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Case : Selectica v Versata  
Testimony Date : May 01, 2009  
Expert Witness : Thomas L Porter Ph.D  
Expert Type : Accounting  
Court : State: Delaware County: Wilmington  
Pages : 60

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SELECTICA, INC . a Delaware corporation, )  
 )  
 Plaintiff. )  
 )  
 v ) C A. No 4241-VCN  
 )  
 VERSATA ENTERPRISES, INC., a Delaware corporation, and TRILOGY, INC , a Delaware corporation. )  
 )  
 Defendants. )  
 )  
 -and- )  
 )  
 VERSATA ENTERPRISES, INC . and TRILOGY, INC , )  
 )  
 Counterclaim-Plaintiffs. )  
 )  
 v )  
 )  
 SELECTICA, INC., JAMES ARNOLD, ALAN B HOWE, LLOYD SEMS, JIM THANOS and BRENDA ZAWATSKI. )  
 )  
 Counterclaim-Defendants. )

Chancery Courtroom No. 12B  
 New Castle County Courthouse  
 Wilmington, Delaware  
 Friday, May 1, 2009  
 9:30 a m.  
 - - -

BEFORE: HON JOHN W NOBLE, Vice Chancellor.

TRIAL TRANSCRIPT - VOLUME V

CHANCERY COURT REPORTERS  
 500 North King Street - Suite 11400  
 Wilmington, Delaware 19801-3759  
 (302) 255-0525

1 THE COURT: Good morning, everyone.  
 2 MS. HENSLEY: Good morning.  
 3 THE COURT: Good morning. You may  
 4 call your witness, unless there are housekeeping  
 5 details.  
 6 MS. HENSLEY: We do have one  
 7 housekeeping matter, just a protocol.  
 8 We received, I think, three  
 9 demonstrative exhibits from the other side that will  
 10 pertain to the rebuttal testimony of  
 11 Patricia Pellervo, that I understand you'll hear later  
 12 on today.  
 13 Our suggestion is, since these were  
 14 out of time under the pretrial order, is either they  
 15 not be allowed, or, if they are, that Elliot Freier,  
 16 who will testify now, be allowed to call -- be called  
 17 back for a very limited purpose to discuss whatever it  
 18 is that Miss Pellervo will testify with respect to  
 19 those three demonstrative aids.  
 20 MR. VARALLO: May I respond, Your  
 21 Honor?  
 22 THE COURT: Good morning. Yes.  
 23 MR. VARALLO: Good morning to you,  
 24 sir

1 APPEARANCES:

2 GREGORY V. VARALLO, ESQ.  
 3 LISA A. SCHMIDT, ESQ.  
 4 JOHN D. HENDERSHOT, ESQ.  
 5 ETHAN A. SHANER, ESQ.  
 6 SCOTT W. PERKINS, ESQ.  
 7 JILLIAN M. GROB, ESQ.  
 8 Richards, Layton & Finger, P.A.  
 -and-  
 9 JONATHAN S. KITCHEN, ESQ.  
 10 CHRISTIAN H. CEBRIAN, ESQ.  
 11 of the California Bar  
 12 Cox, Castle and Nicholson LLP  
 13 for Plaintiff and Counterclaim Defendants

14 MARTIN P. TULLY, ESQ.  
 15 MEGAN WARD CASCIO, ESQ.  
 16 LESLIE A. POLIZOTI, ESQ.  
 17 RYAN D. STOTTMANN, ESQ.  
 18 Morris, Nichols, Arsht & Tunnell LLP  
 -and-  
 19 NOEL M. HENSLEY, ESQ.  
 20 NICHOLAS EVEN, ESQ.  
 21 JOHN TANCABEL, ESQ.  
 22 SARA FRANKFURT GAIL, ESQ.  
 23 of the Texas Bar  
 24 Haynes and Boone LLP  
 for Defendants and Counterclaim-Plaintiffs

1 A couple of thoughts. First of all,  
 2 as Your Honor had indicated, this trial is being  
 3 timed, and we have a number of rebuttal witnesses. We  
 4 would like to call four of number, as of right now.  
 5 And we believe that we will need the time this  
 6 afternoon to do exactly that.  
 7 My friends are not quite out of time,  
 8 but they have used more time than we have. And we  
 9 would object to having to cut short that opportunity  
 10 to finish the case as plaintiffs, Your Honor.  
 11 Secondly, yes, these rebuttal slides  
 12 were presented this morning but, honestly, they were  
 13 put together late last evening. So we presented them  
 14 at the first opportunity. They're nothing more than  
 15 demonstratives, Your Honor. It's not as though the  
 16 slides constitute new substantive evidence or new  
 17 opinions.  
 18 THE COURT: I will allow the use of  
 19 the demonstratives. I will afford Trilogy the  
 20 opportunity to put its expert witness back on the  
 21 stand to comment on them. And whether folks are out  
 22 of time or not at the end of the day is something I  
 23 won't know until we get to near the end of the day.  
 24 MS. HENSLEY: Your Honor, we call

1 remember that?  
 2 A Yes.  
 3 Q Mr Brogan, I take it, could have  
 4 contacted Mr Miller and did not. Is that your  
 5 assumption?  
 6 A That's my understanding, yes  
 7 Q And was Mr. Brogan acting for the  
 8 company? Did he have an obligation in doing a 382  
 9 study to get that information?  
 10 A I believe so, although the company  
 11 could have told him that they didn't want him to do  
 12 it. And obviously they're paying him, so he'll do  
 13 what they tell him to do.  
 14 Q Was there any showing that that  
 15 attempt had been made?  
 16 A Not that I saw.  
 17 Q There was some testimony or  
 18 questioning about fluctuations in value. And I think  
 19 you were shown -- what exhibit is it? --about an  
 20 article just now; right?  
 21 A Right.  
 22 Q Okay. And as to Selectica, what does  
 23 that rule apply to?  
 24 A It applies to their pre-IPO period.

1 with those purchases.  
 2 Q So that's the only interpretation one  
 3 could make about listing, because the number adds up  
 4 to the total shares, is that fair?  
 5 A Yes.  
 6 MS. HENSLEY: Your Honor, I move for  
 7 admission of DX-615.  
 8 MR. KITCHEN: No objection.  
 9 MS. HENSLEY: No further questions.  
 10 THE COURT: It's admitted without  
 11 objection.  
 12 (Defendants' Exhibit No. 615 was  
 13 received in evidence.)  
 14 THE COURT: Do you have anything  
 15 further, Mr. Kitchen?  
 16 MR. KITCHEN: No, Your Honor, at least  
 17 not at this time. I understand he may be recalled.  
 18 MS HENSLEY: Thank you, Your Honor  
 19 Your Honor, we call Dr. Thomas Porter.  
 20 THOMAS L. PORTER, having been first  
 21 duly sworn, was examined and testified as follows:  
 22 DIRECT EXAMINATION  
 23 BY MS. HENSLEY:  
 24 Q Dr. Porter, how are you currently

1 Q Does the selection of methods of  
 2 treatment referable to fluctuation in value have any  
 3 impact materially on the conclusion you reached that  
 4 an ownership change had occurred by November the 14th,  
 5 2008?  
 6 A I don't believe so, no.  
 7 Q I'm going to show you what is DX-615  
 8 that has already been entered into evidence in this  
 9 case. Is this what you were referring to in answer to  
 10 Mr. Kitchen's questions about the information on  
 11 Trilogy's share ownerships?  
 12 A Yes, it is. It's the Schedule 13D  
 13 filed by Versata and Trilogy that shows -- the pages  
 14 are not numbered. But towards the back it shows the  
 15 listing of all of their share purchases which  
 16 corresponds with their share ownership at that time.  
 17 Q Does that say anything about whether  
 18 or not at some point Trilogy had a zero balance in  
 19 shares of Selectica?  
 20 A Well, it doesn't say it directly. But  
 21 by looking at the listing of their share purchases and  
 22 when they were, in comparison to what their ownership  
 23 was as of the date of the filing, you could see that  
 24 they had to have started at zero in order to get there

1 employed?  
 2 A I'm currently a vice president at NERA  
 3 Economic Consulting.  
 4 Q Let's talk a little bit about your  
 5 background. Describe, if you will, your professional  
 6 development?  
 7 A I have a bachelor's degree from the  
 8 University of Maryland, master's in business from  
 9 Georgia Tech, and a Ph.D. in accounting from the  
 10 University of Washington.  
 11 Between my bachelor's and master's  
 12 degree, and my master's and Ph.D., I worked for public  
 13 accounting firms as an auditor and a systems  
 14 consultant. And after my Ph D. program, I had an  
 15 academic position at Boston College, where I taught  
 16 accounting and financial reporting, and also at  
 17 Georgia State University.  
 18 But between those, I worked at the  
 19 Financial Accounting Standards Board on the research  
 20 and technical activities staff. And I've been  
 21 employed at NERA for the past six years.  
 22 Q I may have missed it in that  
 23 recitation. Do you hold a professional license?  
 24 A I do. I'm a CPA currently licensed in