EFiled: Apr 23 2008 8:00PM EDT
Transaction ID 19546025
Case No. 3438-VCS

EXHIBIT A

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CHARLES HOKANSON, JOHN HOKANSON, FOYE STANIFORD, CHARLES SEITZ and ELIZABETH SEITZ	:	
	:	C.A. No.:3438 VCS
Plaintiffs,	:	
v.	:	
WILLIAM PETTY, M.D., TREVOR MOODY, BUZZ BENSON, MARC GALLETTI, CRAIG CORRANCE AND DAVID GRANT, and ALTIVA CORPORATION,	:	
Defendants.	:	

VERIFIED AMENDED COMPLAINT

The above-captioned plaintiffs, Charles Hokanson, John Hokanson, Foye Staniford, Charles Seitz and Elizabeth Seitz ("Plaintiffs"), by and through their undersigned counsel, Riley Riper Hollin & Colagreco, file this Amended Complaint against Altiva Corporation ("Altiva"), a Delaware corporation, and William Petty, M.D., Trevor Moody, Buzz Benson, Marc Galletti, Craig Corrance and David Grant (collectively, "Defendants" or "the Board") for certain equitable, declaratory and monetary relief, and alleges upon personal knowledge and information and belief as follows:

NATURE OF ACTION

1. This is an all too familiar squeeze out case. Plaintiffs are minority stockholders in Altiva, owning more than 3.5 percent interest in Altiva. The impending merger between Altiva and Exactech *et al.*, scheduled to close on January 2, 2008 (as defined in more detail below, the "Merger"), will operate to cancel all of Plaintiffs' common stock in Altiva and deprive them of any merger consideration whatsoever. Defendants comprise the board of directors of Altiva and

also own a controlling interest in Altiva. These same Defendants will retain their respective management position in the post-Merger Altiva. For these reasons, Defendants are substantially self-interested in the Merger. Despite these conflicts of interest, and in violation of their fiduciary duties, Defendants did nothing to sanitize the Board's deliberations from the taint of self-interest. On information and belief, the Board failed to (i) establish a committee of independent directors to consider the Merger, (ii) obtain an opinion on the fairness of the Merger to Plaintiffs and the rest of Altiva's minority stockholders, and (iii) preclude self-interested directors from voting on the transaction. In short, the Board's decision-making process concerning the Merger was unfair to the minority stockholders and particularly Plaintiffs.

2. Unfair also is the price of the Merger. To arrive at the total Merger consideration of $15,420,503, the Board used the *minimum* valuation of Altiva of $25 million, which floor amount was fixed some four years earlier, when Altiva had no negotiating power. The use of this minimum valuation figure resulted in a paltry multiple of less than 2.0X of Altiva's trailing 12-month gross revenue. In today's market, comparable spine implant companies are commanding more than 4.0X trailing 12-month gross revenue. Defendants did not even go through the motions of discharging their duties of care and loyalty to the common shareholders. The Board failed to obtain a current, independent valuation of Altiva, which it was free—and indeed, even duty-bound—to do given that the $25 million valuation was merely a floor—not a ceiling. The Board also failed to obtain a fairness opinion to evaluate the impact of the $25 million floor valuation on Altiva's shareholders. Predictably, these failures yielded a grossly unfair Merger consideration and constituted a breach of Defendants' fiduciary duties of care of loyalty.

3. The Merger price is especially unfair to Plaintiffs, who, through the sale of their company's assets to Altiva in 2003 allowed Altiva to reposition itself from a failing dental implant enterprise to the far more lucrative spinal fusion market. If not for that transaction, Altiva would have likely died on the vine and never found a merger partner.

4. For these reasons, the Merger cannot withstand entire fairness scrutiny. Defendants, therefore, have breached their fiduciary duties, both as directors and controlling stockholders, owed to Altiva's minority stockholders.

5. Accordingly, Plaintiffs are entitled to (among other things) rescissory damages to compensate them for the fair value of their Altiva stock.

PARTIES

6. Plaintiff, Charles Hokanson, is an adult individual residing at 1335 Merrybrook Road, Collegeville, Pennsylvania 19403. Mr. Charles Hokanson is and was at all times relevant hereto a stockholder of record of Altiva, owning 150,511 shares of Altiva common stock.

7. Plaintiff, John Hokanson, is an adult individual residing at 1737 Flagler Manor Circle, West Palm Beach, Florida 33411. Mr. John Hokanson is and was at all times relevant hereto a stockholder of record of Altiva, owning 200,681 shares of Altiva common stock.

8. Plaintiff, Foye Staniford, is an adult individual residing at 4707 Hidden Lane, Ft. Worth, Texas 76107. Mr. Foye Staniford is and was at all times relevant hereto a stockholder of record of Altiva, owning 100,340 shares of Altiva common stock.

9. Plaintiffs, Charles and Elizabeth Seitz, are adult individuals residing at 4508 Grandin Road, SW, Roanoke, Virginia 24018. Mr. and Mrs. Seitz, are and were at all times relevant hereto shareholders of record of Altiva, owning 50,170 shares of Altiva common stock.

10. Nominal defendant, Altiva Corporation, is a private corporation organized under the laws of the State of Delaware, having its principal place of business at 9800-I Southern Pines Blvd., Charlotte, North Carolina 28273.

11. Defendant, William Petty, M.D. (hereinafter "Petty"), is an adult individual having an office location at 2320 North West 66th Court, Gainesville, Florida 32653. At all times relevant hereto, Petty was a director of Altiva.

12. Defendant, Buzz Benson, (hereinafter "Benson") is an adult individual having an office location at 50 South 6th Street, Suite 1390, Minneapolis, Minnesota 55402. At all times relevant hereto, Benson was a director of Altiva.

13. Defendant, Trevor Moody, (hereinafter "Moody") is an adult individual having an office location at 601 Union, Two Union Square, Suite 3200, Seattle, Washington 98101. At all times relevant hereto, Moody was a director of Altiva.

14. Defendant, Marc Galletti, (hereinafter "Galletti") is an adult individual having an office location at 3000 Sand Hill Road, Building 1, Suite 230, Menlo Park, California 94025. At all times relevant hereto, Galletti was a director of Altiva.

15. Defendant, Craig Corrance, (hereinafter "Corrance") is an adult individual having an office location at 9800-I Southern Pines Blvd., Charlotte, North Carolina 28273. Corrance is an officer of Altiva, presently the President and CEO.

16. Defendant, David Grant, (hereinafter "Grant") is an adult individual having an office location at 9800-I Southern Pines Blvd., Charlotte, North Carolina 28273. Grant is an officer of Altiva, presently the CFO.

17. Defendants Petty, Benson, Moody, Galletti, Corrance and Grant are collectively referred to as the Altiva Directors.

JURISDICTION

18. This Court can exercise personal jurisdiction over nominal defendant Altiva because it is a Delaware corporation. This Court can exercise personal jurisdiction over the Altiva Directors as they are all directors of Altiva, a Delaware corporation, and because Defendants have all consented to service of process pursuant to 10 *Del. C.* § 3114, the Director's Consent statute.

19. This Court has subject matter jurisdiction over the claims alleged herein pursuant to 10 *Del. C.* § 341 and 10 *Del. C.* §§ 6501 *et seq.*

FACTUAL BACKGROUND

Plaintiffs Enter the Spinal Devise and Implant Industry

20. In or around 2001, Plaintiffs formed Vertebral Systems ("Vertebral"), a company created to enter the spinal devise and implant industry. In December 2001, for a purchase price of $1,500,000 Vertebral acquired from Surgical Dynamics certain assets, intellectual property and FDA approvals relating to the spine industry. Following this acquisition, in January 2002 Vertebral entered the market and began to build a distribution network for its spinal implants, with the aid and counsel of Dr. Walter Simmons of Texas, and Dr. Finn of Florida, both well known and highly respected spine surgeons.

21. In late 2002, then-CEO of Altiva, Jim Robson (now deceased), contacted Vertebral concerning the possibility of a merger of the companies. At that time, Altiva was a struggling, bit player in the dental implant market. To save Altiva from impending financial ruin, Robson was determined to transition Altiva from the dental implant market to the burgeoning spinal implant industry. Robson touted his experience in the spine market, boasting that he was principally responsible for the development and sale of Acromed to DePuy for over

$300,000,000. Robson expressed confidence that Altiva could achieve a similar level of success by entering into the spinal implant business and acquiring Vertebral's assets and technology.

22. In or around January 2003, following a period of negotiations, Altiva communicated a purchase price of $500,000 and a 5% stock interest in Altiva for title to all Vertebral assets and inventory. Vertebral refused this offer. By February 2003, Altiva had made a counter-offer which Vertebral again rejected. It appeared that a deal would not be reached.

23. In May 2003, Altiva sent Vertebral a letter, withdrawing its offer and terminating negotiations. The following month, however, at Altiva's initiation, the parties resumed negotiations regarding a potential asset sale.

Vertebral Sells its Assets to Altiva

24. These negotiations culminated in an agreement in which Vertebral would sell only certain assets to Altiva in exchange for $350,000 and a 3.5% ownership interest in Altiva ("the Vertebral-Altiva Transaction"). The transaction was consummated on August 29, 2003.

25. The Vertebral-Altiva Transaction was vital to Altiva's existence because it allowed Altiva to pivot from its failing dental implant business to the far more lucrative spinal fusion market. Indeed, at the time of the Vertebral-Altiva Transaction, Altiva was on the brink of financial ruin. If not for the Vertebral Shareholders and, specifically, Altiva's acquisition of Vertebral's Simmons Plate and Screw system, Exactech would never have thrown Altiva the financial life-line it so desperately needed. Thus, the Vertebral Shareholders kept Altiva afloat and paved the way for the Merger.

The Altiva-Exactech Financing Transaction

26. Shortly after closing on the Vertebral-Altiva Transaction, however, on or about October 7, 2003, Plaintiffs received a letter issued to Altiva stockholders, which (i) announced

its entry into the spine market, (ii) acknowledged that this was made possible by Altiva's acquisition of Vertebral's assets and technology, along with the surgical experience, technical expertise and prestige of the Simmons name and reputation and (iii) announced, as a consequence, that negotiations were underway with a potential corporate investor to provide greater funding for further development in the spine market.

27. This October 7, 2003 letter was the first time Plaintiffs learned of Exactech's negotiations with this potential corporate investor. Indeed, Altiva and its then-board of directors (hereinafter, the "2003 Board") did not disclose to Vertebral that Altiva and Exactech were on the verge of closing a financing transaction—a transaction that depended entirely on Altiva acquiring Vertebral's assets, and one that would seriously dilute the value of Plaintiffs' Altiva shares. Given that the complex transaction between Altiva and Exactech was executed only several weeks after the Vertebral-Altiva Transaction, there can be no doubt that the 2003 Board knew of—but concealed—the existence and terms of its impending financing transaction with Exactech during Altiva's negotiations with Vertebral. And, thus, the 2003 Board knew full-well when the Vertebral-Altiva Transaction closed that Plaintiffs' Altiva shares would become worthless in the likely event that Exactech exercised its option.

28. Shortly after the issuance of the October 7, 2003 letter, and less than 40 days following the Altiva acquisition of the Vertebral assets from the Plaintiffs, Exactech and Altiva closed on a Securities Purchase Agreement in which Exactech invested $1 million in Altiva, and loaned Altiva $5 million in the form of loans convertible to Altiva Series C Preferred Stock (the "Securities Purchase Agreement").

29. In exchange for this financing, Altiva granted Exactech an option which permitted Exactech to purchase all outstanding shares of Altiva common stock, preferred stock and

securities (the "Buy-Out Option"). The Buy-Out Option was exercisable in a three-year period, from October 29, 2005 to October 28, 2008.

30. The Securities Purchase Agreement provides that Exactech's purchase of Altiva would be based on a valuation of Altiva which could be ***no less than*** *$25 million*, plus any cash held by Altiva, less certain of its liabilities.

31. At the same time, October 2003, Altiva and Exactech also executed a Stockholders' Agreement (the "Stockholders' Agreement"). The Stockholders' Agreement set forth the number of shares issued by Altiva for each series of Altiva stock and also stated a valuation for Altiva's stock. In particular, Section 3.4(a) of defines Altiva's valuation as follows:

> (a) "Altiva Valuation" means an amount equal to the Buyout Multiple multiplied by the Altiva Trailing Twelve Months Revenue as of the date of the Purchase Price is calculated (the "Calculation Date"), ***provided, in no event shall the Altiva Valuation be less than $25 million***.

(Emphasis added). The plain meaning of this language allowed the Board, in the event Exactech exercised the Buy-Out Option, to set Altiva's valuation at a sum commensurate with Altiva's current fair value.

32. Despite the fact that the Stockholders' Agreement worked to substantially dilute Plaintiffs' once-significant interest in Altiva, the 2003 Board failed to inform Plaintiffs of either the Securities Purchase Agreement or the Stockholders' Agreement. As a result, until recently Plaintiffs were unaware of the terms of Exactech's Buy-Out Option.

33. Similarly, Plaintiffs were also excluded from participating in the stock offerings provided for under the Stockholders' Agreement, which again, seriously diluted their ownership interest in Altiva.

34. In anticipation of the impending transactions with Exactech, the 2003 Board approved a measure to amend Altiva's Certificate of Incorporation and, in particular, to allow for an increase in the number of shares of Altiva stock. The 2003 Board sought stockholder approval of this proposed action via a written consent action.

35. Charles Hokanson is the only Altiva shareholder among Plaintiffs who signed this written consent. But Mr. Hokanson was misinformed of the impact the proposed merger would have on the Vertebral Shareholders. In particular, before signing the written consent Mr. Hokanson sought counsel regarding the proposed written consent action from defendant Grant, Altiva's then-CFO, and later, from Altiva's then-CEO, Jim Robson. Both Grant and Robson represented to Mr. Hokanson that, while some minimal dilution of common shares would result, the Exactech transaction would ultimately increase the value of Plaintiffs' Altiva shares. Further, both Grant and Robson assured Mr. Hokanson that, in the event Exactech exercised the Buy-Out Option, Plaintiffs would be able to convert their Altiva shares to Exactech stock. Not once, however, did Grant or Robson even suggest that Plaintiffs would be altogether squeezed-out and receive no consideration for their shares if Exactech exercised the Buy-Out Option. As Altiva's CFO, Grant was intricately involved in both the Vertebral-Altiva Transaction and the Altiva-Exactech Transaction. Mr. Hokanson and the other Plaintiffs were, therefore, justified in relying to their detriment on Grant's knowingly false representations.

36. Similarly, none of the materials Altiva provided to Mr. Hoaknson concerning the consent action specifically revealed that, if Exactech exercised the Buy-Out Option, Altiva's holders of common stock would be squeezed-out and receive no payout for their shares.

Exactech Executes the Buy-Out Option

37. More recently, in December 2007, Altiva and Exactech entered into a Plan of Merger wherein Altiva and Exactech Spine, Inc. (a wholly owned subsidiary of Exactech) will merge with Altiva being the surviving entity and becoming a wholly owned subsidiary of Exactech.

38. But it was not until December 17, 2007, almost two weeks after the Plan of Merger and vote by written consent of the majority shareholder, that Altiva notified Plaintiffs of the pending Merger. The delay in notification left Plaintiffs only two weeks, during the holiday season, to react to protect their interests. The absence of notice and delay in notification speaks to Defendants' bad faith. For these reasons, Plaintiffs cannot be charged with either actual or constructive notice of the accrual of their claims alleged in this action before December 2007.

39. Not only do Defendants comprise the board of directors of Altiva and own a controlling interest in Altiva, each of them will retain their respective management positions in the post-Merger Altiva. As such, Defendants are all substantially self-interested in the Merger. Despite these conflicts of interest, and in violation of their fiduciary duties, Defendants did nothing to sanitize the Board's deliberations from the taint of self interest. On information and belief, the Board failed to (i) establish a committee of independent directors to consider the Merger, (ii) obtain an opinion on the fairness of the Merger to Altiva's minority stockholders, and (iii) preclude self-interested directors from voting on the transaction. The Board's decision-making process concerning the Merger was unfair to the minority stockholders and particularly Plaintiffs.

40. Because they all will retain their management positions following the Merger, Defendants owe allegiance to both the pre- and post-Merger Altiva. Compounding this conflict

of interest is the equally troubling fact that Mr. Petty is an interlocking director, as he is a director of Altiva and also the chairman and CEO of Exactech. Therefore, the pre-Merger Altiva directors and officers, all of whom will retain comparable positions in the post-Merger Altiva, were, upon information and belief, influenced, dominated and otherwise beholden to Petty—their eventual superior. Defendants will not be adversely affected by accepting the proposed Merger consideration, which represents a fraction of Altiva's present value, because they will more than make-up the deficit when they cross over to the other side of the transaction and assume their post-Merger positions.

41. Unfair also is the price of the Merger. To arrive at the total Merger consideration of $15,420,503.00, the Board used the *minimum $25 million* valuation for Altiva that was fixed some four years earlier, when Altiva had no negotiating power. The use of the minimum Altiva valuation resulted in a multiple of less than 2.0X of Altiva's trailing 12-month gross revenue. In today's market, comparable spine implant companies are commanding more than 4.0X trailing 12-month gross revenue. The Board did not even obtain a current, independent valuation of Altiva, which it was free—and indeed, even duty-bound—to do given that the $25 million valuation was merely a floor—not a ceiling. The Board also failed to obtain a fairness opinion to evaluate the impact of the $25,000,000 floor valuation on Altiva's shareholders. Predictably, these failures yielded a grossly unfair amount of Merger consideration and constituted a breach of Defendants' fiduciary duties.

42. The Merger price is especially unfair to Plaintiffs, who, through the sale of their company's assets to Altiva in 2003 allowed Altiva to reposition itself from a failing dental implant enterprise to the far more lucrative spinal fusion market. If not for that transaction, Altiva would have likely died on the vine and never found a merger partner. Upon information

and belief, following Exactech's investment in Altiva, Defendant Petty was appointed to Altiva's board of directors. Petty was also on Exactech's board of directors at this time. Plaintiffs believe that Petty participated in negotiating the Merger, occupying both sides of the transaction. Plaintiffs also believe that Altiva did not appoint a disinterested committee to conduct the merger negotiations and to protect Altiva's stockholders from unfairness and self-dealing.

43. Plaintiffs believe that no independent valuation of Altiva was performed prior to the execution of the Merger Agreement. In fact, the purchase price represents only a fraction of Altiva's present-day value.

44. Following Exactech's 2003 investment in Altiva, Exactech controlled enough voting stock that, when combined with the original members of Altiva, a vote on the Merger was never taken.

COUNT I—BREACH OF FIDUCIARY DUTIES OF LOYALTY AND GOOD FAITH

45. Plaintiffs incorporate the preceding paragraphs by reference as though stated herein at length.

46. Defendants, as directors, officers and majority shareholders, owe fiduciary duties of loyalty and good faith to Altiva and its shareholders, including Plaintiffs.

47. The fiduciary duties of loyalty and good faith owed by Defendants require them to act in good faith, in the best interests of Altiva and its shareholders, and preclude Defendants from favoring their own interests over those of Plaintiffs.

48. Defendants breached their fiduciary duties of loyalty and good faith to Plaintiffs by failing to exercise business judgment, engaging in unfair processes and entering into the Merger Agreement with Exactech without determining the fair-market value of Altiva or disclosing all aspects of the Merger to Plaintiffs. In particular, Defendants permitted the

purchase value of the Merger to be capped at the $25,000,000 minimum valuation of Altiva. This valuation bears no relationship to Altiva's present-day value.

49. As a result of these breaches of the fiduciary duties of loyalty and good faith, Plaintiffs, as minority shareholders, have sustained significant economic injuries for which Plaintiffs seek appropriate judicial relief, including, but not limited to, the recovery of monetary damages in an amount to be determined at trial. Furthermore, because Defendants personally benefited by virtue of their breaches of fiduciary duties, Plaintiffs also seek disgorgement and forfeiture of all ill-gotten gains and other benefits obtained by Defendants, while acting in violation of their duties to Plaintiffs.

COUNT II—BREACH OF THE FIDUCIARY DUTY OF CARE

50. Plaintiffs incorporate the preceding paragraphs by reference as though stated herein at length.

51. Defendants, as directors, officers and majority shareholders, owe Plaintiffs, as minority shareholders, a fiduciary duty to exercise care in managing its affairs. Defendants have repeatedly breached this obligation.

52. Defendants entered into a Securities Purchase Agreement wherein they failed to reasonably set forth a mechanism to accurately account Altiva's fair market value.

53. Defendants failed to engage an independent firm to calculate Altiva's value prior to entering into the Securities Purchase Agreement, and thus, they failed to adequately inform themselves on this vital matter.

54. Defendants failed to obtain a fairness opinion evaluating the impact of the proposed Merger on Plaintiffs and the rest of Altiva's common shareholders.

55. Defendants also failed to exclude Petty from all negotiations with Exactech despite his interest in both Altiva and Exactech.

56. Defendants failed to notify the shareholders of Altiva regarding the Securities Purchase Agreement, the Stockholders' Agreement or the Merger Agreement with Exactech.

57. As a result, Plaintiffs have suffered significant economic injuries for which Plaintiffs seek appropriate judicial relief, including, but not limited to, the recovery of monetary damages in an amount to be determined at trial.

COUNT III—DECLARATORY JUDGMENT

58. Plaintiffs incorporate the preceding paragraphs by reference as though stated herein at length.

59. As already alleged, Defendants failed to exercise business judgment when agreeing to the terms of the Merger by utilizing an inherently unfair process and agreeing upon an unfair price.

60. The Merger is an interested transaction agreed upon by Altiva's Board which is populated by self-interested directors and preferred shareholders, collectively holding a controlling interest in Altiva.

61. Defendants took no prophylactic measures to protect Altiva or Plaintiffs from any unfair process or price agreed to by the self-interested Board.

62. The Board failed to obtain a fairness opinion evaluating the impact of the Altiva-Exactech Transaction on common shareholders of Altiva.

63. Defendants failed to engage an independent firm to perform a valuation of Altiva in connection with the Merger. Instead, Defendants used the minimum valuation fixed four years earlier.

64. The claims and issues which form the basis of this cause of action constitute an actual controversy and are ripe for judicial determination.

65. Plaintiffs request that this Court declare that the Altiva-Exactech Transaction and Merger are unfair to Altiva and Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court award Plaintiffs the following relief:

(a) entering judgment in favor of Plaintiffs and against Defendants;

(b) declaring that the Altiva-Exactech financing transaction in 2003 wrongfully diluted Plaintiffs' ownership interest in Altiva;

(c) declaring that Defendants breached their fiduciary duties of loyalty, good faith and care to Plaintiffs;

(d) declaring that the Altiva-Exactech Transaction and Merger is unfair;

(e) awarding Plaintiffs compensatory and consequential damages attributable to Defendants' breaches of fiduciary duties or other improper conduct;

(f) awarding Plaintiffs rescissory damages resulting from Defendants' breaches of fiduciary duties or other improper conduct;

(g) ordering Defendants to disgorge and forfeit to Plaintiffs all ill-gotten gains and other benefits obtained by them;

(h) awarding Plaintiffs all the reasonable legal costs associated with prosecuting this action, including attorneys' fees, accountants' and experts' fees, costs and expenses;

(i) awarding Plaintiffs pre-judgment and post-judgment interest; and

(j) awarding Plaintiffs such other equitable relief as may be just and proper.

Respectfully submitted,

RILEY RIPER HOLLIN & COLAGRECO

By: /s/ John G. Harris

John G. Harris (I.D. No. 4017)
1201 N. Orange Street
One Commerce Center, 3rd Floor
Wilmington, Delaware 19801
Telephone: (302) 655-1140

Attorney for Plaintiffs

Dated: April 23, 2008