

## Dirty Laundry Airs on Stock Site

Contributed by Lou Pearlman Writer  
Friday, 11 December 1998

A company officer sued three individual investors for allegedly posting defamatory comments on a stock discussion message board, and served the suit by posting it on the same boards that are at the core of the complaint.

Dean Dumont, one of three defendants, first learned of the suit filed by Legacy Software in a US District Court in New Hampshire when he logged on to the Silicon Investor Web site Thursday night.

Dumont hit the boards to discuss the performance of his stocks, but instead found himself reading a legal filing with his name on it. The filing charged intentional infliction of emotional distress, invasion of privacy, defamation, and unfair trade practices.

Dumont, an investor in Milford, New Hampshire, had been investigating the background of Legacy Software chairman Michael Zwebner who has been connected to Lou Pearlman

John R. Skelton, the lead attorney in the suit brought by Bingham Dana LLP could not be reached for comment.

"I've been trying to do due diligence on Legacy," Dumont said. "And his filings don't seem to be up-to-date. I'm doing my homework and he thinks I'm maliciously slandering him."

The filing charged that Dumont and his cohorts went so far as to create a new message board "for the specific purpose of ridiculing the plaintiff."

The two other defendants are named in the suit under their online aliases, Spider Valdez and Rico Staris.

Dumont objected to the unusual and very public method that Legacy Software used to serve the lawsuit.

"I don't think [Silicon Investor] should have allowed them to post legal proceedings," Dumont said. "The administrator should have pulled it off."

Silicon Investor webmistress Jill McKinney said that while the Securities and Exchange Commission (SEC) has in recent months cracked down on stock discussion boards, lawsuits brought by individual companies are relatively rare.

"I've seen many more [lawsuits] on behalf of the SEC rather than individual companies," McKinney said. She added that Silicon Investor would not provide the names of the anonymous posters unless faced with a subpoena. No subpoena has yet been served on the company.

The suit suggests that the three investors are involved in a complex conspiracy.

Zwebner is accusing Dumont and his anonymous cohorts of colluding with DCI Telecommunications, Zwebner's former employer. Zwebner claims he worked for that firm until February 1998 after selling his telecommunications technology company, Cardcall, to the firm on 19 February 1997.

The filing suggests that there was an acrimonious parting between DCI and Zwebner, and that that the company is trying to drag Zwebner's good name through the mud.

Dumont scoffed at the idea that he is working with "DCI insiders," as the suit states, and said Zwebner is trying to cover up some unspecified misdeed.

"If he wants to sue me for doing due diligence, that's fine," Dumont said. "But what is he hiding?"

Below is a copy of what was sent to Mr. Dumont

To: Rico Staris who wrote (1)12/10/1998 8:06:00 PM  
From: Charles L. Solomont, Esq., BinRead Replies (3) of 296

TO: RICO STARIS

REQUEST FOR WAIVER OF SERVICE OF COMPLAINT

Bingham Dana attorneys at law, represents Michael Zwebner in connection with a lawsuit that has been commenced

against you. A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the District of New Hampshire and has been assigned docket number C98-682.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of the service will be avoided if I receive a signed copy of the waiver within 30 days after the date designated below as the date on which this Notice and Request is sent. For your convenience, if you wish, I will send you a stamped envelope pre-addressed to me for your use. Simply, send a reply to me on this thread advising as to where I should send same.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent.

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, Michael Zwebner, this 10th day of December, 1998.

\_\_\_\_\_  
Charles L. Solomont, Esq. Bingham Dana LLP  
150 Federal Street  
Boston, MA 02110

#### WAIVER OF SERVICE OF SUMMONS

TO: Charles L. Solomont, Esq.  
150 Federal Street  
Boston, MA 02110

I acknowledge receipt of your request that I waive service of a summons in the action of Zwebner v. Dumont, a/k/a "bgtit", John Doe I, a/k/a "Spider Valdez", John Doe II, a/k/a "Rico Staris", et al. which is case number C98-682 in the United States District Court for the District of New Hampshire. I have also received a copy of the complaint in the action, and have been offered a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I be served with judicial process in the manner provided by Rule 4.

I will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me if an answer or motion under rule 12 is not served upon you within 60 days after December 10, 1998.

\_\_\_\_\_  
Date Signature

Printed/typed name: \_\_\_\_\_ a/k/a "Rico Staris";  
(true name)  
Address:

#### Duty to Avoid Unnecessary Cost of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action

has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons has been actually served when the request for waiver of service was received.

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

\_\_\_\_\_  
)  
MICHAEL J. ZWEBNER, )  
)  
Plaintiff, )  
)  
v. ) CIVIL ACTION  
) NO. C98-682  
DEAN DUMONT, a/k/a &ldquo;bgtit&rdquo;, JOHN DOE I, )  
a/k/a &ldquo;Spider Valdez&rdquo;, JOHN DOE II, a/k/a )  
&ldquo;Rico Staris,&rdquo; JOHN DOE III, JOHN DOE IV,) )  
JOHN DOE V, JOHN DOE VI, JOHN DOE VII, )  
JOHN DOE VIII, JOHN DOE IX, and )  
JOHN DOE X, )  
)  
Defendants. )  
\_\_\_\_\_)

#### I. PRELIMINARY STATEMENT

1. This is a complaint for defamation, invasion of privacy, intentional infliction of emotional distress, and violation of the New Hampshire Unfair Trade Practices statute arising out of the defendants' use of the Internet to disseminate false and defamatory information about the plaintiff. Plaintiff also seeks injunctive relief from the acts alleged in the Complaint. A jury trial is demanded.

#### II. PARTIES

2. Plaintiff Michael J. Zwebner is an individual citizen of Great Britain.
3. Defendant Dean Dumont is an individual residing in Milford, New Hampshire. Defendant Dean Dumont uses the alias &ldquo;bgtit&rdquo; when communicating over the Internet.
4. Defendant Doe I is an individual of unknown residency using the alias &ldquo;Spider Valdez&rdquo; in his communications over the Internet.
5. Defendant Doe II is an individual of unknown residency using the alias &ldquo;RICO STARIS&rdquo; in his communications over the Internet.
6. Defendants Doe III through X are individuals acting in concert with defendant Dumont, defendant Doe I a/k/a &ldquo;Spider Valdez,&rdquo; and defendant Doe II a/k/a &ldquo;Rico Staris&rdquo; for the purpose of publishing malicious false and defamatory information about Michael Zwebner in order to, among other things, illegally manipulate the stock of one or more publicly traded companies.

#### III. JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because the parties are citizens of a state in the United States and a citizen of a foreign nation, Great Britain, and because the matter in controversy exceeds the sum or value of Seventy Five Thousand Dollars (\$75,000.00).
8. This Court has jurisdiction over the state law claims set forth herein pursuant to 28 U.S.C. § 1367, which provides that when the District court has original jurisdiction, the District Court shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.
9. This jurisdictional district is a proper venue pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events giving rise to the claim occurred within this jurisdictional district and the defendants purposefully directed their conduct

towards New Hampshire and investors and other information seekers residing in New Hampshire.

10. This is an action for a judgment against the defendants pursuant to Rule 54 of the Federal Rules of Civil Procedure.

#### IV. BACKGROUND

11. Plaintiff Michael Zwebner has been an officer and director of Videocall International Corporation (&ldquo;Videocall&rdquo;) since its inception in February of 1997 and was recently elected as Chairman of Legacy Software, Inc. (&ldquo;Legacy&rdquo;), a public company trading on the NASDAQ exchange under the symbol &ldquo;LGCY.&rdquo;

12. Prior to his affiliation with Videocall and Legacy, Michael Zwebner created and operated a corporation known as Cardcall International Holdings, Inc. (&ldquo;Cardcall&rdquo;). Cardcall was the parent holding company of Cardcall (UK) Limited and Cardcaller Canada, Inc., Cardcall's wholly owned subsidiaries. Cardcall was engaged in the business of producing and selling prepaid long-distance telephone calling cards. Cardcall was one of the first companies in the eastern United States to market pre-paid long distance calling cards.

13. In February of 1997, Cardcall was acquired/merged with DCI Telecommunications, Inc. (hereinafter &ldquo;DCI&rdquo; or the &ldquo;Company&rdquo;), a Colorado corporation with a principal place of business in Stratford, Connecticut. Pursuant to the terms of the merger, all of Cardcall's shareholders became shareholders of DCI.

14. Mr. Zwebner remained the vice president of Cardcall and also the general manager of its affiliate in the United Kingdom, Cardcall (UK) Limited, until February of 1998.

15. Since the merger of Cardcall and DCI in February of 1997, several of the shareholders who had been involved in the running of Cardcall have resigned their positions with the Company due to their dissatisfaction with the way the management, officers and directors of DCI ran their business/company.

16. The Cardcall/DCI merger called for Cardcall shareholders to receive options for DCI stock that would vest at various predetermined future dates.

17. Many of these former Cardcall shareholders have rightfully and legally sold the DCI stock they received in connection with the DCI/Cardcall merger. Some have likewise exercised their vested options in DCI stock and sold shares acquired via the exercise of said options.

#### V. THE DEFENDANTS' USE OF THE INTERNET TO DEFAME THE ZWEBNERS AND MANIPULATE STOCKS

##### The Internet

18. The &ldquo;Internet&rdquo; is a global array of computer networks accessible all over the world.

19. Use of the Internet as a conduit of information has exploded as more and more people have signed up as Internet users. There are now many millions of Internet users worldwide. The Internet has become a social and commercial force of immense importance, where information can be immediately posted and relayed throughout the commercial world.

20. Throughout the Internet, there are dozens of &ldquo;stock talk&rdquo; bulletin boards, news groups, and chat rooms. Included among these is the &ldquo;Silicon Investor,&rdquo; the Web address of which is <http://www.techstocks.com/investor/main>.

21. Individuals have posted hundreds of thousands of messages to these bulletin boards. There are more than three so-called threads or posts regarding DCI on Silicon Investor bulletin boards. These threads are accessed by the home name &ldquo;DCTC.&rdquo; These posts are read by people around the globe. Silicon Investor, whose bulletin boards include one or more for DCI, receives between 2.5 and 4 million hits per day on its site.

22. People who post on bulletin boards (once they register with Silicon Investor) are not required to disclose their real identities or whether the information they are disseminating is accurate. They may thus hide behind a shield of anonymity believing they can fabricate and intimidate with no risk of repercussions.

##### The Defendants' Scheme to Defame the Zwebners and Manipulate Stock Prices

23. Using their aliases, &ldquo;bgtit&rdquo;, &ldquo;Spider Valdez&rdquo;, and &ldquo;Rico Staris,&rdquo; defendants Dumont, Doe I and Doe II, acting in concert with other Doe defendants attempting to manipulate the stock of DCI, posted false and defamatory information about the Zwebners on Silicon Investor Internet chat lines.

24. The defendants went so far as to create a new chat line called &ldquo;No Bash for Legacy&rdquo; for the specific purpose of ridiculing the plaintiff, Michael Zwebner and his brother, Charles Zwebner, and the public company of which the Zwebners are directors and officers.

25. The defendants deliberately copied and posted defamatory and false information regarding Michael Zwebner and his brother Charles on an Internet interactive board established for public discussion about another company, Airstar Technologies, Inc. (&ldquo;ASTG&rdquo;), knowing full well that the Zwebners were attempting to acquire this company. The defendants' dissemination of false and defamatory information misled ASTG directors and shareholders and caused the Zwebners to abandon the proposed acquisition.

26. The defendants either knew the statements they posted on the Silicon Investor chat lines regarding the Zwebners to be false or otherwise made them with reckless disregard as to the truth of the information and with the intent to harm the Zwebners and influence the prices of publicly traded stocks.

27. For many months the management of DCI has been attempting to secure institutional investors and/or a purchaser of the Company. For some time, DCI has thus been the subject of merger and acquisition rumors.

28. In order to maximize the value of the Company and hence the amount potential suitors would pay for DCI, the current

management and insider shareholders of DCI have been trying to make the Company appear to be financially healthy and to have the potential for high profits.

29. For most of the past six months, the Company and its stock have not performed well.

30. On information and belief, the defendants, acting in concert with DCI insiders, have been attempting to divert attention away from the Company's poor performance by blaming fictitious outside forces for causing indicia of poor corporate performance, such as, among other things, depressed stock prices.

31. To this end, the defendants have been disseminating lies over the Internet, falsely accusing the Zwebners of, among other things, short selling DCI stock and otherwise manipulating DCI stock prices.

32. In truth, it is defendants, and those DCI insiders acting in concert with them, that are manipulating DCI stock prices by employing falsehood and deceit in an effort to deceive investors into believing that the Zwebners and others are to blame for the stock's poor performance. The defendants have sought to deceive investors and potential suitors into believing that the Company is not performing as poorly as corporate indicators suggest, but that rather the Zwebners are somehow distorting the true financial picture of the Company through purported sales of "invalid stock" and manipulation of stock prices. Irrespective of the defendants' motive and purpose in disseminating this information, these remarks that the defendants have widely and maliciously published over the Internet are absolutely false and defamatory.

33. The Zwebners have repeatedly notified defendants through the Internet and otherwise that the information they are disseminating is false. Defendants nevertheless persist in smearing the Zwebners' names and reputations, for their own commercial purposes, through the publication of malicious falsehoods and innuendo over the Internet.

Lies Perpetrated by Defendant Dean Dumont a/k/a "bgtit";

34. On August 3, 1998, defendant Dumont intentionally made false statements regarding the sale of DCI stock by Michael Zwebner and his brother, Charles. Using the alias "bgtit", Dumont posted on the Silicon Investor that the Zwebners had "illegally sold" their shares and that "ball is already rolling" on "an investigation by the NASD in the S.E.C." These statements were false. No shares of DCI stock had been sold illegally by the Zwebners and there has never been any governmental "investigation" of the sale of DCI stock by either Michael or Charles Zwebner.

35. Later that same day, using the alias "bgtit", defendant Dumont again posted that the Zwebners were selling DCI stock illegally, falsely stating that the Zwebners "were committing a few illegal acts and fraud is just one of them." This statement is false. The Zwebners' sale of DCI securities was not illegal. They committed no fraud or other wrongdoing.

36. A few days later, on August 6, 1998, defendant Dumont posted a message falsely accusing Charles Zwebner of previously denying that he and other former Cardcall shareholders had ever sold any of their DCI stock and insinuating that Mr. Zwebner's purported efforts to conceal his sale of DCI stock evidenced some impropriety in the sale. Using the alias "bgtit", defendant Dumont claimed that "Mr. Zwebner stated in his last post that [Cardcall share]holders weren't selling [DCI] shares." This statement was false. In fact, neither Charles nor Michael Zwebner has ever posted a message on the Internet claiming that the former shareholders of Cardcall were not selling any shares of their DCI stock. Indeed, Charles Zwebner had made official filings with the SEC which are publicly disclosed, so declaring his sales of shares.

37. Most recently, defendant Dumont, continuing to use the alias "bgtit", disseminated false information purporting that Michael Zwebner has violated the law by not making required Securities Exchange Commission ("SEC") filings. On December 6, 1998, for example, defendant Dumont falsely posted on the Internet a message accusing Mr. Zwebner of having said he was "up to date in all filings and [yet did] not hav[e] them done." That day Mr. Dumont also again falsely insinuated in an Internet message that Mr. Zwebner had not made required filings: "Is there something in LGCY you are failing to disclose. Like not filing an 8K for the assumption of the Board of Directors. The 8K for the \$10 million deal for the real estate . . . S.E.C. and the NASD frown upon those tactics." In that same posting, Mr. Dumont proceeded to frame additional false statements within questions: "How did you and yours manage to gain control of a public company without [sic] shareholder consent? Why is there NO FILINGS MR. ZWEBNER, what are hiding? . . . You have not filed any of the appropriate paperwork."

38. Two days later, on December 5, 1998, "bgtit" continued his onslaught of fabrication: "Mr. Zwebner in his own words, and several other times . . . has stated that he is up to date on his filings, yet there are no filings."

39. All of these statements are false. Michael Zwebner has made all of the regulatory filings required of him.

False Statements Made By Defendant John Doe I a/k/a "Spider Valdez";

40. On October 19, 1998, defendant John Doe I, in concert with "defendant John Doe II, using the aliases "Spider Valdez" and "Rico Staris," posted a message on a Silicon Investor chat line falsely accusing the Zwebners of having "shorted invalid stock" and having financed [LGCY, the public company for which Michael Zwebner currently serves as chairman] in a questionable manner."

41. Two days later, on October 20, 1998, so-called "Spider Valdez" elaborated that his fabrication as to the Zwebners' "selling invalid stock short" was in reference to stock they owned in DCI. The defendant referred to the "short position at [DCI] that is backed by invalid stock and zwebner brothers." These statements are all false. Neither Michael nor Charles Zwebner have ever sold invalid stock short.

42. On October 24, 1998 defendant Doe I a/k/a "Spider Valdez" falsely informed the Internet world that the

plaintiff was in trouble with the SEC and the FBI in connection with their "deeds" concerning DCI stock: "i look at [DCI] squeeze and deeds of Zwebners. sec and fbi have matters in hand."

43. In truth, there has been absolutely no investigation by the FBI or SEC concerning actions of the Zwebners related to DCI stock.

## VI. DAMAGES

44. The cumulative effect of the dissemination of these false and misleading representations regarding the Zwebners has resulted in direct harm to them, their reputation, and their business relationships, contracts and dealings. It has precipitated the loss of time and attention to their business responsibilities and occasioned unnecessary legal fees and expenses. In addition it has created an environment of loss of faith by investors and shareholders of Legacy Software, Inc. (the public company of which Michael Zwebner is chairman), resulting with some of the shareholders selling their holdings, and a resultant substantial drop in the share value of the company.

45. The defendants, through their dissemination of false and misleading statements about the Zwebners, have improperly made significant profits, all of which should be disgorged.

46. The defendants, through their malicious dissemination of false and misleading statements about the Zwebners, have caused the Zwebners to incur significant direct consequential damages including attorneys fees, consultant fees and expenses, lost employment time and other such damages.

47. The defendants, through their dissemination of false and misleading statements about the Zwebners, have harmed the Zwebners' reputation and their relationships and dealings.

48. The defendants, through their malicious dissemination of false and misleading statements about the Zwebners, have caused the Zwebners pain, anguish, and emotional distress.

49. The defendants' conduct directed at the Zwebners was malicious, willful, wanton, reckless, vexatious and oppressive, entitling the Zwebners to an award of enhanced compensatory damages and double to triple damages and attorneys fees and costs pursuant to NH RSA 358-A:10, I.

### COUNT I &ndash; DEFAMATION

50. Paragraphs 1 through 49 are incorporated as if fully set forth herein.

51. The defendants published the malicious, false and defamatory statements described above on the Internet, intending that they reach as wide an audience of securities purchasers and sellers, securities' professionals and other information seekers as possible, both in the United States and internationally.

52. The defendants' malicious, false and defamatory statements described above constitute libel per se as they are words tending to injure a person in his trade or business, many of which directly or indirectly charge Mr. Zwebner with criminal conduct, thus entitling plaintiff to a recovery without proof of special damages.

53. The defendants negligently published the malicious, false and defamatory statements described above concerning Mr. Zwebner causing him to suffer damages as more fully described herein.

54. The defendants published the malicious, false and defamatory statements described above with knowledge that the statements were false, or with reckless disregard as to whether they were false, causing plaintiff to suffer damages as more fully described herein.

### COUNT II -

#### UNFAIR TRADE PRACTICES &ndash; NEW HAMPSHIRE STATUTE

55. Paragraphs 1 through 54 are incorporated as if fully set forth herein.

56. Defendant Dumont is a "person" within the terms of RSA 358 A:1, I.

57. On information and belief, defendants Does I and II, a/k/a "Spider Valdez" and "Rico Staris" are "persons" within the terms of RSA 358 A:1, I.

58. The defendants knowingly engaged in unfair and/or deceptive acts and/or practices by disseminating the malicious, false, misleading and defamatory information regarding the Zwebners described above.

59. The defendants negligently engaged in unfair and/or deceptive acts and/or practices by disseminating the false, misleading and defamatory information regarding the Zwebners described above.

60. The defendants' unfair and/or deceptive acts and/or practices include, but are not limited to, disparaging the Zwebners in their business by making malicious, false or misleading representations of fact in violation of RSA 358-A:2, VIII.

61. The defendants' malicious, unfair and/or deceptive acts and/or practices have caused plaintiff to suffer damages as more fully described above.

### COUNT III &ndash;

#### INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

62. Paragraphs 1 through 61 are incorporated as if fully set forth herein.

63. Defendants, through their dissemination of malicious, false and misleading statements about Mr. Zwebner, engaged in extreme and outrageous conduct.

64. Defendants' dissemination of malicious, false and misleading statements about plaintiff was intentional or, at a

minimum, reckless.

65. Defendants, through their dissemination of malicious, false and misleading statements about Mr. Zwebner, have inflicted severe emotional distress upon Mr. Zwebner.

COUNT IV &ndash;  
(FALSE LIGHT INVASION OF PRIVACY)

66. Paragraphs 1 through 65 are incorporated as if fully set forth herein.

67. Defendants Dumont and Doe I a/k/a &ldquo;Spider Valdez&rdquo; and Doe II a/k/a &ldquo;Rico Staris&rdquo; publicized or caused to be publicized the information concerning Mr. Zwebner detailed above.

68. The information so publicized or caused to be publicized was false and defamatory.

69. The false and defamatory information defendants Dumont, Doe I and Doe II so publicized or caused to be publicized placed plaintiff before the public in a false or objectionable light, in that defendants publicly portrayed plaintiff as having committed crimes punishable as felonies; as having committed the crime of fraud; as having committed acts of stock market manipulation; and as having concealed and covered up their acts.

70. The false or objectionable light in which defendants placed plaintiff was highly offensive to plaintiff, and would be highly offensive to any reasonable person.

71. Defendants Dumont, &ldquo;Spider Valdez&rdquo; and &ldquo;Rico Staris&rdquo; all acted with actual malice in publicizing or causing to be publicized false and defamatory information about plaintiff, as alleged herein, in that defendants did so with knowledge of, or in reckless disregard as to, the falsity of the information and the false light in which plaintiff would be placed.

WHEREFORE, plaintiff Michael J. Zwebner requests that this Court grant the following relief:

- (a) Judgment for compensatory damages, together with interest thereon, at legal rate, plus additional and consequential damages, according to proof in an amount not less than Ten Million Dollars (\$10,000,000);
- (b) Judgment for double or treble damages (that is, up to Thirty Million (\$30,000,000)) pursuant to NH RSA 358-A:10, I;
- (c) Judgment for costs incurred herein, including attorneys fees to the extent allowed by law;
- (d) Schedule a jury trial for the award of compensatory and statutory damages;
- (e) Permanently enjoin the defendants from issuing malicious, false and misleading statements concerning the plaintiff; and
- (f) Such other and legal equitable relief as this Court may deem just and proper.

Respectfully submitted,  
MICHAEL J. ZWEBNER

By his attorneys

\_\_\_\_\_  
S/S

John R. Skelton, NH Bar # 6526  
BINGHAM DANA LLP

Dated: December 10, 1998 OF COUNSEL  
Victor H. Polk, Esq.  
Charles L. Solomont, Esq.  
BINGHAM DANA LLP  
150 Federal Street  
Boston, MA 02110  
617-951-8000

Originally posted at <http://siliconinvestor.advfn.com/readmsg.aspx?msgid=6781994>

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If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be

obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent.

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, Michael Zwebner, this 10th day of December, 1998.

\_\_\_\_\_  
Charles L. Solomont, Esq. Bingham Dana LLP  
150 Federal Street  
Boston, MA 02110

#### WAIVER OF SERVICE OF SUMMONS

TO: Charles L. Solomont, Esq.  
150 Federal Street  
Boston, MA 02110

I acknowledge receipt of your request that I waive service of a summons in the action of Zwebner v. Dumont, a/k/a "bgtit&rdquo;, John Doe I, a/k/a "Spider Valdez&rdquo;, John Doe II, a/k/a "Rico Staris&rdquo;, et al. which is case number C98-682 in the United States District Court for the District of New Hampshire. I have also received a copy of the complaint in the action, and have been offered a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I be served with judicial process in the manner provided by Rule 4.

I will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me if an answer or motion under rule 12 is not served upon you within 60 days after December 10, 1998.

\_\_\_\_\_  
Date Signature

Printed/typed name: \_\_\_\_\_ a/k/a "Rico Staris&rdquo;  
(true name)  
Address:

#### Duty to Avoid Unnecessary Cost of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons has been actually served when the request for waiver of service was received.

UNITED STATES DISTRICT COURT

## DISTRICT OF NEW HAMPSHIRE

\_\_\_\_\_  
 )  
 MICHAEL J. ZWEBNER, )  
 )  
 Plaintiff, )  
 )  
 v. ) CIVIL ACTION  
 ) NO. C98-682  
 DEAN DUMONT, a/k/a &ldquo;bgtit&rdquo;, JOHN DOE I, )  
 a/k/a &ldquo;Spider Valdez&rdquo;, JOHN DOE II, a/k/a )  
 &ldquo;Rico Staris,&rdquo; JOHN DOE III, JOHN DOE IV,) )  
 JOHN DOE V, JOHN DOE VI, JOHN DOE VII, )  
 JOHN DOE VIII, JOHN DOE IX, and )  
 JOHN DOE X, )  
 )  
 Defendants. )  
 \_\_\_\_\_)

## I. PRELIMINARY STATEMENT

1. This is a complaint for defamation, invasion of privacy, intentional infliction of emotional distress, and violation of the New Hampshire Unfair Trade Practices statute arising out of the defendants' use of the Internet to disseminate false and defamatory information about the plaintiff. Plaintiff also seeks injunctive relief from the acts alleged in the Complaint. A jury trial is demanded.

## II. PARTIES

2. Plaintiff Michael J. Zwebner is an individual citizen of Great Britain.  
 3. Defendant Dean Dumont is an individual residing in Milford, New Hampshire. Defendant Dean Dumont uses the alias &ldquo;bgtit&rdquo; when communicating over the Internet.  
 4. Defendant Doe I is an individual of unknown residency using the alias &ldquo;Spider Valdez&rdquo; in his communications over the Internet.  
 5. Defendant Doe II is an individual of unknown residency using the alias &ldquo;RICO STARIS&rdquo; in his communications over the Internet.  
 6. Defendants Doe III through X are individuals acting in concert with defendant Dumont, defendant Doe I a/k/a &ldquo;Spider Valdez,&rdquo; and defendant Doe II a/k/a &ldquo;Rico Staris&rdquo; for the purpose of publishing malicious false and defamatory information about Michael Zwebner in order to, among other things, illegally manipulate the stock of one or more publicly traded companies.

## III. JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because the parties are citizens of a state in the United States and a citizen of a foreign nation, Great Britain, and because the matter in controversy exceeds the sum or value of Seventy Five Thousand Dollars (\$75,000.00).  
 8. This Court has jurisdiction over the state law claims set forth herein pursuant to 28 U.S.C. § 1367, which provides that when the District court has original jurisdiction, the District Court shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.  
 9. This jurisdictional district is a proper venue pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events giving rise to the claim occurred within this jurisdictional district and the defendants purposefully directed their conduct towards New Hampshire and investors and other information seekers residing in New Hampshire.  
 10. This is an action for a judgment against the defendants pursuant to Rule 54 of the Federal Rules of Civil Procedure.

## IV. BACKGROUND

11. Plaintiff Michael Zwebner has been an officer and director of Videocall International Corporation (&ldquo;Videocall&rdquo;,) since its inception in February of 1997 and was recently elected as Chairman of Legacy Software, Inc. (&ldquo;Legacy&rdquo;,) a public company trading on the NASDAQ exchange under the symbol &ldquo;LGCY.&rdquo;  
 12. Prior to his affiliation with Videocall and Legacy, Michael Zwebner created and operated a corporation known as Cardcall International Holdings, Inc. (&ldquo;Cardcall&rdquo;). Cardcall was the parent holding company of Cardcall (UK) Limited and Cardcaller Canada, Inc., Cardcall's wholly owned subsidiaries. Cardcall was engaged in the business of

producing and selling prepaid long-distance telephone calling cards. Cardcall was one of the first companies in the eastern United States to market pre-paid long distance calling cards.

13. In February of 1997, Cardcall was acquired/merged with DCI Telecommunications, Inc. (hereinafter "DCI" or the "Company"), a Colorado corporation with a principal place of business in Stratford, Connecticut. Pursuant to the terms of the merger, all of Cardcall's shareholders became shareholders of DCI.

14. Mr. Zwebner remained the vice president of Cardcall and also the general manager of its affiliate in the United Kingdom, Cardcall (UK) Limited, until February of 1998.

15. Since the merger of Cardcall and DCI in February of 1997, several of the shareholders who had been involved in the running of Cardcall have resigned their positions with the Company due to their dissatisfaction with the way the management, officers and directors of DCI ran their business/company.

16. The Cardcall/DCI merger called for Cardcall shareholders to receive options for DCI stock that would vest at various predetermined future dates.

17. Many of these former Cardcall shareholders have rightfully and legally sold the DCI stock they received in connection with the DCI/Cardcall merger. Some have likewise exercised their vested options in DCI stock and sold shares acquired via the exercise of said options.

## V. THE DEFENDANTS' USE OF THE INTERNET TO DEFAME THE ZWEBNERS AND MANIPULATE STOCKS

### The Internet

18. The "Internet" is a global array of computer networks accessible all over the world.

19. Use of the Internet as a conduit of information has exploded as more and more people have signed up as Internet users. There are now many millions of Internet users worldwide. The Internet has become a social and commercial force of immense importance, where information can be immediately posted and relayed throughout the commercial world.

20. Throughout the Internet, there are dozens of "stock talk" bulletin boards, news groups, and chat rooms. Included among these is the "Silicon Investor," the Web address of which is <http://www.techstocks.com/investor/main>.

21. Individuals have posted hundreds of thousands of messages to these bulletin boards. There are more than three so-called threads or posts regarding DCI on Silicon Investor bulletin boards. These threads are accessed by the home name "DCTC." These posts are read by people around the globe. Silicon Investor, whose bulletin boards include one or more for DCI, receives between 2.5 and 4 million hits per day on its site.

22. People who post on bulletin boards (once they register with Silicon Investor) are not required to disclose their real identities or whether the information they are disseminating is accurate. They may thus hide behind a shield of anonymity believing they can fabricate and intimidate with no risk of repercussions.

### The Defendants' Scheme to Defame the Zwebners and Manipulate Stock Prices

23. Using their aliases, "bgtit", "Spider Valdez", and "Rico Staris," defendants Dumont, Doe I and Doe II, acting in concert with other Doe defendants attempting to manipulate the stock of DCI, posted false and defamatory information about the Zwebners on Silicon Investor Internet chat lines.

24. The defendants went so far as to create a new chat line called "No Bash for Legacy" for the specific purpose of ridiculing the plaintiff, Michael Zwebner and his brother, Charles Zwebner, and the public company of which the Zwebners are directors and officers.

25. The defendants deliberately copied and posted defamatory and false information regarding Michael Zwebner and his brother Charles on an Internet interactive board established for public discussion about another company, Airstar Technologies, Inc. ("ASTG"), knowing full well that the Zwebners were attempting to acquire this company. The defendants' dissemination of false and defamatory information misled ASTG directors and shareholders and caused the Zwebners to abandon the proposed acquisition.

26. The defendants either knew the statements they posted on the Silicon Investor chat lines regarding the Zwebners to be false or otherwise made them with reckless disregard as to the truth of the information and with the intent to harm the Zwebners and influence the prices of publicly traded stocks.

27. For many months the management of DCI has been attempting to secure institutional investors and/or a purchaser of the Company. For some time, DCI has thus been the subject of merger and acquisition rumors.

28. In order to maximize the value of the Company and hence the amount potential suitors would pay for DCI, the current management and insider shareholders of DCI have been trying to make the Company appear to be financially healthy and to have the potential for high profits.

29. For most of the past six months, the Company and its stock have not performed well.

30. On information and belief, the defendants, acting in concert with DCI insiders, have been attempting to divert attention away from the Company's poor performance by blaming fictitious outside forces for causing indicia of poor corporate performance, such as, among other things, depressed stock prices.

31. To this end, the defendants have been disseminating lies over the Internet, falsely accusing the Zwebners of, among other things, short selling DCI stock and otherwise manipulating DCI stock prices.

32. In truth, it is defendants, and those DCI insiders acting in concert with them, that are manipulating DCI stock prices by employing falsehood and deceit in an effort to deceive investors into believing that the Zwebners and others are to blame for the stock's poor performance. The defendants have sought to deceive investors and potential suitors into believing that the Company is not performing as poorly as corporate indicators suggest, but that rather the Zwebners are

somehow distorting the true financial picture of the Company through purported sales of "invalid stock" and manipulation of stock prices. Irrespective of the defendants' motive and purpose in disseminating this information, these remarks that the defendants have widely and maliciously published over the Internet are absolutely false and defamatory.

33. The Zwebners have repeatedly notified defendants through the Internet and otherwise that the information they are disseminating is false. Defendants nevertheless persist in smearing the Zwebners' names and reputations, for their own commercial purposes, through the publication of malicious falsehoods and innuendo over the Internet.

Lies Perpetrated by Defendant Dean Dumont a/k/a "bgtit";

34. On August 3, 1998, defendant Dumont intentionally made false statements regarding the sale of DCI stock by Michael Zwebner and his brother, Charles. Using the alias "bgtit", Dumont posted on the Silicon Investor that the Zwebners had "illegally sold" their shares and that "ball is already rolling" on "an investigation by the NASD in the S.E.C." These statements were false. No shares of DCI stock had been sold illegally by the Zwebners and there has never been any governmental "investigation" of the sale of DCI stock by either Michael or Charles Zwebner.

35. Later that same day, using the alias "bgtit", defendant Dumont again posted that the Zwebners were selling DCI stock illegally, falsely stating that the Zwebners "were committing a few illegal acts and fraud is just one of them." This statement is false. The Zwebners' sale of DCI securities was not illegal. They committed no fraud or other wrongdoing.

36. A few days later, on August 6, 1998, defendant Dumont posted a message falsely accusing Charles Zwebner of previously denying that he and other former Cardcall shareholders had ever sold any of their DCI stock and insinuating that Mr. Zwebner's purported efforts to conceal his sale of DCI stock evidenced some impropriety in the sale. Using the alias "bgtit", defendant Dumont claimed that "Mr. Zwebner stated in his last post that [Cardcall share]holders weren't selling [DCI] shares." This statement was false. In fact, neither Charles nor Michael Zwebner has ever posted a message on the Internet claiming that the former shareholders of Cardcall were not selling any shares of their DCI stock. Indeed, Charles Zwebner had made official filings with the SEC which are publicly disclosed, so declaring his sales of shares.

37. Most recently, defendant Dumont, continuing to use the alias "bgtit", disseminated false information purporting that Michael Zwebner has violated the law by not making required Securities Exchange Commission ("SEC") filings. On December 6, 1998, for example, defendant Dumont falsely posted on the Internet a message accusing Mr. Zwebner of having said he was "up to date in all filings and [yet did] not hav[e] them done." That day Mr. Dumont also again falsely insinuated in an Internet message that Mr. Zwebner had not made required filings: "Is there something in LGCY you are failing to disclose. Like not filing an 8K for the assumption of the Board of Directors. The 8K for the \$10 million deal for the real estate . . . S.E.C. and the NASD frown upon those tactics." In that same posting, Mr. Dumont proceeded to frame additional false statements within questions: "How did you and yours manage to gain control of a public company without [sic] shareholder consent? Why is there NO FILINGS MR. ZWEBNER, what are hiding? . . . You have not filed any of the appropriate paperwork."

38. Two days later, on December 5, 1998, "bgtit" continued his onslaught of fabrication: "Mr. Zwebner in his own words, and several other times . . . has stated that he is up to date on his filings, yet there are no filings."

39. All of these statements are false. Michael Zwebner has made all of the regulatory filings required of him.

False Statements Made By Defendant John Doe I a/k/a "Spider Valdez";

40. On October 19, 1998, defendant John Doe I, in concert with "defendant John Doe II, using the aliases "Spider Valdez" and "Rico Staris," posted a message on a Silicon Investor chat line falsely accusing the Zwebners of having "shorted invalid stock" and having financed [LGCY, the public company for which Michael Zwebner currently serves as chairman] in a questionable manner."

41. Two days later, on October 20, 1998, so-called "Spider Valdez" elaborated that his fabrication as to the Zwebners' "selling invalid stock short" was in reference to stock they owned in DCI. The defendant referred to the "short position at [DCI] that is backed by invalid stock and zwebner brothers." These statements are all false. Neither Michael nor Charles Zwebner have ever sold invalid stock short.

42. On October 24, 1998 defendant Doe I a/k/a "Spider Valdez" falsely informed the Internet world that the plaintiff was in trouble with the SEC and the FBI in connection with their "deeds" concerning DCI stock: "i look at [DCI] squeeze and deeds of Zwebners. sec and fbi have matters in hand."

43. In truth, there has been absolutely no investigation by the FBI or SEC concerning actions of the Zwebners related to DCI stock.

## VI. DAMAGES

44. The cumulative effect of the dissemination of these false and misleading representations regarding the Zwebners has resulted in direct harm to them, their reputation, and their business relationships, contracts and dealings. It has precipitated the loss of time and attention to their business responsibilities and occasioned unnecessary legal fees and expenses. In addition it has created an environment of loss of faith by investors and shareholders of Legacy Software, Inc. (the public company of which Michael Zwebner is chairman), resulting with some of the shareholders selling their

holdings, and a resultant substantial drop in the share value of the company.

45. The defendants, through their dissemination of false and misleading statements about the Zwebners, have improperly made significant profits, all of which should be disgorged.

46. The defendants, through their malicious dissemination of false and misleading statements about the Zwebners, have caused the Zwebners to incur significant direct consequential damages including attorneys fees, consultant fees and expenses, lost employment time and other such damages.

47. The defendants, through their dissemination of false and misleading statements about the Zwebners, have harmed the Zwebners' reputation and their relationships and dealings.

48. The defendants, through their malicious dissemination of false and misleading statements about the Zwebners, have caused the Zwebners pain, anguish, and emotional distress.

49. The defendants' conduct directed at the Zwebners was malicious, willful, wanton, reckless, vexatious and oppressive, entitling the Zwebners to an award of enhanced compensatory damages and double to triple damages and attorneys fees and costs pursuant to NH RSA 358-A:10, I.

#### COUNT I &ndash; DEFAMATION

50. Paragraphs 1 through 49 are incorporated as if fully set forth herein.

51. The defendants published the malicious, false and defamatory statements described above on the Internet, intending that they reach as wide an audience of securities purchasers and sellers, securities' professionals and other information seekers as possible, both in the United States and internationally.

52. The defendants' malicious, false and defamatory statements described above constitute libel per se as they are words tending to injure a person in his trade or business, many of which directly or indirectly charge Mr. Zwebner with criminal conduct, thus entitling plaintiff to a recovery without proof of special damages.

53. The defendants negligently published the malicious, false and defamatory statements described above concerning Mr. Zwebner causing him to suffer damages as more fully described herein.

54. The defendants published the malicious, false and defamatory statements described above with knowledge that the statements were false, or with reckless disregard as to whether they were false, causing plaintiff to suffer damages as more fully described herein.

#### COUNT II - UNFAIR TRADE PRACTICES &ndash; NEW HAMPSHIRE STATUTE

55. Paragraphs 1 through 54 are incorporated as if fully set forth herein.

56. Defendant Dumont is a &ldquo;person&rdquo; within the terms of RSA 358 A:1, I.

57. On information and belief, defendants Does I and II, a/k/a &ldquo;Spider Valdez&rdquo; and &ldquo;Rico Staris&rdquo; are &ldquo;persons&rdquo; within the terms of RSA 358 A:1, I.

58. The defendants knowingly engaged in unfair and/or deceptive acts and/or practices by disseminating the malicious, false, misleading and defamatory information regarding the Zwebners described above.

59. The defendants negligently engaged in unfair and/or deceptive acts and/or practices by disseminating the false, misleading and defamatory information regarding the Zwebners described above.

60. The defendants' unfair and/or deceptive acts and/or practices include, but are not limited to, disparaging the Zwebners in their business by making malicious, false or misleading representations of fact in violation of RSA 358-A:2, VIII.

61. The defendants' malicious, unfair and/or deceptive acts and/or practices have caused plaintiff to suffer damages as more fully described above.

#### COUNT III &ndash; INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

62. Paragraphs 1 through 61 are incorporated as if fully set forth herein.

63. Defendants, through their dissemination of malicious, false and misleading statements about Mr. Zwebner, engaged in extreme and outrageous conduct.

64. Defendants' dissemination of malicious, false and misleading statements about plaintiff was intentional or, at a minimum, reckless.

65. Defendants, through their dissemination of malicious, false and misleading statements about Mr. Zwebner, have inflicted severe emotional distress upon Mr. Zwebner.

#### COUNT IV &ndash; (FALSE LIGHT INVASION OF PRIVACY)

66. Paragraphs 1 through 65 are incorporated as if fully set forth herein.

67. Defendants Dumont and Doe I a/k/a &ldquo;Spider Valdez&rdquo; and Doe II a/k/a &ldquo;Rico Staris&rdquo; publicized or caused to be publicized the information concerning Mr. Zwebner detailed above.

68. The information so publicized or caused to be publicized was false and defamatory.

69. The false and defamatory information defendants Dumont, Doe I and Doe II so publicized or caused to be publicized

placed plaintiff before the public in a false or objectionable light, in that defendants publicly portrayed plaintiff as having committed crimes punishable as felonies; as having committed the crime of fraud; as having committed acts of stock market manipulation; and as having concealed and covered up their acts.

70. The false or objectionable light in which defendants placed plaintiff was highly offensive to plaintiff, and would be highly offensive to any reasonable person.

71. Defendants Dumont, "Spider Valdez" and "Rico Staris" all acted with actual malice in publicizing or causing to be publicized false and defamatory information about plaintiff, as alleged herein, in that defendants did so with knowledge of, or in reckless disregard as to, the falsity of the information and the false light in which plaintiff would be placed.

WHEREFORE, plaintiff Michael J. Zwebner requests that this Court grant the following relief:

- (a) Judgment for compensatory damages, together with interest thereon, at legal rate, plus additional and consequential damages, according to proof in an amount not less than Ten Million Dollars (\$10,000,000);
- (b) Judgment for double or treble damages (that is, up to Thirty Million (\$30,000,000)) pursuant to NH RSA 358-A:10, I;
- (c) Judgment for costs incurred herein, including attorneys fees to the extent allowed by law;
- (d) Schedule a jury trial for the award of compensatory and statutory damages;
- (e) Permanently enjoin the defendants from issuing malicious, false and misleading statements concerning the plaintiff; and
- (f) Such other and legal equitable relief as this Court may deem just and proper.

Respectfully submitted,  
MICHAEL J. ZWEBNER

By his attorneys

\_\_\_\_\_  
S/S

John R. Skelton, NH Bar # 6526  
BINGHAM DANA LLP

Dated: December 10, 1998 OF COUNSEL  
Victor H. Polk, Esq.  
Charles L. Solomont, Esq.  
BINGHAM DANA LLP  
150 Federal Street  
Boston, MA 02110  
617-951-8000

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