

 **Blueberry Software, Inc.**
DOCUMENT CONVERSION SYSTEMS

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

March 31, 2004

Honorable Judge D. Lowell Jensen
Judge of the United States District Court
1301 Clay Street
Suite 400S
Oakland, CA 94612-5212

Re: Beigel v. Dwan, C02-3116

Dear Judge Jensen:

We are in receipt of letters to you from Lawrence Bernheim (March 24) and Richard Blair (March 26).

The VistaSource matter is not in dispute by any parties, only the Arbortext matter. We will address only that matter.

Mr. Blair's contributions are all based on past and projected royalty streams from Arbortext. For some time now, we have disputed these royalty streams and possess ample evidence for this dispute. Although we did not initiate buyout proposals with Arbortext (Mr. Blair did), we are not necessarily opposed to a buyout. What we feel makes sound business sense is to invoke the clause in the contract that allows us to perform an audit of Arbortext. This is not a law suit, does not affect royalty streams, and is simply a normal part of business. Only an audit can determine if the Arbortext royalty streams are accurate and can therefore be used as a basis for determining an appropriate buyout figure.

We believe an audit will reveal much higher royalty stream amounts, both past and future. We are willing to pay for this audit ourselves, with no investment from Mr. Dwan, who stands to profit from this audit. If Arbortext is honest, it should welcome an audit to verify its figures. As it is, Arbortext's letter (Exhibit 3 of Mr. Blair's letter) makes dubious sense. They manage to say in one page that 1) they can predict royalties almost to the penny, 2) we are of dwindling importance, 3) they're nevertheless willing to find someone else to provide our technology, 4) they're willing to overpay us for our technology so that they can possess it forever.

Arbortext failed to mention that they recently signed a new agreement with Vektas that involves the direct use of Blueberry technology (Arbortext E3-includes Blueberry technology) which is now incorporated into a product called Armada which is a Vektas product. On Vektas' web site, the description of Armada includes this statement.... "Accepting documents from a number of industry accepted authorizing tools including Microsoft's Word, Intereleaf or Adobe

FrameMaker, **ARMADA**, will recognize and convert to your desired output...” The web site says... “Based around the power of Arbortext’s E3, Vektas will soon launch the tool that will act as a core server for document assembly, processing and management...” (**Exhibit 1**) These statements describing the functionality of Armada, now appearing to belong to Vektas, are in fact, Arbortext’s E3 server product of which Interchange (our technology) is a Standard. (**Exhibit 2**). This new contract clearly points out the fact that our technology will not decrease over the next few years. Rather, the royalty stream should definitely increase as it is unlikely that this contract will have a duration of a mere two years.

In Mr. Bernheim’s comments in his March 24, 2004 letter to you, he states that negotiations took place between myself, my attorney, Mr. Hanson, and various Arbortext representatives. According to Mr. Bernheim this took place in the Spring of 2002. Mr. Bernheim also states that on July 30, 2002, Arbortext’s attorney, Mr. Herzog, sent a six page letter to him and Mr. Hanson which reflected Arbortext’s response to my claims.

Mr. Bernheim failed to mention that in October of 2002, Mr. Herzog and Mr. Haggarty (Arbortext’s Finance Officer at that time) flew out from Michigan to meet with Mr. Hanson, Mary Tarantino, and me. After this meeting took place, I immediately resumed working with Arbortext engineers and I provided them a major upgrade in addition to working on several bugs which they were sending to me on a piece-meal basis. I requested several times that they send me a bug list and provide me a date for these releases just like they had done in the past. Several weeks later, they finally sent me a list.

As was stated to you in our in camera session, Arbortext stopped communicating with me after I refused to give them permission to access Blueberry’s Source Code. At the time I refused to give them permission, I was working on all of the bug fixes they sent to me. Their reason for wanting to access the Source Code seemed strange to me. I told them to send me the bug and I would fix it but they insisted that they couldn’t duplicate it. I never refused to keep working. In **Section 2.4** of the Arbortext/Blueberry contract, it says that if Blueberry Software fails to perform its obligations under this agreement, Arbortext may access the source code. It goes on to say... “Arbortext will not otherwise access Blueberry source code until and unless it has good cause to believe Blueberry has failed to perform its obligations, and in this event will notify Blueberry formally, stating the reasons for accessing the source code. Arbortext will transmit any changes to the Blueberry source code it makes to Blueberry in a timely manner: changes will be adequately documented and commented...” The contract is clear that they must get permission in writing to do this, must state the reasons for doing so and must transmit all changes to me. They have done none of these things.

As for Mr. Dwan’s concern about liability should Arbortext file a suit against Blueberry, Arbortext decided to not work with Mr. Dwan. This evidence was present to the Court during the trial. It was never Mr. Dwan’s job to perform the contract. They stopped communicating with him. In addition, according to the contract, Arbortext could have sent me communication that I was in breach and I would have had thirty days to cure it. They never sent me any communication of this type. Arbortext was informed of the court’s decision which awarded me sole ownership of the contract. In addition, **Section 15.7** of the Arbortext contract states... “Except for the payment of money, neither party will be liable to the other for any failure to perform or delay in the performance of its obligations caused by circumstances beyond its

reasonable control.” Arbortext took Mr. Dwan out of the equation and therefore Mr. Dwan’s liability is not an issue, especially in light of the above, but most importantly because the ownership has changed from two parties to one.

During the telephone conference in November, 2003, with Ray Sciavone and Dave Peralta, Mary Tarantino mentioned to Mr. Peralta and Mr. Shiavone that we were interested in performing an audit. They seemed to welcome this on the telephone but Jim Sterken who had refused to communicate with Mr. Dwan in the past, contacted him, minutes after the call. Mr. Bernheim has mentioned the strain between Arbortext and Blueberry Software. Of course there would be strain given the feelings of both parties; on our part, that they have failed to honor the contract by withholding royalties and applying double discounts to keep our royalties at their projected minimum and now allegedly, on their part, with their inference that I have failed to perform. However, their relationship with Ms. Tarantino has always been courteous and professional. As a matter of fact, Ms. Tarantino and Mr. Peralta exchanged emails after the November, 2003 conference call. It was Mr. Sterken who interrupted this dialogue by contacting Mr. Dwan. This email is attached. **(Exhibit 3).**

The Arbortext contract in regard to litigation, calls for Binding Arbitration with one (1) Arbitrator. Arbortext has no grounds for Litigation because they have not cited Breach. Termination for Cause would prevent them from continuing to sell the products with our technology. This would affect many other companies especially solution providers who also would have to refrain from selling the products which include our technology. We are not insolvent and the Court Appointed Receiver is not performing because of insolvency. As was stated by you in our previous post trial session, the Receiver’s role, in this case is not a traditional one. Therefore Arbortext cannot Terminate for Cause because of the Receiver, because we are solvent.

I would very much like to see an equitable conclusion to this matter. I hope the Court understands, when Ms. Tarantino started to work in her present capacity, it was for the benefit of both Mr. Dwan and me. She saw very clearly the errors in the reporting. She has researched this matter extensively over the past couple of years, and would have done the same work and come to the same conclusions had she been working for a different company.

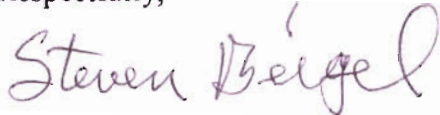
As stated to you in our last session, the law firm we consulted has looked at the evidence and totally agrees this case of underreporting, improper interpretation, and withholding of royalties on the part of Arbortext, has great merit. We are not planning to file for Arbitration, but most definitely, given the evidence we possess, the performance of an audit very well could greatly increase our ability to negotiate a higher buyout figure if all parties agree and only at that time, would we even consider the necessity of Arbitration.

If Arbortext chose to threaten us with Arbitration because we wanted to Audit, that would be a very strong message to us that there definitely is something seriously wrong with the royalty reports. Performing an audit is considered a necessary Standard practice in this industry. Performing audits are greatly encouraged and are often done at times when there is no suspicion. It does however, ensure that proper reporting is taking place and both contract parties are being rewarded properly.

I am asking the Court to rule on this issue of our right to perform an audit. To accept Arbortext's word about the value of this contract over time is one thing. To accept such a low figure and give them global rights in perpetuity harms me in ways that will affect my future. Ongoing development of my copyrighted software will be in direct competition with their one-time buyout for their lifetime royalty-free-license to use my software which is copyrighted by me.

Mr. Bernheim stated that we have no money for an Audit. Mr. Blair has stated that the Receivership has no money for an audit. As stated to you during our last session, we are more than willing to pay for this audit. Ms. Tarantino's mother (my mother-in-law) passed away on March 11, 2004. Her funeral was a couple of days before our last session. Ms. Tarantino's family has offered to put up the money for this audit. .

Respectfully,

A handwritten signature in purple ink that reads "Steven Beigel". The signature is written in a cursive style with a large, looped "S" and "B".

Steven Beigel

Encls.

Cc: Richard G. Blair
Lawrence Bernheim

Exhibit 1



- <> Home
- <> Consultancy
- <> Products
- <> Training
- <> Support & maintenance
- <> Resource
- <> About Vektas
- <> News and Events

You are here: Vektas // Products // Armada — Powered by E3



**Vektas Armada:
Powered by E3**



Based around the power of Arbortext's E3, Vektas will soon launch the tool that will act as a core server for document assembly, processing and management.

If you are required to produce different outputs from multiple sources Armada will fulfil this role. Accepting documents from a number of industry accepted authoring tools including Microsoft's Word, Interleaf or Adobe FrameMaker, Armada will recognize and convert to your desired output. Introducing significant time and cost savings to your current and future projects.

Armada has an ARK interface which means it can be customized by your developers to meet your own needs and interacts fully with an S1000D (also known as AECMA) Common Source DataBase (CSDB), ensuring that data integrity is maintained.

E3: The Vektas solution

Creation

- **XML/SGML authoring:**
Vektas Warrior
- **Remote authoring:**
Arbortext Contributor — web-based thin client
- **Custom:**
Authoring with Microsoft Word or other application

Conversion

- **Standard-to-Standard:**
S1000D to MIL-Spec
- **Legacy to markup:**
Documents from DTP and Word Processing tools to XML/SGML
- **Publication:**
PDF/(X)HTML/Wireless

Management

- **Loose-leaf Publisher:**
Change management, revision control
- **XML collections:**
Book profiles, Web Help output, language control, DMRL for S1000D

Development

- **Integration with CSDB:**
SOAP
- **Development through Vektas ARK:**
C++, Java, JavaScript
- **Industry standard:**
XML, SGML, XSLT, XSL-FO



To receive the Armada data sheet please click on the following link to send your request via email.

Request Armada data sheet or view the Armada concept.

If you require any further information on Armada please contact sales@vektas.com.

Links: ARK // Warrior // E3

Exhibit 2

Exhibit B

Arbortext Products

Arbortext is authorized to market, distribute and support the Blueberry Software when it is incorporated in any Arbortext Products that Arbortext creates utilizing Blueberry code, which at present include:

1. Interchange option for Epic Editor, fixed license
2. Interchange option for Epic Editor, concurrent license
3. Interchange option for Epic E-content Server, server license
4. Onword (anticipated Q3 or Q4 2000 release)
5. Onframe (possible Q3 or Q4 2000 release)

Exhibit 3

Steven Beigel

From: "Mary Tarantino" <mary@blueberrysoftware.com>
To: "Steven Beigel" <steve@blueberrysoftware.com>
Sent: Wednesday, March 31, 2004 10:31 AM
Subject: Fw: Our Conversation

----- Original Message -----

From: Dave Peralta
To: Mary Tarantino
Sent: Friday, November 14, 2003 12:04 PM
Subject: Re: Our Conversation

Hi Mary,

Thanks for your note. I'll look forward to hearing from you next week. Also, as Ray mentioned yesterday, please let us know if it would be helpful to have another conference call with Steve involved.

Enjoy your weekend,
Dave

Dave Peralta
Chief Financial Officer
Arbortext, Inc.
Office: 734.327.6859
Cell: 734.717.1874

"Mary Tarantino" <mary@blueberrysoftware.com>

11/14/2003 01:17 PM

To "Dave Peralta" <DPeralta@arbortext.com>

cc "Steven Beigel" <steve@blueberrysoftware.com>

Subject: Our Conversation

Dave,

Steve and I are discussing the issues addressed in our telephone conversation yesterday. I know I told you that I would call you today, but I am not quite ready to respond. I will call you early next week.

Thank you for your time.

Mary

03/31/2004