

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

MARK KISHEL,

Defendant.

Civil Action File No.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

The plaintiff Securities and Exchange Commission (the “Commission”) files this complaint and alleges the following:

SUMMARY

1. This action involves insider trading in the securities of Immucor, Inc. (“Immucor” or the “Company”), a publicly-traded Georgia corporation, by one of its directors.

2. Immucor manufactures and sells products used by hospital blood banks, clinical laboratories, and blood donor centers to detect and identify certain properties of human blood prior to patient transfusion.

3. After the close of the markets on Monday, April 26, 2004, Immucor issued a press release stating that its “Galileo” blood analysis system had been cleared by the U. S. Food and Drug Administration (“FDA”) on April 23, 2004.

4. The day after the announcement, Immucor stock traded up \$4.18 per share, or 19.19%, to a closing price on April 27 of \$25.96.

5. On April 16, 2004, defendant Kishel purchased Immucor securities while in possession of nonpublic, material information regarding this announcement.

6. Defendant Kishel, directly or indirectly, engaged in acts, practices, and courses of business which have constituted and will constitute violations of Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §§ 78j(b)] and Rule 10b-5 [17 C.F.R. §§ 240.10b-5] promulgated thereunder.

7. The defendant, unless enjoined by this Court, will continue to engage in the acts, practices and courses of business alleged herein, and in acts, practices and courses of business of similar purport and object.

JURISDICTION AND VENUE

8. The Commission brings this action pursuant to authority conferred upon it by Sections 21(d) and 21(e) of the Exchange Act [15

U.S.C. §§ 78u(d)-(e)] seeking to permanently enjoin the defendant from engaging in the transactions, acts, practices and courses of business alleged in this Complaint, and transactions, acts, practices and courses of business of similar purport and object, for disgorgement of illegally obtained funds and for other equitable relief, including civil money penalties.

9. Kishel, directly and indirectly, made use of the means and instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the acts, practices, and courses of business alleged herein. Certain of these acts, practices, and courses of business have occurred within the Northern District of Georgia, including but not limited to, the defendant's acquisition of material nonpublic information and the placement and execution of orders to purchase securities in the form of stock.

10. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa], because certain of the transactions, acts, practices and courses of business constituting violations of the Exchange Act occurred within the Northern District of Georgia. Among other things, Immucor maintained its principal office in the Northern District of Georgia where Kishel acquired material nonpublic information, and Kishel placed and

executed orders to purchase Immucor securities within the Northern District of Georgia.

DEFENDANT AND RELEVANT ENTITY

11. Kishel, 59, was at all relevant times a resident of Roswell, Georgia.
12. Kishel was during the relevant period, a director of Immucor.
13. Immucor is headquartered in Norcross, Georgia.
14. Immucor's common stock trades on the NASDAQ market under the symbol "BLUD."

FACTS

A. Immucor's Insider Trading Policy

15. During the relevant period, Immucor had a detailed written policy prohibiting insider trading.
16. Kishel was a member of the Immucor board of directors that amended and ratified Immucor's insider trading policy in April 2003.
17. The policy states, among other things, that Immucor's directors are prohibited from trading while in possession of material nonpublic information.
18. The policy goes on to say that "material information is any positive or negative information that a reasonable investor would consider

important in a decision to buy, hold or sell stock—in short any information which could reasonably be expected to affect the price of the stock.”

19. On May 19, 2003, Kishel signed a certification that he had read, understood, and agreed to comply with the terms of this insider trading policy.

B. Kishel Received Material Nonpublic Information In The Course Of His Duties as an Immucor Director

20. On January 30, 2004, Immucor submitted an application to the FDA to market and sell Galileo, its flagship product, in the United States.

21. Two days later, on February 2, 2004, the Company announced its FDA submission.

22. At about the same time, the Company began telling institutions and investors in various conference calls that it expected an FDA decision on its submission in approximately 9 to 12 months.

23. On March 25, 2004, when Immucor announced its fiscal third quarter results, the Company refined this projection, telling investors that “[b]ased on the nature of the [FDA’s] inquiries, [Immucor] now believe[s it] will receive clearance to market the Galileo in the United States in the fall of 2004.”

24. Over approximately the next month, as Immucor's staff responded to the FDA's questions and requests for additional information which were far fewer and less detailed than anticipated, it became clear to Immucor's senior management that the FDA would likely grant approval to Immucor's Galileo application within a matter of weeks instead of months—far earlier than the Company had previously projected.

25. Given the expected profitability of Galileo, such early approval by the FDA was viewed as significant news by Immucor's senior management.

26. On April 13, 2004, Immucor's Vice President of Regulatory Affairs presented information, regarding expected early approval of the Galileo submission, to those in attendance at a monthly executive staff meeting.

27. Three days later, on April 16, 2004, Immucor's president and CEO made a presentation to Immucor's board of directors, with defendant Kishel in attendance, informing the board that the Company now expected early FDA approval of Galileo. The information constituted material non-public information.

28. A presentation booklet, citing early FDA approval of Galileo, was also given to each board member.

C. **Kishel Purchased Immucor Stock While in Possession of Material Nonpublic Information**

29. On April 16, 2004, immediately after leaving the board meeting, Kishel purchased 1500 shares of Immucor common stock for his IRA account and 1000 shares of Immucor common stock for accounts of his children at prices averaging \$20.50 per share.

30. He had not previously purchased Immucor stock for himself or for the accounts of his children.

31. On Friday, April 23, 2004, the FDA communicated to Immucor its approval of Immucor's Galileo application.

32. After the close of the markets on Monday, April 26, 2004, Immucor issued a press release stating that Galileo had been cleared by the FDA on April 23, 2004.

33. During the period from April 1, 2004 to April 26, 2004, Immucor stock had traded at prices ranging from a low on April 1 of \$18.40 per share to a high at the close on April 26 of \$21.78 per share.

34. The day after the announcement that the FDA had cleared Galileo for marketing in the United States, the market for Immucor stock

moved up \$4.18 per share, or 19.19%, to a closing share price on April 27 of \$25.96.

35. Trading volume on April 27, 2004 was 4,802,297 shares, over 28 times the average trading volume of 169,596 shares during the period from April 1 through April 26.

36. Through his trading, Kishel obtained an unrealized gain of \$13,650.

COUNT I--FRAUD

Violations of Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, Thereunder

37. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 36, above.

38. At various times on April 16, 2004, defendant Kishel, in connection with the purchase of securities described herein, by the use of the means or instrumentalities of interstate commerce or by use of the mails, or of any facility of any national securities exchange, directly and indirectly:

- (a) employed devices, schemes, and artifices to defraud;
- (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in

light of the circumstances under which they were made, not misleading; and

(c) engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon other persons, as more particularly described above.

39. Defendant Kishel, knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, Kishel acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

40. By reason of the foregoing, Defendant Kishel directly and indirectly violated, and unless permanently restrained and enjoined will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff Commission, respectfully prays that the Court:

I.

Make findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure.

II.

Issue a permanent injunction enjoining defendant Kishel, and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of the order by personal service or otherwise, and each of them from violating Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

III.

Issue an Order requiring defendant Kishel to disgorge all ill-gotten gains and losses avoided as alleged in the Commission's Complaint, plus pay prejudgment interest thereon.

IV.

Issue an Order requiring defendant Kishel, pursuant to Sections 21(d)(3) and 21A of the Exchange Act [15 U.S.C. 78u(d)(3) and 78u-1], to pay civil monetary penalties.

V.

Issue an Order that retains jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may have been entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

VI.

Grant such other and further relief as may be necessary and appropriate.

Dated: January 19, 2006

RESPECTFULLY SUBMITTED,

/s/ William P. Hicks

William P. Hicks

Georgia Bar No. 351649

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