsco. He learned this information from a friend, who was also a family member of a high-ranking ACR Group officer.

15. In May 2007, while still on temporary assignment to ACR Group's corporate offices for the purpose of assisting the preparation of ACR Group's quarterly SEC filing, he was instructed to conform the format of ACR Group's stockholder equity disclosures to match the manner in which Watsco made such disclosures. Defendant understood this instruction to confirm that a merger was in fact going to occur in the near future.

16. ACR Group's employee manual specifically requires employees to "preserve as confidential all trade secrets, confidential information, knowledge data or other information relating to products, customers, financial performance or projections, or any other subject matter pertaining to the business of ACR." Likewise, ACR Group's insider trading policy, which applies to all employees including Michael Biello, prohibits "pass[ing] material, non-public information on to others, or recommend[ing] to anyone the purchase or sales of any securities, when they are aware of material, non-public information."

17. Notwithstanding company policies against insider trading, based on the information he had learned, Michael Biello instructed his brother in mid-June to buy ACR Group stock with the intent and expectation that he would do so. Without disclosing the details of the information he had learned, Defendant told his brother, among other things, that ACR Group was a likely merger candidate

18. Acting on this tip, Michael Biello's brother purchased 1,680 ACR Group shares for about \$8,000 on June 22, 2007. He bought an additional 1,650 shares for approximately

\$8,000 on June 25.

19. By the time Michael Biello's brother purchased his shares, substantial steps had been taken toward the tender offer. For example, Watsco had already engaged in extensive due diligence and had nearly completed negotiations on the transaction. Michael Biello knew or had reason to know that the information he possessed had been acquired directly or indirectly from an insider or from someone working on his or her behalf.

20. Before market open on July 5, 2007, ACR Group announced Watsco's tender offer to purchase all outstanding ACR Group common stock for \$6.75 per share. ACR Group's stock closed that day at \$6.61 a share, roughly 44% greater than the previous day's closing price. Trading volume spiked as well, to 2.3 million shares compared to the 120-day daily average of 36,000 shares. Biello's brother sold his ACR Group shares on July 5, earning \$6,036 profit.

## **CLAIMS**

### **I.**

#### **Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] Thereunder by Defendants**

21. Plaintiff Commission repeats and incorporates by reference paragraphs 1 through 20 of this *Complaint* as if set forth *verbatim* herein.

22. In breach of his duty, Defendant Biello knowingly or recklessly communicated material, non-public information to his brother.

23. Through his actions as alleged above, Defendant Biello, with scienter:
- a. employed devices, schemes, or artifices to defraud;
  - b. made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the

- circumstances under which they were made, not misleading; and
- c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon persons, including purchasers and sellers of securities;
  - d. in connection with the purchase or sale of securities, by use of means or instrumentalities of interstate commerce, of the mails, or the facilities of a national securities exchange.

24. By reason of the foregoing acts and practices, Defendant Biello violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**II.**  
**Violations of Section 14(e) of the Exchange Act and Rule 14e-3 Thereunder  
by Defendants**

25. Paragraphs 1-24 are realleged and incorporated by reference.

26. By June 25, 2007, substantial steps had been taken to commence a tender offer for the securities of ACR Group by Watsco. At the time he tipped his brother, and at the time his brother purchased ACR Group stock on June 22 and June 25, Defendant Michael Biello was in possession of material information regarding the tender offer for ACR Group securities by Watsco, which he knew or had reason to know was nonpublic, and which each knew or had reason to know was acquired directly or indirectly from an officer, director, partner, or employee or other person acting on behalf of the offering company.

27. By reason of the foregoing, Defendant Michael Biello violated, and unless enjoined, will continue to violate Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and

Rule 14e-3 [17 C.F.R. §240.14e-3] thereunder.

**PRAYER FOR RELIEF**

The Commission respectfully requests that this Court enter a judgment:

- (i) permanently enjoining Defendant Michael Biello from violating Section 10(b) and 14(e) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78n(e)] and Rules 10b-5 and 14e-3 [17 C.F.R. §§ 240.10b-5 and 240.14e-3] thereunder;
- (ii) ordering Defendant Michael Biello to pay civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1] for his violations of the federal securities laws as alleged herein;
- (iii) ordering Defendant Michael Biello to disgorge all ill-gotten gains from the conduct alleged herein, with prejudgment interest; and
- (iv) granting such other relief, both in law and in equity, as this Court may deem just and appropriate.

Dated this 13<sup>th</sup> day of March, 2009.

Respectfully submitted,

/s/ David B. Reece  
DAVID B. REECE  
Attorney-in-Charge  
Texas Bar No. 24002810  
S.D. Texas Bar No. 896560  
SECURITIES AND EXCHANGE  
COMMISSION  
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# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I.(a) PLAINTIFFS**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Defendants-**

**Randall Leone and Randall Clark Wall**

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF** \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

**County of Residence of First Listed Defendant:** Dallas County  
**(IN U.S. PLAINTIFF CASES ONLY)**  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

**(c) ATTORNEY (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

**David B. Reece**  
**U.S. Securities & Exchange Commission**  
**801 Cherry Street, Suite 1900**  
**Fort Worth, TX 76102**  
**(817) 978-6476**

ATTORNEYS (IF KNOWN)

Leone: Spencer C. Barasch, Esq., Andrews Kurth LLP, 1717 Main Street, Suite 3700, Dallas, Texas 75201; (214) 659-4685.  
  
Wall: Tonya Grindon, Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Commerce Center, Suite 1000, 211 Commerce Street, Nashville, Tennessee 37201; (615) 726-5607.

**II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)**

- 1 U.S. Government Plaintiff  
 2 U.S. Government Defendant  
 3 Federal Question (U.S. Government Not a Party)  
 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)**

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | <b>PTF</b>                 | <b>PTF</b>                 |   | <b>PTF</b>                 | <b>PTF</b>                 |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)**

<p><b>CONTRACT</b></p> <p><input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise</p>	<p style="text-align: center;"><b>TORTS</b></p> <p><b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel &amp; Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury</p>	<p><b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><b>FORFEITURE/PENALTY</b></p> <p><input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food &amp; Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. &amp; Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other</p>	<p><b>BANKRUPTCY</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 156 <input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p style="text-align: center;"><b>PROPERTY RIGHTS</b></p> <p><input type="checkbox"/> 820 Copy rights <input type="checkbox"/> 830 Patient <input type="checkbox"/> 840 Trademark</p>	<p><b>OTHER STATUTES</b></p> <p><input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes</p>
<p><b>REAL PROPERTY</b></p> <p><input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure  <input type="checkbox"/> 230 Rent Lease &amp; Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property</p>	<p><b>CIVIL RIGHTS</b></p> <p><input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment  <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights</p>	<p><b>PRISONER PETITIONS</b></p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence  <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus &amp; Other <input type="checkbox"/> 550 Civil Rights</p>	<p style="text-align: center;"><b>LABOR</b></p> <p><input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting &amp; Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act</p>	<p style="text-align: center;"><b>SOCIAL SECURITY</b></p> <p><input type="checkbox"/> 861 HIA (1395FF) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))</p>	<p style="text-align: center;"><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609</p>

**V. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding  
 2 Removed from State Court  
 3 Remanded from Appellate Court  
 4 Reinstated or Reopened  
 5 Transferred from another district (Specify)  
 6 Multidistrict Litigation  
 7 Appeal to District Judge from Magistrate Judge

**VI. CAUSE OF ACTION** CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING (DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY):

Brief Description of cause:

Section 10(b) and 14(3) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b) and 78n(e)], and Rule 10b-5 and 14e-3, [17 C.F.R. §§ 240.10b-5 and 240.14e-3]

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND**  YES  NO

**VIII. RELATED CASE(S) (See Instructions): IF ANY**

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE **03/13/2009** /s/ **David B. Reece** SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

Receipt # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_