

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

**NORTHERN DIVISION**

**FILED**

**MAY 08 2007**

**U.S. DISTRICT COURT  
BAY CITY, MICHIGAN**

**THE DOW CHEMICAL COMPANY**

**Plaintiff,**

**v.**

**J. PEDRO REINHARD and  
ROMEO KREINBERG**

**Defendants.**

Case No:

**07-12012**

**COMPLAINT**

**THOMAS L. LUDINGTON**

**JURY TRIAL DEMANDED**

Plaintiff The Dow Chemical Company ("Dow" or "Plaintiff"), by and through its attorneys, for its Complaint against Defendants J. Pedro Reinhard ("Reinhard") and Romeo Kreinberg ("Kreinberg") (collectively, "Defendants"), states as follows:

1. For decades, and at all relevant times, Defendants Reinhard and Kreinberg were among Plaintiff Dow's most senior and trusted executives. But in clear breach of their fiduciary duties to Dow, Defendants engaged in unauthorized and undisclosed discussions with third parties regarding proposed transactions that were fundamental to the future course of the company. Unaware of this information, Dow was enveloped by a swirl of extraordinarily disruptive published rumors that Dow was about to be hostilely acquired by a third party. As a result, Dow was forced to embark on a distracting and frustrating search to determine the validity and source of those rumors. Despite their awareness of this search and the adverse impact of the rumors on the company's many employees, Defendants never disclosed their participation in third-party discussions regarding proposed transactions.

2. Dow brings this action to recover damages for Defendants' breaches of fiduciary duty, as well as to recover moneys owed by Defendants to Dow pursuant to various written agreements with the company that are described more fully below. Dow also seeks a declaration that, as a result of Defendants' breaches of fiduciary duties and breaches of contract, Dow has no further financial obligations to Defendants.

### **THE PARTIES**

3. Plaintiff The Dow Chemical Company has its principal place of business in Midland, Michigan, where for over a century its headquarters has been located. Dow is a leader in science and technology, providing innovative chemical, plastic and agricultural products and services to many essential consumer markets. Dow, including its consolidated subsidiaries, had annual sales of \$49 billion in 2006 and employs approximately 43,000 people worldwide. The company is a Delaware corporation and is publicly-traded on the New York Stock Exchange.

4. Defendant J. Pedro Reinhard is an individual residing in Key Biscayne, Florida. Reinhard previously served as Dow's chief financial officer and is a member of Dow's Board of Directors until May 10, 2007.

5. Defendant Romeo Kreinberg is an individual residing in Key Biscayne, Florida. At the time of his termination from Dow, Kreinberg was Dow's executive vice president for the Performance Plastics & Chemicals Portfolio.

### **JURISDICTION AND VENUE**

6. There is complete diversity between Plaintiff and Defendants, and the amount in controversy exceeds \$75,000 exclusive of interest and costs. This Court therefore has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391. A substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial district. The ultimate focal point of this dispute is Dow's headquarters and principal place of business in Midland, Michigan, which was the target and victim of Defendants' misconduct.

### **FACTUAL ALLEGATIONS**

#### **I. DOW HIRES DEFENDANTS, AND DEFENDANTS RISE TO BECOME SENIOR EXECUTIVES AT DOW.**

8. Defendant Reinhard joined Dow on October 14, 1970 and rose to become one of Dow's most senior and trusted executives. After initially joining Dow's Finance Department, Reinhard was appointed finance director of Dow Brazil in 1978. After three years in that position, Reinhard was appointed finance director of Dow Europe in 1981. Reinhard was elected an assistant treasurer by Dow's Board of Directors in 1984 and became vice president of Dow Europe and managing director of Dow in Italy in 1985. He was elevated to treasurer of The Dow Chemical Company in 1988, was named a vice president of the company in 1990 and was elected financial vice president in 1995. Also in 1995, Reinhard was elected to the Board of Directors, the Executive Committee, and the Finance Committee. He was also named chief financial officer. Reinhard was elected executive vice president in 1996. Reinhard retired as chief financial officer effective October 1, 2005 and retired as an executive vice president effective December 31, 2005, though he retained his position on Dow's Board of Directors.

9. As a senior executive and director at Dow, Reinhard was intimately involved in Dow's most important strategic decisions and had access to Dow's most sensitive, proprietary, and confidential information. As a result of his various positions, Reinhard owed Dow various fiduciary duties, including fiduciary duties of candor and undivided loyalty.

10. Defendant Kreinberg joined Dow in 1977 and also rose to become one of Dow's most senior and trusted executives. Kreinberg held a series of sales, marketing, business operations and commercial management positions in Europe until 1992, when he was named general manager for Dow Italy and vice president of Dow Europe. He subsequently held global vice president and business group president positions until he became senior vice president for plastics at Dow in 2003. In 2004, he became a member of Dow's Office of the Chief Executive. After serving as Dow's senior vice president of Plastics, on September 15, 2005 Kreinberg was named executive vice president for the Performance Plastics & Chemicals Portfolio. Kreinberg was also a member of Dow's Executive Leadership Committee, which is tasked with defining Dow's strategic direction.

11. As a senior executive at Dow, Kreinberg was intimately involved in Dow's most important strategic decisions and had access to Dow's most sensitive, proprietary, and confidential information. As a result of his various positions, Kreinberg owed Dow various fiduciary duties, including fiduciary duties of candor and undivided loyalty.

## **II. DOW EMBARKS ON NEW STRATEGIC INITIATIVE.**

12. The operative events in this lawsuit find a critical point in July 2006. That month Dow held a weeklong retreat for its board and senior management. The express aims of that retreat were (i) to educate new directors about the ins and outs of serving as a board member and (ii) to discuss corporate strategy. Both Kreinberg and Reinhardt attended this meeting.

13. During this meeting, Dow's leadership heard formal presentations reviewing a proposal that Dow pursue a new strategy to extract more value from Dow's cyclical commodities

business and direct some of the resulting funds into the company's lucrative specialty-products business.

14. This July 2006 meeting culminated with the Board adopting a significant strategy to focus on Dow's higher-profit, specialty products. Dow would focus its global resources and formidable research and development on tackling pressing global issues with high-performance products.

15. Defendants were centrally involved in all aspects of this new initiative.

16. Specifically, Kreinberg played a key role in executing this plan. He served as a senior executive in the critical specialty-products business. He was a leader in the new focus on these markets. Kreinberg had access to all manner of detailed plans for these products, operations, and overall business.

17. As a director, Reinhard was also directly responsible for overseeing this new strategy. He received regular updates on its implementation. He participated actively in essential oversight and direction. Reinhard knew exactly where Dow was moving.

18. Armed with their knowledge of Dow's innermost secrets and latest plans, Defendants would launch themselves on a course of deception and betrayal.

**III. FOLLOWING DOW'S NEW STRATEGIC INITIATIVE, THERE ARE REPEATED PRESS REPORTS OF MAJOR PROPOSED TRANSACTIONS INVOLVING DOW, WHICH CLOUDED DOW'S FUTURE AND ROILED ITS MANAGEMENT AND EMPLOYEES.**

19. Soon after Dow began to pursue its new strategic initiative, repeated press reports began to surface that Dow was going to be involved in a major proposed transaction. These

press reports clouded Dow's future, distracted Dow from its business objectives, and roiled its management and employees. Accordingly, Dow began an effort to assuage these negative effects on Dow's business, determine the source of these rumors, and assess their validity.

20. The first press coverage was in January 2007. Specifically, on the morning of January 18, 2007, the *Financial Times* ran a story in which it was reported that "talk in the market was that a consortium of private equity groups was working on a break-up bid for Dow Chemical."

21. The rumors in the January 18, 2007 *Financial Times* story were disruptive and a matter of great concern to Dow. Accordingly, Dow began an inquiry to determine: (i) whether there was a basis for these rumors; and (ii) the source of these rumors. As part of this inquiry, Dow pursued information from the investment banking and financial community regarding potential bids for some or all of Dow. Although both Reinhard and Kreinberg were aware of this inquiry and its importance to Dow, neither Reinhard nor Kreinberg informed Dow about any knowledge they had regarding these rumored transactions involving Dow.

22. Dow's Board of Directors discussed the January 18, 2007 *Financial Times* rumors at its February 14, 2007 board meeting. Although Reinhard attended that meeting, and Kleinberg was aware of the meeting, neither told the board members that he had any knowledge about potential major transactions involving Dow.

23. On the morning of February 25, 2007, the *Sunday Express* reported that Dow was "set to become the target of the world's largest-ever leveraged buyout," with three private equity firms ready to bid \$54 billion for Dow.

24. As with the January 18, 2007 *Financial Times* rumors, the rumors in the February 25, 2007 *Sunday Express* story were again disruptive and a matter of great concern to Dow. Accordingly, Dow vigorously continued its inquiries, including its inquiries with the investment banking and finance community, to determine whether: (i) there was a basis for these rumors; and (ii) the source of these rumors. Although both Reinhard and Kreinberg were aware of these inquiries and their importance to Dow, again neither Reinhard nor Kreinberg informed Dow about any knowledge they had about potential major transactions involving Dow.

25. On March 12, 2007, the *Evening Standard* ran a story naming a banker as the “mastermind” of a \$60 billion leveraged buyout of Dow, which would be “the largest buyout the world has ever seen.”

26. As with the January 18, 2007 *Financial Times* rumors and the February 25, 2007 *Sunday Express* rumors, the rumors in the March 12, 2007 *Evening Standard* story were again damaging and a matter of great concern to Dow. Accordingly, Dow continued its quest to determine whether: (i) there was a basis for these rumors; and (ii) the source of these rumors. Although both Reinhard and Kreinberg were aware of these inquiries and their importance to Dow, again neither Reinhard nor Kreinberg informed Dow about any knowledge they had about discussions among certain third-parties regarding potential transactions involving Dow.

27. The persistent rumors about potential transactions involving Dow were taken up specifically at a March 16, 2007 meeting of Dow’s Board of Directors, which Reinhard attended.

28. On March 15, 2007 — the day before the March 16 meeting of Dow’s Board of Directors — Kreinberg responded to an email sent to him by an employee who reported to him. The employee’s email forwarded Kreinberg the portion of the *Evening Standard* story describing

the possible \$60 billion takeover of Dow. Kreinberg authored this response: "E se non e vero, e ben trovato. Which means in italian, if its not true its well invented."

29. At the March 16 meeting of Dow's Board of Directors, Reinhard did not inform Dow that he had any knowledge about discussions among third-parties regarding potential major transactions involving Dow.

**IV. IT IS FINALLY REVEALED — BY SOURCES OTHER THAN DEFENDANTS — THAT DEFENDANTS WERE MEETING WITH INVESTMENT BANKERS REGARDING POTENTIAL MAJOR TRANSACTIONS INVOLVING DOW.**

30. The events that unfolded after the March 16 meeting of Dow's Board of Directors culminated in the identification of Defendants as persons who had played a role in discussions about potential major transactions involving Dow.

31. On April 8, 2007, the *Sunday Express* trumpeted that a buyout of Dow "could be days away, as a consortium of Middle Eastern investors and American buyout firms puts the finishing touches to an approach for U.S. giant Dow Chemical."

32. As with the previous rumors regarding potentially huge transactions involving Dow, the rumors in the April 8, 2007 *Sunday Express* story were disruptive and a matter of great concern to Dow. Accordingly, Dow continued its inquiries, including inquiries with the investment banking and finance community, to determine whether: (i) there was a basis for these rumors; and (ii) the source of these rumors. Although both Reinhard and Kreinberg were aware of these inquiries and their importance to Dow, neither Reinhard nor Kreinberg informed Dow that they had any knowledge about discussions among third-parties regarding potential major transactions involving Dow.

33. Within 48 hours of the *Sunday Express* story, information regarding potential transactions involving Dow that wasn't revealed by Defendants was shared with Dow by a major international financial institution (the "Bank").

34. On April 9, 2007, Dow issued a press release in which the company denied that it was "in play." Although the press release was reviewed by Dow's senior management and Board of Directors, neither Reinhard nor Kreinberg objected to the language in the press release, and the press release did not cause them to come forward or otherwise divulge the role they had played.

35. That same day, the Bank's CEO and another senior banker traveled to Midland, Michigan to have a previously-scheduled dinner with two senior executives from Dow, including Dow's CEO. That evening, the Bank's CEO explained that the Bank's London affiliate had been working on behalf of certain Middle Eastern investors on potential major transactions involving Dow. The Bank's CEO subsequently explained that a variety of potential transactions were being discussed, including a purchase of Dow in its entirety. He also revealed that people close to Dow were involved in the discussions, and he committed to identifying who those persons were.

36. On April 10, 2007, a day after their dinner, the Bank's CEO called Dow's CEO and identified Reinhard and Kreinberg as the Dow employees involved in the discussions with third-parties about a major transaction involving Dow. He also told Dow's CEO that these two Dow employees had discussions with representatives of the Bank's London affiliate.

**V. DOW'S BOARD OF DIRECTORS ACTS DELIBERATELY AND PROMPTLY TO TERMINATE DEFENDANTS' EMPLOYMENT.**

37. Accordingly, three months after the extraordinarily distracting rumors about Dow first surfaced, Dow finally learned that two of its most trusted senior executives had not disclosed their personal involvement in unauthorized discussions with third-parties at the center of the rumored transactions. This startling realization was worsened by the fact that Dow did not learn of the senior executives' involvement from the senior executives themselves, but rather from a third party source.

38. Early on April 11, 2007, Dow's CEO informed Dow's Presiding Director and the Chair of Dow's Audit Committee of the information that he had learned from the Bank's CEO. Dow's Board of Directors had a regularly scheduled meeting on April 11, and Dow's CEO, as Chairman, made this the first item of business for the meeting at 3:45 p.m. Reinhard was not present at the meeting as he had previously informed Dow's CEO that he had a conflict that day. Dow's CEO presented to the Board the information he had, and then asked for the Board's thoughts as to how he should proceed. The Board discussed the situation at length and asked many questions about the activities of Reinhard and Kreinberg and the credibility of the information provided to Dow's CEO by the Bank's CEO. There was unanimous agreement among the directors that the information was credible, and that the two employees should be terminated.

39. However, the Board asked Dow's CEO to meet with each employee, present the newly-uncovered information, and ask for their explanation. Those meetings were arranged for 7:00 a.m. on April 12, 2007. The Board asked the following individuals to join Dow's CEO at

the meetings: Charles Kalil, Paul Stern, and Arnold Allemang (a member of the Board). Martin Lipton, outside counsel for Dow, also attended.

40. On April 12, 2007, the group identified above met separately with Reinhard and then with Kreinberg, beginning at 7:00 a.m. Both Reinhard and Kreinberg denied the allegations against them without offering any sort of explanation.

41. Given the aforementioned denials, and following those meetings, Dow's CEO and its outside counsel placed calls to the Bank's CEO and the Bank's general counsel. The Bank's CEO reconfirmed the information that he had previously provided to Dow's CEO.

42. The Executive Committee of Dow's Board met the morning of April 12, 2007 and the other Directors, with the exception of Reinhard, were invited to attend. Dow's CEO informed the Committee of the meetings with Reinhard and Kreinberg, the fact that their employment was terminated, as well as the follow-up calls to the Bank's CEO and general counsel. The Committee then voted to remove Kreinberg as a Dow officer.

43. As a result of their serious misconduct and conduct harmful to the interest of the company, including their breaches of fiduciary duty and breaches of the express terms of their contracts with Dow, Dow terminated the employment of Reinhard and Kreinberg.

**VI. REINHARD AND KREINBERG HAVE PLAINLY BREACHED THEIR COMPENSATION AGREEMENTS WITH DOW.**

44. Dow acted promptly to terminate the Defendants' employment due to their repeated and serious misconduct that served to advance their own agendas at the expense of Dow. As described in more detail below, Defendants' actions and the consequent termination of their employment by Dow has serious effects on their past and present compensation

arrangement, including the cancellation of certain outstanding equity awards and the obligation of Defendants to repay certain amounts previously realized in respect of certain equity awards.

45. Both Defendants have received significant equity-based awards under, among other plans, The Dow Chemical Company 1988 Award and Option Plan (the "1988 Plan"). Each Defendant has received the following relevant equity awards under the 1988 Plan: (i) awards of stock options ("Stock Options"), (ii) awards of performance shares (including certain performance deferred shares) ("Performance Awards") and (iii) awards of deferred stock (including certain other performance deferred shares) ("Deferred Stock Awards"). In addition, both Defendants receive dividend unit awards ("Dividend Units") under The Dow Chemical Company Dividend Unit Plan (the "Dividend Unit Plan"). These four types of awards are referred to as the "Equity Awards." Immediately prior to the termination of his employment, Kreinberg had outstanding Equity Awards with an estimated value of \$15,000,000 and, in the three years prior to his termination, Kreinberg had recognized approximately \$5,000,000 in value from his Equity Awards. Similarly, immediately prior to the termination of his employment, Reinhard had outstanding Equity Awards with an estimated value of \$16,200,000 and, in the three years prior to his termination, Reinhard had realized approximately \$14,700,000 in value from his Equity Awards. These awards were made by Dow to, among other things, encourage and reward loyal service to Dow.

**A. Equity Awards Issued Under the 1988 Plan**

46. The 1988 Plan is administered by Dow's Compensation Committee. Section 4.02 of the 1988 Plan provides that the Compensation Committee has the full power to interpret and administer the Plan and that any "interpretation by the [Compensation] Committee of the terms

and provisions of the Plan and the administration thereof, and all action taken by the [Compensation] Committee, shall be final, binding and conclusive on the Company, . . . all Employees, their respective legal representatives, successors and assigns and upon all other persons claiming under or through any of them.”

47. Each Equity Award made to the Defendants under the 1988 Plan is subject to the terms and conditions of the 1988 Plan itself and an award agreement that sets out certain very specific conditions that apply to such awards. Although the terms and conditions applicable to each such Equity Award vary somewhat in detail, and with one exception not here relevant, each Equity Award issued to Defendants under the 1988 Plan that is relevant to this claim provides that (i) the Equity Award is immediately canceled and forfeited if the holder’s employment with Dow and its affiliated companies is terminated for any reason other than death, disability or retirement, (ii) each Equity Award that has not previously been terminated is canceled and forfeited if the holder engages in certain activities determined to be harmful or adverse to Dow or its affiliates and (iii) if the holder engages in certain activities determined to be harmful or adverse to Dow or its affiliates, the holder may be required to repay any value the holder received in respect of any Equity Award during the three-year period preceding such activities.

48. By way of example, Section 2 of certain agreements covering Stock Options granted to the Defendants provide that “[e]xcept in the case of death, disability or retirement, this Agreement shall terminate as soon as you are no longer employed by the Company or any Subsidiary or Affiliate (collectively, a “Dow Company”), notwithstanding the fact that the stated term of this Agreement may not have expired.” Section 7 of these Stock Option agreements provide that “[i]f you engage . . . in any activity harmful to the interests of a Dow Company, including but not limited to conduct related to your employment for which either criminal or

civil penalties against you may be sought, . . . then any Option under this Agreement shall terminate effective on the date on which you enter into such activity. . . . The Compensation Committee shall, in its sole discretion, determine whether the above conditions have been met, and the determination of the Compensation Committee shall be final and binding as to all parties.” Section 6 of these Stock Option agreements further provide that “[i]f at any time within three years after you exercise any portion of this Option you engage in any activity, . . . harmful to the interest of a Dow Company, including but not limited to conduct related to your employment for which either criminal or civil penalties against you may be sought, . . . any [option spread realized] on the date of exercise shall be paid by you to the Company.”

49. In the same vein, Section 6 of certain agreements covering Performance Awards granted to each Defendant provide that “[e]xcept in the case of retirement, disability or death, this Agreement shall terminate upon your voluntary or involuntary termination of a Dow Company. Participation shall be automatically terminated and all rights under this Agreement forfeited by you if the Compensation Committee, in its sole judgment, determines that you have at any time during the term of this Agreement engaged in any activity harmful to the interests of or in competition with a Dow Company.” Section 8 of these Performance Award agreements further provide that “[i]f at any time within three years after the end of the Performance Period, you engage in any activity . . . harmful to the interest of a Dow Company, including but not limited to conduct related to your employment for which either criminal or civil penalties against you may be sought, . . . the [value previously received pursuant to the Performance Award] shall be paid by you to the Company.”

50. Section 4 of certain agreements covering Deferred Stock Award granted to Defendants similarly provide that “[t]his Agreement shall terminate and your rights under this

Agreement shall be forfeited if your employment with any Dow Company is terminated for any reason other than death, disability or retirement.” Section 8 of these Deferred Stock Award agreements further provide that “[i]f you at any time during the term of this Agreement you engage in any act of Unfair Competition (as defined below), this Agreement shall terminate effective on the date on which you enter into such act of Unfair Competition . . . In addition, if at any time within three years after issuance and delivery of this Deferred Stock you engage in any act of Unfair Competition, you shall promptly pay to the Company the [value previously received pursuant to the Deferred Stock Award]. The Compensation Committee shall, in its sole discretion, determine when any act of Unfair Competition has occurred, and the determination of the Compensation Committee shall be final and binding as to all parties. For purposes of this Agreement, the term ‘Unfair Competition’ shall mean and include activity on your part that . . . is or may be harmful to the interests of a Dow Company, including but not limited to conduct related to your employment for which either criminal or civil penalties against you may be sought . . . .”

**B. Equity Awards Issued Under the Dividend Unit Plan**

51. The Dividend Unit Plan is also administered by the Compensation Committee. Section 4.02 of the Dividend Unit Plan provides that the Compensation Committee has the full power to interpret and administer the Plan and that any “interpretation by the Compensation Committee of the terms and provisions of the Plan and the administration thereof, and all action taken by the Compensation Committee, shall be final, binding and conclusive on the Company, . . . all Employees, their respective legal representatives, successors and assigns and upon all other persons claiming under or through any of them.”

