

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

In re: :
EIS INTERNATIONAL, INC. : Master File No. 3:97CV813 (CFD)
SECURITIES LITIGATION :

RULING ON DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT

This is a class action brought by shareholders of EIS International, Inc. ("EIS") against EIS, Edward J. Sarkisian (Executive VP of Worldwide Sales and Marketing for EIS), Kent M. Klineman (Secretary, as well as a director and former Treasurer, of EIS), and Joseph J. Porfeli (CEO of EIS) alleging securities fraud arising out of EIS's acquisition of Surefind Information, Inc. ("Surefind"), and Cybernetics Systems International ("Cybernetics"). Pending is the defendants' motion for summary judgment [Doc. # 160]. For the following reasons, the motion is DENIED.

I. Summary Judgment Standard

In a summary judgment motion, the burden is on the moving party to establish that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). A court must grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." Miner v. City of Glens Falls, 999 F.2d 655, 661 (2d Cir. 1993) (citation omitted). A dispute regarding a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d 520, 523 (2d Cir. 1992) (quoting

Anderson, 477 U.S. at 248). After discovery, if the nonmoving party “has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof,” then summary judgment is appropriate. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

The Court resolves “all ambiguities and draw[s] all inferences in favor of the nonmoving party in order to determine how a reasonable jury would decide.” Aldrich, 963 F.2d at 253. Thus, “[o]nly when reasonable minds could not differ as to the import of the evidence is summary judgment proper.” Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir. 1991); see also Suburban Propane v. Proctor Gas, Inc., 953 F.2d 780, 788 (2d Cir. 1992).

II. Discussion

The Court finds that there are genuine issues of material fact that preclude summary judgment. Regarding the acquisition of Surefind, the plaintiffs have submitted evidence from which a reasonable juror could conclude that, given the technological state of Surefind’s software product and its sales history, EIS’s public statements regarding projected revenue forecasts and opportunities for immediate synergy with existing EIS services were materially false and misleading. A juror could also conclude that all of the defendants were aware of these facts, and that each either made public statements or ratified public statements made by others regarding projected revenues and a level of synergy with existing EIS products that were not based in fact and were materially misleading.

Similarly, regarding EIS’s acquisition of Cybernetics, there are genuine issues of material fact as to whether EIS’s public statements that Cybernetics was a “market leader” and had “extremely lucrative software” and statements that Cybernetics would contribute substantially to EIS’s revenue in

