

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA : **CRIMINAL NO. 12-_____**

v. : **DATE FILED: May 10, 2012**

TIMOTHY MCGEE : **VIOLATIONS:**

: **15 U.S.C. §§ 78j(b), 78ff, and 17 C.F.R.**

: **§§ 240.10b-5 and 240.10b5-2 (securities**

: **fraud - 1 count)**

: **18 U.S.C. § 2 (aiding and abetting)**

: **18 U.S.C. § 1621 (perjury)**

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

BACKGROUND

At all times relevant to this indictment:

1. Philadelphia Consolidated Holding Corp. (“PHLY”) was a publicly-traded insurance holding company with headquarters in Bala Cynwyd, Pennsylvania. PHLY’s stock was registered under Section 12(g) of the Securities Exchange Act of 1934 and was traded on the National Association of Securities Dealers Automated Quotations (“NASDAQ”) under the ticker symbol “PHLY”. PHLY specialized in commercial property and casualty insurance products through its operating subsidiary, Philadelphia Insurance Company.

2. Tokio Marine Holdings, Inc. (“Tokio Marine”) was a property, casualty and life insurance and reinsurance company based in Tokyo, Japan whose shares are publicly-traded on both the Tokyo and Osaka Stock Exchanges.

3. The United States Securities and Exchange Commission (the “SEC”) was an independent agency of the United States which was charged by law with the duty of protecting investors by regulating and monitoring, among other things, the purchase and sale of publicly traded securities.

4. TIMOTHY MCGEE, the defendant, was a stock broker and financial advisor with Ameriprise Financial Services, Inc. (“Ameriprise”), a broker-dealer registered with the SEC. Since 1988, MCGEE has been a “registered representative” of an SEC-registered broker-dealer, that is, he holds licenses from the Financial Industry Regulatory Authority (“FINRA”) (previously known as the National Association of Securities Dealers), which is the independent regulator for all securities firms doing business in the United States.

5. As part of the FINRA licensing process, all registered representatives must pass examinations and participate in continuing education programs on, among other things, securities laws and regulations, including the laws pertaining to insider trading.

6. Alcoholics Anonymous (“AA”) is a fellowship of alcoholics seeking to become and/or remain sober. AA seeks to enable sobriety through open communication and support between and among members. AA members are encouraged to trust and confide in each other both during meetings as well as in one-on-one conversations. One of the means by which AA enables trust and confidence among members is, as its name implies, through member anonymity. Anonymity is among the “Twelve Traditions” that form the guiding written principles for all AA members and participants. Keeping members’ confidences is paramount to AA’s functioning and the success of its members. At AA meetings, members are reminded that information shared among members must remain confidential.

7. A senior executive of PHL Y (“the Executive”) had been a longtime member of AA. The defendant, TIMOTHY MCGEE, was also a longtime member of AA. The Executive and MCGEE met in or about 1999 through AA meetings they attended together. Over a period of nearly ten years and stemming from their mutual membership in AA, the Executive and MCGEE developed a relationship of trust and confidence. Each shared with the other personal private information in respect of their struggles with alcoholism, and each relied on the other for support in those struggles. The relationship of trust and confidence extended beyond their membership in AA, and served as the basis for a close personal relationship.

8. At all relevant times, MCGEE and the Executive shared a relationship of trust and confidence. MCGEE and the Executive had a history, pattern, and practice of sharing and maintaining confidences such that MCGEE knew and reasonably should have known that the Executive expected that MCGEE would maintain the confidentiality of any material nonpublic information MCGEE learned from the Executive. MCGEE understood that he could not use or share any confidential information that MCGEE learned from the Executive.

TOKIO MARINE’S ACQUISITION OF PHL Y

9. Beginning in or about the spring of 2008, PHL Y was in discussions with Tokio Marine regarding Tokio Marine’s potential purchase of PHL Y. By on or about June 23, 2008 the companies had signed an exclusive negotiating agreement and had discussed a potential purchase price of \$61.50 per share of PHL Y stock. Negotiations progressed, and on or about July 22, 2008, PHL Y’s board of directors approved the final merger agreement and resolved to recommend adoption of the merger agreement to PHL Y’s shareholders.

10. The merger discussions between PHL Y and Tokio Marine were material,

non-public information. At all times, the Executive was privy to, and participated in, the merger discussions.

11. On or about July 23, 2008, before the U.S. stock markets opened, PHL Y publicly announced that Tokio Marine would acquire PHL Y in a cash deal at a price of \$61.50 per share of PHL Y common stock. Between on or about April 22, 2008 and on or about July 22, 2008, the day before the public announcement of the merger between PHL Y and Tokio Marine, PHL Y's common stock traded in a range of \$31.22 to \$38.64 per share. On or about July 22, 2008, shares of PHL Y common stock closed at \$35.55. Following the merger announcement, on or about July 23, 2008, PHL Y's share price rose to a high of \$59.10 and closed at \$58.43, a 64 percent increase over the share price prior to the merger announcement. Between on or about July 23, 2008 and on or about December 1, 2008, PHL Y stock traded between \$49.20 and \$61.45 per share.

12. On or about December 1, 2008, the merger was consummated, with current shareholders of PHL Y receiving \$61.50 per share of PHL Y common stock.

THE SCHEME

13. From on or about July 14, 2008 to on or about July 22, 2008, in West Conshohocken, Pennsylvania, in the Eastern District of Pennsylvania and elsewhere, defendant

TIMOTHY MCGEE

willfully, directly and indirectly, and by aiding and abetting, by the use of means and instrumentalities of interstate commerce and of the facilities of a national securities exchange, used and employed manipulative devices and contrivances in connection with the purchase and sale of securities, in contravention of the rules and regulations prescribed by the Securities and

Exchange Commission, namely, 17 C.F.R. §§ 240.10b-5 and 240.10b5-2, by (a) employing a device, scheme, and artifice to defraud and (b) engaging in acts, practices and courses of dealing which would and did operate as a fraud and deceit upon persons in connection with purchases and sales of PHL Y securities.

MANNER AND MEANS

It was part of the scheme that:

14. In or about the spring of 2008, while the Executive participated in the merger discussions between PHL Y and Tokio Marine, the Executive faced renewed struggles with his alcoholism. As a result, the Executive began attending AA meetings on a near daily basis. The Executive also began speaking daily to his AA confidante TIMOTHY MCGEE. The Executive relied upon and trusted in MCGEE to help the Executive in his struggle with alcoholism, and confided in MCGEE for that purpose.

15. In or about the first week of July 2008, during a discussion that took place immediately following an AA meeting the Executive had just attended with MCGEE, the Executive confided in TIMOTHY MCGEE that his difficulties with drinking were in large part due to the stresses he faced at work as a result of PHL Y's negotiations with a potential acquirer. At this time, and continuing over the course of the following weeks, the Executive informed MCGEE about the merger discussions between PHL Y and Tokio Marine. At all times, the Executive and MCGEE understood that the information regarding PHL Y's impending sale was shared in confidence, and with the expectation that MCGEE not risk exposing the confidence by engaging in stock trades.

16. On or about July 14, 2008, TIMOTHY MCGEE purchased 1,000 shares of

PHLY stock.

17. On or about July 17, 2008, TIMOTHY MCGEE purchased 8,250 shares of

PHLY stock.

18. On or about July 18, 2008, TIMOTHY MCGEE purchased 1,000 shares of

PHLY stock.

19. On or about July 22, 2008, TIMOTHY MCGEE purchased 500 shares of

PHLY stock.

20. MCGEE did not disclose his purchases of PHL Y stock to the Executive prior to his trades. MCGEE's undisclosed purchases of PHL Y stock while in possession of material non-public information about PHL Y violated (a) the fiduciary and other duties of trust and confidence he owed to the Executive and (b) MCGEE's agreement to keep confidential information learned from fellow AA members in the course of discussions related to drinking and sobriety.

21. On or about July 17, 2008, using the information he had unlawfully obtained from the Executive, TIMOTHY MCGEE further breached the duties of trust and confidence he owed to the Executive by tipping a friend and co-worker who is also a registered representative ("Tippee #1") to buy PHL Y stock. As a direct result of MCGEE's unlawful use and disclosure of the information he had obtained from the Executive, on July 17, 2008 Tippee #1 bought 19,560 shares of PHL Y stock in his own brokerage accounts and in the brokerage accounts of his wife, parents, sister and grandmother. Also as a result of MCGEE's unlawful use of the information he had obtained from the Executive, on or about July 17, 2008, Tippee #1 tipped his close friend ("Tippee #2") to buy PHL Y stock. Beginning on July 17, 2008 and

continuing through July 22, 2008, Tippee #2 purchased 33,000 shares of PHL Y stock.

22. On or about July 23, 2008, PHL Y and Tokio Marine publicly announced their merger agreement, and PHL Y stock rose in value by approximately 64 percent over the prior day's trading.

23. On or about July 25, 2008, TIMOTHY MCGEE sold 4,750 shares of PHL Y stock for \$58.50 per share, and kept his remaining PHL Y stock until the consummation of the merger on December 1, 2008, when he received \$61.50 per share of PHL Y stock pursuant to the merger agreement. In all, MCGEE netted personal profits of approximately \$292,000 from his unlawful PHL Y trades.

24. On or about July 23, 2008, Tippee #1 sold 2,665 shares of PHL Y stock from the accounts held by himself and his wife, 1000 shares from his sister's account, 4000 shares from his grandmother's account, and 1600 shares from his parents' account, retaining the remaining shares until the merger consummated on December 1, 2008. In all, Tippee #1 reaped profits of approximately \$508,600 for himself and his family members as a result of MCGEE's unlawful disclosure of information to Tippee #1.

25. On or about July 23, 2008, Tippee #2 sold all 33,000 of the PHL Y shares he had purchased the week prior, reaping profits of approximately \$783,000 as a result of MCGEE's unlawful disclosure of information to Tippee #1.

In violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2, and Title 18, United States Code, Section 2.

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this indictment:

1. Paragraphs 1 through 12 and 14 through 25 of this indictment are incorporated here.
2. On or about September 16, 2009, in Philadelphia, Pennsylvania, in the Eastern District of Pennsylvania, defendant

TIMOTHY MCGEE

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 officers of the United States Securities and Exchange Commission taken to pursuant to a subpoena issued under Section 21(a) of the Securities and Exchange Act of 1934, that he would testify, declare, depose and certify truly, willfully and contrary to such oath, stated and subscribed material matters which he did not believe to be true, specifically, when asked the following questions MCGEE gave the following answers, the underlined portions of which were false:

Specification 1 (page 110, line 1 to line 14)

Q: Did you have any information prior to making your purchases in Philadelphia Consolidated in July of '08 that there might be something afoot at the company, that there might be something happening with the stock?

A: No.

Q: You didn't get a feeling from anyone that there was some activity, maybe

[PHLY executives] weren't at a certain event that they were always at and you thought something might be going on, that they were busy?

A: No, there was nothing like that.

Specification 2 (page 121, line 11 to page 122 line 17)

Q: Any other events¹ that you recall in let's say – beginning in maybe March of '08 going forward?

A: March of '08?

Q: Anything from that time forward till you bought?

A: No.

Q: How about any contacts, do you recall having any conversations or contacts with [PHLY executives]?

A: Oh, I talked to [the Executive], you know, just checked in with him. Made sure he was doing alright in our common deal. There's a certain amount of our conversations that kind of revolve around that bike environment.

Q: In any of these interactions that you had with him during that time frame, did you ever sense or pick up any type of information or queue [sic] that would suggest that the company was going to be purchased?

A: I did not.

Q: Was there any rumors going on that you heard about the company being bought that led you to purchase the stock in July?

A: No. I knew nothing. I mean there was not a factor.

¹ Referring to “trialthlons or other types of charity events” in which McGee would see certain PHLY executives, p. 120 lines 16-19.

Q: And there's no indication from any of the family members, generic or otherwise, to suggest to you to purchase the stock, whether it not be specific about whether you bought out, but any other indications to you that it might be a good time to buy the stock?

A: If there were, it was so generic that I didn't pick up on it. I mean I did not pick up on anything. I did not recognize any comment that made me take pause to think.

In violation of Title 18, United States Code, Section 1621.

A TRUE BILL:

GRAND JURY FOREPERSON

ZANE DAVID MEMEGER
United States Attorney