

The Daylight Raid of A.G. Edwards

By Mike Kroll

On Tuesday, December 3rd a remarkable event occurred in Galesburg's financial history. With but one exception every employee of Everen Securities' Galesburg office simultaneously resigned *en masse* to join rival brokerage firm A.G. Edwards. The defecting employees included Everen's Sr. Vice President, Registered Representative and Branch Office Manager Sid Carlson; Broker and Registered Representative Loren Wright; Branch Office Operations Manager Sandra Hillier; and Branch Office Wire Operator Kathey Walker. The sole remaining employee of Everen's Galesburg branch office is Broker and Registered Representative Steve Eiker.

In the parlance of the securities industry, what occurred was a "raid."

When Eiker showed up for work that morning, Carlson presented him the keys to the office and told him he was now the only remaining employee. Eiker was caught totally by surprise; he says he had no indication that his coworkers were planning a mass exit. Carlson or someone else had apparently thought there might be trouble; someone arranged for two police officers to be there to observe as Carlson presented Eiker the keys and walked away. Eiker then called his company's Chicago headquarters and told them what happened. They immediately sent employees from Peoria and Chicago to insure continued operation of the Galesburg branch. One of the first to arrive was Vice President of Compliance Brenda Fournier. Her job was to determine a "damage" assessment on the raid and to gather documentation for Everen's legal counterattack.

Almost immediately upon being informed of the resignations, Everen's lawyers drafted both a complaint for injunctive relieve and a motion for a temporary restraining order (TRO). The facts portrayed in these documents were largely the result of Fournier's initial efforts combined with information gathered from Eiker. The papers were filed with the Knox County Circuit Clerk the very next day. They paint a not-so-pretty picture of the so-called "raid."

During the weeks and months prior to December 3rd, officials of A.G. Edwards allegedly offered inducements to the Everen staff to not only resign but to systematically collect a wide variety of customer and company information to be brought with them when they changed firms. The client data reportedly contained "confidential financial and historical information regarding Everen's clients, including customer identities, addresses telephone numbers, transactional histories, tax information, personal financial data, banking information and investment objectives."

Additionally, Carlson's position as Branch Manager provided him "access to all confidential customer information for customers serviced by Everen's Galesburg branch office" and "confidential information concerning his branch's profitability and the performance of the brokers under his supervision." Allegedly Carlson was offered "\$150,000 in the form of guaranteed salary, draw and other extraordinary compensation for overseeing the theft of Everen's client information and the recruitment of Everen's employees."

Everen also claims that both Carlson and Wright are prohibited from soliciting business from their former

Everen customers for period of 30 days by virtue of a "training agreement" both men signed upon joining Everen's predecessor firm, Blunt Ellis & Loewi. Carlson joined Blunt Ellis & Loewi in 1983 and Wright in 1990. Neither had any prior experience in the securities field and both received four months of paid training in Milwaukee. Blunt Ellis & Loewi later became Kemper Securities, which in turn became Everen following an employee buyout in 1995.

By Federal law, all brokerage firms employees' day-to-day actions are governed by a "*Compliance and Sales Practices*" manual issued by each firm. This manual details the rules and regulations pertaining to the trading of securities, each broker's legal responsibilities and the firm's policies and procedures. Both Wright and Carlson signed forms in June 1993 acknowledging their receipt and reading of this manual when issued by Kemper Securities.

Everen (through its predecessors) was the first brokerage firm to open a branch office in Galesburg 45 years ago. A.G. Edwards is relatively new in town having opened its Galesburg office only one year ago with two brokers. Everen's attorneys argue that the purpose of a raid is twofold. "In addition to avoiding the usual costs and years of work necessary to create a client base to support a successful branch office, it was A.G. Edwards' intent to so decimate Everen's Galesburg branch office that it would no longer be able to effectively compete with the A.G. Edwards branch office."

The complicated legal maneuvering involved in this episode has brought big-city attorneys specializing in such issues to Galesburg. Everen is represented by Chris Barber and Nancy Hendrickson of the Chicago law firm Ungaretti and Harris and joined by Galesburg attorney Barry Barash of Barash and Stoerzbach. A.G. Edwards and Carlson are represented by Nicholas Iavarone of Chicago and Wright by Jack Ball of the Galesburg firm of Blake and Ball.

As is typical of most attorneys, none of these lawyers really wants to make any on-the-record comments to the press. They have likewise warned their clients and witnesses to keep their mouths shut. This restricts coverage of these events to available written court materials and court testimony.

The emergency hearing on the TRO was held on Thursday December 5th before Knox County Circuit Judge James Stewart. At the time of this hearing, the lawyers for A.G. Edwards had not filed any written response. Attorneys for both sides made oral arguments in front of a courtroom packed with intrigued Everen clients. The afternoon hearing did not take long and Stewart promised a quick decision.

Arguing on Everen's behalf, Barber requested the following relief: the return of all confidential or proprietary customer information, an injunction barring the former Everen staff from transferring any confidential or proprietary information to A.G. Edwards, an injunction barring the former Everen brokers (or other employees of A.G. Edwards) from soliciting or even accepting business from "any customer of Everen who is located within 50 miles of the Galesburg office or any customers of Everen with whom the defendant brokers have had contact prior to their resignation."

Iavarone argued that since the training agreements signed by Carlson and Wright were with Blunt, Ellis & Loewi and the *Compliance and Sales Practice Manual* was issued under the name of Kemper Securities, they were no longer legally binding. He also argued that the customer information taken by Carlson and the other former employees was neither as extensive as portrayed by Barber nor confidential and proprietary.

According to Iavarone, Carlson and his staff could have easily recreated a list of the names, addresses and

telephone numbers of Everen's 2,800 plus Galesburg-area clients with little more than their memory and a telephone book or city directory. Furthermore, Iavarone also claimed that the vast majority of Carlson and Wright's former Everen clients were eager to follow their brokers to the new firm and would therefore approve of A.G. Edwards acquisition of their Everen client information.

On Friday, December 6th, Stewart issued a written ruling on Everen's TRO request. Many were surprised when that ruling seemed to favor A.G. Edwards in most respects. Stewart acknowledged that Carlson and the others "misappropriated extensive client records, in hard copy form and in a computer database" which "contain confidential, financial and historical information regarding Everen clients." Stewart even ordered the return of confidential and proprietary information but only that "not specifically authorized by the customer to be possessed by [A.G. Edwards]."

But Stewart agreed with Iavarone's arguments that the customer lists were not confidential nor proprietary since they could be otherwise reconstructed. With respect to the limitations imposed by the training agreements and the Compliance and Sales Practices Manual, that "the record was inconclusive as to what duties and responsibilities the defendants owe to Everen Securities." This aspect of Stewart's ruling probably the key aspect freed the A.G. Edwards staff to solicit Everen's customers both directly and indirectly.

In many respects this ruling is like closing the barn door after the livestock had escaped. A major part of Carlson's duties at Everen was to supervise the branch office staff "to ensure their compliance with Everen rules and procedures." By inducing Carlson to not only switch employers, but also to spend weeks before he left accumulating material from Everen to be brought over to A.G. Edwards, most of Everen's in-house security measures were easily circumvented.

On Thursday, December 16th both parties were back in Knox County Circuit Court again standing before Judge Stewart. This time Everen was to begin arguing for injunctive relief from A.G. Edwards as well as from Carlson and Wright individually. Everen alleged six counts against the defendants. A.G. Edwards was accused of "unfair competition" and, in conjunction with Carlson and Wright, of "misappropriation of trade secrets" as well as "aiding and abetting breach of fiduciary duty and conspiracy." Both Carlson and Wright were individually accused of "breach of contract" and Carlson alone with "breach of fiduciary duty."

Testimony was taken in the Courthouse's third floor courtroom. Aside from the contesting parties, the husband of Sandra Hillier and myself, no one else attended what turned out to be a full day of testimony. Barber handled the presentation of Everen's case and Iavarone handled most cross examination on behalf of A.G. Edwards, with occasional assistance from Ball. By the conclusion of that day in court, Everen had not yet even concluded its case and A.G. Edwards hadn't begun its defense.

The day began with Everen's compliance officer Brenda Fournier explaining her company's view of what occurred during the "raid." She arrived late afternoon on Tuesday the third and worked into the evening searching for and cataloging all of the Galesburg branch's local records. Fournier testified that what she found was typical of the many other raid situations she has investigated.

She described how brokerage offices maintain files on all clients. Federal regulations require that all correspondence between clients and the brokerage must be maintained. In addition, there are copies of legal documents from trusts, powers of attorney and tax information. Most of this information is also used by the broker in the course of daily account transactions.

In the case of Everen, Fournier testified that all original documentation is sent to a corporate storage facility in either Chicago or Milwaukee. Photocopies are kept in the branch office for use by the local brokers. The office files also include trading receipts and account statements. When she arrived in the Galesburg office, she found client files for only about 100 accounts out of a total of over 2,800. She claims the account files that remained were for inactive or closed accounts.

Following the December 6th ruling by Judge Stewart on the TRO, A.G. Edwards returned a total of six "bankers boxes" full of information. Most was in the form of three-ring binders but none contained any client files. The last branch office audit conducted by Everen compliance officials this past October found nothing missing. Fournier testified that file drawer after file drawer in the Galesburg office were either empty or contained only outdated sales materials the night of December 6, 1996.

Iavarone was merciless in his cross examination of Fournier. His principal point was that there never were any such client files in the Galesburg office. While Fournier firmly maintained that the records existed and were missing Iavarone attempted (with no small degree of success) to demonstrate that many of the specifics which led to Everen's allegations were based on assumptions made by Fournier or on nonrepresentative anecdotal or hearsay evidence.

Fournier was clearly distressed upon leaving the witness stand. In contrast, Sandra Hillier, formerly the Operations Manager and Sales Associate for Everen, was clearly the day's most poised and convincing witness. Called by Barber, she described just how the raid was carried out from her perspective.

Carlson must have been approached by representatives of A.G. Edwards sometime prior to November. During that month they individually made employment offers to Wright, Hillier and Walker. In Hillier's case she first filled out an A.G. Edwards employment application on November 21st and again immediately before the December 3rd joint resignation.

Between the time of her initial acceptance of the A.G. Edwards position and December 3rd, Hillier recounted how she systematically printed out client information from the Everen computer system and photocopied "thousands of documents of client information." All this was done at Carlson's direction with the use of Everen's equipment and materials. Adding to the audacity of this whole affair, all the copying was done during regular Everen business hours against Everen's payroll.

Hillier testified that she gave all this material to Carlson who removed it from the Everen offices presumably to transfer it to A.G. Edwards. The information taken did not just concern clients of Carlson and Wright. "Mr. Carlson instructed me to print out the name and address files of Everen clients and it was simpler to copy all of the client names including those of Steve Eiker. I then gave Mr. Carlson all of my copied computer data."

On the weekend immediately prior to the joint resignation, Carlson, Wright, Hillier and Walker were all hard at work in A.G. Edwards' Galesburg office on N. Henderson St. They worked all day Saturday and much of Sunday entering Everen client information into the A.G. Edwards computer system. By the time Everen officials had even a whiff of what had occurred, the damage had already been done. Even if A.G. Edwards and Carlson had returned all of the materials taken from Everen (which they admittedly did not) as required by the TRO, it really wouldn't have mattered much.

Hillier went on to testify that "we began sending letters to the entire Everen client list announcing that

Carlson and Wright had left Everen to join A.G. Edwards on Tuesday, December 3rd. During the next three days every single client should have received such a letter." Following their resignation, Carlson and Wright were not yet registered as brokers for A.G. Edwards, which limited their actions somewhat.

Following the mailing of the "announcement" letter a packet of information was sent to all of the Everen clients. This packet contained a carefully worded letter from either Carlson or Wright and a solicitation letter from A.G. Edwards broker Jack Crock inviting the clients to follow their brokers to A.G. Edwards. Also in the envelope was a partially completed form necessary to legally transfer a brokerage account from one firm to another.

One of the advantages A.G. Edwards reaped from the records Carlson and the others brought with them was sufficient information to greatly simplify the effort necessary for clients to make the switch. By filling out much of this form with this information including client social security numbers and Everen account numbers they could have made switching brokers a cakewalk. Unfortunately for A.G. Edwards, the TRO prohibited making such complete use of the purloined data. Customers desiring to switch have to do more than simply sign their name at the bottom of the form.

After the December 6th ruling on the TRO, A.G. Edwards was prohibited from using the Everen data. No clear indication was offered of the number of client solicitation packets which went out prior to that date and therefore could have taken full advantage of the Everen database information. "We intended to use all of the available information before the temporary restraining order was issued but we didn't use any other information than name, address and telephone number even though more information was available to us," testified Hillier.

Barber asked Hillier if she was familiar with Everen's prohibition on the disclosure of client information. She indicated that she was. He went on to ask if any of the defecting Everen employees at any time sought permission from individual clients to take copies of their information. "Common sense was enough to tell me that client information was confidential and not to be disclosed or disseminated without permission. We did not receive client permission to take any of their information from Everen."

The final witness called by Barber that day was Carlson. His testimony corroborated much of what Hillier said and offered even more detail and insight into the chain of events. Carlson testified that in the days and weeks preceding his resignation from Everen, he "took home at least two dozen banker's boxes of materials from the office."

The material taken included twelve or more years of daily commission reports Carlson had saved, his branch employee files containing performance documentation, personnel evaluations and insurance claim data. These boxes also contained the thousands of pages Hillier turned over to him *as well as many more he copied himself*. "I copied virtually all of the documents regarding my personal accounts. I brought binders home and copied documents in my home on my own photocopier. I began this process during the weeks immediately prior to my resignation from Everen and I purchased my own copier paper at Wal-Mart."

The most startling admission Carlson made was that he personally burned much of the information he and his defecting staff took from the Everen offices in his backyard! The first time was the weekend before his resignation and the last time was on Wednesday December 5th. This was nothing new. Carlson testified that he customarily "burned records in my backyard about twice a year while at Everen. Our shredder wasn't capable of handling large amounts of records."

"After the computerization of our office there was no need to keep all of the old and outdated client records. I instructed my staff to destroy outdated types of documents and copies of letters which were no longer needed." Carlson said this explained why Fournier failed to find the disputed client files; according to him they never existed. All information needed by the office's brokers was available on the Everen computer system.

Carlson lives on a small farm in rural Knox County near Rio. On the occasion of the weekend burning, he recounted destruction of box after box of the daily commission reports from the Galesburg Everen office. These reports itemized each day's trading activity for each of the brokers in the office, including the commission earned. "I figured that Everen would replace us with new brokers and I didn't want anyone newly assigned to the Galesburg office to be able to look through documentation of my personal performance. I didn't think that would be right."

He also reportedly burned all the personnel information and client data regarding Eiker's Everen clients which had been taken with the rest. After admitting and itemizing the range of the Everen information and documents he directed to be collected, Carlson was asked by Barber why he conducted the burning and if anyone witnessed the event. Carlson answered. "I never discussed the destruction of records with anyone else. No one was with me when I burned the documents."

When Carlson was asked why he took so much away with him virtually cleaning out the office he answered simply, "I was concerned about leaving the Everen office neat and tidy when I left." Asked why he volunteered his testimony regarding the burning when it was unlikely to be discovered otherwise, Carlson stated, "My decision to burn documents was a case of poor judgment. Burning those documents was a stupid move. Despite the embarrassment of retelling this account of events I am doing so because I don't lie."

Barber kept questioning Carlson on his actions on behalf of A.G. Edwards while still employed by Everen as Branch Manager responsible to prevent the very activities he directed. Carlson admitted to soliciting Wright, Hillier and Walker over to the A.G. Edwards fold even to the point of having them fill out A.G. Edwards employment applications in Everen's Galesburg office on Monday, December 2nd.

Carlson corroborated Hillier's account of the staff's work at the A.G. Edwards office on the weekend prior to resigning. "No one from A.G. Edwards supervised us as we worked that weekend although some of their staff were in and out of the office during that time." He also claimed that, "there was nothing I used to create the letter to Everen clients that I could not recreate from memory with the aid of a telephone book. Using the Everen client list did make my task much, much easier."

Testimony described how Carlson and Hillier made photocopies of the September monthly statements of all Everen clients as well as the last quarterly summary. The monthly statements provided a clear record of the status and activity of all transactions for the month. The quarterly summary covered all accounts including those without recent activity.

"I planned to use the data I took from Everen to assist me in best serving my clients once they converted from Everen to A.G. Edwards. I wanted to make changing my accounts over as simple as possible for my clients. The whole point was to assure continued effective service to my clients."

Barber asked Carlson if he felt that he had done anything improper or violated the terms of his training agreement or the *Compliance and Sales Practices Manual*. "I did nothing improper. There

was nothing wrong in my taking the copies of Everen documents. They belong to my clients, not Everen, and are necessary if I am to continue serving my clients properly. It was wrong to burn the documents. I don't know why I decided to burn them. But it wasn't because I was concerned about the impropriety of my other activities."

A key contention of the defense is that neither the training agreement nor the *Compliance and Sales Practices Manual* were legally binding on the defecting employees. As Stewart pointed out in his TRO ruling, "neither document includes any provision that the terms inure to the benefit of the successors and assignees of the original company."

Carlson testified "I was unclear as to the applicability of the Kemper labeled *Compliance and Sales Practices Manual* after the name change in 1995. Everen never sent out such a manual in its own name. I never signed any employee agreement with either Blunt, Ellis and Loewi or Kemper."

At the conclusion of this first day of testimony there was still much more to come in January. The TRO, such as it is, remains in effect but both brokerage firms are now locked in a struggle over the loyalties of the Everen client base. Carlson and Wright believe that the client's loyalty is properly with the broker and those knowledgeable in the securities business confirm that most clients will follow their broker. However, this whole episode has a real stench about it which may leave many clients contemplating the wisdom of finding a totally new stockbroker.

Each of the two principal attorneys made a single on-the-record comment as court recessed for the day. Everen's Barber wanted to allay concerns about the future of the Galesburg branch office, "No matter what else happens this office is here to stay for quite some time." A.G.Edwards' Iavarone wanted to be sure that everyone understood "the actions of Carlson, Wright, Hillier and Walker prior to their resignation were at their own initiative and *not at the direction of anyone from A.G. Edwards.*"

Officially, neither firm has much to say about the incident. After repeated prodding, Benjamin F. "Tad" Edwards IV, Central Region Vice President for A.G. Edwards, issued his firm's formal response from the St. Louis main office: "We're certainly pleased about having a presence in the Galesburg area and look forward to helping current and future clients address their financial needs through our wide range of investment services. We opened our Galesburg office in December of 1995 and plan to be here for a long time."

This dispute could be in court for a long time, too.

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