

DALEEN TECHNOLOGIES INC

Form 10-Q

May 14, 2003

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**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

**X      QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

**For the quarterly period ended March 31, 2003**

**OR**

**O      TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

**For the transition period from      to**

**Commission File Number: 0-27491**

**DALEEN TECHNOLOGIES, INC.**

(Exact name of registrant as specified in Its charter)

**Delaware**

(State or other Jurisdiction of incorporation  
or organization)

**65-0944514**

(I.R.S. Employer  
Identification No.)

**902 Clint Moore Road, Suite 230**

**Boca Raton, Florida**

(Address of principal executive offices)

**33487**

(Zip Code)

**Registrant's Telephone Number, Including Area Code: (561) 999-8000**

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the Registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

As of April 30, 2003, the Registrant had outstanding 45,828,912 shares of common stock.

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**Table of Contents****PART I****FINANCIAL INFORMATION****Item 1. Financial Statements.****DALEEN TECHNOLOGIES, INC. AND SUBSIDIARIES****Condensed Unaudited Consolidated Balance Sheets**

	December 31, 2002	March 31, 2003
	(In thousands, except share and per share data)	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 6,589	\$ 6,080
Restricted cash	30	30
Accounts receivable, less allowance for doubtful accounts of \$3,976 at December 31, 2002 and \$3,910 at March 31, 2003	2,558	1,874
Cost in excess of billings		7
Unbilled revenue	203	197
Other current assets	1,022	701
Total current assets	10,402	8,889
Notes receivable	77	59
Property and equipment, net	1,824	1,545
Goodwill	5,086	5,086
Other assets	1,400	1,023
Total assets	\$ 18,789	\$ 16,602
LIABILITIES AND STOCKHOLDERS EQUITY		
Current liabilities:		
Accounts payable	\$ 368	\$ 268
Accrued payroll and other accrued expenses	2,576	2,489
Current portion of capitalized lease	164	109
Billings in excess of costs	616	706
Deferred revenue	1,279	664
Other current liabilities	53	71
Total current liabilities	5,056	4,307
Long term portion of capitalized lease	26	9
Total liabilities	5,082	4,316
Stockholders equity:		
Series F Convertible Preferred Stock, \$.01 par value; 588,312 shares authorized; 458,224 issued and outstanding at December 31, 2002 and March 31, 2003, respectively (\$110.94 per share liquidation value)	27,656	27,656
Common stock, \$.01 par value; 200,000,000 shares authorized; 46,848,876 shares issued and 45,847,865 and 45,828,912 outstanding at December 31, 2002 and March 31, 2003, respectively	469	469

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Additional paid-in capital	196,649	196,649
Accumulated deficit	(210,918)	(212,337)
Treasury stock at cost; 1,001,011 and 1,019,964 shares at December 31, 2002 and March 31, 2003, respectively	(149)	(151)
	<u>13,707</u>	<u>12,286</u>
Total stockholders' equity		
	<u>\$ 18,789</u>	<u>\$ 16,602</u>

*See accompanying notes to condensed unaudited consolidated financial statements.*

**Table of Contents****DALEEN TECHNOLOGIES, INC. AND SUBSIDIARIES****Condensed Unaudited Consolidated Statements of Operations**

	<b>Three months ended March 31,</b>	
	<b>2002</b>	<b>2003</b>
	<b>(In thousands, except per share data)</b>	
Revenue:		
Professional services and other	\$ 1,689	\$ 3,824
License fees	211	245
	<u>1,900</u>	<u>4,069</u>
Total revenue		
Cost of revenue:		
Professional services and other	1,003	1,067
License fees	36	303
	<u>1,039</u>	<u>1,370</u>
Total cost of revenue		
Gross margin	861	2,699
	<u>861</u>	<u>2,699</u>
Operating expenses:		
Sales and marketing	1,149	900
Research and development	1,328	1,681
General and administrative	1,333	1,614
	<u>3,810</u>	<u>4,195</u>
Total operating expenses		
Operating loss	(2,949)	(1,496)
Total interest income and nonoperating income, net	147	78
	<u>147</u>	<u>78</u>
Net loss applicable to common stockholders	\$ (2,802)	\$ (1,418)
	<u>\$ (2,802)</u>	<u>\$ (1,418)</u>
Net loss applicable to common stockholders per share -basic and diluted	\$ (0.13)	\$ (0.03)
	<u>\$ (0.13)</u>	<u>\$ (0.03)</u>
Weighted average shares outstanding- basic and diluted	22,225	45,829
	<u>22,225</u>	<u>45,829</u>

*See accompanying notes to condensed unaudited consolidated financial statements.*

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## DALEEN TECHNOLOGIES, INC. AND SUBSIDIARIES

## Condensed Unaudited Consolidated Statements of Cash Flows

	Three Months Ended	
	March 31, 2002	March 31, 2003
	(In thousands)	
Cash flows from operating activities:		
Net loss	\$ (2,802)	\$ (1,418)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	686	1,410
Amortization of deferred stock compensation	15	
Loss on disposal of property and equipment	13	
Bad debt expense	119	5
Interest income on stockholders' notes receivable	(45)	(1)
Changes in assets and liabilities		
Accounts receivable	1,256	699
Costs in excess of billings		(7)
Unbilled revenue	(20)	5
Other current assets	(79)	(308)
Other assets	20	(5)
Accounts payable	83	
Accrued payroll and other accrued expenses	(924)	73
Billings in excess of costs	(463)	89
Deferred revenue	(118)	(616)
Other current liabilities		8
Net cash used in operating activities	(2,259)	(66)
Cash flows used in financing activities:		
Payment of capital lease		(72)
Payment of deferred offering costs	(28)	
Net cash used in financing activities	(28)	(72)
Cash flows used in investing activities:		
Proceeds from sale of fixed assets	1	
Repayment of stockholders' notes receivable		12
Payments related to the acquisition of Abiliti		(262)
Capital expenditures	(137)	(104)
Net cash used in investing activities	(136)	(354)
Effect of exchange rates on cash and cash equivalents		(17)
Net decrease in cash and cash equivalents	(2,423)	(492)
Cash and cash equivalents-beginning of period	13,093	6,589
Cash and cash equivalents-end of period	\$ 10,670	\$ 6,080

See accompanying notes to condensed unaudited consolidated financial statements.





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**Daleen Technologies, Inc. and Subsidiaries**  
**Notes to Condensed Unaudited Consolidated Financial Statements**  
**March 31, 2003**

**(1) Basis of Presentation**

The accompanying condensed unaudited consolidated financial statements for Daleen Technologies, Inc. and subsidiaries (collectively referred to as "Daleen" or the "Company") have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. Accordingly, these financial statements do not include all of the information and footnotes necessary for a fair presentation of financial position, results of operations and cash flows in conformity with generally accepted accounting principles. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation of the results for the periods presented have been included. The condensed unaudited consolidated balance sheet at December 31, 2002 has been derived from the Company's audited consolidated financial statements at that date. These condensed unaudited consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto for the year ended December 31, 2002, included in the Company's annual report on Form 10-K as of and for the year ended December 31, 2002, filed with the Securities and Exchange Commission (the "SEC") on March 28, 2003.

The results of operations for the three months ended March 31, 2003 are not necessarily indicative of results that may be expected for any other interim period or for the full fiscal year.

**(2) Principles of Consolidation**

The accompanying financial statements include the accounts and operations of Daleen Technologies, Inc. and its subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

On October 3, 2002 the Company formed a wholly-owned subsidiary DSI, Inc. and a wholly-owned subsidiary of DSI, Inc., Daleen Solutions, Inc. ("Daleen Solutions"). These entities were formed for the purpose of purchasing the assets and assuming certain liabilities of Abiliti Solutions, Inc. ("Abiliti") on December 20, 2002. The operations of Daleen Solutions are included for the three months ended March 31, 2003. See Note 8 for proforma results of operations for the three months ended March 31, 2002.

The accounts and operations of the Company for the three months ended March 31, 2002 include PartnerCommunity, Inc. ("PartnerCommunity"), a subsidiary of the Company. The Company sold this subsidiary on June 24, 2002.

**(3) Basic and Diluted Net Loss Per Share**

Basic and diluted net loss per share was computed by dividing net loss applicable to common stockholders by the weighted average number of shares of common stock outstanding for each period presented. Common stock equivalents were not considered since their effect would be antidilutive. Common stock equivalents amount to 56,109,665 shares and 28,734,366 shares for the three months ended March 31, 2003 and 2002, respectively.

**(4) Liquidity**

The Company had an accumulated deficit of \$212.3 million at March 31, 2003 and although the Company continued to experience operating losses during the three months ended March 31, 2003, the losses have improved from the same period in 2002 and from the fourth quarter of 2002. Cash used from operations was

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\$66,000 during the three months ended March 31, 2003 compared to cash used in operations of \$2.3 million during the three months ended March 31, 2002. Cash and cash equivalents at March 31, 2003 were \$6.1 million.

The Company believes the cash and cash equivalents at March 31, 2003 may be sufficient to fund operations in the foreseeable future due to the Company's 2003 anticipated revenue, including the revenue stream associated with the Abiliti acquisition. However, the telecommunications and software industries are still faced with many challenges. In addition, there is a high business concentration risk with the Company's largest outsourcing service customer and if this customer were to terminate their agreement it would severely impact the Company's operations. The Company provides outsourcing services to its largest customer pursuant to a contract expiring at the end of December 2003. In addition, this customer has financial constraints. If this customer were to cease doing business with the Company for any reason, the Company may be required to reduce operations and/or seek additional public or private equity financing or financing from other sources or consider other strategic alternatives, including a possible merger, sale of assets, or other business combination or restructuring transactions. There can be no assurances that additional financing or strategic alternatives will be obtainable on terms acceptable to the Company or that any additional financing would not be substantially dilutive to existing stockholders. If this customer were to cease to do business with Daleen and the Company failed to obtain additional financing or failed to engage in one or more strategic alternatives it may have a material adverse affect on the Company's ability to continue to operate as a going concern. The condensed unaudited consolidated financial statements have been prepared assuming the Company will continue as a going concern, and do not include any adjustments that might result from the outcome of this uncertainty.

### **(5) Revenue Recognition**

The Company recognizes revenue related to outsourcing services under Emerging Issues Task Force Issue 00-21, *Accounting for Revenue Arrangements with Multiple Deliverables* ( EITF 00-21 ). EITF 00-21 relates to accounting for multiple-deliverable arrangements and specifies circumstances under which a revenue arrangement should be separated into different revenue-generating deliverables or units of accounting and how the revenue arrangement should be allocated to the different deliverables or units of accounting.

Revenue related to outsourcing services consists of (1) discovery work and (2) monthly processing fees generated from the Company's provision of billing and event management services. These two deliverables are considered separate units of accounting because these elements can and have been sold separately and they create stand-alone value for the customer. The discovery work is recorded on a time and materials basis as the work is performed. The monthly processing fees are recognized as the related services are rendered and are billed monthly based on transaction volume processed, percentage of revenue billed on behalf of customers or monthly minimum charges per contractual arrangements.

The Company recognizes revenue related to site license and services agreements under Statement of Position 98-9, *Modification of SOP 97-2, Software Revenue Recognition, With Respect to Certain Transactions* ( SOP 98-9 ). SOP 98-9 requires recognition of revenue using the residual method when (1) there is vendor-specific objective evidence ( VSOE ) of the fair values of all undelivered elements in a multiple-element arrangement that is not accounted for using long-term contract accounting, (2) VSOE of fair value does not exist for one or more of the delivered elements in the arrangement, and (3) all revenue recognition criteria in Statement of Position 97-2, *Software Revenue Recognition* ( SOP 97-2 ) other than the requirement for VSOE of the fair value of each delivered element of the arrangement are satisfied.

The following elements could be included in the Company's software license arrangements with its customers:

Software license

Maintenance and support

Professional services

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Third party software licenses and maintenance

**Training**

VSOE exists for all of these elements except for the software license. The software license is delivered upon the execution of the license agreement. Based on this delivery and the fact that VSOE exists for all other elements, the Company recognizes revenue under SOP 98-9 as long as all other revenue recognition criteria in SOP 97-2 are satisfied.

Under SOP 98-9, the arrangement fee is recognized as follows: (1) the total fair value of the undelivered elements, as indicated by VSOE, is deferred and subsequently recognized in accordance with the relevant sections of SOP 97-2 and as described below and (2) the difference between the total arrangement fee and the amount deferred for the undelivered elements is recognized as revenue related to the delivered elements.

Revenue related to delivered elements of the arrangement is recognized when persuasive evidence of an arrangement exists, the software has been delivered, the fee is fixed and determinable and collectibility is probable.

Revenue related to undelivered elements of the arrangement is valued by the price charged when the element is sold separately and is recognized as follows:

Revenue related to customer maintenance agreements is deferred and recognized ratably using the straight-line method basis over the applicable maintenance period. The VSOE of maintenance is determined using the rate at which maintenance is renewed each year and is dependent on the amount of the license fee as well as the type of maintenance the customer chooses.

Professional service fees are recognized separately from the license fee since the services are not considered significant to the functionality of the software and the software does not require significant modification, production or customization. There are two types of service contracts that are entered into with customers: fixed fee and time and materials.

The Company recognizes revenue from fixed fee contracts using the percentage of completion method, based on the ratio of total hours incurred to date to total estimated labor hours. Changes in job performance, job conditions, estimated profitability and final contract settlement may result in revisions to costs and income and are recognized in the period in which the revisions are determined. Contract costs include all direct material and labor costs and those indirect costs related to contract performance, such as indirect labor and supplies. These costs are readily determinable since the Company uses the costs that would have been charged if the contract was a time and materials contract. Provisions for estimated losses on uncompleted contracts are recorded in the period in which losses are determined. Amounts billed in excess of revenue recognized to date are classified as Billings in excess of costs, whereas revenue recognized in excess of amounts billed are classified as Costs in excess of billings in the accompanying condensed unaudited consolidated balance sheets.

Revenue related to professional services under a time and materials arrangement is recognized as services are performed.

Third party software is recognized when delivered to the customer. The value of third party software is based on the Company's acquisition cost plus a reasonable margin and is readily determinable since the Company frequently sells these licenses separate of the other elements.

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Training revenue is recognized when training is provided to customers and is based on the amount charged for training when it is sold separately.

The Company typically receives 25% of the license fee as a down payment and the balance is typically due between three and nine months from contract execution. In limited situations, the Company enters into extended payment terms with certain customers if the Company believes it is a good business opportunity. When it enters into these arrangements, the Company evaluates each arrangement individually to determine whether collectibility is probable and the fees are fixed and determinable. An arrangement fee is not presumed to be fixed and determinable if payment of a significant portion of the license fee is due after the normal and customary terms usually offered to customers by the Company. Revenue related to arrangements containing extended payment terms where the fees are not considered fixed and determinable is deferred until payments are due.

In order to ensure that collectibility is probable, the Company performs credit reviews on each customer. If collectibility is determined to not be probable upon contract execution, revenue is recognized when cash is received.

**(6) Restructuring Activities**

During 2001, the Company performed various restructuring activities. For the year ended December 31, 2001, the Company recorded \$11.8 million of restructuring charges related to restructuring activities that were announced on January 5, 2001 (the January 2001 Restructuring), April 10, 2001 (the April 2001 Restructuring), and October 17, 2001 (the October 2001 Restructuring). For the year ended December 31, 2002 the Company recorded a \$745,000 restructuring charge related to restructuring activities announced on May 14, 2002 (the 2002 Restructuring). Management started to implement these actions immediately following the announcements. Such charges included the estimated costs related to workforce reductions, closing and downsizing of facilities, asset writedowns and other costs.

At December 31, 2002, an accrual remained on the condensed unaudited consolidated balance sheet related to the January 2001 Restructuring and 2002 Restructuring in the amount of \$144,000.

Amounts charged against the restructuring accrual for the three months ended March 31, 2003 were as follows (in thousands):

	January 2001 Restructuring	2002 Restructuring	Total
Employee termination benefits	\$	\$ 79	\$ 79
Facility costs/rent on idle facilities	10		10
	<u>\$ 10</u>	<u>\$ 79</u>	<u>\$ 89</u>

As of March 31, 2003, an accrual in the amount of \$55,000 remains on the condensed unaudited consolidated balance sheets in accrued payroll and other accrued expenses related to the January 2001 Restructuring consisting of facility costs and rent on idle facilities in Atlanta, Georgia.

**(7) Goodwill**

At December 31, 2002 and March 31, 2003, goodwill represents the excess of costs over the fair value of assets related to the acquisition of Abiliti (See Note 8). The Company follows the provisions of Statement of Financial Accounting Standards No. 142, *Goodwill and Other Intangible Assets* (SFAS No. 142). Goodwill and other intangible assets acquired in a purchase business combination and determined to have an infinite useful life are

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not amortized, but instead tested for impairment at least annually in accordance with the provisions of SFAS No. 142. SFAS No. 142 also requires that intangible assets with estimable useful lives be amortized over their respective estimated useful lives to their estimated residual values, and reviewed for impairment in accordance with SFAS No. 144, *Accounting for Impairment or Disposal of Long-Lived Assets*. There has been no impairment to date related to the goodwill recorded in connection with the acquisition of Abiliti.

**(8) Asset Purchase and 2002 Private Placement**

On December 20, 2002, pursuant to an Asset Purchase Agreement dated October 7, 2002 (the *Asset Purchase Agreement*), Daleen Solutions, a wholly-owned subsidiary of Daleen, consummated its purchase (the *Asset Purchase*) of substantially all of the assets and assumption of certain liabilities of Abiliti. Abiliti was a provider of carrier-class telecommunications billing, rating, and event management solutions. As consideration for the Asset Purchase, Daleen issued to Abiliti 11,406,284 shares of common stock, 115,681 shares of Series F convertible preferred stock (Series F preferred stock) and warrants to purchase 5,666,069 additional shares of common stock at an exercise price of \$0.9060 per share (the *Asset Purchase Warrants*). The fair value of the Asset Purchase Warrants was calculated using the Black Scholes Model. The total consideration for the Asset Purchase amounted to \$6.1 million.

Concurrently with the consummation of the Asset Purchase, on December 20, 2002, pursuant to an Investment Agreement dated October 7, 2002 (the *Investment Agreement*), Daleen completed its private placement of 10,992,136 shares of common stock, 115,681 shares of Series F preferred stock, warrants to purchase 5,666,069 additional shares of common stock at an exercise price of \$0.9060 per share (the *Investment Warrants*), and warrants to purchase 500,000 additional shares of common stock at an exercise price of \$0.17 per share (the *Additional Warrants*), for total proceeds of \$5.015 million in cash (the *2002 Private Placement*). The purchasers in the 2002 Private Placement were Behrman Capital II L.P. and Strategic Entrepreneur Fund II, L.P. (collectively, the *Behrman Funds*), which are related entities and stakeholders of Abiliti. The proceeds of the 2002 Private Placement will be used for working capital and general corporate purposes.

The Asset Purchase resulted in a charge of \$104,000 in the fourth quarter of 2002 related to the write-off of purchased in-process research and development. In-process research and development relates to the development of Abiliti's products at the time of the Asset Purchase. The products were in the early stages of their development and were undergoing further development and integration with Daleen's products. The value assigned to in-process research and development was determined based on management's estimates of the percentage of completion of the underlying development effort, resulting net cash flows from Abiliti's products and the discounting of such cash flows back to their present value.

The Asset Purchase was accounted for as a purchase transaction and accordingly, the acquisition price was allocated to the acquired assets and assumed liabilities based on their estimated fair value as of the acquisition date. The excess of the consideration paid over the estimated fair value of net assets and purchase in-process research and development acquired was recorded as goodwill. The preliminary purchase price was allocated as follows (in thousands):

Purchase in-process research and development	\$ 104
Net assets	\$ 921
Goodwill	\$5,086
	<hr/>
	\$6,111
	<hr/>

The following unaudited proforma results of operations of the Company for the three months ended March 31, 2002 assumes the acquisition occurred as of January 1, 2002. The proforma results have been prepared for comparative purposes only and do not purport to indicate the results of operations that would have actually occurred had the combinations been in effect on the dates indicated, or which may occur in the future. The unaudited proforma results of operations are as follows (in thousands):

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	<b>Three Months Ended March 31, 2002</b>
Total Revenue	\$ 4,697
Net loss applicable to common stockholders	\$ (3,054)
Net loss applicable to common stockholders per share basic and diluted	\$ (0.07)
Weighted average outstanding shares	44,623

The proforma revenue amount for the three months ended March 31, 2002 includes a high business concentration risk due to three customers amounting to approximately 65% of proforma revenues for such period.

**(9) Business and Credit Concentrations**

During the three months ended March 31, 2003, 75.2 percent of the Company's total revenue was attributed to three customers. Sales to these three customers accounted for 47.7 percent, 15.1 percent and 12.4 percent of the total revenue for the three month period. During the three months ended March 31, 2002, 37.6 percent of the Company's total revenue was attributed to two customers. Sales to these two customers accounted for 24.5 percent and 13.1 percent of total revenue for the three month period. See unaudited proforma business concentration risk in Note 8.

Three customers accounted for 56.3 percent and 68.4 percent of total accounts receivable at March 31, 2003 and December 31, 2002, respectively.

**(10) Related Party Transactions**

Science Applications International Corporation ( SAIC ) through its subsidiary SAIC Venture Capital Corporation, is a significant stockholder of the Company. Revenue related to SAIC for the three months ended March 31, 2003 and March 31, 2002 was \$13,800 and \$45,000, respectively. SAIC owns 44% of the voting stock of Danet, Inc. ( Danet ) and 100 percent of the voting stock of Telcordia Technologies, Inc. ( Telcordia ). Danet is a customer and a subcontractor of the Company's product. There was no revenue recognized related to Danet for the three months ended March 31, 2003 and 2002. In the three months ended March 31, 2003 we paid Danet \$103,442 related to professional services. There were no purchases to Danet for the three months ended March 31, 2002. The Company has a strategic alliance relationship and an Original Equipment Manufacturer Agreement with Telcordia. Revenue related to Telcordia for the three months ended March 31, 2003 and March 31, 2002 was \$3,600 and \$465,770, respectively.

**(11) Legal Proceedings**

*Fazari v. Daleen Technologies, Inc.*

On December 5, 2001, a class action complaint was filed in the United States District Court for the Southern District of New York. On April 22, 2002 an amended complaint was filed by two plaintiffs purportedly on behalf of persons purchasing the Company's common stock between September 20, 1999 and December 6, 2000. The complaint is styled as *Angelo Fazari, on behalf of himself and all others similarly situated, vs. Daleen Technologies, Inc., BancBoston Robertson Stephens Inc., Hambrecht & Quist LLC, Salomon Smith Barney Inc., James Daleen, David B. Corey and Richard A. Schell*. The individual defendants, Messrs. Corey, Schell and Daleen, have entered into tolling agreements with the plaintiffs resulting in their dismissal from the case without prejudice. The remaining defendants include us and certain of the underwriters in the Company's initial public offering ( IPO ).

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More than 300 similar class action lawsuits filed in the Southern District of New York against numerous companies and their underwriters have been consolidated for pretrial purposes before one judge under the caption *In re Initial Public Offering Securities Litigation*. The joint Motion to Dismiss filed by the defendants was denied as to the underwriters and certain issuers, including the Company.

The complaint includes allegations of violations of (i) Section 11 of the Securities Act of 1933 by all named defendants, (ii) Section 15 of the Securities Act of 1933 by the individual defendants and (iii) Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder by the underwriter defendants. Specifically, the plaintiffs allege in the complaint that, in connection with the IPO, the defendants failed to disclose excessive commissions purportedly solicited by and paid to the underwriter defendants in exchange for allocating shares of the Company's common stock in the IPO to the underwriter defendants' preferred customers. Plaintiffs further allege that the underwriter defendants had agreements with preferred customers tying the allocation of shares sold in the IPO to the preferred customers' agreements to make additional aftermarket purchases at pre-determined prices. Plaintiffs further allege that the underwriters used their analysts to issue favorable reports about the Company to further inflate the Company's share price following the IPO. Plaintiffs claim that the defendants knew or should have known of the underwriters' actions and that the failure to disclose these alleged arrangements rendered the prospectus included in the Company's registration statement on Form S-1 filed with the SEC in September 1999 materially false and misleading. Plaintiffs seek unspecified damages and other relief.

The Company believes that it is entitled to indemnification by the underwriters under the terms of the underwriting agreements. The Company has notified the underwriters of the action, but the underwriters have not yet agreed to indemnify the Company. The lead underwriter, BancBoston Robertson Stephens Inc., has ceased doing business and there is no assurance it will have the financial resources to provide indemnification. The Company is continuing to monitor the progress of a proposed settlement involving the plaintiffs, the insurance companies and numerous issuers that includes a waiver by the insurance companies of any retention