

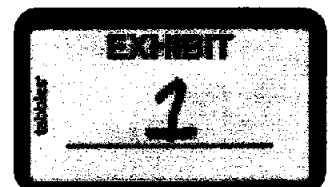
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LINKCO, INC., a Delaware corporation,)
)
Plaintiff,)
)
v.) Case No. 99 C 7774
)
FUJITSU CO., LTD., a Japanese corporation,) Judge William J. Hibbler
)
Defendant.)

**BRIEF IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS**

Attorneys for Defendant
Richard J. O'Brien
Paul E. Veith
James G. Clessuras
SIDLEY & AUSTIN
Bank One Plaza
10 South Dearborn
Chicago, Illinois 60603
(312) 853-7000

Dated: March 27, 2000



INTRODUCTION

This case has virtually nothing to do with Illinois and should not proceed here. The lawsuit arises out of plaintiff LinkCo's association with a Japanese businessman (Kiyoto Kanda) and establishment of a Japanese subsidiary (headed by Kanda) toward the pursuit of a business opportunity in Japan, and the alleged misappropriation of trade secrets by Fujitsu Limited, a Japanese corporation. None of the conduct alleged to form the basis for LinkCo's claims occurred in Illinois. The product now offered by Fujitsu Limited that allegedly utilizes LinkCo's trade secrets – DisclosureVision — was designed by Fujitsu Limited in Japan, developed in Japan, brought to market in Japan, and serves as a basis for the reporting and publishing of information by companies listed on Japanese stock exchanges. An exercise of personal jurisdiction over Fujitsu Limited in this case would offend principles of due process. For that reason alone, this action should be dismissed.

Moreover, the doctrine of forum non conveniens also compels dismissal. The likely witnesses in this case are predominantly Japanese nationals who live in Japan, work in Japan, and for whom Japanese is their native language. Virtually all of the documents reflecting the development of DisclosureVision are, not surprisingly, written in Japanese and found in Japan. The factual basis for dismissal on forum non conveniens grounds is overwhelming.

STATEMENT OF FACTS¹

LinkCo and Kanda

LinkCo is a Delaware corporation which at all relevant times was based in Massachusetts. (Complaint ¶ 2). According to published records of the Illinois Secretary of

¹ For purposes of this motion only, the allegations of the Complaint are taken to be true.

Steven M. Bierman (SB 6615)
SIDLEY AUSTIN BROWN & WOOD
875 Third Avenue
New York, New York 10022
(212) 906-2000

Richard J. O'Brien (RO 4882)
Paul E. Veith (PV 4549)
SIDLEY AUSTIN BROWN & WOOD
Bank One Plaza
10 South Dearborn Street
Chicago, Illinois 60603
(312) 853-7000

Attorneys for Defendant Fujitsu Limited

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
LINKCO, INC.,

Plaintiff,

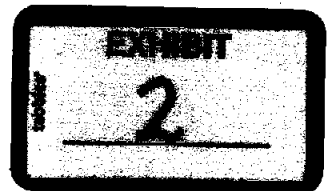
-against-

FUJITSU LTD.,

Defendant.
-----x

00 Civ. 7242 (SAS)

MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION TO
STRIKE PLAINTIFF'S REQUEST
FOR PUNITIVE DAMAGES



LX062942

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I. INTRODUCTION

This case involves plaintiff LinkCo, Inc.'s ("LinkCo") claim that Fujitsu Limited, a Japanese company, misappropriated a trade secret through its collaboration with a Japanese national named Kiyoto Kanda, who was the principal of a Tokyo-based consulting firm called K and A, Inc. According to LinkCo, Fujitsu's relationship with Kanda – who set up and worked at one time for LinkCo's Japanese subsidiary, LinkCo Japan – enabled Fujitsu to enter the "corporate disclosure" business by introducing a set of products and system integration services under the brand name "DisclosureVision." LinkCo alleges that DisclosureVision is a copy of LinkCo's trade secret.

LinkCo seeks punitive damages "in excess of \$200 million" on several of its tort claims in this action – on top of the \$66 to \$76 million it apparently will seek in compensatory damages.¹ Fujitsu submits that punitive damages are not available to LinkCo in this case at all, because Japanese law is applicable to the question of whether punitive damages are available and does not permit their recovery. Japan embraces the policy of limiting the recovery in tort cases to compensatory damages, and Japan has a far stronger interest in the application of its law on this question than does New York, primarily because Japan is the locus of virtually all of Fujitsu's alleged misconduct in this case. Fujitsu is, of course, domiciled in Japan and its interactions with Kanda (the alleged "source" of LinkCo's trade secret) overwhelmingly occurred in Japan, where Fujitsu designed, developed, and marketed DisclosureVision exclusively for the Japanese market.

¹ See Declaration of Paul E. Veith, herein "Veith Decl.," ¶ 10, and Complaint, ¶ 60, attached to Veith Decl. as Exhibit 1. The source materials for the statements in Defendant's Motion to Strike Punitive Damages are found either in the body of the declarations of Toru Shibata, Yuichi Sakai, Hideki Kamijyo, or Takeshi Ito, or in the body and/or exhibits to the declaration of Paul E. Veith. All five declarations are being submitted with this motion. Whenever a cited source is an exhibit to the Veith declaration, the citation indicates the source document and the exhibit number. For example, when the Complaint is cited, it will be cited: "(Complaint, ¶ ___/Veith Decl. Exh. 1)."

II. LEGAL STANDARDS

The determination of whether punitive damages are available to LinkCo is driven by choice-of-law analysis. Because this Court sits in New York, it must apply the choice-of-law principles developed by New York state courts. Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 497 (1941).² Under New York law, courts resolve choice-of-law questions on an issue-by-issue basis, when necessary. For example, the determination that New York law applies to a given cause of action and therefore to the measure of compensatory damages under that cause of action does not necessarily mean that New York law will apply to the question of whether punitive damages are available to the plaintiff under that cause of action. See James v. Powell, 279 N.Y.S.2d 10, 18 (N.Y. 1967) (“An award of punitive damages . . . depends upon the Object or purpose of the wrongdoing and on this issue we should look to the ‘law of the jurisdiction with the strongest interest in the resolution of the particular issue presented.’”) (citations omitted); Knieremen v. Bache Halsey Stuart Shields Inc., 427 N.Y.S.2d 10, 14-15 (1st Dep’t 1980) (separately analyzing three choice-of-law issues and finding that Louisiana law was applicable on punitive damages question and barred recovery of punitive damages).

² Under New York choice-of-law analysis for tort claims, the law of the jurisdiction where the tort occurs usually controls the determination of liability. Schultz v. Boy Scouts of Am., Inc., 491 N.Y.S.2d 90, 95-96 (N.Y. 1985) (stating that the place of the tort will usually have a predominant, if not exclusive, interest in conduct-regulating rules). If this standard were applied strictly here, Japanese law would likely apply to liability issues for all of plaintiff’s causes of action, because the conduct LinkCo complains of is conduct that took place predominantly, if not exclusively, in Japan. But if there is no *conflict* of laws to resolve and/or if the parties agree, a federal court will typically apply the forum’s law. See Seven-Up Bottling Co. (Bangkok), Ltd. v. Pepsico, Inc., 686 F. Supp. 1015, 1022 (S.D.N.Y. 1988); In re Arbitration between Allstate Ins. Co. & Stolarz, 597 N.Y.S.2d 904, 905 (N.Y. 1993); Elson v. Defren, 726 N.Y.S.2d 407, 411 (1st Dep’t 2001); J. Aron & Co. v. Chown, 647 N.Y.S.2d 8, 8 (1st Dep’t 1996). In the summary judgment briefing in this case, the parties both cited New York law as being applicable to the liability question for LinkCo’s claim of trade secret misappropriation. As a result, the Court appropriately applied New York law without engaging in any choice-of-law analysis. Fujitsu made it clear, however, that its agreement that New York law should apply to the issues being litigated in the summary judgment motion should not be construed as an agreement that New York law applied to all issues in the case. In its brief, Fujitsu stated: “[i]t appears that there may be at least one important difference between Japanese and New York law that does not affect the current motion: punitive damages are not available under Japanese law. Fujitsu reserves the right to seek application of Japanese law on the issue of the availability of punitive damages, if necessary.” (Mem. In Support Of Defendant’s Motion For Partial Summ. Judgment., p. 9, n.8).

The "particular issue presented" by this motion is whether punitive damages are available to LinkCo. There is a conflict between New York's law and Japan's law on this point, and the parties do not agree on which jurisdiction's law should apply. Thus, a "conflicts" issue has been isolated, and the Court should (1) identify the policies embraced in the conflicting laws, and (2) "examine the contacts of the respective jurisdictions to ascertain which has a superior connection with the occurrence and thus would have a superior interest in having its policy or law applied." Dym v. Gordon, 262 N.Y.S.2d 463, 466 (N.Y. 1965). This "interest analysis" will result in the Court applying the "law of the jurisdiction with the strongest interest in the resolution of the particular issue presented." Dobelle v. Nat'l R.R. Passenger Corp., 628 F. Supp. 1518, 1528 (S.D.N.Y. 1986).

In conducting "interest analysis," courts applying New York law have considered several factors, including (1) plaintiff's domicile, (2) defendant's place of business, (3) the place where the alleged "misconduct" occurred, and (4) the basic policies underlying the field of law. Dobelle, 628 F. Supp. at 1528.³ As will be noted below, these various factors have been accorded more or less weight depending on the issue on which choice-of-law analysis is being conducted, because the Court is to consider only those "facts and contacts . . . which relate to the purpose of the particular law in conflict." Miller v. Miller, 290 N.Y.S.2d 734, 737 (N.Y. 1968), quoted in Saxe v. Thompson Medical Co., 1987 WL 7362, at *1 (S.D.N.Y. Feb. 20, 1987).

Courts engaging in "interest analysis" under New York law on the punitive damages question have consistently applied the law of the jurisdiction in which a corporate defendant's alleged misconduct occurred. Dickerson v. USAir, Inc., 2001 WL 12009, at *9 (S.D.N.Y. Jan. 4, 2001) (applying punitive damages law of Washington where the majority of

³ Dobelle also lists the "location of the accident" as a factor. Id. at 1528. Obviously, there is no "accident" alleged in the case at bar, which involves allegations of intentional wrongful conduct.

defendant's misconduct occurred, including its managerial decisions, rather than law of place of accident); Wang v. Marziani, 885 F. Supp. 74, 77-78 (S.D.N.Y. 1995) (applying punitive damages law of Pennsylvania where defendant drove at excessive speed causing accident, rather than law of New York where plaintiff was domiciled); Saxe, 1987 WL 7362, at *1 & n.1 (S.D.N.Y. 1987) (applying punitive damages law of New York where testing, advertising and merchandising of allegedly defective product occurred, rather than law of Connecticut where plaintiff ingested product); Dobelle, 628 F. Supp. at 1529 (applying punitive damages law of Pennsylvania where majority of actions leading up to the accident occurred, rather than law of the place of accident, which was fortuitous); Bosio v. Norbay Secs., 599 F. Supp. 1563, 1572 (E.D.N.Y. 1985) (applying New York punitive damages law to breach of fiduciary duty claim when securities brokerage firm and a broker-dealer allegedly committed wrongful acts in New York, including conversion, and the account involved was maintained in New York); Beasock v. Dioguardi Ents., Inc., 472 N.Y.S.2d 798, 801 (4th Dep't 1984) (applying punitive damages law of jurisdictions where defendants designed, manufactured, and approved product, rather than law of New York where product exploded); Knieremen, 427 N.Y.S.2d at *13 (applying punitive damages law of Louisiana when "all of the acts that would warrant punitive damages were restricted to Louisiana," rather than law of New York where corporate defendant was domiciled). Where it was not possible to pinpoint a single jurisdiction as the location for all of the alleged misconduct, courts have opted for the jurisdiction where the majority of the defendant's alleged misconduct occurred. See Dickerson, 2001 WL 12009, at *9; Dobelle, 628 F. Supp. at 1529.

III. THE COURT SHOULD APPLY JAPAN'S LAW AND PRECLUDE LINKCO FROM SEEKING PUNITIVE DAMAGES IN THIS CASE

A. Plaintiff's Domicile

LinkCo is a Delaware corporation that was founded in Massachusetts in 1995 and moved to Illinois in 1999. (Complaint, ¶ 2/Veith Decl. Exh. 1). LinkCo has no basis to argue that New York law should apply on the basis of its domicile, because it is not now and never has been domiciled in New York. In any event, "the interest of plaintiff's domicile has little relevance since punitive damages are designed to punish a defendant, not to compensate a plaintiff." Dobelle, 628 F. Supp. at 1528-29.

B. Defendant's Domicile

Fujitsu is a company domiciled in Japan. (Complaint, ¶ 3/Veith Decl. Exh. 1; Shibata Decl. ¶ 2). While plaintiff's domicile may have little relevance to the choice-of-law determination regarding punitive damages, the defendant's domicile "is . . . of some moment in relation to the purpose of the rule." Saxe, 1987 WL 7362, at *1. A defendant's domicile should be accorded some weight because the purpose underlying an award of punitive damages is to punish and deter, and any jurisdiction – Japan included – will have a strong interest in determining the method of punishing and deterring its own corporate citizens.

C. Location Of The "Misconduct"

In order to determine the location of Fujitsu's alleged misconduct, the Court should consider two questions: (1) what is the allegedly tortious conduct?, and (2) *where*, as between Japan and New York, did it occur? The first question can be answered, in part, by examining LinkCo's Complaint. LinkCo alleges trade secret misappropriation, conversion, unfair competition, and tortious interference with contractual relations. (Complaint ¶¶ 50-

84/Veith Decl. Exh. 1). LinkCo alleges a common set of facts for all of its causes of action, which facts are set forth in paragraphs 6-49 of the Complaint. As the Court is aware, the only trade secret at issue in this case is a 26-element "combination" of "concepts, technologies, and strategies," identified by LinkCo's liability expert, Bruce Webster. (Webster Report, pp. 4-5, 16-18/Veith Decl. Exh. 4; Webster Dep., pp. 53, 72-73, 109, 198/Veith Decl. Exh. 5).

LinkCo alleges Fujitsu engaged in conduct rendering it liable for misappropriating and converting that "combination" trade secret.⁴ There are two possibilities as to where the conduct amounting to misappropriation or conversion of a trade secret "occurs": the place where information is appropriated, and the place where the information is used. Courts in this district have found the place of usage to be determinative as to where trade secret misappropriation occurs. See CCS Int'l, Ltd. v. ECI Telesystems, Ltd., 1998 WL 512951, at *11 (S.D.N.Y. Aug. 18, 1998)(finding it likely Israeli law governs misappropriation claim when appropriation occurred in a number of places, one of which was New York, but use of information to develop system in competition with plaintiff's took place in Israel); Blimpie Int'l, Inc. v. ICA Menyforetagen AB, 1997 WL 143907, at *7 (S.D.N.Y. Mar. 25, 1997) (determining the law of Sweden likely applies because trade secrets used in market there); also Frink Am., Inc. v. Champion Road Mach. Ltd., 48 F. Supp. 2d 198, 205 (E.D.N.Y. 1999) (applying the law of the locus of the market where defendant, using the plaintiff's trade secrets, introduced a similar product in direct competition with plaintiff, instead of the law of the locus of appropriation). Whether the Court focuses its inquiry on the location of the alleged *appropriation* of trade secret

⁴ There is no discernible difference between the conduct forming the basis for LinkCo's trade secret misappropriation claim and its conversion claim. In addition to the fact that LinkCo relies on the same factual allegations for each count (Complaint, ¶¶ 1-49, 50, 61/Veith Decl. Exh. 1), LinkCo expressly alleges that the object of Fujitsu's conversion was LinkCo's "trade secret and confidential information." (Id. ¶¶ 65-66).

information, or the location of the alleged *use* of that information, the result of that inquiry points toward Japan.

1. Place Of Appropriation

To determine the locus of the alleged "appropriation," the Court must examine the place of Fujitsu's interaction with Kiyoto Kanda, because LinkCo contends that Fujitsu relied upon LinkCo proprietary information "in the development effort that resulted in their (sic) new corporate disclosure system," and "that Kiyoto Kanda was the source providing the intellectual property to them (sic)." (Webster Report at 47/Veith Decl. Exh. 4). The overwhelming majority of Fujitsu's contacts with Kanda occurred in Japan, as is evident from several points gleaned from the record in this case, which cannot be disputed:

- Kanda's place of business and residence was in Japan at all times during his relationship with Fujitsu. (Kamijyo Decl. ¶ 15).
- Kanda was one of three LinkCo representatives who attended a meeting with LinkCo on September 10, 1997 at Fujitsu Research Institute in Tokyo, Japan. (Ito Decl. ¶ 7).
- A short time following the September 10 meeting, Kanda called Fujitsu's Takeshi Ito and subsequently met Ito and Fumihiko Otsuki for lunch in Tokyo, Japan. (Ito Decl. ¶ 8). Ito testified that he met or communicated with Kanda in Japan on several occasions in the following months in Japan, and LinkCo's expert relies heavily on these meetings in his Report, which he characterizes as "secret meetings" that began "just a few weeks after the September 10, 1997 meeting." (Webster Report at 40, 46/Veith Decl. Exh. 4).
- LinkCo's expert purports to document some of Kanda's interactions with Fujitsu in Exhibit 10 to his report – those interactions began in July/August 1997 (when Kanda was seeking to arrange a meeting between Fujitsu and LinkCo) and continued through March 2000, a period of nearly three years. (Webster Report at 77-84/Veith Decl. Exh. 4). Of the 109 "documented interactions" during this time period cited, just four make reference to events or communications that took place in New York (all of which are described below), six make reference to trips Kanda made to other countries in Asia (*Id.* at 79-80), and the balance of the "interactions" appear to reflect communications or meetings that took place in Japan.

- LinkCo's expert's "documented interactions" exhibit makes reference to several consulting agreements between Fujitsu and K and A, Inc. (Kanda's firm), all of which were negotiated and entered into in Japan. (Webster Report at 79, 80, 84/Veith Decl. Exh. 4; Shibata Decl. ¶ 12).
- Approximately 45 of the "documented interactions" refer to communications to which Kanda and Kazunori Atobe were parties. Atobe is a Fujitsu engineer who was involved in the development of DisclosureVision, and, during the time of his work on DisclosureVision, Atobe did not have any occasion to travel outside Japan. (Atobe Dep. at 85, 100/Veith Decl. Exh. 2).
- Among the "documented interactions" listed by LinkCo's expert are lectures or seminars Kanda conducted on Fujitsu's behalf at various points in 1999 and 2000 regarding the corporate disclosure/investor relations field, in an effort to promote DisclosureVision. Those lectures and seminars all occurred in Japan. (Kamijyo Decl. ¶ 20).

As can be readily determined from the points listed above, Kanda's "interactions" with Fujitsu in Japan spanned nearly three years. In contrast, the interaction between Kanda and Fujitsu that occurred in New York was very limited in time and in scope:

- between December 7 and 14, 1997, Fujitsu's Takeshi Ito and Fumihiko Otsuki visited New York on business, some of it related to the corporate disclosure field and some of it unrelated. Kanda joined Ito and Otsuki at a meeting with Professor Ajit Kambil of New York University, who was introduced to Fujitsu as an expert on the EDGAR system and who later was engaged to do a research project on Fujitsu's behalf (Ito Decl. ¶¶10-12).⁵
- between February 25 and March 8, 1998, Otsuki visited New York on business, some of it related to the corporate disclosure field and some of it unrelated. On February 26, 1998, Kanda joined Otsuki for (a) an introduction to Professor Sato of the Japan/U.S. Research Center on Business and Economy at N.Y.U. (b) a meeting with Professor Kambil (to discuss the research project that had been proposed) and (c) a meeting at the offices of Document Technologies, a vendor of software for public corporations using the EDGAR system (Otsuki Dep. at 55-57, 63-68/Veith Decl. Exh. 6; Business Trip Report/Veith Decl. Exh. 7).
- between June 21 and June 27, 1998, Otsuki and Hideki Kamijyo visited New York on business, and were accompanied to several meetings by Kanda. The three met with Professor Kambil to discuss the ongoing research, and also visited

⁵ Between December 1 and December 5, 1997, a group of Fujitsu employees who were working on the Ministry of Finance ("MOF") EDINET project made an investigatory visit to New York. The MOF group visited Professor Kambil on December 1, but Kanda was not present for that meeting or for any other meeting with the MOF group on the trip. (Sakai Decl. ¶ 10).

Bowne (the financial printing company), and met at Fujitsu's offices in New York during the trip. (Kamijyo Decl. ¶16; Otsuki Dep. at 106-10/Veith Decl. Exh. 6).

Apart from the meetings described above, there is no indication in the record that any of Fujitsu's interactions with Kanda took place in New York, and there is no evidence in the record that Kanda communicated LinkCo's trade secret information to Fujitsu employees during any of the New York trips. Because (a) Kanda is alleged to be "the source" who transmitted LinkCo's trade secret information to Fujitsu, and (b) the overwhelming majority of his "interactions" with Fujitsu occurred in Japan (and few occurred in New York), this Court should conclude that the locus of Fujitsu's alleged "appropriation" activity was Japan, not New York.

2. Place Of Use

More importantly, to the extent Fujitsu is alleged to have "used" LinkCo's trade secret information, it has done so entirely in Japan, not New York. According to LinkCo's Complaint, Fujitsu's DisclosureVision package "is a copy of the very technology developed by LinkCo" and Fujitsu was able "to create and market the DisclosureVision software" by obtaining "LinkCo's trade secret and confidential information." (Complaint, ¶¶ 45, 48, 58/Veith Decl. Exh. 1). LinkCo's expert concluded that Fujitsu used LinkCo's trade secret by "conceiving, designing, and promoting publicly [DisclosureVision]." (Webster Report at 4/Veith Decl. Exh. 4). Without question, DisclosureVision was conceived, designed, and promoted by Fujitsu exclusively in Japan:

- Hideki Kamijyo, a Fujitsu systems engineer involved in the development of DisclosureVision, has testified that all the conceptual and detailed design work for the applications developed for DisclosureVision was performed by Fujitsu employees working in Japan. (Kamijyo Decl. ¶8).
- Kamijyo has testified that the programming for the applications developed for DisclosureVision was performed by Fujitsu employees, employees of Fujitsu subsidiaries, or sub-contractors working in Japan. (Kamijyo Decl. ¶9).

- Kamijyo has testified that the testing for the applications developed for DisclosureVision was performed by Fujitsu employees, employees of Fujitsu subsidiaries, or sub-contractors working in Japan. (Kamijyo Decl. ¶10).
- Kamijyo has testified that all of the marketing activity in support of the applications developed for DisclosureVision was performed in Japan. (Kamijyo Decl. ¶11).
- Toru Shibata, Kamijyo's supervisor and a manager who was responsible for key decisions regarding DisclosureVision, has testified that all of the Fujitsu employees who worked on the DisclosureVision project worked in Japan, that all of the decisions he made as a manager on the DisclosureVision project were made in Japan, and that all of his reporting to supervisors took place in Japan. (Shibata Decl. ¶10).
- DisclosureVision encompassed applications designed exclusively for Japanese corporate users and certain system engineering services performed for specific Japanese institutions. (Kamijyo Decl. ¶¶11-12). It was not marketed outside of Japan.

3. Place Of Unfair Competition

In Count III of its Complaint, LinkCo alleges that "Fujitsu exploited and misappropriated LinkCo's proprietary and exclusive Technology, its trade secrets, and its confidential information to compete in the very markets LinkCo intended to compete in, at LinkCo's expense." (Complaint, ¶ 71/Decl. Exh. 1). The factual allegations incorporated in LinkCo's unfair competition claim are identical to the factual allegations incorporated in its trade secret and conversion claims. (Complaint ¶¶ 1-49, 50, 61, 69). Thus, the "conduct" that supports this claim is the same as the conduct that supports the other claims, and the question of where the unfair competition took place should be answered in the same way as the question of *where* Fujitsu is alleged to have "used" LinkCo's trade secret information. As indicated above, Fujitsu's DisclosureVision package offered products exclusively in the Japanese marketplace, not in New York or any of the United States. (Kamijyo Decl. ¶¶11-12).

4. Place Of Interference

In Count IV of its Complaint, LinkCo alleges that Fujitsu tortiously interfered with LinkCo's contractual relations with Kanda and Professor Kambil, and asserts that Fujitsu knew about Kanda and Professor Kambil's "covenants not to compete and agreement not to disclose LinkCo's trade secret and confidential information," and induced them to "breach their covenants not to compete and non-disclosure agreement with LinkCo." (Complaint, ¶¶ 77-78/Veith Decl. Exh. 1). Again, the factual allegations underlying this count are the same as those underlying the trade secret, conversion, and unfair competition counts.

As demonstrated above, Fujitsu's interactions with Kiyoto Kanda predominantly took place in Japan. As to those meetings that took place in New York in December 1997 and February and June of 1998, they came long after the time – according to LinkCo – that Fujitsu is alleged to have commenced its "secret" meetings with Kanda and to have begun receiving LinkCo confidential information. Webster Report at 46/Veith Decl. Exh. 4. Thus, LinkCo cannot credibly claim that the "interference" with Kanda's alleged contract with LinkCo occurred predominantly in New York.⁶

D. Policies Underlying Awards Of Punitive Damages

Under New York law, punitive damages are awarded in "singularly rare cases" where the "wrong complained of is morally culpable, or is actuated by evil and reprehensible motives." Knieriemen, 427 N.Y.S.2d at 13 (internal citations omitted). The purposes of the allowance of punitive damages are punishment of the defendant and deterrence of future

⁶ LinkCo also alleges in its Complaint that Fujitsu interfered with its contractual relations with Professor Kambil. (Complaint, ¶ 78/Veith Decl. Exh. 1). But there is (a) no evidence that anyone from Fujitsu knew that Professor Kambil was a party to a confidentiality agreement with LinkCo; (b) no evidence that Fujitsu met with Kambil for the purpose of obtaining any information about LinkCo, its products, or its business; and (c) no evidence that would support a finding that Fujitsu engaged in any conduct in New York that caused Kambil to breach an agreement with LinkCo. (Kambil Dep., pp. 83-85, 90-91, 103-04, 130-31, 152, 161, 164-65/Veith Decl. Exh. 3).

wrongdoing. See Beasock, 472 N.Y.S.2d at 800. Thus, "punitive damages awards are essentially conduct-regulating rather than loss-allocating." Saxe, 1987 WL 7362, at *1.

Under Japanese law, awards of punitive damages in tort cases are not permitted. In 1997, the Supreme Court of Japan explained the policy against punitive damage awards in a case concerning the enforceability of a judgment obtained in California:

It is evident that the system of punitive damages as provided by the Civil Code of the State of California (hereinafter, 'punitive damages') is designed to impose sanctions on the culprit and prevent similar acts in the future by ordering the culprit who had effected malicious acts to pay additional damages on top of the damages for the actual loss, and judging from the purposes, is similar to criminal sanctions such as fines in Japan.

In contrast, the system of damages based upon tort in Japan assesses the actual loss in a pecuniary manner, forces the culprit to compensate this amount, and thus enables the recovery of the disadvantage suffered by the victim and restores the *status quo ante* (citation omitted), and is not intended for sanctions on the culprit or prevention of similar acts in the future, i.e., general prevention.

Admittedly, there may be an effect of sanctions on the culprit or prevention of similar acts in the future by imposing a duty of compensation on the culprit, but this is a reflective and secondary effect of imposing the duty of compensation on the culprit, and the system is fundamentally different from the system of punitive damages whose goals are the sanctioning of the culprit and general deterrence.

In Japan, sanctioning of the culprit and general deterrence is left to criminal or administrative sanctions. Thus, the system in which in tort cases, the victim is paid damages for the purpose of imposing sanction on the culprit and general deterrence in addition to damages for the actual loss should be regarded as against the basic principles or basic ideas of the system of compensation based upon tort in Japan.

Unknown v. Yoshitake Katayama & Mansei Kogyo KK, 51 Minshu 2573 (Supreme Court of Japan, July 11, 1997).⁷

Obviously, the laws of Japan and of New York are fundamentally different on the question of whether an award of punitive damages – which aims to punish and deter – is appropriate in a tort case. Japan has an interest in punishing and deterring unlawful behavior by its corporate citizens, particularly where that behavior occurs on its soil. But Japan has made the choice that punishment and deterrence are to be achieved through “criminal and administrative sanctions,” not awards of punitive damages in civil tort litigation. Japan therefore has a strong interest in the application of its law on punitive damages in this case, because it will result in the prevention of an award against Fujitsu that is contrary to the policies of the Japanese tort system.

New York, on the other hand, has comparatively little, if any, interest in the application of its law on punitive damages in this case. It has no particular interest in protecting LinkCo – which was never domiciled in New York. It has no particular interest in regulating the conduct of Fujitsu that gave rise to this action, insofar as an overwhelming majority of that conduct occurred more than 6,700 miles away in Japan. The fact that Fujitsu personnel traveled to New York on several occasions in the process of investigating the corporate disclosure field should not lead to a conclusion that New York has an interest in applying its law to this case. New York should have no interest in punishing and deterring the conduct of foreign visitors from companies like Fujitsu, where there is no evidence – to be distinguished from conclusory

⁷ The Supreme Court of Japan is Japan’s highest court. The English home page of the Supreme Court of Japan can be accessed at “<http://www.courts.go.jp/english/ehome.htm>.” A page that lists the “prominent decisions” of the Supreme Court of Japan can be accessed at: “<http://courtdomino2.courts.go.jp/promjudg.nsf/View1?OpenView>.” The translated decision on the cited case can be accessed via a link on the “prominent decisions” page, and is attached as Exhibit 8 to the Veith Declaration.

allegations – that Fujitsu came to New York for any illicit purpose, or that it sought or obtained any LinkCo confidential or “trade secret” information in New York.

In light of the demonstration that the plaintiff in this case is not and was not ever domiciled in New York, that the defendant is a Japanese company based in Tokyo, and that the overwhelming majority of the alleged misconduct giving rise to this case occurred in Japan, this Court ““should accord to [Japanese law] the recognition which comity between enlightened governments requires,”” and strike LinkCo’s request for punitive damages: James, 279 N.Y.S.2d at 17.

IV. CONCLUSION

For the foregoing reasons, the Court should enter an order striking plaintiff's request for punitive damages on the basis of a finding that the law of Japan applies to the question of whether punitive damages are available to LinkCo and precludes their recovery on all claims asserted in this case.

Dated: April 1, 2002

FUJITSU LIMITED

By:



One of its attorneys

Steven M. Bierman (SB 6615)
SIDLEY AUSTIN BROWN & WOOD
875 Third Avenue
New York, New York 10022
(212) 906-2000

Richard J. O'Brien (RO 4882)
Paul E. Veith (PV 4549)
SIDLEY AUSTIN BROWN & WOOD
Bank One Plaza
10 South Dearborn Street
Chicago, Illinois 60603
(312) 853-7000

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

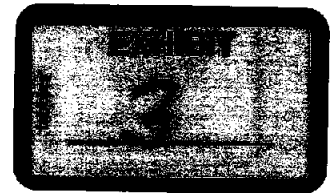
LINKCO, INC., a Delaware Corporation)	
)	
Plaintiff,)	Case No. 99 C 7774
)	
v)	Hon. William J. Hibbler
)	
FUJITSU CO., LTD.,)	
)	
Defendant.)	

DECLARATION OF TORU SHIBATA

I, Toru Shibata, declare as follows:

1. I am employed by Fujitsu Limited as the Manager of Solution Development Department II, Systems Business Division I, System Engineering Group (the "Systems Group"). The statements made in this Declaration are based on personal knowledge or based on an understanding gained during the course of my work at Fujitsu Limited.
2. Since March of 1998, the Systems Group has been involved in developing a product relating to electronic reporting and disclosure of financial and other business information by public companies in Japan. The Systems Group has worked with other groups within Fujitsu Limited on this project.
3. Fujitsu Limited has developed and continues to develop a package of application programs and services called DisclosureVision. DisclosureVision was publicly announced in a March 31, 1999 press release. The packages of application programs and systems integration services that make up DisclosureVision are designed for and marketed to companies listed on Japanese stock exchanges, Japanese stock exchanges, companies engaged in the filing and disclosure business for Japanese companies, commercial information providers, and institutional or individual investors in Japanese companies.

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4 Fujitsu Limited's Systems Group spent approximately 12 months developing IR-Station and IR-Tanshin Station, two application programs that form part of DisclosureVision's "IR Solution," a solution which supports the investor relation activities of companies listed on the Japanese stock exchanges. A team of approximately four Fujitsu employees and four employees of a Fujitsu sub-contractor (located in Japan) worked on the project. All of the work on the design, development, testing, and production of IR-Tanshin Station and IR-Station took place in Japan. The documentation relating to this project covers hundreds of pages and is largely technical in nature. Although I cannot be sure that I have seen all documentation concerning the project, virtually all of the documentation I have seen over the past 24 months which relates to this project has been written in Japanese.

5. At this time, the DisclosureVision product is designed exclusively for the Japanese market. For example, IR-Station is a database application that stores and sorts data filed with Japan's Ministry of Finance or Japan's stock exchanges. IR-Tanshin Station is an application program that edits financial data into a format designed by the Tokyo Stock Exchange.

6. Because DisclosureVision is marketed exclusively in Japan, virtually all of the available technical and non-technical information concerning DisclosureVision is located in Japan and is written in the Japanese language.

7. To my knowledge, none of the Systems Group's work on the design, development, testing, or production of DisclosureVision was performed in the United States or in Illinois. To my knowledge, all of the work done on the design, development, and production on the project has been performed in Japan.

8. I live and work in Japan, and my native language is Japanese. This Declaration is being submitted in English for the convenience of the Court.

I declare under penalty of perjury under the laws of the United States of America that
the foregoing is true and correct. Dated this 22 day of March, 2000 at Tokyo, Japan

柴田 徹
Toru Shibata

Steven M. Bierman (SB 6615)
SIDLEY AUSTIN BROWN & WOOD
One World Trade Center
New York, New York 10048-0557
(212) 839-5510

Richard J. O'Brien
Paul E. Veith
SIDLEY AUSTIN BROWN & WOOD
Bank One Plaza
10 South Dearborn Street
Chicago, Illinois 60603
(312) 853-7000

Attorneys for Defendant Fujitsu Limited

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
LINKCO, INC.,

Plaintiff,

00 Civ. 7242 (SAS)

-against-

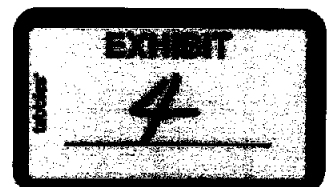
FUJITSU LTD.,

Defendant.
----- x

NAOYUKI AKIKUSA'S RESPONSE
TO LINKCO'S WRITTEN
INTERROGATORIES

Naoyuki Akikusa, by and through his attorneys, submits the following answers to the written interrogatories propounded by Plaintiff LinkCo, Inc., as modified by agreement of counsel. Defendant Fujitsu Limited, for whom Mr. Akikusa serves as President, is undertaking to answer certain of the interrogatories that seek information more appropriately provided by the corporation. A separate response to those interrogatories is being served simultaneously with these answers. In the following document, Mr. Akikusa's answers are in bold type; objections interposed by his counsel are in bold and italicized type.

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at Fujitsu. In my opinion, the quoted statement is our corporate message intended to convey that Fujitsu Group can help customers achieve their highest goals. I do not know whether that slogan has been utilized in the sales and marketing of DisclosureVision products.

17. When and how did you first become aware that Fujitsu was intending to develop a corporate disclosure system? When and how did you learn that that system was intended to include the following features?

- (a) That the system would permit electronic filing with the Ministry of Finance and/or with Japanese stock exchanges.
- (b) That corporate information would be available in both English and Japanese.
- (c) That a single centrally managed database would insure that all communication will use a single source of information.
- (d) That the system would utilize the Internet to convey information to analysts, other companies, institutional and individual investor.
- (e) That the system would utilize a relational database.
- (f) That the system has a database combining information from accounting human resources, public relationships and other corporate departments.
- (g) That the system would contain a YuhoStation and/or TanshinStation that reduces information to a formatted database that reorganizes the contents of the database to in a format that is highly searchable and suitable for drawing inferences with respect to the contents.
- (h) That the system interfaces with companies ERP and accounting systems.

Fujitsu objects to this interrogatory on the basis that it is vague and ambiguous in its use of the term "corporate disclosure system" without defining that term.

A: I am not aware of the meaning of "corporate disclosure system" as used in the question, but assuming this means the DisclosureVision project, I first became aware of Fujitsu's work on the project around the time of its press release announcing DisclosureVision. Because I am not aware of any of the specific features of the DisclosureVision project, I do not know whether the specific features listed in (a) through (h) are features that were included in the DisclosureVision systems.

18. Identify any discussions that you have had since January, 1997 with either the Ministry of Finance and/or Tokyo Stock Exchange regarding issues relating to corporate disclosure. When did you have these discussions, who participated and what was said by each of the participants?

Fujitsu objects to this interrogatory on the basis that it is vague and ambiguous in its use of the term "corporate disclosure" without defining that term.

A: Even assuming "corporate disclosure" refers to the electronic filing of corporate reports with the Tokyo Stock Exchange and Ministry of Finance, I have had no discussions with representatives of the Tokyo Stock Exchange or Ministry of Finance since January 1997.

[1] it in March '99 and they have dated through March 2001 did you
[2] say?

[3] MR. O'BRIEN: 2002, your Honor.

[4] THE COURT: Did you say March?
rsj MR. O'BRIEN: Yes, your Honor.

[6] The COURT: Even if you are right, that is three years
m of sales?

[8] MR. O'BRIEN: Yes, your Honor.

pj The COURT: March 99 to March 2002, three years.

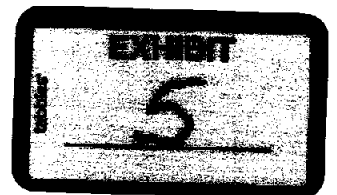
[10] MR. O'BRIEN: The stuff before the announcement wasn't
[ii] just samples or anything like that. The facts will show that
[12] at the time it was announced in March 1999 Fujitsu decided to
[13] fold into DisclosureVision as the middle segment, Digital

[14] Disclosure Solution, the systems that I talked about in my
[15] opening sold to the Tokyo Stock Exchange, and that was TD-Net,
[16] and there was a similar one sold to the Osaka Stock Exchange
[17] called EDNet. So those were systems that there had already
[18] been sales of at the time of the announcement. The facts will
[19] show that the reason they put those it Disclosure Vision was to
[20] sort of promote themselves regarding a track record.

[21] THE COURT: So in the worst case it is three years of
[22] sales.

[23] MR. LEVINSON: But they come more than two years after
[24] the hypothetical announcement.

[25] The COURT: I realize that, but I am not so sure of



[1] the import of that argument.

[2] The fact question I had was projections. I know about
[3] the projections that I excluded, the ones that Fujitsu made
[4] about ten months after the alleged date of encryption. Were
[5] there any other projections though?

[6] MR. LEVINSON: Your Honor, there is, of course, the
m January '97 that we have talked to your Honor about that talks
[8] about the market size. But starting in July there are -
[9] THE COURT: Of what year?

[10] MR. LEVINSON: [998].
[it] THE COURT: July '98?

[12] MR. LEVINSON: Ycs. There are documents that begin to
[13] be the early drafts of what become the business plan.
[14] THE COURT: I realize that. Your expert said it takes
[15] about six months to finalize all that. I remember all that.
[16] That was the so-called 10-month projections. They start to
[17] start it by June or July to make those.

[18] MR. LEVINSON: There is one dated in July, August,
[19] October.

(20) THE COURT: [understand that. Those are the Fujitsu
[21] projections we already talked about.

[22] MR. O'BRIEN: There are projections after that, too,
[23] your Honor.

[24] THE COURT: Also Fujitsu?

[25] MR. O'BRIEN: Correct, your Honor.

[1] THE COURT: So the earliest Fujitsu projections we
[2] have had are those that come out in October 1998, which) know
[3] your expert says they started to draft in June There is
[4] nothing earlier than that, right, that Fujitsu had?

[5] MR. LEVINSON: Not as to sales that will be achieved.

[6] THE COURT: Then what about LinkCo? Are there any
m LinkCo documents where they were projecting sales?

[8] MR. LEVINSON: Yes.

[9] THE COURT: When are they?

[10] MR. LEVINSON: Those are in the '96-'97 time frame,

[11] before September 10th, the meeting between LinkCo and Fujitsu.

[12] THE COURT: Of '97?

[13] MR. LEVINSON: In other words, when we were developing

[14] the projects, we were making projections.

[15] THE COURT: Anything else, Mr. O'Brien?

[16] MR. O'BRIEN: No, your Honor.

[17] THE COURT: Do sales continue?

[18] MR. O'BRIEN: There haven't been any sales that we are

[19] aware of since March of 2002, your Honor.

[20] THE COURT: OK. We are going to continue now I will

[21] rule when I can. So the jury is coming in.

[22] MR. O'BRIEN: Your Honor, before the jury comes in, I

[23] would like to invoke Rule 615 and have Mr. Israel-Rosen

[24] excluded.

[25] THE COURT: Yes. One representative That's it. The

[1] other should step out, Mr Levinson.

[2] (Jury present)

[3] THE COURT: Please be seated. Good morning everyone.

[4] THE JURY: Good morning.

[5] THE COURT: My clerk told me, to my great

[6] disappointment, that you don't want to work next Monday. Is
p~ that unanimous or is there somebody I can lean on or pressure

[8] or convince? Aren't there one or two of you who are kind of

[9] holding out? The reason I say that is it is the best work day

[10] there is There won't be any distractions, We can get more

[11] work done than usual. It is almost like you can get 2 for 1,

[12] and this trial is going to be long enough. It is not one of

[13] those major holidays. We aren't talking about Thanksgiving

[14] Day or Christmas Day or Easter Sunday which I wouldn't even

[15] ask you. It is kind of a minor blip on the calendar screen.

[18] I can accommodate you to help and start a half hour later or

[17] end a half hour early but I would sure hate to lose the day

[18] With that little caveat, would you reconsider it when you go

[19] back to the jury room? I see some nods. Thank you. Please

[20] reconsider.

[21] With that, Mr. Levinson.

[22] MR. LEVINSON: Yes. I have asked Professor Maimon to

[23] resume the witness stand.

[24] ODED MAIMON, resumed.

[25] THE COURT: Mr. Maimon, I would ask you to speak up,

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A: This would be a very rough conversion. But all you need to do is basically add a zero. So it would be \$10,000.

O: Add a zero?

A: No. I'm sorry. Delete two zeros.

O: I want to make sure I have this right, Mr. Kamijo. The total sales for the IR Solution series you identified included 30 million yen for IR-FunctionSet and another one million yen for translation services, is that accurate?

A: Yes.

O: If you again do that sort of rough conversion that you just did, what is the approximate dollar value of those sales?

A: \$300,000.

O: Mr. Kamijo, is Fujitsu still promoting any of the products that you mentioned here today that fall within the JR Solution series within DisclosureVision?

A: No.

O: Are any of those products — JR-Station, IR-TanshinStation, IR-FunctionSet — still available if you want to purchase them?

A: IR-FunctionSet and the translation service I believe can be purchased.

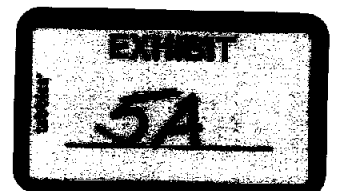
O: Did Mr. Kanda or Professor Kambil provide you with the ideas for the products you have mentioned within the IR Solution series?

A: No, they hadn't.

O: Are you familiar, sir, with the actual sales attributable
Page 2740

[1] to the Digital Disclosure Solution system integration work from
[2] 1998 through the present?

[3] A: Yes.



[4] Q: What systems integration work has been done over that time
[5] period as part of Digital Disclosure Solution?

[6] A: What are included therein are the Tokyo Stock Exchange's
H TD-Net system and the Nihon Keisai Shinbun, Reuters, and

[8] Bloomberg systems that link up to that TD-Net system.

[9] Moreover, the Osaka Stock Exchange's disclosure system is
[10] included as well.

[11] Q: What have been the total sales attributable to that systems
[12] integration work for the period of time 1998 to the present?

[13] A: It would be approximately 785 million yen.

[14] Q: Using the same rough calculation or conversion you did a
[15] moment ago, does that translate to \$7.85 million?

[16] A: Yes.

[17] Q: Is this another one where you could give a more exact
[18] number if you had a calculator?

[19] A: Yes.

[20] Q: Let's pass that for now and talk about the final component,
[21] Investor Solution. Has Fujitsu ever developed any products or
[22] serviced related to this Investor Solution component?

[23] A: No.

[24] Q: To ask you an obvious question, have there been any sales
[25] of anything attributable to Investor Solution since
Page 2741

[1] DisclosureVision was conceived?

[2] A: No, there is not.

[3] Q: Does Fujitsu, to your knowledge, Mr. Kamijo, have any
[4] current plans to develop products that would fall under the
[5] Investor Solution component of DisclosureVision?

[8] A: It does not.

[7] Q: What project or business are you working on today?

[8] THE INTERPRETER: May the interpreter ask the witness
[9] to repeat his testimony?

[10] THE COURT: Of course.

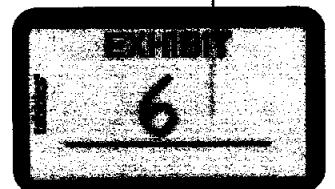
[11] THE INTERPRETER: Thank you.

1 put itself up for sale. LinkCo tried to get Nichimen
2 interested in buying LinkCo. But the evidence also showed that
3 neither Nichimen nor anyone else was interested in paying
4 anything for LinkCo's assets or technology. Use your common
5 sense and ask why.

6 No one was willing to do so even though Mr. Israel-
7 Rosen testified he would have taken \$600,000 for LinkCo's
8 entire business. Your common sense should tell you why no one
9 was willing to pay a nickel for whatever it was that LinkCo
10 had, and Fujitsu can only be accused of stealing something that
11 LinkCo had.

12 Right before LinkCo folds, though, on November 20,
13 1997, Mr. Ito invites Mr. Kanda to be one of the several
14 outside consultants on a panel for a seminar Fujitsu put on
15 regarding IR and corporate disclosure trends and issues. Even
16 though LinkCo knew Mr. Kanda was running his own IR consulting
17 business and even though LinkCo was in the process of shutting
18 down, LinkCo claims before you that it was very wrong for Mr.
19 Kanda to appear as a panelist on this Fujitsu seminar.

20 But even if you somehow believe it was wrong for Mr.
21 Kanda to do that while he was still technically the president
22 of LinkCo Japan, Mr. Kanda is not on trial here. LinkCo has
23 sued him in another courtroom. The question for you, ladies
24 and gentlemen, is whether it was wrong for Fujitsu to have
25 allowed Mr. Kanda to serve as one of several panelists in that



1 seminar on November 20, 1997.

2 LinkCo suggests the answer to that question is found
3 in PX-2. That is the November 20, 1997, proposal based upon
4 actual experience that you just heard about again. That is the
5 document that Mr. Kanda used for the seminar. LinkCo says that
6 this document gives you the answer as to whether Fujitsu got
7 proprietary information from Kanda at that seminar that LinkCo
8 owned. On this point, ladies and gentlemen, Fujitsu agrees
9 completely with LinkCo: The answer is in that document.

10 We urge you to review it carefully and determine if
11 there is anything in there that LinkCo or anyone else can claim
12 to own. That is what this case is about. It is a bunch of
13 general concepts. On this document you again got very helpful
14 testimony from Dr. Charny -- I keep bringing him up -- of
15 LinkCo. If anyone should know that this document has LinkCo
16 confidential information that LinkCo owned, wouldn't Dr. Charny
17 know? He was the head of LinkCo's engineering.

18 What did Dr. Charny tell you about this document?
19 Remember he went through it page by page by page for you.

20 Your Honor, can I publish the document to the jury?

21 THE COURT: Of course.

22 MR. O'BRIEN: Why don't we review what Dr. Charny had
23 say about PX-2. I would like you to follow along. He starts
24 with the third page in, because the first is a cover page and
25 the second is just Mr. Kanda's curriculum vitae. If you are

[1] "Q. Well, I'd like to know each of the courses or areas of
 [2] training that you studied during that period of time, the last
 [3] quarter of 1999.
 [4] "A. I don't remember.
 [5] "Q. Do you remember any of the areas that you studied to
 [6] receive that certification?
 [7] "A. I remember I did the case study for the Japanese brewery
 [8] industry, but I do not remember specific areas of each course.
 [9] "Q. So, you came to learn a lot, I suppose, about the Japanese
 [10] brewery industry, is that correct?
 [11] "A. Yes, I did.
 [12] "Q. Do you know why it was that Fujitsu certified you as a
 [13] consultant before you were trained?
 [14] "A. I was already doing the business in the field of corporate
 [15] disclosure.
 [16] "Q. Prior to the time you received the training?
 [17] "A. That's correct.
 [18] "Q. And is it true that one of the main sources of your
 [19] information prior to receiving the training about corporate
 [20] disclosure and investor relations, American business
 [21] investments, was through Mr. Kiyoto Kanda and through Professor
 [22] Ajit Kambal?
 [23] "A. I am not sure about the information from them as my main
 [24] source of information. But this is one of the source of
 [25] information.

[1] this new business, we would like you to arrange an adequate
 [2] training program to solve this problem"? Do you recall that
 [3] discussion at all, that question being raised?
 [4] "A. Which session or presentation are you referring to?
 [5] "Q. I'm asking you generally if you recall that type of
 [6] discussion at all, the question being raised that Fujitsu
 [7] doesn't have specialists in corporate disclosure and therefore
 [8] can't even talk to their customers about this new business.
 [9] "A. I do not know such a subject was discussed.
 [10] "Q. And just to be a little bit more accurate, when you
 [11] received the training in July/August 1999 and the months after
 [12] that, that was several months after Fujitsu had already
 [13] launched this DisclosureVision business, which occurred in late
 [14] March 1999, is that correct?
 [15] "A. That's correct.
 [16] "Q. Let me hand you what's been marked as PX-2."
 [17] It is an admitted exhibit.
 [18] "Q. Which is in both English and Japanese, with the title 'The
 [19] Content Business in the Securities Industry.' Have you seen
 [20] this document before, sir?
 [21] "A. I am not sure the document I saw is the identical one, but
 [22] I remember I have seen the similar forms.
 [23] "Q. Did you see those — the cover page of this, which bears
 [24] the date November 20, 1997? Did you see the similar forms to
 [25] this document, Exhibit PX-2, after, on or after November 20,

[1] "Q. You found them to be good sources of information on these
 [2] subjects, did you not?
 [3] "A. In terms of the United States general situation, I think
 [4] their information was good information.
 [5] "Q. Do you — in 1997 and prior, had you ever studied a Yuho
 [6] report on a Japanese company?
 [7] "A. No, I didn't.
 [8] Q: And as of 1997 and early, had you studied Tanshin reports
 [9] on Japanese companies?
 [10] "A. No. I didn't do any study. I don't know exactly what you
 [11] mean by "study." But I have seen a Tanshin report, but I
 [12] didn't study the Tanshin report.
 [13] "Q. Well, as of the end of 1997, how many Tanshin reports
 [14] would you say you read through in their entirety?
 [15] "A. I don't remember the exact number, but not many.
 [16] "Q. Do you recall discussions at Fujitsu in 1998 about the
 [17] fact that the company did not have specialists in the field of
 [18] the disclosure business and that they had to start an
 [19] educational and training program for key persons on corporate
 [20] disclosure?
 [21] "A. No, I do not recall.
 [22] "Q. OK. Do you recall a question and answer session, a
 [23] presentation at all, where the question was asked, 'since we do
 [24] not have any specialists in the area of the disclosure
 [25] business, we're not even able to talk to our customers about

[1] 1997?
 [2] "A. Yes.
 [3] "Q. And did you see the documents similar to this in
 [4] connection with your study of corporate disclosure and IR
 [5] solutions?
 [6] "A. I do not remember exactly when, but it was after I met
 [7] with Mr. Kanda. So I think so.
 [8] "Q. Mr. Kanda showed the document to you?
 [9] "A. I don't remember for sure, but I think so.
 [10] "Q. Do you recall generally seeing proposals prepared by Mr.
 [11] Kanda?
 [12] "A. Are you referring to the proposal that Mr. Kanda prepared
 [13] for Fujitsu?
 [14] "Q. Yes.
 [15] "A. I don't remember if they were the proposals in writing.
 [16] "Q. He made proposals verbally also that were not in writing
 [17] to Fujitsu regarding the disclosure business?
 [18] "A. Not regarding the disclosure business. But in terms of
 [19] the commissioning of research, I don't remember if there were a
 [20] proposal from Mr. Kanda to Fujitsu.
 [21] "Q. Do you deny, sir, that Fujitsu advertises that its
 [22] DisclosureVision system is the first system of its kind
 [23] anywhere in Japan?
 [24] "A. This product was first in Japan in that this is the first
 [25]

(1) at Fujitsu, isn't that so?
 (2) **MR. O'BRIEN:** I object to the form.
 (3) You may answer.
 (4) **THE WITNESS:** I am aware the fact
 (5) that TD-Net system is very different from the portion
 (6) that I am in charge, which is the IR portion.
 (7) **Q:** (By Mr. Levinson) And do you happen to know if
 (8) the TD-Net system contract was awarded by the Tokyo
 (9) Stock Exchange prior to September 1997?
 (10) **A:** I don't know.
 (11) **Q:** If you turn to page 805 of Exhibit 116, Mr.
 (12) Kanda's document of November 20, 1997, do you see
 (13) that he talks about the use of information that can
 (14) be made prior to disclosure, at the time of
 (15) disclosure and after disclosure?
 (16) **MR. O'BRIEN:** I object to the form.
 (17) You may answer.
 (18) **THE WITNESS:** Yes, I do.
 (19) **Q:** (By Mr. Levinson) And that is a concept that
 (20) Fujitsu talks about — an idea that Fujitsu talks
 (21) about in support of its DisclosureVision business
 (22) that it will permit use of information and reuse of
 (23) information at the various times before and after
 (24) disclosure to governmental authorities.
 (25) **MR. O'BRIEN:** I object to the

(1) With respect to the statement, "The revolution
 (2) in technology from analog to digital is causing a
 (3) revolution in the field of IR as well" isn't it true
 (4) that that is something that Fujitsu promotes as being
 (5) addressed by its DisclosureVision business?

(6) **A:** I think this is talking about general needs.
 (7) So for example, we are using a scanner in order
 (8) to digitize the image data, so that is a conversion
 (9) from analog data to digital.
 (10) So I think in that sense, it is true.

(11) **Q:** And with respect to the statement on the bottom
 (12) of page 807, the recipients of information want to
 (13) receive information nearly instantly for their own
 (14) use, that they want to be able to analyze and compare
 (15) companies and the performance of different companies
 (16) easily, and they want to use the data to create and
 (17) submit their own new documents — those are all
 (18) features that are centrally promoted by Fujitsu as
 (19) part of its DisclosureVision products, is that not
 (20) so?

(21) **MR. O'BRIEN:** I object to the form.
 (22) You may answer.
 (23) **THE WITNESS:** The requirements
 (24) mentioned here is the corporation's common sense
 (25) requirements.

(1) form. You may answer.
 (2) **THE WITNESS:** I do not understand
 (3) your question. So please specify the intent of your
 (4) question.
 (5) **Q:** (By Mr. Levinson) I will restate the question,
 (6) sir.
 (7) Do you deny that Fujitsu advertises to the
 (8) public that one of the valuable uses of its
 (9) DisclosureVision business is that it permits
 (10) companies to efficiently produce and reuse disclosure
 (11) information for multiple purposes?
 (12) **A:** I do not deny it.
 (13) I am not sure about the portion of multiple
 (14) purposes, but I think it talks about reuse or
 (15) improving efficiency.
 (16) **THE VIDEOGRAPHER:** I need to make a
 (17) tape change at this point.
 (18) It is now 11:19. This is the end of Tape 1 on
 (19) Day 2 of the videotaped deposition.
 (20) (Short recess taken.)
 (21) **THE VIDEOGRAPHER:** Okay, it is
 (22) 11:20. This is Tape 2 of Day 2.
 (23) Today is April 22nd. And we are live.
 (24) **Q:** (By Mr. Levinson) Can you turn to page 807 of
 (25) Mr. Kanda's document, Exhibit 116.

(1) So in that sense, IR Series Solutions have been
 (2) constructed in order to respond to that requirement.
 (3) So in that sense, I think the Fujitsu was
 (4) promoting this product using that point.
 (5) **Q:** (By Mr. Levinson) And in fact, Fujitsu uses
 (6) very much of the same language, don't they, as is
 (7) contained in that reference?
 (8) **MR. O'BRIEN:** I object to the form.
 (9) You may answer.
 (10) **THE WITNESS:** So the wording that
 (11) Fujitsu used, I am not sure — correction —
 (12) I am not sure whether the wording that Fujitsu
 (13) used is similar to this difference. But this is a
 (14) common sense statements.
 (15) **Q:** (By Mr. Levinson) And with respect to the
 (16) statement on page 807, Key Points, where it says
 (17) under Key Points, "Using or the use of digital data
 (18) from a unified source" — isn't it true that Fujitsu
 (19) also emphasizes in its DisclosureVision materials
 (20) that it uses digital data from a unified or
 (21) centralized source?
 (22) **A:** I think this statement in this document states
 (23) general needs.
 (24) For example, on the right-hand side, there is
 (25) a sentence. And in the middle, there are pictures.

LX011387

[1] Q: As of December 1997, even at that point, at the end of
 [2] LinkCo's day-to-day operations, would you still have
 [3] characterized LinkCo as a startup company?
 [4] A: Yes, a startup that fell on hard times.
 [5] Q: As of that time, what was still left to be done to get to a
 [6] point where LinkCo would have had a commercially viable
 [7] product?
 [8] A: It depends. You see, what typically happens with many
 [9] companies when they have to scale down their ambitious goals,
 [10] they sometimes spin off new products that are less ambitious
 [11] but still nevertheless commercially viable. I guess your
 [12] question is too open-ended. It is conceivable that we would
 [13] have spun off a product around EDO. There were many
 [14] opportunities that could have occurred if we had time and
 [15] money. So if you could rephrase your question more
 [16] specifically.
 [17] Q: How far away was LinkCo from having completed a commercial
 [18] intercompany database that could have been used to sell data to
 [19] the outside world?
 [20] A: A few years away. Again, let me qualify it. It depends on
 [21] the amount of information, the amount of data, type of data,
 [22] etc. So you could have some database with some data pretty
 [23] quickly, but it is questionable that anybody will be interested
 [24] in paying money for it.
 [25] Q: In the context of computer technology, do you have an

[1] understanding of the term "intellectual property"?
 [2] A: Yes.
 [3] Q: What is your understanding of that term?
 [4] A: These are design specifications, unique design
 [5] specifications, computer code especially, computer programs
 [6] that constitute the core of intellectual property.
 [7] Q: Using your own understanding as you just stated it, did
 [8] LinkCo, to your knowledge, possess any intellectual property
 [9] that could have been defined and licensed for use by a third
 [10] party at the time it stopped its day-to-day operations?
 [11] MR. LEVINSON: I object. It calls for an opinion
 [12] based on his own definitions of the key terms in the case.
 [13] MR. VEITH: It is a permissible lay opinion with a
 [14] foundation. He gave his understanding —
 [15] THE COURT: I don't think so. Given the very argument
 [16] you made the other day about the lay opinion, I don't think so,
 [17] clearly not. Objection sustained.
 [18] Q: Dr. Maimon, could you turn to —
 [19] THE COURT: Dr. —
 [20] Q: I'm sorry. There are so many doctors in this case I have
 [21] lost track. Dr. Charny, could you turn to the document that
 [22] has been admitted in evidence in your book that is called PX-2.
 [23] It contains on the first part an English translation of a
 [24] Japanese document.
 [25] A: Yes. I have seen that. You showed it to me two days ago.

[1] Q: Did you ever see a document substantially similar to this
 [2] one while you worked at LinkCo?
 [3] A: No.
 [4] Q: If you look at the first page of that document, which is
 [5] FL801, do you see that? My question, Dr. Charny, is, does this
 [6] page of this PX-2 contain anything that you recognize as
 [7] something that was a secret known only within LinkCo as of
 [8] November 20, 1997?
 [9] MR. LEVINSON: Objection. He didn't see the document.
 [10] Now he is asking him opinions pertaining to it.
 [11] MR. VEITH: I am not asking him an opinion. Having
 [12] seen the document, I am asking him if he had seen anything in
 [13] here, does he see anything in here that was a secret at LinkCo
 [14] as of November 20, 1997. It is a pure fact testimony. I am
 [15] not asking him for an opinion. I am asking him a pure fact
 [16] question.
 [17] THE COURT: Does he see anything in this document —
 [18] MR. VEITH: In this page.
 [19] THE COURT: This very page on the screen?
 [20] MR. VEITH: Right. That he recognizes something that
 [21] was a secret known only within LinkCo in November 1997.
 [22] MR. LEVINSON: That calls for opinion on what was
 [23] secret in the entire universe in 1997.
 [24] MR. VEITH: He was there.
 [25] THE COURT: He was there and he knows his field, and I

[1] am going to allow it. Do you see anything on this page?
 [2] A: No.
 [3] Q: Go to the next page. That is biographical information, is
 [4] that right, on Mr. Kanda?
 [5] A: Yes, I believe so.
 [6] MR. VEITH: Then go to the next page, please, Ms.
 [7] Milnikel. Blow that up, the text, please.
 [8] Q: Do you see anything on this page, Dr. Charny, that you
 [9] recognize as something that was a secret known only within
 [10] LinkCo as of November 20, 1997?
 [11] MR. LEVINSON: A running objection, your Honor.
 [12] THE COURT: I understand that. That is OK. Go ahead
 [13] and answer.
 [14] THE WITNESS: Should I?
 [15] THE COURT: Yes. Same question as the first page.
 [16] A: No, I don't see any secrets here.
 [17] Q: Go to the next page in this document. Same question. Is
 [18] there anything on that page that you recognize as a secret
 [19] known only within LinkCo as of November 20, 1997?
 [20] A: No, I don't see any secrets there.
 [21] Q: To the next page, please. Do you see anything on that
 [22] page, FL805, that you recognize as something that was a secret
 [23] known only within LinkCo as of November 20, 1997?
 [24] A: No, I don't see any secrets there.
 [25] Q: Please turn to the next page, which is labeled FL806. Do

The "Content Business" in the Securities Industry

Corporate IR and Disclosure

Proposal based on Actual Experience

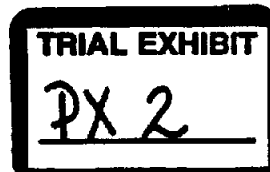
1. "C R" and "I R"
Unification of Information Sources
2. Summary of the Necessary Corporate Public Relations Activities
IR as the basis for Disclosure
3. Digital IR Presentation System
"Digital Data" and "Reverse Engineering"
4. The Assumptions Made in Japan are Not the Assumptions Made
around the World
From global "orphan" to the "presentation" of Japan.
The need for a disclosure system that is standardized throughout the
world.
5. Business Projects Based on the Use of Corporate Data

November 20, 1997

K and A Co., Ltd.

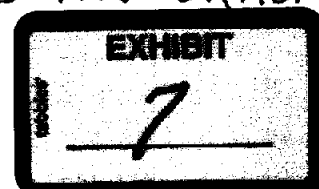
Kiyota KANDA

Confidential



[FL 00801]

REVISED TRANSLATION



LX063099

DiMeglio, Lisa

From: Kiyoto Kanda <kanda@tka.att.ne.jp>
Sent: Thursday, March 12, 1998 3:34 PM
To: Joseph Savarese
Cc: Carl Crosetto; Bill Penders; John Penhollow; Lisa DiMeglio
Subject: Report from Japan

Dear Joe,

It was a nice meeting with you during my stay in NY.

Yesterday and today, I arranged several meetings in Tokyo for Bill.

Meeting with Fujitsu
Meeting with Nichimen
Meeting with IBI(International Business Information)

As to the translation project, Bill is bringing a copy of Yuho report(Japanese 10-K type report) and I have asked him to prepare several pages translation into English.

Mr. Sato of Nichimen is coming to New York in the week of March 23 and visiting Bowne. You may meet him then.

Another discussion that I did with Bill was the IR company issue targeted listed companies in Hong Kong. I am going to contact Mr. Paul Dalton in Bowne HK to discuss the collaboration. Also Fujitsu is planning to introduce Japanese Stock Exchange system to Hong Kong market as well as other places in Asia. I am sure that there must be several opportunities for all of us, for sharing profits.

Please keep in touch and communicate what is going on in this disclosure field.

Best regards,

Kiyoto Kanda

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DiMeglio, Lisa

From: Xiaoyu Qiu
ant: Tuesday, March 31, 1998 10:38 AM
fo: Lisa DiMeglio
Subject: Re: FW: Nichimen Issue

Lisa,

Thank you very much. I will share the good news with Ray and Bin. I will meet with you at your convenience. Please let me know.

Harry

Reply Separator

Subject: FW: Nichimen Issue
Author: Lisa DiMeglio at BNYCP003
Date: 3/30/98 9:58 PM

Harry,

As you can see, these people are impressed with the quality of our work!

I would like to work with you on pricing the entire Yuho document (I have word counts).

Lisa

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

om: Kiyoto Kanda <kanda@tka.att.ne.jp>
Sent: Tuesday, March 31, 1998 11:14 AM
To: Bill Penders
Cc: Joseph Savarese; Lisa DiMeglio
Subject: Nichimen Issue

Dear Bill,

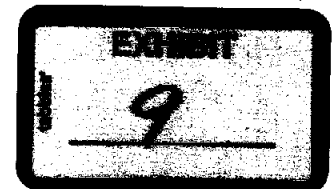
I had a meeting with Mr. Sato and Saito of Nichimen yesterday. I was impressed by your quality of Yuho translation which you presented when Mr. Sato was at your office last week.

As I expected, your translation skill and system is well organized. I would like to construct business models which is based on your translation system. Mr. Sato is supposed to receive your estimate in due course of time, I heard.

I hope we can work together soon.

Best regards,

Kiyoto Kanda



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