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CONSUMER NEWS

by Ray Chao

IBM acquires Lotus Corporation

In the largest offer ever made for a computer software company, International Business Machines Corp. ("IBM") paid \$3.52 billion dollars to acquire software producer Lotus Development in a deal confirmed in June. The deal represents IBM's first-ever hostile takeover bid and is a bold attempt by IBM Chairman Louis Gerstner to gain ground in the personal computer software business and challenge Microsoft Corp., which presently dominates the personal computer software market.

Initially, Lotus CEO Jim P. Manzi prolonged negotiations with IBM for several weeks after IBM had announced plans to takeover Lotus in an attempt to increase the offer or wait for a competing bid from another company. Manzi finally agreed to a deal valued at \$64 a share, nearly double what Lotus stock had been selling.

Eventually, IBM hopes the acquisition will enable the company to better develop and market Lotus' Notes software, which enables personal computer users to collaborate among various computer networks. IBM predicts Notes and "groupware" applications will be a major growth area within the next two years. Despite \$11 million in annual software sales, IBM was not considered a "big player" in

the personal computer portion of the market before the Lotus deal.

"Lotus will be a very critical and important part of IBM's growth strategy," said IBM Chairman Louis Gerstner. In addition, Gerstner believes Notes will help spark the "third wave of the computer age."

Founded in 1982, Lotus is primarily known for its pioneering efforts with its spreadsheet software called Lotus 1-2-3, and was once the industry's largest software company. Today, Microsoft provides the operating system for approximately 80 percent of the personal computers in use and is the overwhelming leader in software applications, including word processors and

spreadsheets. Nonetheless, in April 1995 Lotus posted a quarterly loss of \$17.5 million and announced major restructuring plans. This made the company attractive for either a merger or hostile takeover.

IBM hopes the move will bring them the competitive edge they need in the ever-changing PC industry. If Notes is a success and becomes an industry standard, it could reduce the reliance on other operating systems such as Windows, Apple Computer's Macintosh, Unix, or even IBM's own OS/2. Although Microsoft does not currently have a program comparable to Notes, they are developing a version called Exchange.

- Charles Whitt

Nurses file suit alleging fraud

The Minnesota Association of Nurse Anesthetists ("MANA") has filed a complaint on behalf of the U.S. government alleging Medicare fraud. The complaint alleges that a number of anesthesiologists in the Minneapolis-St. Paul area "have been billing Medicare for services which they either did not perform or which did not qualify for reimbursement." In addition, MANA alleges that this was done with the "knowledge and assistance" of local hospitals. These services were actually performed by nurse

anesthetists, according to the complaint.

The complaints allege that as many as 28,000 fraudulent claims were filed for Medicare reimbursement over a six-year period and seeks more than \$280 million in penalties, damages and costs. "Since we reported this situation to the hospitals and they had refused to act, we felt a sense of obligation to bring this information forward to the federal government," said Gayle McKay, president of MANA.

U.S. investigates Japanese markets

The United States announced it would investigate alleged Japanese market barriers to photographic film and paper. Responding to a petition filed by Eastman Kodak Co., U.S. Trade Representative Mickey Kantor launched an investigation into charges the Japanese government and Fuji Photo Film Co. have colluded to keep lower-priced foreign film out of the Japanese market. In addition, the complaint alleges Kodak was denied \$5.6 billion in potential sales that Kodak said it would have earned in Japan since 1975.

"American manufacturers of photographic film and paper should be able to compete on a fair basis in the Japanese market, just as Japanese firms can here," said Kantor. "It is critical that U.S. firms achieve full access to Japan's market, a market roughly comparable in size to the U.S."

Fuji has denied the charges. A statement issued by Fuji's U.S. subsidiary expressed surprise and disappointment with Kantor's decision to proceed with the investigation. "It is unfortunate that the U.S. trade representative did not recognize this petition for what it is — a heavy-handed attempt to shift the blame for Kodak's own poor business decisions in Japan from Kodak to the Japanese photographic industry and the Japanese government."

According to the petition filed by Kodak, "Japanese policies have created a protected profit sanctuary

in Japan for Fuji Photo Film." Presently, Fuji claims 75 percent of the Japanese photographic film market and 86 percent of the market for photo paper, while Kodak has less than 10 percent of both markets. In comparison, Kodak said it has a 43 percent share in Europe and a 44 percent share worldwide. "We simply want the same opportunity to compete in Japan that Japanese companies have in the U.S.," said George Fisher, chief executive officer of Kodak. So far, Kodak has spent one year and \$1 million preparing the 251-page petition. "We seek resolution, not retaliation," said Fisher. "We are one step closer to finally correcting years of anti-competitive behavior in Japan regarding consumer photographic film and paper," Kodak said in a statement.

In a seven-page rebuttal filed by Fuji, the company argues that it is no more dominant in Japan than Kodak is in the United States. Presently, Kodak has a 75 percent share of the U.S. market.

This investigation comes on the heels of an agreement reached between the two nations to open Japan's automotive market to foreign companies. While the Kodak case involves a comparatively small market, it could present the Clinton administration with a better opportunity for challenging Japanese trade and business practices and opening Japanese markets to foreign products. While many of Kodak's allegations mirror charges lodged by

U.S. automakers, "the case against Japan on photo film is much more credible than the case for autos," said Steven Dryden, author of *Trade Warriors*, which examines U.S.-Japan trade. Interestingly, the dispute over film could take longer to resolve than the dispute over autos. "This could well be a long haul, and tougher than the auto issue," predicted Jeffrey Pittsburg of Goldis Pittsburg Institutional Services.

The auto agreement was reached just hours before trade sanctions against Japanese luxury cars were scheduled to take effect. The U.S. had threatened to impose \$5.9 billion in tariffs. The sanctions were the largest ever brandished by the U.S. and could have given rise to a trade war that would disrupt the global economy and weaken the new World Trade Organization.

President Clinton welcomed the agreement, calling it "a major step toward free trade throughout the world," predicting it would produce thousands of new jobs for Americans. While interpretations of the agreement are varied, the pact accomplished important U.S. trade objectives and averted a trade war.

Japanese auto manufacturers will voluntarily increase purchases of American cars and auto parts by 50 percent, or \$9 billion, in three years. From the onset, the focus of the negotiations has been auto parts. In addition, 200 dealers that sell American cars are expected to open by next year in Japan and 1,000

showrooms by the year 2000. Furthermore, the Japanese government agreed to certify small, independent garages and allow them to buy American parts for their repairs. Presently, Japanese manufacturers control the government-certified garages where most repairs are done.

Previously, Japan had resisted such U.S. demands, contending that they would lead to quotas and managed trade. In addition, the Japanese government argued that it could not force companies or Japanese consumers to buy foreign products. The United States,

however, suggests the agreement will ultimately benefit Japanese customers. "Domestically, this is popular in Japan," a White House aide said. "Everyone knows the Japanese market is over-regulated, but it is hard to make changes. This agreement will bring in a flow of products at much lower prices."

Critics of the agreement point out that the provisions are "voluntary" and do not provide methods of enforcement. Furthermore, the agreement includes no commitments to specific sales figures or market shares. Instead, the pact relies on Japan's promise to aim for certain

sales levels established by the Japanese auto industry.

Nonetheless, the agreement is preferable to the threatened 100 percent tariffs on imported Japanese luxury autos that would have prompted Japanese retaliation. The agreement is "a very important step and its got the potential to be a very good agreement," said Laura Armstrong, a spokesman for the American Automobile Manufacturers Association. "We've got to begin now to start tracking what we are able to accomplish and what barriers we find."

Study says breast implants not the source of disease

A new study by the Harvard Medical School found no link between silicon breast implants and connective tissue diseases. The report was published one month after Dow Corning Corporation declared bankruptcy after 70,000 women filed claims alleging the company's silicone breast implants were responsible for a wide range of debilitating diseases. While some women with implants have developed connective tissue diseases such as rheumatoid arthritis, lupus, and scleroderma, there is no scientific proof that the implants caused the diseases.

The latest major study is so compelling that some leading rheumatologists suggest the federal Food and Drug Administration ("FDA") should lift the voluntary moratorium on sales of the implants it imposed in 1992. The latest data is consistent with previous studies which have failed to find a link between silicone breast implants and specific diseases. Dr. Shaun Ruddy, a rheumatologist at the Medical College of Virginia and president of the American College of Rheumatology, said that with the results of the latest study added to previous studies, the case should be closed. "I would

think that if there had not been the endless litigation, it is unlikely that anyone would choose to study this issue further," said Dr. Ruddy. "I think we have enough data to end the moratorium," said Dr. George E. Erlich, rheumatologist and head of the arthritis advisory committee.

In the latest study, epidemiologists and rheumatologists studied over 87,000 nurses, 1,183 of whom had implants. The data was collected from June 1976 through May 1990, before any lawsuits were filed alleging silicone breast implants caused ill effects. Their results show that women with implants were actually less likely to develop connective tissue diseases like rheumatoid arthritis. In addition, they were also less likely to complain of signs and symptoms similar to those of connective tissue disease. Furthermore, the study also showed no link between breast implants and any of the 41 signs of connective tissue disease. "This study should be very reassuring to women," said co-author Dr. Matthew Liang of Boston's Brigham and Women's Hospital.

The study has been called "first class" by Dr. Janet Daly, professor of epidemiology at the University of Washington in Seattle. "This is a pretty good piece of information to substantiate that there is unlikely to be an association" between implants and connective tissue disease.

Some doctors, however, believe the new study is flawed and contend that silicone breast implants are the cause of a new and ill-defined disease that cannot be detected by the recent studies or the ones that preceded it. Dr. Gary Solomon, associate director for rheumatology at the Hospital for Joint Disease Orthopedic Institute in New York, criticized the latest study. Dr. Solomon pointed out that the researchers relied on the patients' charts rather than actually examining the patients. Thus, they would miss the atypical connective tissue disease he has seen in hundreds of women with implants. Dr. Solomon estimated that of the 1,200 women with implants he has seen, two-thirds were referred to him by lawyers. In addition, Dr. Solomon has been an expert witness for plaintiff's lawyers in implant litigation.

According to Donald McLearn of the FDA, the agency was not ready to make a decision in light of the new study. While the FDA was "encouraged that research is beginning to provide the kind of data that was lacking in the early 1990s," the studies to date "cannot rule out a small, but significant increase in risk." Furthermore, the recent study does not "fully answer the question of whether the implants may lead to atypical symptoms related to the immune system in some women."

When the FDA requested the voluntary moratorium on the sale of silicone breast

implants in 1992, researchers said their data was not sufficient to show that the implants were safe. Although the FDA has always maintained there was no scientific evidence associating implants and connective tissue diseases, an avalanche of lawsuits followed the moratorium.

Lawyers and doctors for the women with implants claim that the implants caused a new sort of disease and do not fit the standard definitions of connective tissue disease. While the symptoms resemble the standard diseases, they do not quite fulfill the standard diagnostic criteria of connective tissue disease and thus are not detected by the researchers.

Since 1962, over 1 million women in the United States and Canada have had silicone breast implants. Approximately one-third of these women were having breast reconstruction as a result of cancer surgery, while the majority of women chose the procedure for cosmetic purposes.

Implant manufacturers have entered into a \$4 billion settlement of a class-action suit brought on behalf of women with implants. Dow Corning, once the largest maker of silicone implants, agreed to pay \$2 billion, the largest share. Lawyers estimate that \$24 billion might be needed to pay the more than 400,000 women who have registered for the class.

Car rentals may become more costly

Car rental companies are trying to exclude annual license fees from their advertised rental rates, which may constitute deceptive price advertising. Presently, a California bill under consideration would allow car rental companies to add on license fees to the rental rate. Consequently, by transforming a cost item that used to be included in the advertised base rental rate into an extra fee, consumers end up paying several dollars a day more than they expected.

Currently, the only charges that are added to an advertised car rental rate are state sales tax and any local taxes and airport fees. Car rental companies can often charge fees substantially higher than advertised rates by tacking on extra fees. For example, advertised rates do not typically include the necessary collision insurance. Instead, car rental companies will offer collision insurance as an extra fee, which is very profitable and can be as much as \$15 a day.