

NOTICE OF FILING

Details of Filing

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File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v
ADAM BLUMENTHAL
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

UNREDACTED CONCISE STATEMENT



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Concise Statement



No. 1533 of 2023

Federal Court of Australia
 District Registry: New South Wales
 Division: General

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

ADAM BLUMENTHAL

Defendant

A. INTRODUCTION

1. ASIC alleges contraventions of the statutory duties of care and diligence and good faith owed by directors in Division 1 of Part 2D.1 of the *Corporations Act 2001* (Cth) (the **Act**). The contraventions principally arise from Mr Adam Blumenthal's roles as a director of EverBlu Capital Pty Ltd ACN 612 793 683 (**EverBlu**) and Creso Pharma Limited ACN 609 406 911 (**Creso**) from 18 March 2021 to 15 November 2021 (the **Relevant Period**). During the Relevant Period, Mr Blumenthal was also the director of Anglo Menda Pty Ltd ACN 608 554 052 (**Anglo Menda**), which (during the Relevant Period) was an Authorised Representative of EverBlu.
2. The proceeding also concerns allegations that Mr Blumenthal contravened the market manipulation provisions in Division 2 of Part 7.10 of the Act in the Relevant Period in relation to trading in the fully paid ordinary shares of Creso on the Australian Securities Exchange (**ASX**).

B. IMPORTANT FACTS GIVING RISE TO CLAIM

3. EverBlu was incorporated on 3 June 2016. Mr Blumenthal is part owner and the controlling mind of EverBlu.
4. EverBlu has operated under Australian Financial Services Licence (**AFSL**) No. 499601 since 21 September 2017, providing research, corporate advisory and stockbroking services.

3441-5411-7163v1 Filed on behalf of (name & role of party)

Australian Securities and Investments Commission, Plaintiff

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5. The statutory conditions of EverBlu's AFSL require EverBlu to (relevantly):
 - (a) comply with the financial services laws, as required by s 912A(1)(c) of the Act; and
 - (b) ensure those who provide financial product advice to retail clients are trained and competent, as required by s 912A(1)(f) of the Act.
6. Mr Blumenthal is the chairman, director, Authorised Representative and Responsible Manager of EverBlu. During the Relevant Period, Mr Blumenthal oversaw and was involved in the corporate advisory and stockbroking services provided by EverBlu.
7. During the Relevant Period, Mr Blumenthal was a non-executive director, substantial shareholder and the chairman of Creso, which was listed on the ASX from 20 October 2016 to 12 June 2023 under the code 'ASX:CPH'. EverBlu led Creso's Initial Public Offering.
8. From at least July 2017, EverBlu provided corporate advisory services to Creso.
9. EverBlu maintained a suspense account, (designated 'SUSP_EVB') (**Suspense Account**). On 14 occasions (on 10 separate days) during the Relevant Period, Mr Blumenthal, personally or by instruction to EverBlu's Designated Trading Representative (**DTR**), used the Suspense Account and/or a client's account to purchase Creso shares for EverBlu clients to disaggregate single client orders into two bids, intending to represent to the market that there were more individual bidders for Creso shares than in fact existed. This conduct was likely to have had the effect of creating, or causing the creation of, a misleading appearance with respect to the number of market participants actively trading Creso shares.

Engagement of Aldo Sacco by Creso

10. In about March 2021, Mr Blumenthal caused Creso to engage Aldo Sacco (**Sacco**), to provide Creso with consultancy, promotional and marketing services, including the provision of market data, market research and market intelligence, and to promote Creso to investors via Sacco's professional and social media network. Sacco was also a client of EverBlu, as were some of his corporate entities which included Client 3 and Nandil Pty Ltd (**Nandil**).
11. Creso's agreement with Sacco was undocumented and Sacco did not provide any formal reports evidencing the services he provided to Creso.
12. Via Nandil, Sacco issued Creso with invoices totalling \$1,237,500, which were paid by Creso.

Engagement of Tyson Scholz by Creso

13. In March 2021, Mr Blumenthal caused Creso to engage Tyson Scholz (**Scholz**), an EverBlu client, to provide marketing and promotional services for Creso.
14. Scholz's companies, SV4T Investments Pty Ltd and EWOLF Enterprises Pty Ltd issued Creso with invoices totalling \$2,013,000, which were paid by Creso.
15. From April to November 2021, Mr Blumenthal caused Anglo Menda to loan \$7,125,460 to Scholz so that Scholz could trade in Creso shares.

Breach of duties owed as a director of Creso

16. By causing Creso to engage Sacco and Scholz to provide consultancy, promotional and marketing services to Creso during the Relevant Period (**Contracted Services**), Mr Blumenthal (as a director of Creso) failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise in the circumstances, in contravention of s 180(1) of the Act, in particular by failing to:
 - (a) document the terms of the Contracted Services in writing;
 - (b) undertake sufficient due diligence into the capabilities of Sacco and Scholz to perform the Contracted Services;
 - (c) require of Sacco and Scholz (respectively) objectively measurable deliverables;
 - (d) require detailed invoices from each of Sacco and Scholz;
 - (e) record details of the Contracted Services provided to Creso by Sacco and Scholz; and
 - (f) assess whether the Contracted Services provided by Sacco and Scholz represented value for money for Creso.
17. By causing Creso to engage Scholz to provide the Contracted Services to Creso, Mr Blumenthal failed to exercise his powers and discharge his duties as a director of Creso in good faith in the best interests of Creso, in contravention of s 181(1)(a) of the Act. Specifically, Mr Blumenthal failed to avoid the conflict of interest between the advantage he stood to gain and the interests of Creso, in circumstances where he benefitted from Creso's payments to Scholz, as such payments enhanced Scholz's ability to repay the loans advanced by Anglo Menda, and where he failed to:
 - (a) disclose to the Board of Creso his financial relationship with Scholz from May 2021 to the end of the Relevant Period (noting disclosure of this

relationship was made by Mr Blumenthal to the Board of Creso in September 2022); and

- (b) exclude himself from the approval of Scholz's invoices by the Board of Creso in July, September and November 2021.

Breach of duties owed as a director of EverBlu

18. Mr Blumenthal, as a director of EverBlu, failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise in the circumstances, in contravention of s 180(1) of the Act, by:

- (a) accepting and executing client instructions to deal in Creso shares in contravention of the following EverBlu policies:
 - (i) the Delegation and Attestation Business Continuity Plan;
 - (ii) the 'Chinese Walls' prohibitions, as outlined in EverBlu's Dealing Manual and Chinese Wall Register;
 - (iii) the prescribed procedures for receiving, recording and executing client orders, as outlined in EverBlu's Dealing Manual;
 - (iv) the Document Retention Policy requirements concerning the maintenance of contemporaneous records of client orders and trades, particularly involving the Suspense Account;
- (b) facilitating loans from Anglo Menda to clients and representatives of EverBlu, in the absence of making or obtaining necessary disclosures and approvals prior to Anglo Menda providing the loans, in contravention of EverBlu's Personal Dealing Policy;
- (c) contrary to EverBlu's Conflicts of Interest Policy, failing to identify and inform EverBlu's Head of Compliance of the actual or potential conflicts of interest that arose from Mr Blumenthal's concurrent roles and interests in:
 - (i) Creso and EverBlu, while facilitating trading in Creso shares by EverBlu's clients and representatives; and
 - (ii) Anglo Menda and EverBlu, in circumstances where Anglo Menda had provided loans to three EverBlu clients (namely Client 5 – a Corporate Authorised Representative of EverBlu, Scholz – an EverBlu client and contractor to Creso and Client 1 – a close friend of Mr Blumenthal);
- (d) contrary to EverBlu's Compliance Framework, failing to ensure that EverBlu:
 - (i) adhered to its compliance obligations; and

- (ii) took necessary and appropriate corrective action to remedy breaches, including recording compliance breaches and incidents within EverBlu's Breaches and Incidents Register; and
- (e) causing EverBlu to breach its obligations under s 912A of the Act, which jeopardised EverBlu's interests by creating a real risk of regulatory action.

Market manipulation contraventions

19. On 14 occasions (on 10 separate days) during the Relevant Period, Mr Blumenthal contravened s 1041B(1)(b) of the Act by disaggregating single client orders to purchase Creso shares, by either (i) placing himself or (ii) directing the DTR to place two bids through the Suspense Account and/or the relevant client's account, intending to represent to the market that there were more individual bidders for Creso shares than in fact existed. This conduct likely had the effect of creating, or causing the creation of, a false or misleading appearance with respect to the market for Creso shares.

C. THE RELIEF SOUGHT

20. ASIC seeks the relief set out in the Originating Process dated 15 December 2023.
21. In summary, ASIC seeks the following relief against Mr Blumenthal under the Act:
- (1) declarations pursuant to s 1317E in relation to his contraventions of ss 180(1), 181(1)(a) and 1041B(1)(b);
 - (2) a disqualification order pursuant to s 206C in relation to his contraventions of ss 180(1) and 181(1)(a); and
 - (3) pecuniary penalties pursuant to s 1317G(1) for his contraventions of ss 180(1), 181(1)(a) and 1041B(1)(b).

D. PRIMARY LEGAL GROUNDS UPON WHICH RELIEF IS SOUGHT

22. Mr Blumenthal's conduct contravened ss 180(1), 181(1)(a) and 1041B(1)(b) of the Act.

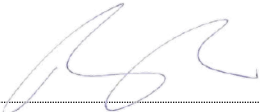
E. THE HARM SUFFERED

23. Mr Blumenthal caused EverBlu to breach its obligations under s 912A of the Act and thus jeopardised EverBlu's interests including by creating the risk of investigation by ASIC with the associated risk of EverBlu's AFSL being cancelled or conditions being imposed, as outlined in the Court Enforceable Undertaking provided by Mr Blumenthal and EverBlu.
24. The duties imposed on directors and officers pursuant to ss 180(1) and 181(1)(a) of the Act protect the interests of the corporation. Mr Blumenthal's conduct exposed Creso and EverBlu to regulatory intervention, including court enforcement action.

Certificate of lawyer

I Anna Ross certify to the Court that, in relation to the Concise Statement filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 15 February 2024



Signed by Anna Ross

Lawyer for the Plaintiff