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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

AMERANTH, INC. \* Civil Docket No.  
\* 2:07-CV-271  
VS. \* Marshall, Texas  
\*  
\* September 15, 2010  
MENUSOFT SYSTEMS CORPORATION \* 2:00 P.M.

TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE JUDGE CHAD EVERINGHAM  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: MR. JOHN W. OSBORNE  
MR. JAMES W. GOULD  
MR. PETER N. FILL  
MR. STEVEN M. PURDY  
MR. PETER H. NOH  
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3 World Financial Center  
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MR. MICHAEL C. SMITH  
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113 East Austin Street  
Marshall, TX 75670

APPEARANCES CONTINUED ON NEXT PAGE:

COURT REPORTERS: MS. SUSAN SIMMONS, CSR  
MS. JUDITH WERLINGER, CSR  
Official Court Reporters  
100 East Houston, Suite 125  
Marshall, TX 75670  
903/935-3868

(Proceedings recorded by mechanical stenography,  
transcript produced on CAT system.)

My Agency Name

1 (Bench conference concluded.)

2 THE COURT: Ladies and Gentlemen, we are  
3 at a milestone. And what that means is we've heard all  
4 the evidence in the Plaintiff's case, and we are now  
5 going to start hearing the evidence from what's called  
6 the Defendants' case-in-chief.

7 Defendant -- Mr. Carroll, you may call  
8 your first witness.

9 MR. CARROLL: Thank you, Your Honor.

10 We would call Brian Smith. And I believe  
11 Mr. Smith has been sworn, Your Honor.

12 THE WITNESS: That's correct.

13 THE COURT: All right. Come around,  
14 Mr. Smith. If you'll have a seat and talk into the  
15 microphone. Try to keep your voice up, also.

16 THE WITNESS: Yes, sir.

17 MR. CARROLL: May the Court, please, Your  
18 Honor.

19 THE COURT: Mr. Carroll.

20 BRIAN SMITH, DEFENDANTS' WITNESS, PREVIOUSLY SWORN

21 DIRECT EXAMINATION

22 BY MR. CARROLL:

23 Q. Mr. Smith, are you Brian Smith, also known as  
24 the DQ dude?

25 A. Yes, sir, that would be me.

My Agency Name

1 Q. Are you the fellow we saw in the video  
2 yesterday?

3 A. Yes, sir, that would be me.

4 Q. Okay. And the jury likely heard a little bit  
5 of your background in the video, but let's go over it  
6 again since we've all slept.

7 Where do you live?

8 A. I live in Houston, Texas.

9 Q. And how old a fellow are you?

10 A. Fifty-three.

11 Q. Now, I think you told the jury in that video  
12 yesterday that you were in business in Houston in a  
13 family-owned business.

14 Would you tell them about that, please.

15 A. I'm basically a second generation. My dad was  
16 with NCR. After a successful career with NCR, he  
17 started our company, and I went to work for him at the  
18 age of 17, I believe.

19 Q. Now, NCR, for those of us who may not be in  
20 the business, is what?

21 A. It stands for National Cash Register.

22 Q. Now, was your daddy a bigshot with National  
23 Cash Register?

24 A. He was the -- he was -- he was very  
25 successful. He started with NCR as the janitor. He

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1 felt certain that with Graham there, our representation  
2 to the customer was solid.

3 He was the developer of the software. He was  
4 there making the pitch with me, and we were successful.  
5 And it's been a long ride, and they're still using the  
6 product today.

7 Q. Now, when was that?

8 A. I believe we actually installed it maybe  
9 around the very beginning of '93, maybe --

10 Q. So somebody --

11 A. Maybe the end of '92.

12 Q. Right after you hooked up with Menusoft?

13 A. Yes, sir. That was I think -- I believe our  
14 very first sale.

15 Q. And you said that the Greyhound Track, is that  
16 between -- for those on the jury who might know that  
17 area, is that between Houston and Galveston on 45?

18 A. Yes, sir. I think it's considered the  
19 La Marque area.

20 Q. Or Dickinson maybe?

21 A. Close to there, yes, sir. I think it is  
22 actually considered La Marque.

23 Q. Okay. And it's still in business?

24 A. Still in business today.

25 Q. Still running greyhounds?

My Agency Name

1 A. Yes, sir.

2 Q. Chasing rabbits?

3 A. Yes, sir.

4 Q. And I think you told the jury they still use  
5 the software that you sold them back in '93?

6 A. Yes, sir. Just -- I think it kind of goes  
7 without saying how reliable the product is. We're still  
8 servicing it. We're still taking care of it. It was a  
9 great product.

10 And it was probably a very key part of our  
11 success to land that account and to open up that  
12 business with that size of an installation. It was a  
13 testimonial to the product and to our company. So it  
14 really did help pioneer us and lead us down the road.  
15 We would take customers there and show them the product,  
16 and then we would more likely do our demonstrations  
17 right there at that facility. So it was, by all means,  
18 I think the start of a very good relationship.

19 Q. And I've heard a fair amount of talk in the  
20 case about that greyhound track.

21 In '92 or '3, when you made that sale, did you  
22 sell them handhelds?

23 A. No, sir, we didn't. I mean, they had an  
24 interest. They were -- they were a MICROS user, and I  
25 was a MICROS dealer actually in 1978. That's dating me

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