

Original

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Civil Docket No.: **06 CA 1137 MLW**

Christine. Varad,
Plaintiff,

v.

Reed Elsevier Incorporated,
d.b.a. *LexisNexis, LexisNexis Risk &
Information Analytics Group, Inc.*,
Defendant.

**PLAINTIFF'S RESPONSE TO DEFENDANT'S STATEMENT OF FACTS and
PLAINTIFF'S STATEMENT OF MATERIAL FACTS WHICH PRESENT
GENUINE ISSUES TO BE DETERMINED BY JURY TRIAL**

Pursuant to Local Rule 56.1, plaintiff, Christine Varad, provides the following response to defendant Reed Elsevier, Inc., d.b.a. LexisNexis, LexisNexis Risk & Information Analytics Group, Inc., statement of facts as set forth in its summary judgment memorandum. Varad further submits herein her statement of undisputed material facts ("Plaintiff's Statement of Undisputed Material Facts").

Christine Varad v. Reed Elsevier Incorporated

Doc. 74

Plaintiff's Response to Defendant's Statement of Facts

Part A

**Reed Had No Involvement with Varad Concerning the Allegations in the
Complaint Prior to the Filing of this Lawsuit**

1. Statements contained in ¶ 1 are disputed and contain inadmissible hearsay.
2. Statements contained in ¶ 2 are disputed and contain inadmissible hearsay.
3. Statements contained in ¶ 3 are disputed and contain inadmissible hearsay.

4. Statements contained in ¶ 4 are disputed and contain inadmissible hearsay.
5. Statements contained in ¶ 5 are disputed and contain inadmissible hearsay.
6. Statements contained in ¶ 6 are disputed and contain inadmissible hearsay.

Part B

Seisint, the Entity the Provided Information to Gall & Gall Concerning Varad, Did Not Function as a Credit Reporting Agency, as Defined by the Fair Credit Reporting Act.

7. Statements contained in ¶ 7 are disputed and contain inadmissible hearsay.
8. Statements contained in ¶ 8 are disputed and contain inadmissible hearsay.
9. Statements contained in ¶ 9 are disputed and contain inadmissible hearsay.
10. Statements contained in ¶ 10 are disputed and contain inadmissible hearsay.
11. Statements contained in ¶ 11 are disputed and contain inadmissible hearsay.
12. Statements contained in ¶ 12 are disputed and contain inadmissible hearsay.
13. Statements contained in ¶ 13 are disputed and contain inadmissible hearsay.
14. Statements contained in ¶ 14 are disputed and contain inadmissible hearsay.
15. Statements contained in ¶ 15 are disputed and contain inadmissible hearsay.

Part C

F& W Had No Issue with the Applicant Screening Report and Continued to Employ Varad for the Duration of Her Temporary Position

16. Statements contained in ¶ 16 are disputed and contain inadmissible hearsay.
- Varad has formally objected to any use her deposition transcript for any purpose by invoking her rights concerning such use pursuant to Fed. R. Civ. P. 32(a)(3).
17. Statements contained in ¶ 17 are disputed and contain inadmissible hearsay.

18. Statements contained in ¶ 18 are disputed and contain inadmissible hearsay.

Varad has formally objected to any use her deposition transcript for any purpose by invoking her rights concerning such use pursuant to Fed. R. Civ. P. 32(a)(3).

19. Statements contained in ¶ 19 are disputed and contain inadmissible hearsay.

Varad has formally objected to any use her deposition transcript for any purpose by invoking her rights concerning such use pursuant to Fed. R. Civ. P. 32(a)(3).

Part D

Varad Contacts Gall & Gall and Seisint Regarding the 1992 Address Contained in the Applicant Screening Report

20. Statements contained in ¶ 20 are disputed and contain inadmissible hearsay.

Varad has formally objected to any use her deposition transcript for any purpose by invoking her rights concerning such use pursuant to Fed. R. Civ. P. 32(a)(3).

21. Statements contained in ¶ 21 are disputed and contain inadmissible hearsay.

Varad has formally objected to any use her deposition transcript for any purpose by invoking her rights concerning such use pursuant to Fed. R. Civ. P. 32(a)(3).

22. Statements contained in ¶ 22 are disputed and contain inadmissible hearsay.

23. Statements contained in ¶ 23 are disputed and contain inadmissible hearsay.

24. Statements contained in ¶ 24 are disputed and contain inadmissible hearsay.

25. Statements contained in ¶ 25 are disputed and contain inadmissible hearsay.

26. Statements contained in ¶ 26 are disputed and contain inadmissible hearsay.

27. Statements contained in ¶ 27 are disputed and contain inadmissible hearsay.

28. Statements contained in ¶ 28 are disputed and contain inadmissible hearsay.

29. Statements contained in ¶ 29 are disputed and contain inadmissible hearsay.

Part E

Varad Has Not Incurred Any Damage As a Result of the Conduct Alleged in the Complaint

30. Statements contained in ¶ 30 are disputed and contain inadmissible hearsay.

Varad has formally objected to any use her deposition transcript for any purpose by invoking her rights concerning such use pursuant to Fed. R. Civ. P. 32(a)(3).

31. Statements contained in ¶ 31 are disputed and contain inadmissible hearsay.

32. Statements contained in ¶ 32 are disputed and contain inadmissible hearsay.

33. Statements contained in ¶ 33 are disputed and contain inadmissible hearsay.

34. Statements contained in ¶ 34 are disputed and contain inadmissible hearsay.

Plaintiff's Statement of Material Facts Which Present Genuine Issues to be Determined by Jury Trial

Pursuant to Local Rule 56.1, Plaintiff, Christine Varad, submits this statement of undisputed material facts in support of her opposition to the motion for a summary judgment in favor of defendant, Reed Elsevier, Inc. d.b.a. LexisNexis, LexisNexis Risk & Information Analytics Group, Inc.

1. LexisNexis® (www.lexisnexis.com) is a leader in comprehensive and authoritative legal, news and business information and tailored applications. A member of Reed Elsevier Group plc [NYSE: ENL; NYSE: RUK] (www.reedelsevier.com), the company does business in 100 countries with 13,000 employees worldwide. In addition to its flagship Web-based Lexis® and Nexis® research services, the company includes some of the world's most respected legal publishers such as Martindale-Hubbell, Matthew Bender, Butterworths, JurisClasseur, Alebeldo-Perrot and Orac.

Through its risk management flagship products, RiskWise®, PeopleWise® and Banko®, LexisNexis Risk Management helps to locate people and assets, authenticate identity, enable commerce, conduct background screening, and support national security initiatives. Customers include government agencies, top law firms and major corporations. See: Tab 1, Exhibit A, p. 1-7, Exhibit B, p. 1-2, Exhibit C. p. 1-5, Exhibit D, p. 1-17.

2. Dayton, OH, September 01, 2004 - LexisNexis U.S., a leading provider of legal news and business information services, announced today that it has closed on its acquisition of Seisint, Inc., a U.S. -bases provider of information management products and services, for \$775 million. See: Tab 1, Exhibit A, p. 1-7, Exhibit B, p. 1-2, Exhibit C. p. 1-5, Exhibit D, p. 1-17.

3 LexisNexis is a member of the Reed Elsevier Group plc [NYSE; ENL; NYSE: RUK]. See: Tab 1, Exhibit A, p. 1-7, Exhibit B, p. 1-2, Exhibit C. p. 1-5, Exhibit D, p. 1-17.

4. Seisint became part of the LexisNexis U.S. Risk Management business of the Corporate and Public Markets division. The LexisNexis Risk Management business includes flagship products such as Riskwise®, PeopleWise® and Banko®. Risk Management products and services are used by lawyers, financial services, insurance, telecommunications and retail businesses and the Federal Government and law enforcement agencies. Those products and services are used to authenticate identity, predict fraud, control credit and fraud losses, to improve risk assessment and to communicate with customers during the customer-management cycle. See: Tab 1, Exhibit A, p. 1-7, Exhibit B, p. 1-2, Exhibit C. p. 1-5, Exhibit D, p. 1-17.

5. LexisNexis PeopleWise® services help companies create better, more productive workplaces through pre-employment screening and background checking. See: Tab 1, Exhibit A, p. 1-7, Exhibit B, p. 1-2, Exhibit C. p. 1-5, Exhibit D, p. 1-17.

See: Tab 1, Exhibit A, p. 1-7, Exhibit B, p. 1-2, Exhibit C. p. 1-5, Exhibit D, p. 1-17.

6 The technology and products developed by Seisint are used to fortify the LexisNexis capabilities in identity authentication, fraud prevention, credit and security risk products. See: Tab 1, Exhibit A, p. 1-7, Exhibit B, p. 1-2, Exhibit C. p. 1-5, Exhibit D, p. 1-17.

7. The acquisition of Seisint, Inc. allowed LexisNexis to offer its customers expanded data, technology and product offerings. See: Tab 1, Exhibit A, p. 1-7, Exhibit B, p. 1-2, Exhibit C. p. 1-5, Exhibit D, p. 1-17.

8. Seisint, Inc. provides information products that allow business, financial services, legal and government customers to quickly and easily extract valuable knowledge from a vast array of data. See: Tab 1, Exhibit A, p. 1-7, Exhibit B, p. 1-2, Exhibit C. p. 1-5, Exhibit D, p. 1-17.

9. Seisint products, including Accurint™ and Securint™, support LexisNexis customers in critical activities such as debt recovery, due diligence, fraud detection, identity verification, law enforcement, legal investigations, pre-employment screening, resident screening, and data supercomputing. See: Tab 1, Exhibit A, p. 1-7, Exhibit B, p. 1-2, Exhibit C. p. 1-5, Exhibit D, p. 1-17.

10. Seisint's services and products are supported by integrating the Seisint Data Supercomputer technology and patent pending data linking methods. See: Tab 1, Exhibit A, p. 1-7, Exhibit B, p. 1-2, Exhibit C. p. 1-5, Exhibit D, p. 1-17.

11. Gramm-Leach-Bliley Act. 15 U.S.C. subsection I, § 6805, Enforcement, specifically does not apply to regulate publishing companies such as Reed Elsevier, Inc. or LexisNexis. The Gramm-Leach-Bliley Act regulates specifically national banks,

federal credit unions, securities dealers and brokers, investment companies, state insurance agencies, and other financial institutions.

12. The Drivers Privacy Protection Act, 18 U.S.C. § 2721 et seq. specifically regulates dissemination of data by state departments of motor vehicles and again, that statute has no application to regulate dissemination of data by a publishing company such as Reed Elsevier, Inc. d.b.a. LexisNexis.

13. Christine Varad has never lived in or visited the State of South Dakota at anytime, for any reason. She had never held a post office box in South Dakota at any time or for any reason. She is not aware of any legitimate reason for an address in South Dakota to be associated with her name; birth date or social security in a LexisNexis® database system generated report. See: Tab 4, Exhibit B, pages 1-3.

14. After reviewing the final, computerized version of her dictated, oral testing responses as submitted for grading concerning her February 2007 Maine Bar Examination, Christine Varad determined that significant portions of her test responses had been deleted. See: Tab 4, Exhibit A, pages 10-11, Tab 4, Exhibit B, pages 1-3.

15. To Christine Varad's knowledge and understanding, Cheryl Cutliffe, Executive Director of the Maine Board of Bar Examiners, admitted by letter dated June 6, 2007, that she deleted portions of Varad's bar examination testing responses prior to submission for grading. See: Tab 4, Exhibit A, page 12 and Tab 4, Exhibit B, pages 1-3.

16. Christine Varad personally observed and verified that the court reporter was making an audio record of her responses in addition to the hand dictated copy of the test responses. Varad requested that Ms. Cutliffe produce the audio version of her test responses. Ms. Cutliffe refused her request. See: Tab 4, Exhibit B, pages 1-3.