UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
- v. -	:	INDICTMENT
SAMUEL WAKSAL,	:	02 Cr.
Defendant.	:	

COUNT ONE

(Conspiracy to Commit Fraud in Connection with the Purchase and Sale of Securities: Samuel Waksal and Tippee No. 1)

The Grand Jury charges:

Background

1. At all times relevant to this Indictment, ImClone Systems Incorporated ("ImClone") was a corporation organized under the laws of the State of Delaware with its principal place of business in New York, New York. ImClone was engaged in the business of developing biologic medicines, including the development of Erbitux, a biologic treatment for irinotecan-refractory colorectal cancer. ImClone publicly described Erbitux as its lead product candidate. At all times relevant to this Indictment, ImClone's common stock was listed on the NASDAQ National Market System, an electronic securities market system administered by the National Association of Securities Dealers, under the symbol "IMCL."

2. Until on or about May 22, 2002, when he resigned, SAMUEL WAKSAL, the defendant, was president, chief executive officer, and a director of ImClone.

Samuel Waksal's Financial Condition

3. As of on or about December 26, 2001, SAMUEL WAKSAL, the defendant, had more than approximately $75 million in indebtedness, over $50 million of which was "margin debt" secured by his shares of ImClone stock. At that time, WAKSAL had to pay more than approximately $800,000 each month to service his indebtedness. As WAKSAL well knew, in the event that the market price of ImClone stock declined substantially, WAKSAL's ImClone stock that secured his "margin debt" would likely be sold and, as a result, his net worth would decrease dramatically.

ImClone's Policies on Insider Trading

4. At all times relevant to this Indictment, ImClone distributed memoranda advising its officers and employees, including SAMUEL WAKSAL, the defendant, of their responsibilities under the federal securities laws. In or about April 2001, as well as in preceding years, ImClone distributed a memorandum advising employees of its insider trading policy, which stated in part:

> U.S. securities laws give the Company, its directors, officers and other employees, among others, the responsibility to ensure that information about the Company is not used unlawfully in the purchase and sale of securities.

> All directors, officers and other employees should pay close attention to the laws against trading on "inside" information. These laws are based upon the belief that all persons trading in a company's securities should have equal access to all "material" information about the company. For example, if an employee of a company knows material, non-public information, that employee is prohibited from buying or selling stock in the company until the information has been disclosed to the public. That is because the employee knows information that will very likely cause the stock price to change, and it would be unfair for the employee to have an advantage that the rest of the investing public does not have. In fact, it is more than unfair, it is fraudulent and illegal. . . .
>
> The general rule is that it is a violation of the federal securities laws for any person to buy or sell securities if he or she is in possession of material inside information. Information is "material" if it could affect a person's decision whether to buy, sell or hold the securities. It is "inside" information if it has not been publicly disclosed. Furthermore, it is illegal for any person in possession of material inside information to provide other people with such information or to recommend that they buy or sell the securities ("tipping"). In that case, they may both be held liable. . . .

5. At all times relevant to this Indictment, ImClone also established so-called "Blackout Periods" during which its officers and employees were prohibited from engaging in any transactions in ImClone common stock. The Blackout Period was described to ImClone personnel in a memorandum. The memorandum further instructed directors and officers not to execute any transaction in ImClone stock during a Blackout Period without

first receiving authorization from ImClone's Office of the General Counsel.

The Insider Trading Scheme

SAMUEL WAKSAL's Acquisition of Inside Information

6. On or about October 31, 2001, ImClone submitted to the United States Food and Drug Administration (the "FDA") a Biologics Licensing Application ("BLA") for approval of Erbitux (the "Erbitux BLA"). Pursuant to FDA regulations, within 60 days following the submission of a BLA, the FDA must decide whether the BLA is administratively and scientifically complete to be accepted for FDA review. Only if a BLA is accepted for filing does the FDA review the application to determine whether the proposed treatment will be approved.

7. Because ImClone expected decisions from the FDA on whether the Erbitux BLA would be accepted for filing and whether the Erbitux BLA would be granted expedited review, on December 21, 2001, ImClone's Office of the General Counsel distributed an email to all ImClone employees placing into effect a "company-wide blackout in trading in ImClone stock." The email stated that "the FDA is required to tell us by the end of next week whether the filing of our BLA for Erbitux has been accepted and whether the file will be granted expedited review," and "[g]iven the importance of this news, we believe employees should not

trade in ImClone stock until we receive definitive information from the FDA and a press release is issued."

8. On December 25, 2001, ImClone's then executive vice-president and chief operating officer was informed that a source within the FDA had stated that it was almost certain that on December 28, 2001, ImClone would receive from the FDA a "Refusal to File Letter," by which the FDA would advise ImClone that it had refused to accept the Erbitux BLA for filing.

9. On or about December 26, 2001, SAMUEL WAKSAL, the defendant, learned of the report that a source within the FDA had stated that ImClone was expected to receive a Refusal to File Letter on December 28, 2001. As of December 26, 2001, this information about the FDA's anticipated decision on the Erbitux BLA was material non-public information. Moreover, as WAKSAL well knew, any subsequent public announcement that the FDA had issued a "Refusal to File Letter" or had otherwise declined to proceed with reviewing and approving the Erbitux BLA would likely have an adverse impact on the market price for ImClone's stock.

The Unlawful Trading

10. As an officer and director of ImClone, SAMUEL WAKSAL, the defendant, owed fiduciary and other duties to ImClone and its shareholders to abstain from trading in ImClone common stock while in possession of material non-public information concerning ImClone's Erbitux BLA. SAMUEL WAKSAL owed further

duties to ImClone and its shareholders to protect the confidentiality of such material non-public information, and to abstain from "tipping" such material non-public information to others. In breach of those duties and for his own personal benefit and the benefit of other persons with whom he had a close personal relationship, SAMUEL WAKSAL disclosed confidential, material non-public information that he had misappropriated and stolen from ImClone about the FDA's anticipated decision. WAKSAL disclosed this information, in substance and in part, to, among others known and unknown, a co-conspirator not named as a defendant herein ("Tippee No. 1") and recommended that Tippee No. 1 sell ImClone stock. Tippee No. 1, in turn, sold ImClone common stock while knowing that the information was confidential, material and non-public and had been disclosed to Tippee No. 1 in breach of SAMUEL WAKSAL's duties to ImClone and ImClone's shareholders.

11. In or about the late evening of December 26, 2001, SAMUEL WAKSAL, the defendant, contacted Tippee No. 1 and communicated to Tippee No. 1 that Tippee No. 1 should sell ImClone common stock. The following day, December 27, 2001, by approximately 9:41 a.m. (EST), Tippee No. 1 placed orders to sell approximately 111,336 shares of ImClone common stock then worth approximately $6,852,255. On or about December 28, 2001, at approximately 9:07 a.m. (EST), Tippee No. 1 placed an order to

sell an additional approximately 25,000 shares of ImClone common stock worth approximately $1,429,750.

Public Announcement of the FDA Decision

12. On or about December 28, 2001, at approximately 2:55 p.m. (EST), the FDA transmitted to ImClone via facsimile a letter stating that the FDA had refused to accept the Erbitux BLA for filing. After the close of business on December 28, 2001, ImClone issued a press release announcing that the FDA had refused to accept the Erbitux BLA for filing (the "RTF Press Release").

13. On December 28, 2001, prior to the issuance of the RTF Press Release, the closing price of ImClone stock was $55.25. On December 31, 2001, the first day that ImClone stock traded after the issuance of the RTF Press Release, the price of ImClone stock closed at $46.46, representing a decline of approximately 16%.

14. By selling a total of 136,336 shares of ImClone stock in the two days prior to ImClone's public announcement of the FDA's refusal to accept for filing the Erbitux BLA, Tippee No. 1 avoided losses of approximately $1.9 million. On or about January 18, 2002, Tippee No. 1 wire transferred approximately $2,850,000 from his account at Roth Capital Partners, LLC, to an account in the name of SAMUEL WAKSAL, the defendant, at UBS Paine Webber.

The Conspiracy

15. From on or about December 26, 2001, up to and including on or about January 18, 2002, in the Southern District of New York and elsewhere, SAMUEL WAKSAL, the defendant, and Tippee No. 1 unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, to commit securities fraud in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5, and to commit wire fraud in violation of Title 18, United States Code, Section 1343.

Objects of the Conspiracy

Securities Fraud

16. It was a part and an object of the conspiracy that SAMUEL WAKSAL, the defendant, and Tippee No. 1 unlawfully, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, the mails and the facilities of national securities exchanges, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which

they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would and did operate as a fraud and deceit upon ImClone and its shareholders, and other persons and entities, in connection with the purchase and sale of ImClone securities, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

Wire Fraud

17. It was further a part and an object of the conspiracy that SAMUEL WAKSAL, the defendant, and Tippee No. 1, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, unlawfully, willfully and knowingly would and did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds for the purpose of executing such scheme and artifice, in violation of Section 1343 of Title 18, United States Code.

Means and Methods of the Conspiracy

18. Among the means and methods by which SAMUEL WAKSAL, the defendant, and Tippee No. 1 would and did carry out the conspiracy were the following:

a. SAMUEL WAKSAL misappropriated and stole material non-public information concerning the status of the Erbitux BLA and the FDA's pending actions on that application, in violation of (i) the fiduciary and other duties of trust and confidence that SAMUEL WAKSAL owed to ImClone and its shareholders; and (ii) ImClone's written policies regarding the use and safekeeping of confidential and proprietary information.

b. For his own benefit and the benefit of Tippee No. 1, with whom SAMUEL WAKSAL had a close personal relationship, SAMUEL WAKSAL disclosed to Tippee No. 1 material non-public information that he had misappropriated and stolen from ImClone and its shareholders with the understanding that Tippee No. 1 would sell shares of ImClone common stock and thereby avoid substantial losses.

c. Tippee No. 1 sold shares of ImClone common stock on the basis of information and recommendations provided by SAMUEL WAKSAL, thereby avoiding substantial losses.

Overt Acts

19. In furtherance of the conspiracy and to effect the illegal objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. In or about the late evening of December 26, 2001, SAMUEL WAKSAL, the defendant, who was in New York, New

York, spoke by telephone with Tippee No. 1, who was in another state.

b. On or about December 27, 2001, Tippee No. 1 spoke by telephone with a representative of Roth Capital Partners, LLC, during which Tippee No. 1 placed an order to sell 50,000 shares of ImClone common stock.

c. On or about December 27, 2001, Tippee No. 1 spoke by telephone with a representative of McDonald Investments, Inc., during which Tippee No. 1 placed an order to sell 50,000 shares of ImClone common stock.

d. On or about December 27, 2001, Tippee No. 1 spoke by telephone with a representative of Banc of America Securities LLC, during which Tippee No. 1 placed an order to sell 10,000 shares of ImClone common stock.

e. On or about December 27, 2001, Tippee No. 1 spoke by telephone with a representative of Prudential Securities Incorporated, Inc., during which Tippee No. 1 placed an order to sell 1,336 shares of ImClone common stock.

f. On or about December 28, 2001, Tippee No. 1 spoke by telephone with a representative of Roth Capital Partners, LLC, during which Tippee No. 1 placed an order to sell 25,000 shares of ImClone common stock.

(Title 18, United States Code, Section 371).

COUNT TWO

(Conspiracy to Commit Fraud in Connection with the Purchase and Sale of Securities: Samuel Waksal and Tippee No. 2)

The Grand Jury further charges:

20. The allegations of paragraphs 1 through 14 and 18 through 19 are repeated and realleged as though fully set forth herein.

The Unlawful Trading

Sales of ImClone Stock By Tippee No. 2

21. In breach of his duties to ImClone and its shareholders to abstain from trading in ImClone common stock while in possession of material non-public information concerning ImClone's Erbitux BLA to ImClone and its shareholders, to protect the confidentiality of such material non-public information, and to abstain from "tipping" such material non-public information to others, and for his own personal benefit and the benefit of other persons with whom he had a close personal relationship, SAMUEL WAKSAL disclosed material non-public information, in substance and in part, to, among others known and unknown, a co-conspirator not named as a defendant herein ("Tippee No. 2") and recommended that Tippee No. 2 sell ImClone stock. Tippee No. 2, in turn, sold ImClone common stock while knowing that the information was confidential, material and non-public and had been disclosed to

Tippee No. 2 in breach of SAMUEL WAKSAL's duties to ImClone and ImClone's shareholders.

22. In or about the early morning of December 27, 2001, SAMUEL WAKSAL, the defendant, contacted Tippee No. 2 and communicated to Tippee No. 2 that Tippee No. 2 should sell ImClone common stock. On or about December 27, 2001, at approximately 9:01 a.m. (EST), Tippee No. 2 placed an order to sell all of Tippee No. 2's securities holdings, consisting of approximately 39,472 shares of ImClone common stock worth approximately $2,472,837.

23. By selling 39,472 shares of ImClone stock two days prior to ImClone's public announcement of the FDA's refusal to accept for filing the Erbitux BLA, Tippee No. 2 avoided losses of approximately $630,000.

Attempted Sale of ImClone Stock Transferred to Tippee No. 2

24. In or about the morning of December 27, 2001, SAMUEL WAKSAL, the defendant, directed Merrill Lynch & Co., Inc. ("Merrill Lynch") to transfer into an account at Merrill Lynch in the name of Tippee No. 2 all of the ImClone common stock that SAMUEL WAKSAL held at Merrill Lynch, consisting of approximately 79,797 shares then valued at approximately $4.9 million (the "79,797 Shares"). SAMUEL WAKSAL's written direction to Merrill Lynch stated that the transfer request was "URGENT - IMMEDIATE ACTION REQUIRED" and that it was "imperative" that the transfer

take place during the morning of December 27, 2001. Subsequent to the transfer of the 79,797 Shares, SAMUEL WAKSAL directed his accountant to seek to have the 79,797 Shares sold. Merrill Lynch refused to sell the 79,797 Shares absent approval from ImClone's Office of the General Counsel because the shares had originally been owned by SAMUEL WAKSAL and were subject to restrictions on trading.

25. On or about December 28, 2001, after SAMUEL WAKSAL, the defendant, was informed that Merrill Lynch had refused to sell the 79,797 Shares, WAKSAL directed his accountant to arrange for the 79,797 Shares to be transferred to Banc of America Securities LLC. On December 28, 2001, at approximately 2:12 p.m., SAMUEL WAKSAL's accountant informed SAMUEL WAKSAL by email that "B[anc] of A[merica] consider[s] [Tippee No. 2] an affiliate of ImClone and cannot sell the shares absent company approval."

The Conspiracy

26. From on or about December 27, 2001, up to and including on or about December 28, 2001, in the Southern District of New York and elsewhere, SAMUEL WAKSAL, the defendant, and Tippee No. 2 unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, to commit securities fraud in violation of Title 15, United States Code,

Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5, and to commit wire fraud in violation of Title 18, United States Code, Section 1343.

Objects of the Conspiracy

Securities Fraud

27. It was a part and an object of the conspiracy that SAMUEL WAKSAL, the defendant, and Tippee No. 2 unlawfully, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, the mails and the facilities of national securities exchanges, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would and did operate as a fraud and deceit upon ImClone and its shareholders, and other persons and entities, in connection with the purchase and sale of ImClone securities, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

Wire Fraud

28. It was further a part and an object of the conspiracy that SAMUEL WAKSAL, the defendant, and Tippee No. 2, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, unlawfully, willfully and knowingly would and did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

Means and Methods of the Conspiracy

29. Among the means and methods by which SAMUEL WAKSAL, the defendant, and Tippee No. 2 would and did carry out the conspiracy were the following:

a. SAMUEL WAKSAL, the defendant, misappropriated and stole material non-public information concerning the status of the Erbitux BLA and the FDA's pending actions on that application, in violation of (i) the fiduciary and other duties of trust and confidence that SAMUEL WAKSAL owed to ImClone and its shareholders; and (ii) ImClone's written policies regarding the use and safekeeping of confidential and proprietary client information.

b. For his benefit and the benefit of Tippee No. 2, with whom SAMUEL WAKSAL had a close personal relationship, SAMUEL WAKSAL disclosed to Tippee No. 2 material non-public information that he had misappropriated and stolen from ImClone and its shareholders with the understanding that Tippee No. 2 would sell shares of ImClone common stock and thereby avoid substantial losses.

c. Tippee No. 2 sold shares of ImClone common stock on the basis of information and recommendations provided by SAMUEL WAKSAL, thereby avoiding substantial losses.

Overt Acts

30. In furtherance of the conspiracy and to effect the unlawful objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On or about December 27, 2001, SAMUEL WAKSAL, the defendant, who was in New York, New York, spoke by telephone with Tippee No. 2, who was in another state.

b. On or about December 27, 2001, Tippee No. 2, who was in another state, spoke by telephone with a representative of Merrill Lynch in New York, New York, during which Tippee No. 2 placed an order to sell 39,472 shares of ImClone common stock.

(Title 18, United States Code, Section 371).

COUNTS THREE THROUGH NINE

(Securities Fraud)

The Grand Jury further charges:

31. The allegations of paragraphs 1 through 14, 18 through 19, 21 through 25, and 29 through 30 are repeated and realleged as though fully set forth herein.

32. On or about the following dates, in the Southern District of New York and elsewhere, SAMUEL WAKSAL, the defendant, unlawfully, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, the mails and the facilities of national securities exchanges, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would and did operate as a fraud and deceit upon ImClone and its shareholders, and other persons and entities, in connection with the following sales of ImClone stock:

COUNT	DATE	ACT
THREE	December 27, 2001	Sale of 39,472 shares of ImClone common stock from an account at Merrill Lynch held in the name of Tippee No. 2
FOUR	December 27, 2001	Attempted sale of 79,797 shares of ImClone common stock transferred to an account at Merrill Lynch held in the name of Tippee No. 2
FIVE	December 27, 2001	Sale of 50,000 shares of ImClone common stock from an account at Roth Capital Partners, LLC, held in the name of Tippee No. 1
SIX	December 27, 2001	Sale of 50,000 shares of ImClone common stock from an account at McDonald Investments, Inc. held in the name of Tippee No. 1
SEVEN	December 27, 2001	Sale of 10,000 shares of ImClone common stock from an account at Banc of America Securities held in the name of Tippee No. 1
EIGHT	December 27, 2001	Sale of 1,336 shares of ImClone common stock from an account at Prudential Securities Incorporated held in the name of another individual
NINE	December 28, 2001	Sale of 25,000 shares of ImClone common stock from an account at Roth Capital Partners, LLC, held in the name of Tippee No. 1

(Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.)

COUNT TEN

(Conspiracy to Obstruct Justice and Commit Perjury)

The Grand Jury further charges:

33. The allegations of paragraphs 1 through 14, 18 through 19, 21 through 25, and 29 through 30 are repeated and realleged as though fully set forth herein.

Introduction

34. Following the commencement of an investigation by the United States Securities and Exchange Commission (the "SEC") into the trading in ImClone stock described in Counts One through Nine above, SAMUEL WAKSAL, the defendant, agreed with Tippee No. 1 and Tippee No. 2 to obstruct the SEC's investigation by providing false and misleading information and by making false and misleading statements in testimony before the SEC.

The SEC Investigation

35. In or about January 2001, the Northeast Regional Office of the SEC commenced an investigation to determine whether SAMUEL WAKSAL, the defendant, and others had violated the federal securities laws and regulations that prohibit trading while in possession of and using material non-public information. It was material to the SEC's investigation to determine, among other things, the reasons for the trading, transfers of stock, and attempted trading of SAMUEL WAKSAL, Tippee No. 1, and Tippee No. 2, among others.

36. On or about January 28, 2002, the SEC issued an Order Directing Private Investigations and Designating Officers to Take Testimony (the "Formal Order of Investigation").

37. During the course of its investigation, the SEC issued the following investigative subpoenas and made the following voluntary request for documents, among others:

a. On or about January 8, 2002, prior to the SEC's issuance of the Formal Order of Investigation, the SEC made a voluntary request for production of documents to ImClone, requesting, among other things, the production of correspondence with any broker, dealer or financial institution regarding trading in ImClone securities by any ImClone insider.

b. On or about January 30, 2002, the SEC issued a subpoena to SAMUEL WAKSAL, the defendant, directing WAKSAL to provide testimony and to produce documents relating to, among other things: (i) any securities trading and bank accounts WAKSAL controlled; (ii) any financial arrangement, agreement or transaction between WAKSAL and any other person with respect to the purchase or sale of securities or the proceeds thereof; and (iii) any wire transfers WAKSAL authorized in connection with any such arrangement, agreement or transaction.

c. On or about January 30, 2002, the SEC issued a subpoena to Tippee No. 1, directing Tippee No. 1 to provide

testimony and produce documents relating to Tippee No. 1's trading in ImClone securities, among other things.

d. On or about January 30, 2002, the SEC issued a subpoena to Tippee No. 2, directing Tippee No. 2 to provide testimony and produce documents relating to Tippee No. 2's trading in ImClone securities, among other things.

e. On or about March 26, 2002, and April 9, 2002, the SEC issued subpoenas to ImClone for documents relating to, among other things, any transaction in ImClone securities by any ImClone officer or director and any brokerage accounts maintained by any ImClone officer or director.

The Scheme to Obstruct Justice

38. Following the SEC's issuance of subpoenas directing SAMUEL WAKSAL, the defendant, Tippee No. 1 and Tippee No. 2 to give testimony, WAKSAL, Tippee No. 1, and Tippee No. 2 agreed to make false and misleading statements to the SEC about their communications regarding their trading in ImClone stock.

39. On April 1, 2002 and April 18, 2002, SAMUEL WAKSAL, the defendant, appeared before the SEC in New York, New York, pursuant to subpoena, and gave testimony under oath. Among other matters, SAMUEL WAKSAL falsely testified, in substance and in part, that:

a. SAMUEL WAKSAL did not speak with Tippee No. 1 during the night of December 26, 2001; did not instruct Tippee

No. 1 to sell ImClone stock on or about December 27, 2001 or on or about December 28, 2001; and did not suggest to Tippee No. 1 that Tippee No. 1 should sell ImClone stock on or about December 27, 2001 or on or about December 28, 2001.

b. SAMUEL WAKSAL did not speak with Tippee No. 2 from the time he heard the report of the FDA's anticipated negative decision regarding the Erbitux BLA until the night of December 27, 2001; did not instruct Tippee No. 2 to sell ImClone stock on or about December 27, 2001; and did not suggest to Tippee No. 2 that Tippee No. 2 should sell ImClone stock on or about December 27, 2001.

c. SAMUEL WAKSAL had planned to transfer the 79,797 Shares to Tippee No. 2 a number of weeks before the transfer on or about December 27, 2001; did not believe there was any imperative associated with the transfer of the 79,797 Shares to Tippee No. 2; and did not ask to have the 79,797 Shares sold.

40. On March 18, 2002, Tippee No. 1 appeared before the SEC in Miami, Florida, pursuant to subpoena, and gave testimony under oath. Among other matters, Tippee No. 1 falsely testified, in substance and in part, that Tippee No. 1 (a) "never had a conversation about stock with [SAMUEL WAKSAL]"; (b) "never spoke to [SAMUEL WAKSAL] about ImClone"; (c) remembered that Tippee No. 1 did not talk to SAMUEL WAKSAL on the night of December 26, 2001; and (d) did not return any of the calls SAMUEL

WAKSAL placed to Tippee No. 1 during the night of December 26, 2001.

41. On March 5, 2002, Tippee No. 2 appeared before the SEC in New York, New York, pursuant to subpoena, and gave testimony under oath. Among other matters, Tippee No. 2 falsely testified, in substance and in part, that (a) prior to placing the December 27, 2001 order to sell ImClone shares, Tippee No. 2 did not speak to anyone other than the person with whom Tippee No. 2 was vacationing; (b) Tippee No. 2 did not discuss investments in any way with SAMUEL WAKSAL during Tippee No. 2's vacation to Idaho; and (c) Tippee No. 2 placed the December 27, 2001 order to sell because Tippee No. 2 needed $1.7 million to close on a two-bedroom apartment in Manhattan into which Tippee No. 2 planned to move on January 7, 2002.

42. Contrary to the testimony of SAMUEL WAKSAL, the defendant, and Tippee No. 1, telephone records show the following telephone calls between telephones associated with SAMUEL WAKSAL and Tippee No. 1 in the late evening of December 26, 2001, just prior to the time that Tippee No. 1 placed orders to sell ImClone stock during the early morning of December 27, 2001:

Time of Call	From	To	Length of Call
9:52 p.m. (EST)	Samuel Waksal's cell phone	Tippee No. 1's home phone	2 seconds
9:56 p.m. (EST)	Samuel Waksal's cell phone	Tippee No. 1's home phone	7 seconds

Time of Call	From	To	Length of Call
10:26 p.m. (EST)	Samuel Waksal's cell phone	Tippee No. 1's home phone	22 seconds
10:41 p.m. (EST)	Tippee No. 1's home phone	Samuel Waksal's home phone	1 minute, 3 seconds
11:11 p.m. (EST)	Tippee No. 1's home phone	Samuel Waksal's home phone	42 seconds

43. Contrary to the testimony of SAMUEL WAKSAL, the defendant, and Tippee No. 2, telephone records show that early in the morning of December 27, 2001, just prior to Tippee No.2's sale of all of Tippee No. 2's ImClone stock, numerous telephone calls were placed between telephones associated with SAMUEL WAKSAL and Tippee No. 2, as follows:

Time of Call	From	To	Length of Call
6:27 a.m. (MST)	Samuel Waksal's work phone	Tippee No. 2's cell phone	Unknown
6:30 a.m. (MST)	Tippee No. 2's cell phone	Samuel Waksal's work phone	2 minutes
6:58 a.m. (MST)	Tippee No. 2's hotel phone	Samuel Waksal's work phone	2.4 minutes
7:01 a.m. (MST)	Tippee No. 2's hotel phone	Merrill Lynch	1.4 minutes
7:46 a.m. (MST)	Tippee No. 2's hotel phone	Samuel Waksal's work phone	1.3 minutes
7:49 a.m. (MST)	Tippee No. 2's hotel phone	Merrill Lynch	0.7 minutes

The Conspiracy

44. From in or about January 2002, until in or about March 2002, in the Southern District of New York and elsewhere, SAMUEL WAKSAL, the defendant, Tippee No. 1 and Tippee No. 2, unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, to obstruct justice, in violation of Section 1505 of Title 18, United States Code, and to commit perjury, in violation of Section 1621 of Title 18, United States Code.

Objects of the Conspiracy

Obstruction of Justice

45. It was a part and an object of the conspiracy that SAMUEL WAKSAL, the defendant, Tippee No. 1 and Tippee No. 2 unlawfully, willfully and knowingly, would and did corruptly influence, obstruct and impede, and endeavor to influence, obstruct and impede the due and proper administration of the law under which a pending proceeding was being had before a department and agency of the United States, namely, the SEC, in violation of Title 18, United States Code, Section 1505.

Perjury

46. It was further a part and an object of the conspiracy that SAMUEL WAKSAL, the defendant, Tippee No. 1 and Tippee No. 2, having taken an oath before a competent tribunal,

officer and person, in a case in which the law of the United States authorizes an oath to be administered, namely, in testimony before the SEC, would and did testify, declare, depose and certify truly, and that any written testimony, declaration, deposition and certificate by them subscribed, would be true, unlawfully, willfully, knowingly, and contrary to such oath, would and did state and subscribe material matters which they did not believe to be true, in violation of Title 18, United States Code, Section 1621.

Means and Methods of the Conspiracy

47. Among the means and methods by which SAMUEL WAKSAL, the defendant, Tippee No. 1 and Tippee No. 2 would and did carry out the conspiracy were the following:

a. SAMUEL WAKSAL and Tippee No. 1 agreed to and did provide false and misleading testimony to the SEC about their communications the night before Tippee No. 1's sales of ImClone stock.

b. SAMUEL WAKSAL and Tippee No. 2 agreed to and did provide false and misleading testimony to the SEC about their communications during the hours prior to Tippee No. 2's sales of ImClone stock.

Overt Acts

48. In furtherance of the conspiracy and to effect the unlawful objects thereof, the following overt acts, among others,

were committed in the Southern District of New York and elsewhere:

a. On or about March 5, 2002, in New York, New York, Tippee No. 2 gave false and misleading testimony about communications with SAMUEL WAKSAL regarding Tippee No. 2's trading in ImClone stock.

b. On or about March 18, 2002, in Miami, Florida, Tippee No. 1 gave false and misleading testimony about communications with SAMUEL WAKSAL regarding Tippee No. 1's trading in ImClone stock.

c. On or about April 1, 2002, in New York, New York, SAMUEL WAKSAL gave false and misleading testimony about his communications with Tippee No. 1 and Tippee No. 2 regarding Tippee No. 1's and Tippee No. 2's trading in ImClone stock.

d. On or about April 18, 2002, in New York, New York, SAMUEL WAKSAL gave false and misleading testimony about his communications with Tippee No. 1 and Tippee No. 2 regarding Tippee No. 1's and Tippee No. 2's trading in ImClone stock.

(Title 18, United States Code, Section 371).

COUNT ELEVEN

(Perjury)

The Grand Jury further charges:

49. The allegations of paragraphs 1 through 14, 18 through 19, 21 through 25, 29 through 30, 34 through 43, and 47 through 48 are repeated and realleged as though fully set forth herein.

50. On April 1, 2002, and on April 18, 2002, in the Southern District of New York, SAMUEL WAKSAL, the defendant, having taken an oath before a competent tribunal, officer and person, in a case in which the law of the United States authorizes an oath to be administered, namely, in testimony before an officer of the United States Securities and Exchange Commission, that he would testify, declare, depose and certify truly, and that any written testimony, declaration, deposition and certificate by him subscribed, would be true, unlawfully, willfully, knowingly, and contrary to such oath, stated and subscribed material matters which he did not believe to be true, namely, the testimony on or about April 1, 2002, and April 18, 2002, the underlined portions of which he believed to be materially false:

Specification One
(Page 96, Line 19 - Page 97, Line 2)

Q: Why did you want to gift shares to [Tippee No. 2]?
A: I had told [Tippee No. 2] that I was going to do that for [Tippee No. 2]. I had told [Tippee No. 2] a couple

of weeks before that – [Tippee No. 2] lived off of [Tippee No. 2's] ImClone. [Tippee No. 2] had no other real means of support, and I had told [Tippee No. 2] when we had talked earlier in December about [Tippee No. 2's] financial situation, that I was going to give [Tippee No. 2] more ImClone stock that [Tippee No. 2] could use to live on.

Specification Two

(Page 184, Line 14 - Page 184, Line 24)

Q: The next phone call, 9:22 p.m., who were you calling there?
A: [Tippee No. 1 and another person].
Q: What did you talk about?
A: I didn't. I left a message, I couldn't get a hold of them.
Q: What did you say in your message?
A: "Call me, Sam." I leave [Tippee No. 1] quick messages.
Q: Did you hear back from [Tippee No. 1]?
A: Not that night.

Specification Three

(Page 311, Line 10 - Page 313, Line 8)

Q: Dr. Waksal, I'm handing you what's just been marked as Exhibit 114. Have you ever seen this document before?
A: Yes.
Q: What is it?
A: It's a request to transfer my Merrill account and shares of ImClone to [Tippee No. 2].
. . . .
Q: And the second paragraph says, "It's imperative this transfer take place tomorrow morning, December 27th, first thing." Do you see that?
A: Yes.
Q: Why was it so imperative that the transfer take place?
A: I believe this was just the way this was written, just to make sure that they would do it very quickly. [My accountant] was going away and it was making sure that it was done immediately. I don't believe that there was any imperative associated with it.

Specification Four

(Page 485, Line 19 - Page 485, Line 25)

Q: Did you ever instruct [Tippee No. 1 or Tippee No. 2] to sell their shares of ImClone?

(a) A: No.
Q: Did you ever suggest to any of them that they sell their shares of ImClone?
(b) A: No.

(Title 18, United States Code, Section 1621).

COUNT TWELVE

(Obstruction of Justice)

The Grand Jury further charges:

51. The allegations of paragraphs 1 through 14, 18 through 19, 21 through 25, 29 through 30, 34 through 43, 47 through 48, and 50 are repeated and realleged as though fully set forth herein.

The Obstructive Conduct

52. After learning of the SEC's investigation, that the SEC had requested the production of documents from ImClone in connection with its investigation, and that ImClone's attorneys had begun to gather documents in response to the SEC's request for production of documents, in or about late January 2002, SAMUEL WAKSAL, the defendant, directed another individual to destroy certain documents and to delete certain computer files maintained at ImClone's offices in New York, New York. More specifically, WAKSAL directed another person to delete computer files containing phone messages he received, and to destroy certain records pertaining to offshore accounts he maintained in

the name of Protec Advisory Group Ltd. at Discount Bank and Trust Company in Geneva, Switzerland, and Amsterdam, the Netherlands.

53. As SAMUEL WAKSAL, the defendant, well knew at the time that he directed the destruction of records relating to his phone messages, such records were material to the SEC's investigation because such records would have revealed the identities of persons to whom SAMUEL WAKSAL may have communicated material non-public information concerning ImClone and described the times and dates of such communications.

54. As SAMUEL WAKSAL, the defendant, well knew at the time that he directed the destruction of documents pertaining to his offshore accounts, such documents were material to the SEC's investigation because such documents may have revealed that WAKSAL unlawfully traded in ImClone securities in offshore accounts and would have revealed the nature and location of assets that the SEC could seek to attach or restrain in a civil action for disgorgement or penalties for insider trading violations.

55. Pursuant to the direction of SAMUEL WAKSAL, the defendant, in or about late January 2002, the individual deleted certain computer files containing WAKSAL's phone messages. Pursuant to SAMUEL WAKSAL's direction, the individual also deleted computer files and discarded documents evidencing SAMUEL WAKSAL's instructions, among other things (a) on November 6,

2000, to transfer 120,000 shares of ImClone stock to an account in the name of Protec Advisory Group Ltd. at Discount Bank and Trust Company in Amsterdam; (b) on January 10, 2001, to transfer 3,480 shares of ImClone stock to an account at Discount Bank and Trust Company in Geneva; and (c) on September 25, 2001, to wire transfer $2 million to an account in the name of Protec Advisory Group Ltd. at Discount Bank and Trust Company in Amsterdam.

Statutory Allegation

56. In or about late January 2002, in the Southern District of New York and elsewhere, SAMUEL WAKSAL, the defendant, unlawfully, willfully and knowingly, would and did corruptly influence, obstruct and impede, and endeavor to influence, obstruct and impede the due and proper administration of the law under which a pending proceeding was being had before a department and agency of the United States, namely, the SEC, by directing and causing another person to destroy documents that were material to a pending SEC investigation.

(Title 18, United States Code, Sections 1505 and 2).

COUNT THIRTEEN

(Bank Fraud)

The Grand Jury further charges:

57. The allegations of paragraphs 1 through 3 are repeated and realleged as though fully set forth herein.

Introduction

58. At all relevant times, NationsBank, N.A. was a bank headquartered in Charlotte, North Carolina. During the relevant time period, NationsBank, N.A. merged with the Bank of America, N.A., and was thereafter known as the Bank of America, N.A. (collectively "Bank of America"). At all relevant times, the deposits of NationsBank and Bank of America were insured by the Federal Deposit Insurance Corporation.

59. From in or about April 1999 through on or about January 18, 2002, SAMUEL WAKSAL, the defendant, defrauded the Bank of America, N.A., by pledging certain securities issued to him by ImClone, purportedly worth millions of dollars, to secure approximately $44 million in loans from Bank of America. In truth and in fact, as WAKSAL well knew, after July 20, 2000, WAKSAL no longer owned those securities he had pledged to Bank of America. Moreover, WAKSAL fraudulently failed to disclose to Bank of America that he had previously pledged those same securities to another creditor. In furtherance of his scheme to defraud, in November 2000, WAKSAL provided Bank of America with a fabricated document containing a forged signature of ImClone's General Counsel, which document falsely represented that WAKSAL still owned those pledged securities.

The Warrant

60. In or about December 1995, ImClone granted to SAMUEL WAKSAL, the defendant, a Stock Purchase Warrant that gave SAMUEL WAKSAL the right to purchase 350,000 shares of ImClone stock at a price of $5.50 per share, during the period from June 12, 1996 through December 11, 2005 (the "Warrant"). At all relevant times, the Warrant was a valuable asset because it permitted WAKSAL to purchase ImClone stock at a price that was substantially below the market price for ImClone's stock. For example, on or about April 21, 1999, the market price for ImClone stock was $17 per share. As a result, the Warrant, which allowed WAKSAL to purchase 350,000 at $5.50 per share, was then worth approximately $4,025,000.

SAMUEL WAKSAL's Pledge of the Warrant to Secure Multiple Debts

61. In or about April 1999, SAMUEL WAKSAL, the defendant, entered into certain credit arrangements with Bank of America ("the Bank of America Credit Facility"). Under the terms of the Bank of America Credit Facility, as modified from time to time, Bank of America extended loans to WAKSAL. As security for those loans, WAKSAL fraudulently pledged certain assets as collateral, including the Warrant. On or about April 21, 1999, WAKSAL assigned all his right, title, and interest in the Warrant to Bank of America.

62. On or about April 21, 1999, the same date that SAMUEL WAKSAL, the defendant, pledged the Warrant to secure the Bank of America Credit Facility, WAKSAL also fraudulently pledged the Warrant to Refco Capital Markets, Ltd. ("Refco"), to secure a short-term credit line extended by Refco to WAKSAL ("the Refco Credit Line"). WAKSAL's contemporaneous pledge of the Warrant to both Refco and Bank of America violated numerous representations and warranties made by WAKSAL both to Refco and Bank of America in connection with the credit extended to WAKSAL by those lenders.

63. At no time did SAMUEL WAKSAL, the defendant, disclose to Bank of America that he had pledged the Warrant to Refco. The failure to disclose this pledge violated the terms of the Bank of America Credit Facility. Similarly, at no time did WAKSAL disclose to Refco that he had pledged the Warrant to Bank of America in violation of the terms of the Refco Credit Line.

64. From time to time during the period from in or about April 1999 through in or about July 2000, Bank of America extended loans to SAMUEL WAKSAL, the defendant, under the Bank of America Credit Facility. As of in or about July 2000, WAKSAL owed approximately $21.8 million under the Bank of America Credit Facility.

65. From time to time during the period from in or about April 1999 through in or about July 2000, Refco extended

loans to SAMUEL WAKSAL, the defendant, under the Refco Credit Line. As of in or about July 2000, WAKSAL owed approximately $5 million under the Refco Credit Line.

SAMUEL WAKSAL's Exercise of the Warrant

66. Notwithstanding his pledges of the Warrant to both Refco and Bank of America, from in or about May 2000 through in or about July 20, 2000, SAMUEL WAKSAL, the defendant, exercised the Warrant and purchased all the ImClone stock to which he was entitled under the Warrant. As WAKSAL well knew, after July 20, 2000, the Warrant was fully exercised and had no remaining value. At no time did WAKSAL disclose to Refco or Bank of America that WAKSAL had exercised the Warrant in violation of his pledge of the Warrant as security for the Bank of America Credit Facility and the Refco Credit Line.

67. In or about August 2000, as a condition of continuing to extend credit under the Bank of America Credit Facility, and as a condition of extending additional credit to SAMUEL WAKSAL, the defendant, and to entities he controlled, representatives of the Bank of America requested that WAKSAL provide documentary evidence that the Warrant remained valid and outstanding. In response to this request, WAKSAL forged the signature of the General Counsel of ImClone on an "Issuer's Letter" dated November 10, 2000, that WAKSAL caused to be transmitted to Bank of America. The forged "Issuer's Letter"

falsely and fraudulently represented, among other things, that WAKSAL continued to own the Warrant, when, in truth and in fact, as WAKSAL well knew, the Warrant had been fully exercised and was, at that time, worthless.

68. The fraudulent representations made by SAMUEL WAKSAL, the defendant, regarding his ownership of the Warrant purportedly pledged as collateral for his indebtedness were material to Bank of America. As of July 1, 2001, SAMUEL WAKSAL and entities he controlled owed over approximately $44 million to Bank of America. This entire indebtedness was secured in large part by the Warrant. As of July 31, 2001, Bank of America valued the Warrant at approximately $29.8 million, which accounted for approximately 41% of the total value of the collateral pledged to secure the indebtedness to Bank of America. As of that date, without its knowledge, Bank of America was under-collateralized in that the amount of the debt of WAKSAL and entities he controlled was greater than the true value of the assets pledged to secure the indebtedness. Bank of America was therefore at a risk of loss that it did not knowingly accept.

69. Notwithstanding the fact that SAMUEL WAKSAL, the defendant, had fully exercised the Warrant and nonetheless pledged it to secure his debt to Bank of America, WAKSAL also continued to pledge the Warrant to Refco as security for his growing debt. On or about October 6, 2000 -- approximately two

and one-half months after he fully exercised the Warrant -- WAKSAL signed a Terms and Conditions document extending his $5 million credit line from Refco, still pledging the Warrant to Refco as security. In or about January 2001, WAKSAL further agreed that the assets securing the credit line to Refco, would also secure WAKSAL's margin debt of approximately $8.5 million to Refco Securities, LLC, a broker-dealer in New York, New York.

Statutory Allegation

70. From in or about April 1999 up to and including on or about January 18, 2002, SAMUEL WAKSAL, the defendant, unlawfully, willfully and knowingly executed and attempted to execute a scheme and artifice to defraud a financial institution, and to obtain the moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, a financial institution, namely Bank of America, N.A., whose deposits were insured by the Federal Deposit Insurance Corporation, by means of false and fraudulent pretenses, representations and promises, namely, the scheme described above.

(Title 18, United States Code, Section 1344).

_____ _____

FOREPERSON JAMES B. COMEY
United States Attorney