

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-against- :

TEXAS GULF SULPHUR COMPANY, et al., :

Defendants. :

65 Civ. 1182

STIPULATION

WHEREAS Francis G. Coates, a defendant herein, purchased 2,000 shares of stock of the Texas Gulf Sulphur Company on April 16, 1964, following an announcement at a news conference by that company of the results of its drilling near Timmins, Ontario;

WHEREAS the Securities and Exchange Commission commenced this action by filing a complaint on April 19, 1965, which complaint charged Coates with violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder in connection with the aforesaid purchases and the subsequent purchases of 1,500 shares of Texas Gulf stock on April 16, 1964, by Coates's broker H. Fred Haemisegger and said broker's customers;

WHEREAS, after a trial on the merits, the United States District Court for the Southern District of New York, in an opinion dated August 16, 1966, found that Coates correctly believed that corporate directors were free to purchase their company's stock once an announcement of thereto-

fore "inside" information had been made by the corporation and held that Coates did not violate Section 10(b) and Rule 10b-5 in connection with his purchases and those of his broker and his broker's customers and directed that judgment be entered dismissing the complaint against Coates;

WHEREAS, in an opinion dated August 13, 1968, the United States Court of Appeals for the Second Circuit reversed the United States District Court and held that relief may be granted on the basis of negligent insider conduct without proof of specific intent to defraud, that assuming that Coates believed that news of the Timmins ore strike had become public at the time he placed his order, such belief was not reasonable under the circumstances and that Coates, therefore, violated Section 10(b) and Rule 10b-5 in connection with his purchases and those of his broker and his broker's customers;

WHEREAS, on April 21, 1969, the United States Supreme Court denied a petition for writ of certiorari filed by Coates;

WHEREAS, Coates asserts that he telephoned his broker only after he believed that he was both legally and morally free to purchase Texas Gulf shares and has denied and continues to deny that he violated Section 10(b) or Rule 10b-5 in connection with the aforesaid purchases, but seeks to avoid the burden and expense of further litigation, including preparing for and participating in a lengthy evidentiary hearing before the United States District Court with respect to what, if any, remedy is appropriate; and

WHEREAS the Commission and Coates have agreed, subject to the approval of the Court, that this action may be appropriately settled as to Coates by his payment to Texas Gulf, subject to the conditions set forth below, of the sum of \$26,250 of which--

(1) \$16,575 represents the difference between the price paid by Coates for 2,000 shares of stock of Texas Gulf on April 16, 1964, and the price at which 2,000 shares of said stock could have been purchased on April 17, 1964; and

(2) \$9,675 represents the difference between the price paid by H. Fred Haemisegger and customers of H. Fred Haemisegger for 1,500 shares of stock of Texas Gulf on April 16, 1964, and the price at which said stock could have been purchased on April 17, 1964;

NOW, THEREFORE, IT IS STIPULATED between plaintiff, Coates and Texas Gulf:

(1) that the judgment to be entered herein shall provide as the sole remedy with respect to Coates the payment by him of the sum of \$26,250 to Texas Gulf;

(2) the amount directed by said judgment to be paid by Coates to Texas Gulf shall be held by Texas Gulf subject to the following conditions:

(a) during the period of three years from the date on which said judgment becomes final, said amount shall be held in escrow, in an interest bearing account, subject to disposition in such manner as this Court may direct upon appli-

cation by the Securities and Exchange Commission;

(b) after three years from the date on which said judgment becomes final, if this Court shall have made no direction as to the disposition of said amount or if it shall have directed the payment of only a portion thereof, said amount or the remaining balance thereof shall become the property of Texas Gulf, except that if Coates or his estate shall incur liability to any person or entity by reason of his purchases of Texas Gulf stock on April 16, 1964, or the purchases of said stock on that date by H. Fred Haemisegger and his customers, as a result of a judgment in or settlement of any other action commenced prior to the date hereof, Texas Gulf will, at the request of Coates or his estate, apply any or all of the remaining balance of said amount toward the satisfaction of such liability;

(3) this stipulation is for the purpose of this action only and does not constitute an admission by the parties hereto for any purpose and may not be used against them in any other action or proceeding.

September 23, 1969.

SECURITIES AND EXCHANGE COMMISSION,

by

/s/ Robert E. Kushner
Robert E. Kushner
Special Counsel

KENNAMER
/s/ F E Kenemer, Jr.
Assistant General Counsel

CRAVATH, SWAINE & MOORE,

by

/s/ Albert R. Connelly
Albert R. Connelly

Attorneys for defendant Francis G.
Coates

WHITE & CASE,

by

/s/ Orison S. Marden

Attorneys for defendant Texas Gulf
Sulphur Company