

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

NEWWAVE TELECOM AND)
TECHNOLOGIES, INC.,)
Plaintiff/Counterclaim-Defendant,)
)
v.)
) C.A. No. N20C-09-215 MMJ CCLD
ZE JIANG, et al.)
)
Defendants/Counterclaim-Plaintiffs.)

Submitted: August 14, 2023
Decided: September 27, 2023
Unsealed: October 9, 2023

POST-TRIAL OPINION

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JOHNSTON, J.

FINDINGS OF FACT AND CONCLUSIONS OF LAW¹

Background

Plaintiff NewWave Telecom and Technologies, Inc. (“NewWave”) acquired iQuartic on May 10, 2019. The controlling agreements are the Stock Purchase Agreement (“SPA”) and the Earnout Agreement (“EOA”). NewWave filed this action alleging breach of the SPA, fraud in the inducement, and declaratory judgment regarding funds held in escrow. The individual Defendants, Jiang, Dolph, Asarsa, Lavin and Blumenfeld (“Defendants”) were officers or employees of iQuartic, at the time of the acquisition. Defendants filed counterclaims for breach of the SPA, breach of the EOA, fraudulent inducement, tortious interference with business relations, defamation, and declaratory judgment in connection with funds held in escrow.

By Opinion dated March 15, 2023, the Court made the following findings.

The Court finds that genuine issues of material fact prevent summary judgment on: Count I—Breach of the SPA; Count II—Fraud/Fraud in the Inducement; Count III and Counterclaim VI Declaratory Judgment (Funds in Escrow); Counterclaim III—Fraud/Fraud in the Inducement; Counterclaim IV—Tortious Interference with Business Relations; and Counterclaim V—Defamation. Counterclaim I—Breach of the SPA—is not time-

¹In this Opinion, the Court will include facts, and address legal issues, to the extent necessary to resolve the parties’ disputes. The Court has reviewed the voluminous trial record and all post-trial submissions. The absence of discussion of certain evidence and legal arguments, as part of this Opinion, does not indicate that the Court has not considered these matters.

barred. However, the Court finds as a matter of law, based on undisputed facts, that NewWave did not breach the representation set forth in SPA Section 4.7. Summary judgment is hereby **GRANTED** in favor of NewWave on this issue.

On Counterclaim II— Breach of EOA—the Court finds that “Lives served” under the EOA means medical records actually processed. Pursuant to the Neutral Accountant’s alternative opinion, the 2019 Earn-Out Payment calculation is based on 808 records actually processed. Therefore, the Court finds that no 2019 Earn-Out Payment is due. Summary Judgment is hereby **GRANTED** against Defendants on this issue.

The Court has determined the legal definition of “Lives served.” Therefore, Expert Steager’s opinion on this issue is moot. The second part of Steager’s opinion is offered to rebut the valuation methodologies employed by NewWave’s damages expert. The Court will consider this testimony, and give it the appropriate weight in the exercise of judicial discretion. Therefore, NewWave’s *Daubert* and D.R.E. 702 Motion to Exclude the Testimony of Eric Steager is hereby **GRANTED IN PART AND DENIED IN PART**.

Defendants/Counterclaim-Plaintiffs’ Motion to Exclude the Testimony of Expert Bryan Bergeron, MD, and Defendants/Counterclaim-Plaintiffs’ Motion to Strike NewWave’s Supplemental Expert Report of Bryan Bergeron, MD, are hereby **DENIED**. The objections set forth in the motions go to the weight to be given to the testimony.

An eight day bench trial was held on the remaining issues.

SPA and Defendants' Representations

Section 2.12(e)(ii) of the SPA warrants that all iQuartic systems are “fully functional and operate and run in a reasonable and efficient business manner....” This warranty applies to the EHRProfiler.

Section 1 of the EOA defines “Business” (in part) as “developing, marketing, and licensing natural language processing for information extraction from healthcare data.”

Prior to acquisition, iQuartic provided demonstrations of the EHRProfiler. Defendants represented the EHRProfiler as a fully functional medical record coding system with Natural Language Processing (“NLP”), capable of extracting and inferring International Classification of Diseases (“ICD”) codes from medical records with better accuracy and efficiency than human processing. Three components - the NLP engine, Optical Character Reader (“OCR”) component, and a review tool - were to be integrated at the time of acquisition.

Defendant Jiang repeatedly told NewWave prior to closing that the EHRProfiler was “ready to go” and could begin coding medical records. Defendants represented that the EHRProfiler compared favorably to Amazon’s commercial NLP solution.

Specific representations were made that iQuartic had \$22 million in recurring revenue from a pipeline of customer contracts and \$8 million in a weighted pipeline, which included healthcare providers as well as payer/insurer customers. Defendants stated that the EHRProfiler could process and code 16,000 pages of medical records per day, with better accuracy than manual human coding. “iQuartic’s AI system is fast, processing hundreds of thousands of medical records in hours, not months.” Further, the EHRProfiler was better than Amazon’s Comprehend NLP solution and was built to provide exact ICD codes.

Defendants’ Admissions

Defendant Berg, iQuartic’s former Chief Technology Officer, admitted that the EHRProfiler could not process “hundreds of thousands of medical records in hours not months.” In a Skype chat, Berg stated: “We can certainly demo (slides) about what we have done and where we intend to go.... ‘Demo’ means building something that shows how it works, even if it’s smoke & mirrors.” Berg referred to EHRProfiler’s NLP software as a minimum viable product (“MVP”), and admitted that an MVP is not fully functional. In July 2019, shortly after the acquisition, Berg said to Jiang and Dolph: “I don’t want to lie to [NewWave]

anymore about what we really have. That come to Jesus moment is going to come, and let's not overdo it.”

Defendant Jiang, iQuartic's former Chief Executive Officer, stated during negotiations with Blue Cross Blue Shield: “We've no workable product, therefore investment and customer is very hard....Of course we bluffed a bit during our negotiations with [NewWave]....FYI this bonus plan is at the negotiation stage [with NewWave], but I want to be sensitive that pushing back too aggressively might be a signal to acquiror that they're buying a lemon.”

Defendant Asarsa, iQuartic's former NLP Specialist, said: “But it seems [NewWave's] expectations are different from reality....They are expecting a ready to use program. What we have is essentially a raw engine that may be turned into a production level program.” Asara acknowledged that the system would not be fully integrated at the time of closing, and that records would have to be tagged manually.

NewWave's Evidence of Deficiencies at Time of Acquisition

NewWave expert witness Bergeron testified that the EHRProfiler did not have true NLP capability. Rather, the system only had text matching, instead of the ability to interpret the meaning of words and phrases. The review or “user

interface” tool was not supported by iQuartic software. NewWave later paid Northbay Solutions LLC and Neuron LP to build a review tool at a cost of \$558,016.

It is undisputed that iQuartic had at the time only one customer - Cognisight. The Cognisight contract was for the processing of 70,000 medical charts. It is undisputed that the iQuartic only coded Cognisight’s records manually. Only 808 Cognisight medical records actually were processed.

The parties disputed the EHRProfiler’s precision standard. Tests of Cognisight records ranged from 1.8% to 23.52%. Regardless of whether a 50% or 85% standard is required for business viability, the precision tests demonstrated that the EHRProfiler was not ready for commercial use.

The Statement of Work (“SOW”) executed between iQuartic and Cognisight permitted no manual coding of medical charts unless they were illegible or contained over 30% handwriting. It is undisputed that manual coding was used for all Cognisight records, not just limited as contemplated in the SOW. As a result, the EHRProfiler was not utilized in accordance with the Cognisight contract. The contract contemplated 60% precision. That level was never achieved.

The Court found particularly compelling the testimony of Denise Dobbin, iQuartic’s Director of Medical Coding from 2015 to 2022. Dobbin was in charge of processing Cognisight records after the acquisition. The Court finds Dobbin to

have been conscientious, competent, forthright, proud of her work, and concerned about results provided to iQuartic's lone customer Cognisight. During her testimony, Dobbin became visibly upset when shown, for the first time, the pre-acquisition pitch deck presented to NewWave. The pitch deck contained the representation that the EHRProfiler could code 16,000 pages in one day by automation. Dobbin was obviously shocked at that statement and had to take a break to compose herself before continuing. While clearly reluctant to say anything disloyal or negative about iQuartic, her former employer, she nevertheless testified that this was a "very unfair representation" and that "our product by no means could have produced what it claims it was producing."

Count I - Breach of Contract

Pursuant to Section 2.12(e)(ii) of the SPA, Defendants warranted that at the time of closing, the EHRProfiler was fully functional and could operate and run in a reasonable and efficient business manner. Section 7.3 of the SPA provides: "Notwithstanding any right of the Buyer fully to investigate the affairs of the Company and the Sellers, and notwithstanding any Knowledge of facts determined or determinable by the Buyer pursuant to such investigation or right of investigation, the Buyer has the right to rely fully upon the representations and warranties of each

of the Company and the Sellers contained in this Agreement and the other Transaction Documents.”

At trial, Defendants disputed that lack of integration was a problem. Rather, Defendants contend that by design, components were not integrated, in order to enable the future integration with other software. Defendants argue that the EHRProfiler was fully functional for its intended purpose of processing electronic medical records for provider systems. Defendants assert that the EHRProfiler was designed solely for risk-adjustment coding. Thus, the limited number of ICD codes identifiable by the system was sufficient. Defendants argue that iQuartic’s business plan never focused on general medical coding for healthcare payers/insurance companies. Contrary to the application purportedly pitched by iQuartic, NewWave attempted to use the EHRProfiler to process scanned medical records for insurance payer companies. Defendants contend that the EHRProfiler was designed for medical providers, not third-party payers. Therefore, Defendants assert they are not in breach of the SPA.

Defendants’ witnesses testified that “fully functioning” does not mean fully automated because the computer-assisted coding system was designed to include a human review component for compliance purposes. Because requirements change

over time, Berg testified that “there’s rarely a software product that is fully functional.”

Defendants argue that NewWave did not reasonably rely on any representations because NewWave unreasonably decided not to run the EHRProfiler source code prior to acquisition. Additionally, NewWave did not understand iQuartic’s business plan. NewWave unreasonably relied on Defendants’ assurances “without ensuring that the EHRProfiler’s marketed functionalities were compatible with NewWave’s objectives.”

The Court finds Defendants’ arguments to be unpersuasive revisionist history. At trial, Defendants attempted to redefine the intended function of the EHRProfiler in order to demonstrate that the system was “fully functional” as required by the SPA. This position is not consistent with the evidence.

For example, there was no testimony or other evidence that Jiang or anyone else affiliated with pre-SPA iQuartic told NewWave or Cognisight (iQuartic’s only customer) something to the effect of: “You don’t understand - the reason the EHRProfiler can’t do the work under the contract is that the system isn’t designed to do this type of thing. Cognisight is a payer, not a provider. So we don’t have a non-manual system that could do what Cognisight wants iQuartic to do, or as fast as agreed in the contract.”

There is evidence that Jiang expressed concern about a Cognisight contract modification that permitted Cognisight to send iQuartic all business lines, instead of limiting them to Medicare. This evidence does not change the Court's conclusions. Medicare is also a payer, not a provider.

Some, if not all, of the Defendants were aware of the existence and precise terms of the Cognisight contract. There was no evidence that any Defendant corrected what must have been an obvious misapprehension by NewWave. It is not reasonable that NewWave would have entered into the Cognisight contract, if NewWave had known that the Cognisight work could only be completed by manual coding, and that the requirement of processing 70,000 records during the time period was simply not possible without a functioning EHRProfiler-type system.

The Court finds that the EHRProfiler was not fully functional at the time of acquisition. Nor was the system capable of operating and running in a reasonable and efficient business manner. Putting the issue of integration aside, the evidence demonstrated that the EHRProfiler, at the time of acquisition, was not able to process medical records using NLP technology. The EHRProfiler was not capable of extracting ICD codes from medical records more quickly or efficiently than manual human coding. The EHR did not have an OCR component that could function to process scanned records not in electronic form.

Therefore, the Court finds in favor of NewWave on Count I - Breach of Contract.

Count II - Fraud/Fraud in the Inducement

In order to prevail, NewWave must prove by a preponderance of the evidence: (1) a false statement or misrepresentation; (2) knowledge of the falsity or reckless indifference to the truth; (3) that the statement induced NewWave to enter into the SPA; (4) reasonable reliance; and (5) resulting injury.

Section 7.3 of the SPA provides:

Notwithstanding any right of the Buyer fully to investigate the affairs of the Company and the Sellers, and notwithstanding any Knowledge of facts determined or determinable by the Buyer pursuant to such investigation or right of investigation, the Buyer has the right to rely fully upon the representation and warranties of each of the Company and the Sellers contained in this Agreement and the other Transaction Documents.

The SPA contains an anti-reliance provision in Section 4.8:

The Buyer represents and acknowledges that, except for the representations and warranties of the Company and the Sellers set forth in Section 2 and Section 3,...the Buyer is not relying and has not relied on any representations of warranties whatsoever regarding the subject matter of this Agreement, express or implied.

NewWave's former Chief Executive Officer and Chief Financial Officer testified that has they known that the EHRProfiler was not as represented, they would not have entered into the SPA to purchase iQuartic.

In post-trial briefing, Defendants state:

To be clear, Defendants' position is **not** that NewWave was required to do due diligence pursuant to the SPA or that it was required to do so to uncover some failure of the EHRProfiler. Defendants' position is that NewWave purchased a company and product it did not understand/chose not to understand because it completed no credible, independent pre-acquisition due diligence.

The Court find this proposed distinction to be without a difference. Either way, Defendants are arguing that if NewWave had engaged in better due diligence, it would have understood the actual, then-current capabilities of the EHRProfiler.

Essentially, Defendants' defense is that if New Wave had performed more thorough due diligence, it would have discovered what the EHRProfiler system actually could or couldn't do, and there would have been no need to rely on any of Defendants' alleged misrepresentations and false statements.

The Court has found that Defendants breached the SPA by making warranties and representations that were not accurate. As previously set forth, Defendant's Berg, Jiang and Asarsa made statements that constitute admissions that representations to NewWave, including those in the SPA, were not true. The Court finds that NewWave has proved, by a preponderance of the evidence, that : the timing of Defendants' statements demonstrates these Defendants' knowledge of falsity and reckless indifference to the truth; the context of the misrepresentations is

proof that Defendants' made the statements with the intent to induce NewWave to enter into the SPA; NewWave reasonably relied on the misrepresentations; and New Wave sustained financial injury.

Therefore, the Court finds in favor of NewWave on Count II - Fraud in the Inducement.

Count III and Counterclaim VI - Declaratory Judgment

NewWave seeks a declaratory judgment releasing \$625,000 held in escrow. Section 7.4(c) of the SPA provides that "the sole and exclusive source to satisfy any claim for indemnification" pursuant to Section 7.2, other than "Fraud-Type Claims," shall be the amount held in escrow.

The Court finds that NewWave is entitled to declaratory judgment releasing the escrow to satisfy indemnification obligations.

Therefore, the Court finds in favor of NewWave on Count III, and against Defendants on Counterclaim VI - Declaratory Judgment.

Counterclaim III - Fraud and Fraud in the Inducement

Defendants allege that NewWave's fraudulent conduct induced the execution of the SPA. Defendants assert that iQuartic relied on assurances by NewWave. Despite NewWave's assurances, New Wave: (1) did not obtain sufficient funding to

support iQuartic's personnel and technical development needs; (2) never intended to hire essential personnel; (3) never intended for iQuartic to maintain independence and control over its operations and/or its product; and (4) never intended to support the Earn-Out Seller's ability to achieve the stated metrics under the EOA, despite repeated statements to the contrary, during the nine-month negotiation period.

Chinedu Enekwe of AffinityVC was NewWave's financial advisor. Enekwe communicated directly with NewWave's bank regarding financing details for the acquisition. Enekwe was the primary point of communication with iQuartic during letter of intent negotiations and the due diligence process. Defendants argue that Enekwe made misrepresentations, on which iQuartic relied, in his position as NewWave's agent with apparent authority.

Following vigorous negotiations involving Enekwe, the final agreed budget was: \$535,417 for 2019 after closing; \$936,360 for 2020; \$1,496,806 revenue for 2019; and \$7,449,389 revenue for 2020.

The Court finds that Defendants failed to identify any specific representation by Enekwe that was false or sufficiently misleading to constitute fraud in the inducement. Defendants attempt to demonstrate justifiable reliance based on certain budget figures discussed with Enekwe during the negotiations. Having

agreed to the reduced final budget, the Court finds that Defendants could not have reasonable relied on budget amounts proposed, but rejected.

Section 3 of the EOA provides:

In the event the Business requires assistance from the Buyer, or other than funding the budget, with respect to sales, support, financing or otherwise, such services and finances may be provided by the Buyer in its sole discretion, and any costs associated with such services shall be allocated to and paid by the Company.

Defendants presented evidence at trial that prior to executing the SPA, NewWave's Mills and Munis agreed with iQuartic's Jiang that iQuartic needed "three plus engineers." The day before closing, Jiang was presented with a chart identifying "2 JavaCoders - (1 Backend & 1 Frontend) & 1 Full Stack Coder for tech slack & Dev Ops Support" in addition to two new HCC coding hires. Jiang testified that he executed the SPA in reliance upon these assurances.

Dolph testified that post-acquisition, NewWave failed to provide funding for marketing, a website, and branding. This failure impeded iQuartic's ability to sell EHRProfiler services.

It is undisputed that iQuartic generated no revenue from the "weighted pipeline," and did not have revenue in 2019 or 2020. Defendants argued that this was because NewWave did not hire necessary employees or allocate sufficient

resources to generate income. Therefore, NewWave never intended for iQuartic to succeed.

NewWave presented evidence that it contributed \$3,356,654.03 into iQuartic in 2019 and 2020, without any revenue realization. This included technology vendors Northbay and Neuron, purchase of an Epic license at Jiang's request, and hiring new employees. Therefore, it would not be sensible or logical for NewWave to have purposely tanked its investments after closing. NewWave witnesses testified that they repeatedly communicated to Jiang that revenue was expected and that any additional hires would be based on revenue. Additionally, Section 3 of the EOA gives NewWave sole discretion to provide services and financial contributions "with respect to sales, support, financing or otherwise."

The Court finds NewWave's evidence persuasive. Therefore, the Court finds in favor of NewWave on Counterclaim III - Fraud and Fraud in the Inducement.

Counterclaim IV - Tortious Interference with Business Relations

In order to successfully claim tortious interference with business relations, a party must prove: (1) existence or reasonable probability of a business opportunity; (2) intentional interference by defendant with that opportunity; (3) proximate cause; and (4) damages.

Defendants argue that NewWave intentionally interfered with the contractual relationship between iQuartic and Cognisight. This this alleged interference was that NewWave “bribed” Dobbin, through a raise and bonus, to sabotage the Cognisight contract. Further, Dobbin and Mills made false accusations about iQuartic to Cognisight. These accusations damaged Cognisight’s view of iQuartic’s technology.

Jiang testified that NewWave knew that manual coders would be necessary to process Cognisight’s records until the SLP integration was complete. Nevertheless, Mills informed Cognisight that: (1) iQuartic was “unethically attempting to deliver coding results” by human coders; (2) the shared solution sold to Cognisight was “smoke and mirrors” and there was no NLP as sold and defined in the statement of work; and (3) it was a “complete shock” to NewWave that the NLP integration was not complete. Dobbin told Cognisight that humans were doing the work because NLP did not exist.

A Cognisight witness testified that no manual coding was permitted under the SOW unless medical charts were illegible or contained over 30% handwriting. In that event, the medical records were to be sent back to Cognisight for manual coding. Cognisight communicated its concerns to Jiang. Mills testified that both Jiang and Dolph refused to respond to Cognisight. Subsequently, Mills discussed

with Cognisight the reasons for the delay in processing Cognisight's medical records. The evidence demonstrated that iQuartic was never able to process records in a manner consistent with the Cognisight contract terms.

The Court finds no merit to the allegation that Dobbin acted as a result of a bribe. The trial evidence supported Dobbin's credible testimony that the bonus and raise were justified by extraordinary effort, and were considered and awarded in due course. There was never any suggestion of a nefarious *quid pro quo*. Dobbin vehemently denied that she ever would have agreed to be untruthful, had such a course of action been proposed.

The Court also finds that the following statements were accurate: the NLP was not integrated; coding was being performed by humans; and no NLP was being used to fulfill the Cognisight contract.

Therefore, the Court finds in favor of NewWave on Counterclaim IV - Tortious Interference with Business Relations.

Counterclaim V - Defamation

The Court previously has found that Defendants failed to present evidence of false statements made by Mills and Dobbin.

Therefore, the Court finds in favor of NewWave on Counterclaim V - Defamation.

Breach of Contract - Earn-Out Agreement

Defendants assert that the Court's March 15, 2023 Memorandum Opinion did not address whether NewWave breached Section 3 of the EOA. Section 3 provides that NewWave shall not "merge or consolidate the company...or otherwise cause the business to operate other than as a business of the company separate and distinct from buyer...." Defendants contend that NewWave breached Section 3 by micromanaging and controlling iQuartic's activities.

Following acquisition, Mills and Munis became iQuartic board members and officers. Jiang, who remained as iQuartic's CEO, disagreed with decisions regarding reporting structure, employee termination, employee compensation, and budget.

In the March 15, 2023 Memorandum Opinion, the Court ruled:

On Counterclaim II - Breach of EOA - the Court finds that "Lives served" under the EOA means medical records actually processed. Pursuant to the Neutral Accountant's alternative opinion, the 2019 Earn-Out Payment calculation is based on 808 records actually processed. Therefore, the Court finds that no 2019 Earn-Out Payment is due. Summary Judgment is hereby **GRANTED** against Defendants on this issue.

To the extent this claim remains following the Court's Memorandum Opinion, Defendants' have failed to demonstrate any breach of the EOA. Overlap in officers and directors from one corporation to another does not necessarily negate the independence of each entity. There has been no suggestion that a Court sitting in equity engage in an analysis of piercing the corporate veil of iQuartic.

Jiang was one of three iQuartic Board members. The fact that he disagreed with the other two on certain issues does not indicate lack of a separate and distinct business. The evidence is that iQuartic's reporting structure was changed by unanimous board approval - including Jiang. The exercise of "sole discretion" by NewWave, to provide or decline to assist with iQuartic finances and services, was incorporated in the agreed language of the EOA in Section 3.

Therefore, the Court finds in favor of NewWave that it did not breach the EOA.

DAMAGES

NewWave purchased iQuartic for \$6,084,013 (BasePurchasePrice), plus or minus estimated net working capital excess or deficit. Investors held promissory notes in the amount of \$712,2190.37. Escrow of \$625,000 is held for indemnity claims. Following acquisition, NewWave hired Northbay Solutions LLC and

Neuron LP to build a review tool in an attempt to develop fully functional software. NewWave paid these entities \$558,016.

Section 7.2(a) of the SPA provides that Sellers indemnify NewWave, based on pro-rata shares, for Losses arising out of “the inaccuracy in or breach by or on behalf of” iQuartic of representations and warranties. Section 7.2(b) requires indemnification by each Seller, severally and not jointly, for Losses arising from “the inaccuracy in or breach of any representation or warranty” made by the individual Defendant Sellers. Defendants Jiang, Dolph, and Asarsa are Sellers as defined by the SPA.

“Losses” are broadly defined in the SPA to include “any loss, damage,...cost,...including any consequential or other damages paid or incurred....”

NewWave claims that it incurred Losses as a result of breach of contract, in the amount of \$558,016 - the amount it paid to Northbay and Neuron.

NewWave contends that it suffered damages as a result of its reliance on false statements and misrepresentations. NewWave claims entitlement to expectation or benefit of the bargain damages. This is measured as the difference between the value of the investment as it was represented and the value actually received. NewWave asserts that this amount is \$6,950,879. NewWave’s damages expert

utilized a discounted cash flow method and concluded that NewWave is entitled to \$7,508,895.00 in benefit of the bargain damages and extra out-of-pocket costs.

Prior to trial, the Court questioned the parties concerning their alleged damages. NewWave's damages expert based his opinion on the assumption that what was purchased through the SPA was worthless. The Court offered the opportunity to all parties to present alternative damages opinions, based on the contingency that the Court would find that NewWave purchased assets worth some, but not full, purchase price value in the iQuartic acquisition. No party chose to present such evidence, leaving the Court to speculate as to what a partial asset value might be.

The Court declines to speculate as to the proper measure of damages. The Court finds that the iQuartic transaction did not result in NewWave's acquisition of worthless assets. The parties are directed to present supplemental expert opinions as to the value of the assets subject to the SPA. Counsel shall confer as to a schedule for these submissions.

CONCLUSION

The Court finds in favor of NewWave and against Defendants on:

Count I - Breach of Contract;

Count II - Fraud in the Inducement;

Count III and Counterclaim VI - Declaratory Judgment;

Counterclaim IV - Tortious Interference with Business Relations;

Counterclaim V - Defamation; and

Breach of Contract - Earn-Out Agreement.

The parties are directed to present supplemental expert opinions as to the value of the assets subject to the SPA. Counsel shall confer as to a schedule for these submissions.

IT IS SO ORDERED.

/s/ Mary M. Johnston _____
The Honorable Mary M. Johnston