

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION**
100 F Street, NE
Washington, DC 20549-4030
Tel: (202) 551-4492

Plaintiff,

v.

**URS KAMBER,
STEPHAN HUSI, and
RICHARD JON MAY,**

Defendants.

Case: 1:07-cv-01867
Assigned To : Bates, John D.
Assign. Date : 10/17/2007
Description: General Civil

**COMPLAINT FOR INJUNCTIVE RELIEF, DISGORGEMENT,
PENALTIES AND OTHER RELIEF, FOR VIOLATIONS OF THE
FEDERAL SECURITIES LAWS AND DEMAND FOR JURY TRIAL**

Plaintiff United States Securities and Exchange Commission (the "Commission") alleges as follows against the Defendants named above:

SUMMARY OF ALLEGATIONS

1. This case arises out of a scheme perpetrated by the Defendants as officers and executives of Centerpulse Ltd. ("Centerpulse" or the "Company"), a former Swiss public company registered to trade American Depository Shares in the United States, fraudulently to misstate Centerpulse's financial results.
2. In the third quarter of 2002, Centerpulse was finalizing critical debt financing needed to fund a \$1 billion global settlement of numerous products liability lawsuits filed against the Company. As part of this process, a consortium of banks were conducting due diligence of Centerpulse's financial results and condition. Centerpulse gave the banks a set of budgets

containing forecasted financial results. In attempting to meet its forecasts, defendants Urs Kamber (Centerpulse's Chief Financial Officer) and Stephan Husi (Centerpulse's Corporate Controller) ordered Centerpulse's senior finance executives to release reserves, not record certain expenses, and engage in other accounting improprieties.

3. Acting on these instructions, defendant Richard Jon May (Group Vice President of Finance, Tax Counsel and Treasurer of Centerpulse USA Holding Company) and certain Centerpulse vice presidents in the United States took numerous improper accounting actions, which caused the Company to fraudulently overstate its third quarter earnings. Among other things, these executives did not book certain losses and expenses, and improperly released reserves to inflate the Company's third quarter operating and pretax income. May also concealed the details of certain expenses from Centerpulse's outside auditors during the third quarter. As a result of the Defendants' misconduct, Centerpulse fraudulently overstated its third quarter pretax income by approximately \$32 million, reporting \$21.9 million in pretax income instead of a \$10.1 million loss.¹

4. Kamber, Husi and May also engaged in accounting fraud in the fourth quarter of 2002 in order to close a shortfall in earnings so that Centerpulse's results would be in line with earlier communications to the market, as well as the forecasted results the Company had given the investment banks. In December 2002, Kamber told certain division-level finance executives that their earnings forecasts for 2002 were too conservative, and he ordered them to do everything possible to cover the earnings shortfall. Kamber, Husi and May improperly managed Centerpulse's fourth quarter and annual earnings for 2002 by (a) not increasing the Company's

¹ As a Swiss corporation, Centerpulse reported its financial results in Swiss francs ("CHF"), but also issued earnings releases and reports presenting its financial results in U.S. dollars. According to Centerpulse's 2002 annual report on Form 20-F, the average exchange rate from Swiss francs to U.S. dollars in 2002 was 1.55 Swiss francs per U.S. dollar (or 0.65 dollars per franc). All conversions from Swiss francs to U.S. dollars in this Complaint use this exchange rate.

reserve for expenses related to the settlement of a products liability class action by at least \$18 million, and (b) improperly using certain anticipated refund credits to offset another \$5 million in expenses related to the class action settlement. Kamber and Husi overstated Centerpulse's year-end 2002 assets in the additional amount of \$3.4 million by refusing to write off costs associated with an impaired asset.

5. As a result of these manipulations, Centerpulse's fourth quarter 2002 pretax income was fraudulently overstated by at least \$26.4 million, reporting \$141.9 million in income instead of \$115.5 million, and its pretax income for fiscal year 2002 was overstated by the same amount, reporting \$240 million in income instead of approximately \$213.6 million.

6. The Defendants' scheme to inflate Centerpulse's financial results materially overstated the Company's operating income, pretax income, expenses, assets and liabilities in public filings – specifically, its third quarter 2002 report on Form 6-K (furnished to the Commission on November 12, 2002), its fourth quarter 2002 financial results press release on Form 6-K (furnished to the Commission on March 28, 2003), and its 2002 annual report on Form 20-F (filed with the Commission on April 25, 2003).

7. By committing the acts described in this Complaint, Kamber, Husi and May directly or indirectly engaged in and, unless restrained and enjoined by the Court, will continue to engage in, transactions, acts, practices and courses of business that violate Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Exchange Act Rules 10b-5 and 13b2-1 [17 C.F.R. §§ 240.10b-5 and 240.13b2-1]. May also violated Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2]. Husi and May aided and abetted violations of Exchange Act Section 10(b) and Rule 10b-5 by Kamber and the Company. Kamber, Husi and May aided and abetted the Company's violations of Exchange Act

Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1 and 13a-16 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-16]. Finally, Kamber violated Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14] by signing a false certification contained in the Company's 2002 annual report filed on Form 20-F.

8. The Commission seeks a judgment from the Court: (a) enjoining Defendants from engaging in or aiding and abetting future violations of the federal securities laws named above; (b) requiring them to disgorge, with prejudgment interest, all ill-gotten gains obtained as a result of the accounting improprieties described in this Complaint, as well as from Centerpulse's inflated financial results; (c) requiring them to pay civil money penalties pursuant to Exchange Act Section 21(d)(3) [15 U.S.C. § 78u(d)(3)]; and (d) barring them from acting as officers or directors of a public company pursuant to Exchange Act Section 21(d)(2) [15 U.S.C. § 78u(d)(2)].

JURISDICTION AND VENUE

9. The Court has jurisdiction over this action pursuant to Exchange Act Sections 21(d), 21(e) and 27 [15 U.S.C. §§ 78u(d), 78u(e) and 78aa]. The Defendants made use of the means or instruments of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with their acts, transactions, practices and courses of business alleged in this Complaint.

10. Venue lies in the District of Columbia pursuant to Exchange Act Section 27 because Centerpulse furnished and filed materially false and misleading reports on Forms 6-K and 20-F with the Commission in this District.

THE PARTIES

11. The plaintiff is the United States Securities and Exchange Commission, which brings this action pursuant to the authority conferred on it by Exchange Act Sections 21(d) and 21(e).

12. Defendant Urs Kamber, age 55, is a Swiss citizen who lives in Herbligen, Switzerland. He was the Chief Financial Officer of Centerpulse from September 2001 through October 2003. He certified the accuracy of the Company's financial results contained in its third quarter 2002 report on Form 6-K, in its fourth quarter 2002 financial results press release on Form 6-K, and in its 2002 annual report on Form 20-F. He is a Chartered Accountant in Switzerland and was so while he worked at the Company. He is currently the Chief Financial Officer of Pendragon Medical Ltd., a private Swiss medical devices company, and the Chief Executive Officer of InCentive Private Equity Group AG in Zurich, Switzerland.

13. Defendant Stephan Husi, age unknown, is a Swiss citizen who lives in Zurich, Switzerland. He was the Corporate Controller of Centerpulse from early 2002 through October 2003.

14. Defendant Richard Jon May, age 42, is a U.S. citizen who lives in Fort Wayne, Indiana. He was the Group Vice President of Finance, Tax Counsel and Treasurer of Centerpulse USA Holding Company from 2001 through October 2003. He is a Certified Public Accountant and an attorney, licensed and admitted to practice in Texas, and was so while he worked at Centerpulse. He is currently Vice President of Tax and Treasury, as well as Tax Counsel, for Zimmer Holdings, Inc., the company that acquired Centerpulse in October 2003.

FACTS

15. Originally named Sulzer Medica AG, Centerpulse was a publicly-traded corporation headquartered in Switzerland that manufactured a variety of medical devices, including hip and knee implants. From January 2001 through October 2003, the Company's American Depository Shares were registered in the United States pursuant to Exchange Act Section 12(b) [15 U.S.C. § 781] and were traded on the New York Stock Exchange under the symbol "CEP." As a foreign issuer, Centerpulse filed annual reports with the Commission on Form 20-F and furnished quarterly reports and other filings on Form 6-K. In its 2002 annual report on Form 20-F, the Company represented that its financial statements were prepared in conformance with International Financial Reporting Standards ("IFRS") and reconciled to Generally Accepted Accounting Principles in the United States ("U.S. GAAP"). It was also the Company's policy and practice to maintain the books and records of its U.S. divisions in accordance with U.S. GAAP. Centerpulse's fiscal year ended on December 31 of each calendar year.

16. Between 2001 and 2003, Centerpulse's financial statements were audited by PricewaterhouseCoopers AG ("PwC-AG"), an international accounting and consulting firm and one of the member firms of PricewaterhouseCoopers International Ltd. PricewaterhouseCoopers LLP ("PwC-US"), a public accounting and consulting firm in the United States, performed certain audit procedures and examination functions in connection with the annual audits and reviews of Centerpulse's financial statements.

I. KAMBER ORDERED EXECUTIVES TO ESTABLISH RESERVES AGGRESSIVELY AND TAKE EXPENSES IN 2001

17. On December 5, 2000, Centerpulse's U.S. Orthopedics Division announced a voluntary recall of certain lots of a medical implant that failed to adhere to patients after surgery.

Centerpulse later announced a similar defect with a second medical implant. The Company was sued in over 1,980 products liability and personal injury lawsuits in the United States and Canada. The lawsuits were eventually consolidated. As a result of this recall litigation, the Company suffered negative media coverage and experienced significant turnover in its senior management, including its Chief Executive Officer and Chief Financial Officer.

18. In 2001, Centerpulse reached a tentative settlement agreement to resolve the recall litigation and recorded a reserve of \$783 million (the "Recall Reserve") in its financial statements as an initial estimate of its exposure. At the end of 2001, new management increased the Recall Reserve to \$873 million. At this time, Defendant Urs Kamber, the Company's new Chief Financial Officer, instructed Centerpulse's finance executives to be aggressive in establishing reserves, to write down asset impairments, and recognize additional expenses in 2001. Kamber indicated that the finance executives should recognize as many losses as possible in 2001, and that he would not accept any write-offs in 2002 that could have been taken in 2001.

19. On May 8, 2002, the court presiding over the recall litigation approved the final settlement agreement that Centerpulse had negotiated with the plaintiff class. The agreement established a trust of approximately \$1.1 billion from which money would be paid to compensate claimants. Centerpulse agreed to contribute \$725 million to the trust, \$635 million of which was to be funded by a credit facility that the Company sought from a consortium of banks.

II. THE DEFENDANTS ENGAGED IN FRAUDULENT ACCOUNTING TO INFLATE CENTERPULSE'S THIRD QUARTER 2002 INCOME

20. Centerpulse negotiated the terms of the \$635 million credit facility during the third quarter of 2002. As part of that process, Centerpulse gave the banks a set of budgets containing forecasted financial results for each quarter of 2002 as well as several years going forward. The preliminary third quarter results, however, came in worse than expected, and

Kamber and Husi worried that Centerpulse would not be able to meet its forecasts. During the course of the quarter, Kamber and Husi directed the Company's senior finance executives to release reserves, not record certain expenses, and engage in other accounting practices in ways that they knew or were reckless in not knowing were improper. Acting on these instructions, May and other Centerpulse officers took improper accounting actions, which had the cumulative effect of increasing the Company's third quarter 2002 pretax income from a \$10.1 million loss to \$21.9 million in positive pretax income – a total overstatement of approximately \$32 million.

A. The Defendants Improperly Delayed Recognition of a \$25 Million Expense

21. Kamber, Husi and May did not record a \$25 million expense incurred in the third quarter of 2002, at the latest, for attorneys' fees arising from the recall litigation settlement. Instead, they improperly delayed recognition of the expense until the fourth quarter in order to inflate third quarter income.

22. In 2001, Centerpulse agreed to pay Richard Scruggs, a class action attorney, \$20 million to help the Company settle the recall litigation. In April and May 2002, Scruggs disputed the fee arrangement. Centerpulse agreed to increase the fee by an additional \$25 million. At the beginning of Centerpulse's fiscal third quarter, between July 2 and 8, 2002, Centerpulse's Board of Directors executed a unanimous consent resolution approving payment of the full \$45 million "for legal services provided by the Scruggs Law Firm."

23. Accrual accounting is required under both U.S. GAAP and IFRS. The accrual method of accounting is based on recognizing financial transactions and events as they occur instead of when cash is paid. In this case, the Company incurred the \$25 million expense for additional attorneys' fees at least by the time the Board approved the expense in July 2002, if not before, and therefore the expense should have been recognized by the third quarter of 2002.

24. Kamber, however, did not want to recognize the expense in the third quarter, and he sought advice on how to avoid doing so. On July 4, 2002, he received an e-mail from an undisclosed party,² who advised him that “the approval should wait a bit” in order to “realize our idea to not include this payment in the income statement.” However, the Board was already circulating and signing the unanimous consent resolution approving the payment. Therefore, despite Kamber’s plans, the \$25 million additional expense was incurred and should have been recognized in the third quarter.

25. Kamber, Husi and May realized that the \$25 million expense would lower Centerpulse’s third quarter income and could impede the Company’s effort to obtain the debt financing needed to fund the recall litigation settlement. Therefore, despite knowing that the \$25 million expense had been incurred in the third quarter, Kamber, Husi and, ultimately, May improperly decided to delay recognition of the expense by arranging to pay the additional attorneys’ fees in the fourth quarter and to record the expense after payment had been made.

26. On or around July 17, 2002, Kamber sent Scruggs an agreement, signed by Kamber and Centerpulse’s Chief Executive Officer, memorializing the obligation to pay an additional \$25 million for Scruggs’ representation in the recall litigation and specifying that the amount would be paid in two installments in the fourth quarter of 2002.

27. May made the payment arrangements and directed the accounting entries in Centerpulse’s books and records. On September 5, 2002, he received an e-mail from the Company’s Treasurer explaining that \$15 million would be paid on October 1, 2002 and \$10 million on November 4, 2002. On the same day, May instructed a subordinate to prepare two wire requests for the payments. He then e-mailed an attorney associated with the Scruggs Law

² When Centerpulse produced this e-mail to the Commission, the Company redacted the name of the person who sent it, apparently in an effort to comply with Swiss privacy laws. A number of documents produced by the Company were redacted similarly.

Firm “confirming that the wire instructions for the additional funds owed Scruggs have not changed.” On or around September 10, 2002, May signed two check requests approving the wire transfers and directing that they be made on October 1 and November 4, 2002.

28. On September 30, 2002, May sent an e-mail to Kamber and the Treasurer of Centerpulse confirming that the Company would make the \$15 million wire transfer to Scruggs the next day. Accordingly, on October 1 – the first day of the fourth quarter – the Company made the first transfer. Centerpulse made the other, \$10 million transfer on November 4, 2002. May sent an e-mail to an attorney with the Scruggs Law Firm confirming that the \$10 million wire transfer had been made.

29. Although May made arrangements to pay the additional fees in the fourth quarter, he nevertheless told Kamber and Husi that the expense needed to be recognized in the third quarter, and he accordingly asked for permission to increase the Recall Reserve in the third quarter, which would have decreased the Company’s third quarter income. Because Kamber did not want the expense to harm the Company’s third quarter results, he ordered May not to increase the Recall Reserve, as described below.

30. On or around September 18, 2002, Centerpulse’s Treasurer included the Scruggs fees as an extraordinary expense in a projected cash flow chart provided to the Company’s prospective lenders. On the evening of September 18, 2002, May sent Kamber an e-mail advising him that the lenders were now aware of the expense and that Kamber should “consider whether it would be clearer to reflect the \$25M in the settlement reserve”

31. Kamber did not want to increase the Recall Reserve because he was worried that Centerpulse’s lenders would become concerned that the Company had not established adequate reserves for its liabilities surrounding the class action settlement. Accordingly, on September 19,

