

The New York Times**Business Day****Wall Street; An Embarrassment on the Amex**

By Floyd Norris
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Correction Appended

THE American Stock Exchange requires listed companies to provide financial information to their shareholders. But for nine months, an insider at one Amex company sold his shares while the company kept its bad news secret.

That news, much of which came out last week, includes a default on loans, a two-year lag in filing tax returns, and a lawsuit that could put the company out of business.

The company in question is North American Recycling Systems, a small firm based in Fort Edward, N.Y. The company has been losing money at a rapid rate, selling assets to stay barely afloat. Its chairman and largest shareholder, Robert Barber, goes on trial tomorrow on charges of bribing a former supervisor in Washington County, N.Y., to get approval for a company plant. The supervisor, William Nikas, who is also a defendant, is now general counsel of North American.

The company's annual report for the fiscal year ended May 31, 1993, was due by the end of August, but was filed with the S.E.C. only last week. Before that, there had been no S.E.C. filings since last April.

During that period, the Amex seems to have done exactly nothing to protect shareholders in the company, although officials knew North American was missing S.E.C. filing deadlines. Amex officials last week refused to be interviewed, but did provide a written statement saying that the decision to allow the company to continue trading was made in light of the fact it had issued a few news releases during the long period when it was delinquent in its S.E.C. filings. Those press releases failed to mention numerous important facts, however, including the existence of a major lawsuit against the company that was filed 14 months ago.

In a brief interview last week, David Norris, the president of North American, said the Amex had not put any pressure on the firm to file its financial statements. He blamed the long delay on the company's former chief financial officer, and said two delinquent quarterly reports would be filed soon.

But while the Amex was doing nothing, John P. McGrain was quite busy. Mr. McGrain runs Conversion Industries, another Amex listing whose business is finding small companies and, in return for a cut of the equity, taking them public. That is how North American went public in 1992. Mr. McGrain is a director of North American and a member of its executive and audit committees, and, Mr. Norris said, was kept fully informed of the company's situation.

Mr. McGrain sold North American stock in the open market in July, October, November and December of 1993, and in January of this year. Reports of such sales by directors are due by the tenth day of the month following the sale, but Mr. McGrain did not get around to filing any of his reports until last month. Early this month, he advised the S.E.C. of his intent to sell still more shares. If those sales went through, as appears likely, he took in about \$400,000 selling 73,728 shares, the bulk of his holdings, for an average price of about \$5.38 per share. Conversion also was a seller of 5,000 shares at an average price of \$4.38.

It is illegal for a director to sell stock in a company while in possession of material non-public information. How does Mr. McGrain justify his actions? We don't know, because he did not return repeated phone calls. Donald Clark, the No. 2 man at Conversion, dismissed the Conversion sales as being so small they would not be of "any concern to anybody," but he said he could not speak for Mr. McGrain. Late Friday, someone dumped 110,000 shares of stock at \$5 a share, 75 cents below the market price at the time. Mr. Clark said the seller was not Conversion.

The legal problems besetting Mr. Barber, the company's chairman, and Mr. Nikas, the company's general counsel, stem from the period in the mid-1980's when Mr. Nikas was a supervisor of Washington County, a dairy-farming region with 55,000 residents north of Albany. He also served as chairman of the county's solid-waste committee.

In those roles, he led the negotiations with Mr. Barber for the construction of a trash-burning plant in the county, to be owned partly by North American. The county promised to cover losses if not enough trash came in, a promise that is costing it a lot of money.

The bribery and conspiracy charges against the two men claim that during the same period Mr. Nikas provided legal services to Mr. Barber and companies he controlled, and was promised an interest in other companies Mr. Barber was starting, without disclosing such conflicts of interest.

In a news release last week, North American expressed confidence that the two men would be exonerated, and added that the company "is not affected and has no liability with regard to the pending litigation."

That is not the way E. Stewart Jones Jr. sees it. Mr. Jones, who is representing Mr. Nikas in the matter, says the criminal charges are part of an effort by Washington County to get out of its contract. "It has worked out economically badly for the county, and they are taking a financial hit," he said, adding that the county hopes that a conviction will lead to its victory in a civil racketeering suit filed in early 1993 against the two men, North American, and other defendants, seeking damages of more than \$10 million.

North American now has a negative net worth of \$3.9 million. One of the loans that is in default has been extended only through next month. Its auditor has questioned its ability to continue as a going concern. But its stock price has held up remarkably well, falling just 25 cents to \$5.625 last week, giving it a total value of \$30 million. Whether it will hold up after the annual report is more fully disseminated remains to be seen.

But what is clear is that the Amex gave its good name to the stock by continuing to trade it for months and months while complete and accurate financial information was available only to corporate insiders. And that allowed one of those insiders to get out while the getting was good.

Correction: April 3, 1994, Sunday *The Wall Street* column on March 20, about trading in shares of North American Recycling Systems, misstated the date of certain disclosures by the company. It was in a filing with the Securities and Exchange Commission in February 1993, not last month, that North American first disclosed a civil suit accusing it and other defendants of racketeering violations.

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