

September 19, 2011

VIA FEDEX

The Honorable Anil C. Singh
Justice of the Supreme Court
111 Centre Street, Room 541
New York, New York 10013

Re: 3M Co. v. Boulter, No. 651708/2011 (N.Y. Sup. Ct., N.Y. Cty.)

Your Honor:

We write on behalf of defendants Harvey Boulter, Porton Capital Technology Funds, and Porton Capital, Inc. (collectively, “Porton”), and with the consent of defendants Lanny Davis, Lanny J. Davis & Associates, PLLC, and Davis-Block LLC (collectively, the “Davis Parties”), to request a conference with the Court concerning the stated intention of plaintiff 3M Company (“3M”) to voluntarily discontinue this action. For the reasons described below, we believe that a discontinuance of the action in this Court should be granted only on the condition that 3M reimburse our clients for the attorneys’ fees and costs incurred in defending against 3M’s meritless action, and any other sanctions the court deems appropriate. As explained below, it is well-established that courts may condition a discontinuance on the payment of attorneys’ fees by plaintiffs in circumstances such as those present here. *E.g., Mandelbaum v. L.N. Magazine Distributors, Inc.*, 280 N.Y.S.2d 753 (2d Dep’t 1967) (discussed further below); *see also* C.P.L.R. 3217 Advisory Committee Notes. Monetary sanctions are particularly appropriate here, in light of 3M’s abuse of this Court’s services for the sole apparent purpose of conducting a publicity campaign against defendants and instrumentalities of the British Government, against which 3M is engaged in related litigation in London.

Porton seeks fees and expenses incurred in preparing two successive motions to dismiss this action. 3M did not respond to either of our motions, and has now re-filed the same claims in federal court in the District of Columbia, meaning that there are presently two identical actions pending in two different jurisdictions. According to published news reports, 3M’s counsel has conceded, in substance, that New York is not the appropriate forum for this action. Having achieved its objective of trying to damage defendants’ reputation, 3M has informed us that it wants to abandon its New York action in its entirety, effectively conceding that it lacked any good faith basis for bringing suit in New York in the first place.

The Honorable Anil C. Singh
September 19, 2011
Page 2 of 4

1. Background

3M filed its original complaint in this action on June 19, 2011. Defendants learned about the action for the first time the next day, not from 3M, but from inquiries from members of the media who had received copies of 3M's complaint and then published stories about it. *See* Exhibit A hereto (June 20, 2011 *Guardian* article). 3M lacked any basis to bring this action in New York, and thus we moved to dismiss on July 14, 2011. Instead of responding to our motion to dismiss, 3M filed an amended complaint on July 21, 2011, which added the Davis Parties as defendants for the first time. We again moved to dismiss, on Friday, August 19, 2011. Only three business days after we filed that second motion to dismiss, 3M filed a virtually identical pleading in the United States District Court for the District of Columbia, *3M Co. v. Boulter et al.*, No. 11-CV-1527. 3M did not inform us of that new lawsuit until two days later, at which time it asked whether we would consent to the voluntary discontinuance of the action pending before Your Honor. As it had before, 3M apparently then stoked a media frenzy intended to attack the reputation of Porton and the Davis Parties. Widespread media interest resulted from the filing of the D.C. action. *See* Exhibit B (August 28, 2011 *Telegraph* article); Exhibit C (additional news article concerning 3M's D.C. filing).

3M was apparently anxious to attack the defendants and the British Government in the media because of a pending trial in the London High Court commenced against 3M by Porton and an instrumentality of the British Government (the "London Action"). The plaintiffs in the London Action allege that 3M is liable for failing to bring to market a potentially lifesaving technology developed by the British Government to detect certain antibiotic-resistant bacteria. 3M and the plaintiffs in the London Action have engaged in a hotly contested battle since the commencement of that dispute. 3M filed the instant action in New York in the middle of the London trial.

While as a general matter 3M has the right to present its position on various issues to the media in this country and abroad, it is not permitted to defame others, or to misuse this Court as a means to that end. 3M's conduct is especially egregious because its now-abandoned original complaint – which was sent to the British media before defendants even knew about the lawsuit – alleged as its first cause of action that Mr. Boulter had violated an English *criminal* statute. Plaintiff's First Amended Complaint dropped the English statutory criminal claim after we moved to dismiss it, but only after the press had already reported on it, thus achieving 3M's apparent purpose of inflicting damage on Defendants' reputations around the world.¹

¹ 3M's lawyers in the instant action have tried high-publicity, diversionary, and meritless countersuits before. In 1996, the owners of the Hyatt Regency St. John resort in the U.S. Virgin Islands brought litigation against Hyatt Corp regarding managerial control of the resort. That case was proceeding in the owners' favor when Hyatt Corp hired the same lawyers now representing 3M to sue a senior vice president of one of the ownership companies, Michael Stanton, for conspiracy and allegedly engaging in fraud. That countersuit was dismissed in its entirety in June 1997. Stanton then countersued Hyatt Corp in May 1998 for libel, malicious prosecution, and abuse of process. As part of the settlement

The Honorable Anil C. Singh
 September 19, 2011
 Page 3 of 4

2. The Court Should Order that Any Discontinuance Is Contingent Upon 3M's Payment of Defendants' Attorneys' Fees and Costs.

Any order of discontinuance of the instant action should provide for the recovery by Porton of the attorneys' fees and costs associated with briefing two successive motions to dismiss in this Court – neither of which elicited any response from 3M. A defendant may recover the fees and costs associated with defending an action when a plaintiff seeks voluntary discontinuance pursuant to court order under C.P.L.R. 3217(b). A court-ordered discontinuance must be “upon terms and conditions[] as the court deems proper,” C.P.L.R. 3217(b), authority that courts have used to award attorney fees to defendants in circumstances nearly identical to the current situation. For example, in *Mandelbaum v. L.N. Magazine Distributors, Inc.*, 280 N.Y.S.2d 753 (2d Dep't 1967), the plaintiff filed a complaint in New York, and subsequently commenced an identical action against the same defendant in California. The Second Department upheld the Supreme Court's order granting discontinuance of the New York action but also awarded attorney fees, stating that “the award of costs and disbursements alone was insufficient and should have included a compensatory counsel fee as a condition to the granting of the plaintiff's motion.” *Id.* at 680; *see also* Advisory Committee Notes to C.P.L.R. 3217 (“The court can impose costs on the plaintiff and even exact from the plaintiff a sum to compensate the defendant for his attorney's fees.”).

3M's behavior in the instant action strongly supports an award of fees and costs under C.P.L.R. 3217(b). In filing its action in this Court and subsequently seeking to voluntarily discontinue the action and pursue the same claims in the District of Columbia, 3M has needlessly forced the defendants to incur substantial legal expenses and fees. Indeed, it was only *after* defendants' spent significant resources responding to 3M's original complaint and amended

of Stanton's claims against it, Hyatt Corp issued a public apology to Stanton via an international press release. An extract follows below:

Hyatt noted that it was retracting the 1996 press release [which summarized its complaint against Stanton] in order to dispel any implication that Mr. Stanton had acted improperly or contrary to his employer's interests and to avoid any suggested injury to Mr. Stanton's reputation. Hyatt apologized for problems, if any, the press release may have caused Mr. Stanton.

See Exhibit D (November 6, 2000 Hyatt Corp. press release).

Here, beyond its attacks on the defendants, 3M also used the now-abandoned New York case to pursue its unusual public vendetta against the British Government. 3M's lawyers publicly threatened Britain's Minister of Defense and his Ministry with subpoenas in this action, Exhibit E (July 12, 2011 *Guardian* article), and William A Brewer III, 3M's lead lawyer told the media: “We are concerned about what role representatives of the Minister of Defence might have played in [alleged actions forming the basis of the New York action]... Needless to say, we are increasingly troubled by the facts that are emerging – and committed to uncovering the truth about this possible conspiracy.” *See* Exhibit F (August 29, 2011 *Guardian* article).

The Honorable Anil C. Singh
September 19, 2011
Page 4 of 4

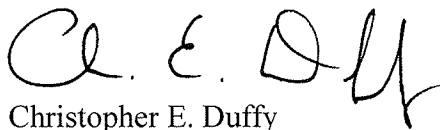
complaint – including by submitting an affidavit from an expert on English law – that William Brewer, 3M’s lead attorney, told the media that Washington, D.C., and *not* New York, is the “concededly appropriate forum” for 3M’s claims. *See* Exhibit G (Sep. 8, 2011 LegalNewsline.com article). Mr. Brewer’s comments further demonstrate that 3M and its counsel had no good faith basis to file suit in New York, where none of the defendants have any connection. Indeed, the original complaint offered only two conclusory sentences that the “defendants committed wrongful acts directed to the State of New York” and “directed their wrongful conduct to the State of New York.” *See* Exhibit H (original complaint at ¶¶ 5-6).

Cognizant that the New York action would be dismissed due to lack of personal jurisdiction, 3M filed an identical action in Washington, D.C. only three business days after defendants filed their motion to dismiss the First Amended Complaint in New York, and as the trial in the London Action was winding down. 3M did not give the defendants any notice of their intention to do so – meaning that defendants’ attorneys remained working on the second motion to dismiss the pleading that 3M knew it would soon seek to voluntarily discontinue. Moreover, 3M took its claims to DC shortly after this action was randomly assigned to Your Honor and Administrative Judge Sherry Klein Heitler entered an order denying 3M’s application to reassign the case to the Commercial Division – giving 3M’s actions the further stench of improper forum-shopping. *See* Exhibit I (July 27, 2011 Administrative Order). Judge Heitler’s order also concluded that 3M’s amended complaint was “devoid of any monetary demand.” *Id.*

* * *

3M is now seeking to discontinue an action that its own counsel publicly concedes never should have been brought in New York in the first place. 3M’s actions cost the Defendants in the form of needless legal fees, in addition to the immense harm caused by the plaintiff’s defamatory media campaign. We respectfully request a conference with the Court, either in person or by telephone, to discuss the most efficient way for the parties to present their respective arguments on the conditions that should be attached to the discontinuance of this action, including payment by 3M of the defendants’ attorneys’ fees and any other appropriate sanctions. We respectfully suggest the Court consider simultaneous letter briefs to Your Honor, simultaneous response briefs, and a hearing if the Court believes that one would be useful.

Respectfully yours,



Christopher E. Duffy

Encls.

cc: Raymond G. Mullady, Jr. (attorney for Davis Parties)
Alexander Widell (attorney for 3M)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

3M COMPANY,

Plaintiff,

v.

HARVEY BOULTER,
PORTON CAPITAL TECHNOLOGY FUNDS,
PORTON CAPITAL, INC., LANNY DAVIS,
LANNY J. DAVIS & ASSOCIATES, PLLC, and
DAVIS-BLOCK LLC,

Defendants.

Index No. 651708/2011

Hon. Anil C. Singh

**Appendix of Exhibits to September 19, 2011
Letter from Christopher E. Duffy**

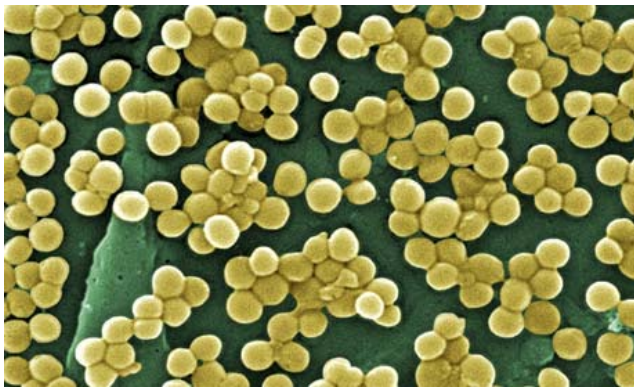
EXHIBIT A

3M countersues as MRSA row becomes toxic

- Knighthood question gives fresh twist to dispute
- Investment fund head accused of 'blackmail'

Rupert Neate
guardian.co.uk, Monday 20 June 2011 16.11 EDT

[A](#) [larger](#) | [smaller](#)



This scanning electron micrograph (SEM) shows clumps of methicillin-resistant *Staphylococcus aureus* bacteria, commonly referred to as MRSA, magnified x9560. Photograph: Mediscan/Corbis

A company with links to the government has been accused of threatening a knighthood awarded to the head of one of the US's biggest companies.

Harvey Boulter, chief executive of Porton Capital, an investment fund that worked with the government to develop a test for MRSA, has been accused of "blackmail" by claiming that the prime minister may reconsider a knighthood awarded to George Buckley, the British-born chief executive of the US conglomerate 3M.

Lawyers for 3M claim Boulter's threat came after he demanded 3M hand over \$30m (£18.5m) to settle a long-running dispute about the potentially lifesaving test sold to the US company in 2007.

In an email to 3M, seen by the Guardian, Boulter said: "As a result of my meeting [with Liam Fox, the defence secretary] you ought to understand that David Cameron's cabinet might very shortly be discussing the rather embarrassing situation of George [Buckley]'s knighthood. It was discussed today. Governments are big and sometimes decisions in one part are not well co-ordinated."

Boulter said 3M's decision to kill off the MRSA testing system, called BacLite, had left the government in a "very awkward situation". The test, which detects the presence of MRSA in hours rather than days, was developed by – and jointly owned by – the Ministry of Defence's civilian research arm, Ploughshare Innovations. "They [the government] feel that you should do the right thing. I can tell you that even at \$20m-\$25m you will leave them not feeling great about the whole episode," Boulter said in the email to 3M's lawyers early on Saturday morning.

"At a headline of \$30m+ you will allow the MoD to internally save face."

Boulter, who claims to have been "given sole authority by the MoD to settle on behalf of them", said that unless 3M paid out millions of pounds the government would be "quietly seething, with ramifications for a while". "They have memories like elephants," he added. "I said to Dr Fox I would try, I have done so."

"From my side, I don't hold a grudge, whether this is \$5m or \$35m it is small beer. We manage \$700m and many of our investors call \$5m a rounding error."

Boulter followed up the first email with a second sent in the early hours of Sunday morning. "I need to tell something to Dr Fox's office on Sunday night," he said. "I don't really want to give a 'radio silence' message as he is secretary of defence and will not expect that. I am trying to manage all of the dynamics carefully."

A spokesman for the Defence Science and Technology Laboratory, which owns Ploughshare, confirmed that Boulter was acting on its behalf in the legal battle with 3M. He refused to confirm whether Fox, or another representative of the government, was aware of the emails sent to 3M's legal counsel over the weekend.

The emails come a week after Boulter's investment fund, Porton Capital, began legal proceedings against 3M demanding up to £41m in disputed proceeds from the sale of the BacLite MRSA test.

Now 3M is countersuing Porton Capital and Boulter personally for "blackmail". "Instead of awaiting the outcome of the pending litigation, defendants and their investors have engaged in an unlawful campaign to blackmail 3M into paying \$30m in order to avoid the continuation of the campaign by which defendants seek to publicly defame 3M and its chairman and chief executive and to tortiously interfere with 3M's legitimate business pursuits in the UK," 3M said in legal papers filed late on Sunday night.

Buckley, who is from a humble background in Yorkshire, received a knighthood in the Queen's birthday honours list earlier this month. Buckley declined to comment on the legal action.

A spokesman for Porton Capital said 3M's claims were "without merit" and criticised the company for making the correspondence public. "Under no conceivable circumstances could anything discussed in those conversations be interpreted as anything other than a good faith attempt to settle the case – there were no threats made, either explicit or implied. The decision by 3M's chairman Mr Buckley and his US personal attorney to make public these confidential discussions – including private discussions with third parties – on a unilateral basis is shocking."

EXHIBIT B

3M launches legal action in dispute over MRSA technology

A bitter legal battle over the sale of Government-backed MRSA technology to 3M has taken a fresh twist with the US technology group claiming it is losing business in Britain because it scrapped the treatment.



The MRSA bacteria strain in a petri dish (REUTERS)

By Roland Gribben and Jonathan Russell

8:31PM BST 28 Aug 2011

In a new legal action mounted in Washington, 3M alleges that Harvey Boulter, chief executive of private equity group Porton Capital, and his US public relations adviser, Lanny Davis, used their influence with the Government and the Ministry of Defence (MoD) to "cause 3M to lose business opportunities with those entities".

The US group which has extensive health care, education, defence and security interests in Britain, also claims that its reputation and goodwill, estimated last year to be worth \$6.8bn (£4.1bn), has been "substantially damaged" by allegations about the legality and ethics of its business practices.

Mr Boulter strongly denied the charges yesterday. He told *The Daily Telegraph*: "I have heard they have lost contracts and I wouldn't be surprised if they have, but to say I have used any influence is totally wrong. They have brought this upon themselves."

Porton and Ploughshare Innovations, part of the MoD's research operations, are suing 3M in the High Court for breach of contract, and seeking damages.

They sold the BacLite system, designed to detect MRSA, the deadly hospital bug, to 3M in 2007.

[3M'S superbug hopes turn sour](http://www.telegraph.co.uk/finance/newsbysector/industry/defence/8700238/3MS-superbug-hopes-turn-sour.html)

(<http://www.telegraph.co.uk/finance/newsbysector/industry/defence/8700238/3MS-superbug-hopes-turn-sour.html>)

[US spends £12.5 billion a year on air con in Iraq and Afghanistan](http://www.telegraph.co.uk/news/worldnews/northamerica/usa/8601975/US-spends-12.5-billion-a-year-on-air-con-in-Iraq-and-Afghanistan.html)

(<http://www.telegraph.co.uk/news/worldnews/northamerica/usa/8601975/US-spends-12.5-billion-a-year-on-air-con-in-Iraq-and-Afghanistan.html>)

[Alstom in deal to build high-speed rail in Iraq](http://www.telegraph.co.uk/news/uknews/road-and-rail-transport/8597276/Alstom-in-deal-to-build-high-speed-rail-in-Iraq.html) (<http://www.telegraph.co.uk/news/uknews/road-and-rail-transport/8597276/Alstom-in-deal-to-build-high-speed-rail-in-Iraq.html>)

[Glaxo to manufacture drugs in Iraq](http://www.telegraph.co.uk/finance/newsbysector/epic/gsk/8686221/Glaxo-to-manufacture-drugs-in-Iraq.html)

(<http://www.telegraph.co.uk/finance/newsbysector/epic/gsk/8686221/Glaxo-to-manufacture-drugs-in-Iraq.html>)

[Shell signs Iraq deal for capture of wasted gas](http://www.telegraph.co.uk/finance/newsbysector/energy/oilandgas/8632843/Shell-signs-Iraq-deal-for-capture-of-wasted-gas.html)

(<http://www.telegraph.co.uk/finance/newsbysector/energy/oilandgas/8632843/Shell-signs-Iraq-deal-for-capture-of-wasted-gas.html>)

The US group abandoned the system after what it says were extensive tests which showed that BacLite "would be about as accurate as a coin flip at determining whether a patient carried MRSA."

Allegations of defamation, blackmail and extortion have been hurled around by the two sides in legal actions and libel suits on both sides of the Atlantic.

Porton's legal costs so far have topped £6m, including £1m for Ploughshare.

EXHIBIT C



Courthouse News Service

Friday, August 26, 2011 Last Update: 7:40 AM PT



3M Claims Lanny Davis Tried to Extort It

By JONNY BONNER

Like 14

ShareThis

WASHINGTON (CN) - 3M claims an investment company conspired with high-powered lobbyist Lanny Davis in a smear campaign to "coerce" it into paying "tens of millions of dollars ... to save them from the consequences of yet another unprofitable investment," a screening test for methicillin-resistant *Staphylococcus aureus*.

3M sued defendants London-based Harvey Boulter, CEO of defendant Porton Capital and a director Porton Capital Technology Funds, both of the Cayman Islands; and Lanny Davis, a principal of co-defendants Davis & Associates, and Davis-Block, all of Washington.

Davis, who worked as a special counsel for President Clinton from 1996 to 1998, has lobbied for a string of controversial clients since leaving the White House, including African dictators, military coup supporters in Honduras, and the government of Pakistan.

3M claims Boulter and Davis smeared it "through every imaginable medium" after it canceled the rollout of BacLite, a test for methicillin-resistant *Staphylococcus aureus*, or MRSA, a dangerous infection, particularly in open wounds, that has created headaches for hospital surgery departments and their patients.

3M says it stopped marketing the test because it was not "commercially viable," and that Boulter and Davis then unleashed the hounds of publicity.

"Defendants' illicit campaign has included overt threats of reprisals by holders of large blocks of 3M stock; public demonstrations by paid individuals posing as victims of an altogether fabricated public health 'issue' allegedly created by 3M's decision to discontinue selling a product no one wanted; multiple press conferences aimed at disseminating false and defamatory information; and a constant stream of media advisories that flooded the airwaves with defamatory statements about 3M and its CEO, George Buckley ('Buckley'). Specifically, the public relations aspect of the pressure campaign - launched with great fanfare on May 11, 2011, by defendants' agents and self-proclaimed public relations expert, defendant Lanny Davis ('Davis') - has featured a barrage of disparaging and defamatory statements disseminated in domestic and international forums, and through every imaginable medium. It has included multiple media events, an interactive website, and various written commentaries asserting damaging and knowingly unfounded allegations that 3M put the health of victims of methicillin-resistant *Staphylococcus aureus* ('MRSA') at risk when 3M chose to cease its multi-year attempts to market an MRSA screening test that was not commercially viable."


3M adds: "When these tactics failed to yield the financial windfall defendants sought, they resorted to making extortionate demands upon 3M." It claims that Boulter and Davis then "acted together" to make a "crude extortion attempt" by "sending to 3M's counsel an unsolicited e-mail in which Boulter claimed that the British Minister of Defence had instructed Boulter to inform 3M that if it did not pay over \$30 million, the Minister of Defence would interfere with 3M's ability to do business with the British government. He also threatened that the British government would reconsider the recently announced call to knighthood of Buckley. This crude extortion attempt threatened both to embarrass Buckley and to tarnish 3M's most valuable asset, its corporate brand."

3M claims Boulter did all this because he had partnered with the British government to invest in Acolyte Biomedica Limited, the company behind BacLite, which specialized in microorganism-detecting products.

3M acquired Acolyte and BacLite in 2007. 3M then marketed BacLite in the United Kingdom, including Australia and Canada, but it did not get U.S. Food and Drug Administration approval, and production was halted, the complaint states.

Potential vendors lashed out against 3M and demanded more than \$66 million for the stopped production, and the defendants "looked for other ways to force 3M to pay them and other U.K. claimants tens of millions of dollars," then crafted and carried out the intimidation campaign, according to the complaint.

3M seeks compensatory and punitive damages for "intimidation and blackmail" under U.K. law, conspiracy, defamation, aiding and abetting and tortious interference.

It is represented by William Brewer III with Bickel & Brewer of Manhattan. Washington-based attorney Kenneth Pfaehler with SNR Denton is also handling the case. 

[Home](#) [Back to Top](#)

[Courthouse News Service](#) [Privacy Policy](#) [Search](#) [RSS](#) [About Us](#)

[Back to Article](#)

3M Takes Suit Against Lanny Davis to D.C. District Court

By [Amanda Becker](#)

Roll Call Staff

Aug. 31, 2011, 7:06 p.m.

Updated: 9:45 a.m.

The Minnesota-based company 3M sued lawyer, lobbyist and public relations guru Lanny Davis last week, accusing him of orchestrating a "smear campaign" on behalf of a client trying to settle a breach-of-contract claim.

Davis said the allegation of a "smear" campaign is "harmful and false," and that he was simply engaging in routine public relations activities.

The case, which was filed Aug. 24 in the U.S. District Court for the District of Columbia, names Davis; his affiliated enterprises; his client, Porton Capital; and Porton's chief executive as defendants in a lawsuit that describes a "conspiracy" to "unlawfully coerce one of the world's largest and most successful companies, 3M, into paying tens of millions of dollars" by disseminating false information to the media.

"Davis's offices in Washington, D.C., served as the 'nerve center' of a campaign to coerce and intimidate 3M into paying Defendants tens of millions of dollars under the guise of 'settling' a lawsuit that was then pending in the U.K.," the complaint stated. It accused Davis of leading "a smear campaign that began as a defamatory media blitz and culminated in the outright attempted blackmail of 3M."

Davis dismissed the lawsuit Wednesday as a tactic meant to divert attention from the original breach-of-contract case, which is drawing to a close in England. He described the lawsuit as 3M's latest attempt to "harass" his client after 3M tried to bring a nearly identical case before a New York state court, then unsuccessfully sought to have it transferred.

"3M and its attorneys have now filed the same suit for the third time," Davis said in a statement. "But no matter how many times they file meritless lawsuits against my client and me as its attorney, they can't change the subject or the facts about their unwillingness to fulfill their contractual commitments."

Attorneys for 3M said late Wednesday that they had filed the suit in Washington because the New York case had become delayed by Davis and other defendants.

The dispute between the two companies began when 3M acquired a company named Acolyte, which had developed a device to screen hospital patients for "super bugs" that resist antibiotic treatment. As a selling shareholder of Acolyte, Porton Capital was entitled to payments based on net sales of the device through the end of 2009.

But when 3M conducted clinical trials to obtain approval from the Food and Drug Administration to sell the product in the United States, results showed that the test was far less accurate than initially believed, the lawsuit said. 3M decided to stop marketing the product and offered to pay invested parties a sum based on projected sales, but Porton Capital rejected the offer and filed the breach-of-contract case in the United Kingdom.

That case went to trial in June, and closing arguments are scheduled for late September.

Davis said the timing of the stateside lawsuits was a diversionary tactic to gain leverage in the overseas litigation.

"It's changing the subject from what's going on in London," he said.

AmandaBecker@rollcall.com | [@rollcallamanda](#)

More Lobbying & Influence

- [In Texas, Disaster Aid Is a Contentious Topic](#)
- [D.C. Veterans Join Ex-Sen. Chris Dodd at MPAA](#)
- [Lobbying by Foreign Countries Decreases](#)
- [Two More Staffers Exit Housing Group](#)
- [More Staffers Depart Home Builders Association](#)
- [GOP Deregulatory Push Makes Cement a Star](#)
- [Battle for Long-Term FAA Funding Looms](#)

Sponsored by:



Roll Call

The Staff

Contact Us

Working at Roll Call

RC Jobs

Subscribe

Classifieds

Advertise

RSS Feeds

Partner Sites:

Congress.org

CQ.com

European Voice

About CQ Roll Call

About the Economist Group

Press Releases

EXHIBIT D

Hyatt Corporation Retraction.

Date: Nov 6, 2000

Words: 162

Publication: Business Wire

Business Editors

CHICAGO--(BUSINESS WIRE)--Nov. 6, 2000

Hyatt Corporation announced today that it is retracting a press release issued on May 30, 1996. The press release described allegations contained in a Complaint that had been filed on May 29, 1996 against Michael V. Stanton in the Supreme Court of the State of New York. In that lawsuit, which was dismissed in 1997, Mr. Stanton erroneously accused Hyatt of unlawfully conspiring with his then employer, a Finnish bank, to deprive Hyatt of its contractual rights in a hotel management agreement relating to a resort hotel located in the U.S. Virgin Islands and formerly known as Hyatt Regency St. John.

Hyatt noted that it was retracting the 1996 press release in order to dispel any implication that Mr. Stanton had acted improperly or contrary to his employer's interests and to avoid any suggested injury to Mr. Stanton's reputation. Hyatt apologized for problems, if any, the press release may have caused Mr. Stanton.

COPYRIGHT 2000 Business Wire

Copyright 2000, Gale Group. All rights reserved. Gale Group is a Thomson Corporation Company.

EXHIBIT E

US firm 3M could summon Liam Fox to give evidence in blackmail case

Subpoena from 3M would force defence secretary Liam Fox to answer claim under oath in US court

Rupert Neate
The Guardian, Tuesday 12 July 2011

[A larger](#) | [smaller](#)



Ministry of Defence has denied that Liam Fox discussed George Buckley's knighthood with chief of Porton Capital, MOD's private equity partner. Photograph Omar Sobhani/Reuters

Liam Fox, the defence secretary, may be forced to give evidence in a blackmail trial in the **United States**, the Guardian has learned.

The "unprecedented" legal action could make Fox the first serving British cabinet minister to give evidence in a serious legal case in America.

The Guardian understands that American conglomerate 3M is considering serving Fox with a subpoena. It will demand that he give evidence over a claim that he was aware of a threat to interfere with the award of a knighthood to 3M's British-born chief executive, George Buckley.

It has been alleged that Porton Capital, a **private equity** partner of the Ministry of Defence, demanded that 3M hand over \$30m (£18.5m) or risk the embarrassment of the government interfering with the knighthood that was awarded to Buckley in June's Queen's birthday honours list. It has also been alleged that Fox was party to a conversation about the suggestion.

A 3M subpoena would force Fox to answer the claim under oath. An email to Porton Capital from 3M's lawyers, which has been seen by the Guardian, said: "We request that you accept subpoenas on [Fox's] behalf for the production of documents and deposition upon oral testimony."

Lawyers for 3M have yet to serve a subpoena on Fox.

Harvey Boulter, chief executive of Porton Capital, which worked with the government to develop innovative technology in the battle against MRSA, has been accused of blackmail and served with legal papers. Boulter and Porton Capital deny the claim.

According to 3M's lawyers, Boulter told them that if an earlier legal battle over the MRSA technology was not settled out of court he would use his political influence to interfere with Buckley's knighthood.

The blackmail case is built on several emails Boulter sent to 3M's lawyers last month. "As a result of my meeting [with Fox] you ought to understand that David Cameron's cabinet might very shortly be discussing the rather embarrassing situation of George [Buckley]'s knighthood. It was discussed today," Boulter said in one of the emails.

"Governments are big and sometimes decisions in one part are not well co-ordinated."

Bill Brewer, 3M's lawyer, said: "We are committed to determine who aided, abetted or participated with Boulter in any manner relative to the demands that were made to 3M on 18 June."

In a new statement, Boulter again claimed that he and Fox discussed the litigation. But an MoD spokesman said: "Dr Fox discussed an entirely different matter when he met Mr Boulter. At no point was there any mention of anyone's knighthood, nor did he enter into any discussion about this legal case."

Mark Stephens, a high-profile medialawyer with London firm Finers Stephens Innocent, said: "Calling a serving British cabinet ministers to give evidence is pretty unprecedented."

Stephens said that if the subpoena is served Fox would be pushed to give evidence in America or speak to US lawyers in a British court.

EXHIBIT F

Liam Fox under fresh pressure over adviser

Defence secretary Liam Fox's long-standing relationship with consultant Adam Werritty is coming under the spotlight

Rupert Neate
guardian.co.uk, Monday 29 August 2011 13.44 EDT

[A larger](#) | [smaller](#)



Adam Werritty brokered a Middle East meeting which has led to Fox (above) being dragged into a blackmail lawsuit. Photograph: Christopher Thomond for the Guardian

An unofficial adviser to defence secretary [Liam Fox](#) was running a health consultancy company when the senior Tory was shadow health secretary, the Guardian can reveal.

The disclosure that Adam Werritty, who has been a close friend of Fox's for at least a decade, was company secretary of UK Health Limited while Fox was the Tory party's lead on health policy will put more pressure on Fox to explain his relationship to the self-styled consultant.

This month the Guardian disclosed that Werritty, who was best man at Fox's wedding in 2005, brokered a meeting in the Middle East which has led to Fox being dragged into a blackmail lawsuit.

Werritty, who purports to be one of Fox's official advisers but is not a government employee, arranged talks between the minister and the Ministry of Defence's private equity partner Porton Capital over a multimillion-pound legal battle between the MoD and US Post-it note maker 3M.

Hours after the meeting, which was not attended by officials and at which no notes were taken, Harvey Boulter, chief executive of Porton Capital, emailed 3M demanding that it hand over \$30m (£18m) to settle a dispute over the sale of a potentially lifesaving treatment to the US company or risk the government questioning the award of a knighthood to 3M's British-born chief executive Sir George Buckley.

It said: "As a result of my meeting [with Liam Fox] you ought to understand that David Cameron's cabinet might very shortly be discussing the rather embarrassing situation of George's knighthood ... At a headline of \$30m+ you will allow the MoD to internally save face."

3M is now suing Porton Capital and Boulter personally for "blackmail", raising the prospect of Fox being summoned to give evidence at a trial in the US. Boulter in turn has accused the American company of libel over the blackmail claims.

The Guardian can now disclose that Werritty, who hands out business cards that describe him as an "adviser to Rt Hon Dr Liam Fox MP" despite the MoD insisting that he is not on their payroll, was appointed company secretary of UK Health Limited in June 2003. At that time Fox was shadow health secretary.

Werritty has been a director of UK Health Limited, which says it is involved in "human health activities", since October 2002. He also served as company secretary between June 2003 and November 2004. Fox served as shadow health secretary between June 1999 and November 2003. Werritty and Fox have previously shared a flat and are understood to have been on holiday together several times. Werritty is a frequent visitor to Fox's office at the MoD.

Werritty, 33, a defence consultant, has also served as a director at a company called Security Futures until the company was dissolved in December last year.

The company secretary of Security Futures was Iain Aitken Stewart, the Tory MP for Milton Keynes and a close friend of Fox and Werritty. Also on the board of Security Futures, which did not explain its business activities to Companies House, was Oliver Hylton, an adviser to Michael Hintze, a hedge fund billionaire, Tory party donor and close friend of Fox.

Hylton is also the manager of Hintze's charitable foundation that has donated £51,000 to a charity set-up by Fox and run by Werritty. The Atlantic Bridge, which Fox established in 1997 and was run by Werritty as executive director and sole employee, has suspended its activities after an investigation by the Charity Commission.

Hintze, the Australian-born boss of hedge fund CQS, is the world's 880th wealthiest person with a fortune of \$1.1bn, according to the latest Forbes rich list. The register of members' interests shows that Fox travelled on Hintze's private jet from Washington to the UK this year, after giving a speech to celebrate what would have been Ronald Reagan's 100th birthday. The Atlantic Bridge aimed to promote the "special relationship" that flourished between Thatcher and the US president.

Fox, Werritty and Hintze refused to comment.

William A Brewer III, partner at Bickel & Brewer and counsel for 3M, said: "We are concerned about what role representatives of the Minister of Defence might have played in the demands that were placed on 3M the weekend of June 18 2011. Needless to say, we are increasingly troubled by the facts that are emerging – and committed to uncovering the truth about this possible conspiracy."

EXHIBIT G

Enter search keyword

NEWSLETTER

Receive our FREE weekly newsletter
[click here](#)

Today's Offers:

[Sign up to access Chicago area foreclosures!](#)
[Refi rates at 2.62%. Get Free Quotes!](#)

LNL MOST POPULAR ARTICLES

- + Minn. AG weighs in on nationwide foreclosure settlement
- + La. business' growth stunted by asbestos lawsuits
- + Indiana joins whistleblower suit
- + 3M claims former Clinton adviser attempted coercion
- + Fourth Circuit rules against Va. AG in ObamaCare challenge

LNL HOT TOPICS

- + Asbestos
- + Big Pharma
- + BP Oil Spill
- + Class Action
- + Dickie Scruggs
- + Financial Crisis
- + Global Warming
- + Hurricane Katrina
- + Lead Paint
- + Sub-Prime Mortgages
- + Tobacco
- + Tort Reform

News

THURSDAY, SEPTEMBER 08, 2011 4:20:00 PM

3M claims former Clinton adviser attempted coercion

BY MICHAEL P. TREMOGLIE

A lawsuit filed against Washington D.C. lawyer Lanny Davis accuses the former Clinton Administration adviser and others of conspiring to unlawfully coerce 3M into paying tens of millions of dollars in a United Kingdom breach of contract case.

The action against Davis was filed Aug. 24 in the U.S. District Court for Washington D.C. Besides Davis, the defendants are his firm Lanny Davis & Associates; as well as an affiliated public relations firm, Davis & Block; Harvey Boulter of London, England, the CEO of Porton Capital; Porton Capital of England and Porton Capital Technologies, a subsidiary based in the Cayman Islands.

The alleged coercion included a public relations campaign by Davis that 3M claims "featured a barrage of disparaging and defamatory statements."

3M's allegations stem from a breach of contract lawsuit Davis's clients filed in London against 3M Company of Minnesota in late 2008.



Davis

Also alleged in 3M's suit was that the defendants resorted to making "extortionate demands" by sending an "unsolicited email" to 3M stating that the Minister of Defence for the United Kingdom (UK) had instructed the defendants (Boulter and Davis) to tell 3M that if \$30 million was not paid the Minister of Defence would interfere with 3M conducting business with the British Government.

According to the complaint, the email also said that the British government would reconsider knighting 3M's CEO George Buckley. This alleged extortion attempt, says the complaint, "threatened both to embarrass Mr. Buckley and to tarnish 3M's most valuable asset, its corporate brand."

3M bought a British company called Acolyte in February 2007. The company produced the screening test called BacLite used to identify those with a strain of bacterial infection known as MRSA. These infections do not respond to treatment from antibiotics.

Porton and another company called Ploughshares Inc., which is owned by the U.K. Ministry of Defence, owned 60 percent of Acolyte. As part of that deal, 3M was required to get regulatory approval in three different markets to sell BacLite which was really the only product Acolyte made and was 3M's main interest in buying the company. The owners of Acolyte were to receive the proceeds of the sale of BacLite through 2009.

After some attempts to sell it, 3M determined that BacLite was commercially unviable. So 3M shelved the product in mid-2008. Since Porton Capital and Ploughshares were among those to get the receipts from the sale of BacLite they sued 3M in late 2008 claiming that 3M did not perform due diligence and was breaching the sales contract. The suit was filed in London and claimed an amount of money that Porton et al claimed they were owed by 3M.

There were settlement talks on the eve of the trial as both parties tried to avoid going to court. The two parties involved in the talks were Porton's CEO Harvey Boulter and attorney William Brewer of Bickel and Brewer, Dallas, Texas, who was representing 3M. The negotiations took place in June.

It was in the course of these negotiations that 3M claims the extortion and conspiracy occurred. An email sent to Brewer from Lanny Davis states that Boulter preferred to litigate for any amount less than \$33 million. But 3M was only offering about \$14 million.

A June 18 email from Harvey Boulter to Brewer is one point of contention addressed in the complaint. It is Exhibit C.

In the email, Boulter tells Brewer that he spoke with Dr. Liam Fox, the British Minister of Defence, about the negotiations. He said the ultimate issue was that the British government was embarrassed by the whole affair. He then mentions that "as a result of my meeting today you ought to understand that David Cameron's Cabinet might very shortly be discussing the embarrassing situation of George's (3M CEO George W. Buckley) knighthood. It was discussed today."

IN THE SPOTLIGHT:

Monday, September 12, 2011

Franks calls out asbestos fraud in House hearing

The practice of making duplicate claims from asbestos tort and trust systems was hammered by Rep. Trent Franks (R-Ariz.) during a House subcommittee hearing Friday.
[Read more...](#)



- + Card check ruling reverses secret ballot - 9/2
- + NLRB to implement new notification rules - 8/31
- + Philadelphia's Anapol Schwartz takes on NFL - 8/24
- + Public unions should be curbed, says right to work defender - 8/23
- + Environmental justice agreement over-regulates, critic says - 8/18

BROWSE BY STATE:

GO

BROWSE BY AG:

GO

BROWSE BY DATE:

GO

NEWS WIDGET:

Attention bloggers:
 Add Record Headlines to your site!

News from LegalNewsline:

[Second Circuit won't let Ecuadorians file response to reply](#)

[Car dealer agrees to pay \\$450K in restitution](#)

[Injunction keeps Pa. company from calling Missourians](#)

[One last channel for](#)

Brewer is also told that \$30 million might be satisfactory. While 3M might win in court it may "lose the war....It might leave the Gov quietly seething, with ramifications for a while - they have memories like elephants."

Brewer not only represented 3M during the negotiation, he also represents 3M in the current litigation.

Travis J. Carter, who is in charge of media relations for Bickel and Brewer's Dallas office, issued a statement from Brewer.

"The defendants have filed a dilatory motion in New York which complained about that forum," said William A. Brewer III, partner at Bickel & Brewer and counsel for 3M. "Rather than tolerate the delays associated with that debate, we re-filed the case in Washington, D.C. - the concededly appropriate forum - in order to expedite our client's right to commence discovery. As we have stated repeatedly, our clients are anxious to push this case forward as quickly as possible."

3M's complaint characterizes Davis as "the champion of anyone willing to pay top dollar."

It says he assists clients by foregoing legal arguments in favor of public relations campaigns - "to concoct a media strategy aimed at giving his client an advantage in the court of public opinion."

It further accuses Davis and the other defendants of staging false protests by victims of MRSA designed to embarrass 3M. They quote a leader of a group involved in eradicating MRSA as saying she was suspicious of the protests occurring in the United Kingdom.

Davis gained national fame when he was named special counsel to President Bill Clinton from 1996 to 1998. He appeared regularly on cable television news shows defending Clinton in the court of public opinion.

Davis has denied 3M's claim. He also accused 3M of venue shopping.

"3M and its attorneys have now filed the same suit for the third time-this time in D.C.," Davis stated. "That is indicative of the lack of thoughtfulness of its case. But no matter how many times they file meritless lawsuits against my client and me as its attorney, they can't change the subject or the facts about their unwillingness to fulfill their contractual commitments, which is now the subject of an ongoing trial in England."

He also said that both he and his client expect that this latest lawsuit by 3M in Washington D.C. will fail, just as its prior two efforts failed in a New York court.

Christopher Duffy and Lee Wolosky of Boies, Schiller and Flexner in New York City represent Davis.

Firm spokesperson Allison Preece provided a prepared statement from Wolosky.

"3M lost in New York and is now trying to bring the same suit in DC. Its filing there suffers from the same deficiencies and will suffer the same fate," Wolosky said.

Defendants could benefit by having 3M file suit in London where Porton is domiciled.

The negotiating statements - the emails of which 3M is making an issue - would not be permissible in an English court.

The suit against 3M by Borton and Ploughshares in London is still pending.

Filed Under: none

[Technorati Links](#)

[E-mail this article to a friend](#) | [Printer friendly format](#)

MORE NEWS HEADLINES:

- [+ 3M claims former Clinton adviser attempted coercion - 9/8](#) READ MORE
- [+ W.Va. attorney to be nominated for Fourth Circuit opening - 7/27](#) READ MORE
- [+ Chesley disbarment goes to Ky. Supreme Court - 6/15](#) READ MORE
- [+ Wis. AG says business owner violated special order - 3/23](#) READ MORE
- [+ Ten AGs whose time is running out - 8/27](#) READ MORE
- [+ Ten stories from North Carolina - 8/20](#) READ MORE
- [+ Ten who would've preferred a landslide - 8/13](#) READ MORE
- [+ Ten of the longest names - 8/6](#) READ MORE
- [+ Ten who had to face the press - 7/30](#) READ MORE
- [+ Ten justices with hobbies - 7/23](#) READ MORE

[W.Va. AG's appeal of Medicaid ruling](#)

[San Diego's attempt to tax online travel companies shot down](#)

[More News...](#)

fast + free- [click here](#)



EXHIBIT H

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

----- X
3M COMPANY, : **Index No.**
 :
 Plaintiff, :
 :
 - v - :
 :
 HARVEY BOULTER, :
 PORTON CAPITAL TECHNOLOGY FUNDS, and :
 PORTON CAPITAL, INC., :
 :
 Defendants. :
----- X

COMPLAINT AND DEMAND FOR JURY

Plaintiff 3M Company (“3M”) files this Original Complaint and Jury Demand against defendants Harvey Boulter, Porton Capital Technology Funds, and Porton Capital, Inc. (collectively, “Defendants”), upon personal knowledge as to its own actions, and on information and belief as to all other matters, as follows:

I.

PRELIMINARY STATEMENT

3M is compelled to commence this action based on Defendants’ wrongful efforts to extort millions of dollars from it. 3M and Defendants are involved in a lawsuit pending in London, England. In fact, trial commenced on June 15, 2011, and is expected to continue well into July 2011. 3M is confident in its position and content to allow the English courts to adjudicate its dispute with Defendants. Unfortunately, instead of awaiting the outcome of the pending litigation, Defendants and their investors have engaged in an unlawful campaign to blackmail 3M into paying thirty million dollars (\$30,000,000) in order avoid the continuation of the campaign by which Defendants seek to publicly defame 3M and its Chairman/CEO and to tortiously interfere with 3M’s legitimate business pursuits in the UK. Because it will not bow to

this illegal behavior, and to protect its legitimate interests, 3M files this action to expose this unlawful scheme and to be compensated for the damage done.

II.

PARTIES

A. Plaintiff

1. Plaintiff 3M Company (“3M”) is a Delaware corporation, with its principal place of business in Minnesota.

B. Defendants

2. Defendant Harvey Boulter is a director of defendant Porton Capital Technology Funds and the Chief Executive Officer of defendant Porton Capital, Inc. He maintains residences in the UK and Dubai.

3. Defendant Porton Capital Technology Funds (“Porton Technology”) is an entity organized under the laws of the Cayman Islands which does business in the UK, Dubai, and other jurisdictions internationally.

4. Defendant Porton Capital, Inc. (“Porton Capital”) is an entity organized under the laws of the Cayman Islands which does business in the UK, Dubai, and other jurisdictions internationally.

III.

JURISDICTION AND VENUE

5. The Court has personal jurisdiction over Defendants pursuant to C.P.L.R. 302(b) because, among other things, they have committed wrongful acts directed to the State of New York.

6. Venue is proper in New York County, pursuant to C.P.L.R. § 503, because Defendants directed their wrongful conduct to the State of New York.

IV.

FACTUAL BACKGROUND

A. 3M And Its Business

7. 3M was founded in 1902 in Two Harbors, Minnesota, by five businessmen hoping to capitalize on a mining mineral used for grinding wheels. Their persistence paid off and they began manufacturing sandpaper in 1905. The company moved to the St. Paul area in 1910. In 1916, the company paid its first dividend of 6 cents a share.

8. 3M is today a company that applies technologies—often in combination—to satisfy a wide array of customer needs. To that end, the company produces literally thousands of products and is a leader in numerous markets. In particular, 3M competes in such varied fields as health care, highway safety, office products, abrasives, and adhesives. Among 3M's more notable products are Scotch[®] Magic TM Tape, Post-it[®] Note Pads, and Nexcare TM Adhesive Bandages. 3M's focus is to make life better for its customers.

9. The engine that drives its long-term success is 3M's commitment to innovation. In the early 1920s, it introduced the world's first waterproof sandpaper. In 1925, 3M invented masking tape—an innovative step toward diversification and the first of many Scotch brand pressure-sensitive tapes. 3M then invented Scotch[®] Cellophane Tape for box sealing and soon hundreds of practical uses were discovered. In the early 1940s, 3M dove into the production of defense materials for World War II. Thereafter, new ventures such as Scotchlite[™] Reflective Sheeting for highway markings, magnetic sound recording tape, filament adhesive tape, and offset printing plates were started. In the 1950s, 3M introduced the Thermo-Fax[™] copying process, Scotchgard[™] Fabric Protector, and Scotch-Brite[®] Cleaning Pads. In the 1960s, 3M developed photographic products, carbonless papers, overhead projection systems, and a rapidly growing health care business of medical and dental products. In the 1970s and 1980s, 3M

expanded into pharmaceuticals, radiology, and energy control. In 1980, 3M introduced Post-it® Notes, which changed people's communication and organization behavior forever. In the 1990s, 3M continued to develop an array of innovative products, including immune response modifier pharmaceuticals; brightness enhancement films for electronic displays; and flexible circuits used in inkjet printers, cell phones, and other electronic devices.

10. Today, 3M has more than 35 business units, organized into six businesses divisions—namely: Healthcare; Consumer and Office; Display and Graphics; Electro and Communications; Industrial and Transportation; and Safety, Security and Protection Services. 3M employs more than 80,000 persons globally, with operations in more than 65 countries, and sells its products in nearly 200 countries. In particular, 3M presently employs 7,350 researchers worldwide. In 2010, 3M had global sales of \$27 billion.

11. Importantly, 3M has enjoyed excellent relationships with governmental authorities in the United Kingdom. Based on those relationships, 3M has done business with many of those governmental authorities. Indeed, 3M is now in negotiations to enter into a number of new business relationships with governmental units in the UK.

12. Throughout its history, 3M has maintained an unwavering commitment to act with honesty and integrity in everything it does. Indeed, 3M has an enviable record of achievement in corporate responsibility, and continually strives to improve its performance and address ongoing challenges and opportunities. In 2010, 3M and the 3M Foundation donated approximately \$59 million in cash and products to educational and charitable institutions.

B. George W. Buckley – 3M's Visionary Chairman/CEO

13. George Buckley is the Chairman of the Board, President, and Chief Executive Officer of 3M. Mr. Buckley was born and raised in Sheffield, England and is now a dual citizen of both the US and the UK. He has a Ph.D. in electrical engineering. He is a scientist and the

inventor of several patents. Having overcome extreme poverty as a child, Mr. Buckley has become a success in both business and life. Under his leadership, 3M has thrived not only economically but in fulfilling its mission of community involvement and participation.

14. In recognition of his business accomplishments and his contributions to his alma mater, the University of Huddersfield, it was recently announced that Mr. Buckley would be invested by Queen Elizabeth II with the rank of Knight Bachelor. The British Consul General Robert Chatterton Dickson described Mr. Buckley and his accomplishments as follows: “As Chairman of the Board, President and CEO of 3M, Dr. Buckley, now Sir George, has been a leader in the American and Midwestern business community for decades. Throughout his career he has maintained close ties to the UK and a commitment to educating future generations as exemplified by his involvement with the University of Huddersfield. Sir George represents excellence in business and learning. . . .”

C. Defendants And Their Business

15. Porton Technology is an investment fund organized under the laws of the Cayman Islands and conducts business in the UK. Defendant Porton Capital is the investment manager for those funds. Defendant Boulter is a Director of Porton Funds and the CEO of Porton Capital. Porton Technology operates through five sub-funds that make investments in a number of areas including life science ventures.

16. One of Porton Technologies’ investments was an ownership interest in Acolyte Biomedica Limited (“Acolyte”), a British Company. Ploughshare Innovations Limited (“Ploughshare”), an entity controlled by the British Ministry of Defense, was also an investor in Acolyte. Acolyte was in the business of developing and marketing various products whose aim was to detect certain dangerous microorganisms.

D. The Underlying Dispute—3M Acquires Acolyte And A MRSA Screening Test Product In Order To Exploit A Perceived Market Niche.

17. As part of its plan to expand into the global in vitro diagnostics market, 3M UK Holdings Limited—a wholly-owned subsidiary of 3M—acquired all of the outstanding shares of Acolyte. Acolyte’s only commercially available product at the time, was BacLite MRSA (“BacLite”), a device that allegedly allowed hospitals and clinics to screen patients for methicillin resistance *Staphylococcus aureus* bacteria (“MRSA”). While staph bacteria are ubiquitous in daily life, MRSA and related organisms, commonly known as “superbugs,” are of particular concern to medical professionals. Those superbugs are resistant to treatment from conventional antibiotics and can spread quickly when introduced into hospitals. The goal of screening tests such as BacLite is to identify carriers of MRSA and quarantine them before the bacteria can spread to the general patient population.

18. Acolyte sold 3M on the prospects of BacLite by touting its ability to fill a market niche existing in early 2007. Competing screening products then on the market were either much cheaper but slower (*i.e.* chromogenic agar tests cost \$2-3 per test, but took 48-72 hours), or much faster but far more expensive (*i.e.* genetic-based PCR tests cost approximately \$25 or more per test, but gave results within 1-2 hours). Acolyte represented to 3M that BacLite was an easy-to-use test that could obtain results in 5 hours at a cost of only \$12-15 per test, and that in clinical trials it had achieved diagnostic sensitivity and specificity in acceptable ranges of 95.2% and 93.2%, respectively.

19. The sensitivity of a screening test measures how accurate it is at identifying that a sample actually contains MRSA, while its specificity indicates how accurate it is at identifying that a sample is negative for MRSA. Thus, a sensitivity rating of 95.2% would mean a test gave

“false negative” readings only 4.8% of the time, while a specificity rating of 93.2% would mean it only gave a “false positive” reading 6.8% of the time.

20. In acquiring Acolyte, 3M intended to utilize its strong global presence and leadership in the medical products field to exploit that niche—specifically a MRSA screening test that was faster than traditional culture-based chromogenic agars but less expensive than genetic PCR screening methods.

E. Unfortunately, BacLite Proves To Be A Commercial Failure In The Global Market.

21. Immediately after the acquisition, and in fulfillment of its obligations under provisions of the Sales and Purchase Agreement (“SPA”) (which granted Acolyte’s selling shareholders (the “Vendors”) an opportunity to receive earn-out payments on net sales of BacLite through December 2009¹), 3M not only continued to actively market BacLite in the UK, but also began marketing in the rest of the European Union (“EU”), Canada, Australia and the United States (“US”). In addition, 3M obtained regulatory approval for BacLite’s sale in Australia, and began diligent efforts to gain similar approval from US and Canadian authorities.

22. BacLite could not be sold in the US without approval from the Food and Drug Administration (“FDA”). The key to obtaining FDA approval for BacLite was the successful completion of clinical trials demonstrating support for the product’s claims relating to clinical sensitivity, specificity, and positive and negative predictive values, as well as data demonstrating the product’s performance against an acceptable comparator/reference method, often referred to as a “gold standard.”

¹ Specifically, the SPA provided that Vendors were entitled to an amount equal to all of the Net Sales that 3M made of BacLite from February 2007 through December 31, 1999, less certain adjustments.

23. Results from these trials, conducted at prestigious hospitals around the United States, showed sensitivity and specificity percentages alarmingly below those claimed by Acolyte before 3M's acquisition. Sensitivity percentages in some beta tests were as low as 50%, meaning that BacLite was about as accurate as a coin flip at determining whether a patient carried MRSA.

24. Other clinical trials being conducted of BacLite in other parts of the world, such as Hong Kong and France, also reported lower than expected performance of BacLite.

25. 3M spent months trying to root out the cause of these surprising results, but with little success. Instead, 3M came to the disappointing conclusion that BacLite, in its existing form, did not meet the performance expectations that Acolyte had claimed for it prior to the acquisition.

26. In the meantime, 3M's extensive marketing efforts in the UK and the EU revealed that the product was becoming rapidly obsolete in the face of newer, more robust competitors.

27. Ultimately, 3M determined that BacLite was not commercially viable because: (i) it was not "robust," meaning that it was not capable of meeting its claimed performance parameters in a real world clinical environment; (ii) it was overly complicated because it involved over a dozen manual steps, increasing the chances of error in busy clinical environments and requiring specially trained personnel to operate it; (iii) it was not fast enough; (iv) it was doubtful the test could routinely achieve the sensitivity/specificity ratings stated by Acolyte prior to the acquisition; (v) the test could not actually be run in the 5 hours claimed by Acolyte because of a number of manual steps were required, further undermining its value proposition; and (vi) by early 2008, the market niche 3M expected to exploit with BacLite had

unexpectedly narrowed because the cheaper chromogenic agar tests had gotten faster and the faster PCR tests had gotten cheaper.

28. In sum, 3M came to the inescapable conclusion that BacLite did not perform as Acolyte had claimed, was obsolete, and would not be commercially viable in the US, Canada or Australia, and that its prospects in the EU and the UK were rapidly eroding.

F. Vendors Sue 3M In London.

29. In light of the above facts, in July 2008, 3M sought the Vendors' consent to allow 3M to cease the business of BacLite prior to December 2009. In return, 3M offered to pay the Vendors the amount of net sales that 3M expected to actually achieve from that point through December 31, 2009. In effect, 3M offered to pay the earn out payments that would have been otherwise due to the claimants in the litigation pending in London ("Claimants")—which 3M estimated to be about \$1.07 million. Under the SPA, the Vendors' consent to that request was not to be unreasonably withhold.

30. Unfortunately, the Vendors refused to consider 3M's request in good faith. Instead, they demanded the sum of \$65.6 million, an amount which bore no rational relationship to the amount that, under any circumstances, would have been achieved pursuant to the earn out.

31. As result of the Vendors' outrageous demands, discussions between the parties regarding 3M's request proved unfruitful. Finally, in a letter to 3M in November 2008, the Vendors' attorneys declared 3M to be in breach of the SPA, and withdrew their request that 3M continue to perform under the contract.

32. Certain of the Vendors—the Claimants—then filed a lawsuit in the UK in December 2008, claiming damages against 3M for breach of contract. Specifically, Claimants alleged that 3M failed to actively market BacLite, to diligently seek regulatory approval for BacLite in the US and Canada, and to devote resources to BacLite to a similar overall degree as

were given to other products in 3M's Medical Division. In its formal defense of the lawsuit, 3M has denied each of these contentions, asserted that the Vendors' consent for 3M to cease the business of BacLite was unreasonably withheld, and that in any event Claimants are entitled to no more than \$2 million. This is the amount of net sales that 3M expected to make between July 2008 and December 2009. The Claimants are: (i) Porton Technology; (ii) Porton Capital; and (iii) Ploughshare.

G. Defendants Attempt To Blackmail 3M And Its CEO.

33. The bench trial of Claimants' lawsuit in the UK High Court began on June 13, 2011, and is expected to last until July 15, 2011. 3M welcomes the opportunity to prove that Claimants' allegations lack both substance and merit. Defendants are apparently aware that their contentions will not withstand careful judicial scrutiny. As a result, they have resorted to a campaign to extort an unreasonably high payment from 3M.

1. Defendant Harvey Boulter, on behalf of the other defendants, threatens 3M with retaliation by the British Government if it does not agree to settle Claimants' lawsuit for tens of millions of dollars.

34. In an effort to explore a possible settlement of the UK lawsuit, 3M's attorneys were given permission to speak directly with one of the Claimants' principals, Boulter, Chief Executive Officer of the Porton Group. During these conversations (the "Conversations"), Boulter stated that he was authorized by all of the Claimants in the London proceedings to speak on their behalf, including Ploughshare. In fact, Boulter represented that he was specifically authorized by Dr. Liam Fox, Minister of Defense, to speak for Claimants.

35. During the Conversations, however, Boulter chose not to engage in a good faith discussion of the parties' respective contentions in the lawsuit, or the risk posed to each by continued litigation. Instead, Boulter made clear to 3M's attorney that Claimants' demand of

\$34 million to settle the UK lawsuit had little to with the merits of the lawsuit. Thereafter, Boulter informed 3M's counsel that he would communicate "their" position in writing.

2. Boulter memorializes his extortion threats in an e-mail to 3M's legal counsel.

36. On June 18, 2011, Boulter sent an to 3M's attorney as promised (the "E-Mail").²

37. In the E-Mail, Boulter makes clear that Claimants' settlement demand of \$30 million "has little to with the case in the Court," but is instead "about losing face." The E-Mail declares that Boulter was "being asked, and have been given the sole authority by the [British Ministry of Defense] to settle on behalf of them." Boulter adds that "I had 45 minutes with Dr Liam Fox, the British Defence Minister on our current favourite topic."

38. Boulter acknowledges in the E-Mail that 3M may prevail in the lawsuit. Nonetheless, he threatens that, in such event, 3M will have won the battle, but lost the war. Boulter then states in the E-Mail that such a victory "might leave [the British Government] quietly seething, with ramifications for a while—they have memories like elephants." However, if 3M were to settle the case for "\$30mn+ you will allow [the British Ministry of Defense] to internally save face."

39. Boulter then stresses in the E-Mail that Claimants' demands have no basis in the actual merits of the case by declaring that "[f]rom next week [M]onday there are politics that will likely remove any further chance of settlement." He adds that "[f]rom my side . . . whether this is \$5mn or \$35mn it is small beer. [Defendants] manage \$700mn and many of our investors call \$5mn a rounding error."

² 3M has attached a copy of Boulter's June 19, 2011, e-mail to this Complaint as Exhibit "A."

40. Notably, Defendants do not restrict themselves to threatening 3M's business interests in the UK. The E-Mail also threatens to interfere with Mr. Buckley's investiture as a Knight Bachelor. In the E-Mail, Boulter declares that "as a result of my meeting today [with Minister Fox] you ought to understand that [UK Prime Minister] David Cameron's Cabinet might very shortly be discussing the rather embarrassing situation of George's knighthood. It was discussed today. Government's are big and sometimes decisions in one part are not well coordinated."

41. Incredibly, Boulter sent a follow-up email to 3M's attorney on June 19, 2011. In that email, Defendants continue their extortionate scheme.³ Specifically, Boulter pressed 3M for immediate capitulation to Defendants' demands on less than 48 hours' notice over a weekend, claiming that he needed 3M's agreement so he could "tell something to Dr. Fox's office on Sunday night." In an effort to create the illusion of urgency, Boulter warned 3M against not responding – or as he put it, giving "a 'radio silence' message" – because Fox "is the Secretary of Defence and will not expect that."

42. In short, in the conversations, the E-Mail, and again in the June 19, 2011, follow-up email (together, the "Communications"), Defendants conspired to make extortionist threats of retaliation against 3M's business interests in the UK, as well as to Mr. Buckley's public recognition, unless 3M accedes to Claimants' outrageous and wholly unfounded demands to settle the lawsuit in London for far more than their claims are worth.

43. Accordingly, 3M now brings this lawsuit to bring to light Defendants' egregious and wrongful actions, and to seek compensation for the harm that they have caused 3M.

³ 3M has attached a copy of Boulter's June 19, 2011, email to this Complaint as Exhibit "B."

V.

CAUSES OF ACTION

A. Count One: Blackmail (United Kingdom Theft Act of 1968)

44. 3M incorporates herein by reference the allegations set forth in the preceding paragraphs.

45. Boulter is a citizen of the United Kingdom, and all Defendants are subject to United Kingdom law.

46. Section 21 of the United Kingdom Theft Act of 1968 provides: “A person is guilty of blackmail if, with a view to gain for himself or another or with intent to cause loss to another, he makes any unwarranted demand with menaces; and for this purpose a demand with menaces is unwarranted unless the person making it does so in the belief – (a) that he has reasonable grounds for making the demand; and (b) that the use of the menaces is a proper means of reinforcing the demand.”

47. By and through the Communications, Defendants intended to cause loss to 3M by making unwarranted threats, menaces, and demands that 3M engage in conduct from which it had a legal right to abstain and that 3M give up valuable rights it was entitled to pursue.

48. Defendants made those unwarranted demands without reasonable grounds to make them, and without a belief either that such grounds exist or that the use of menaces were proper, as Defendants were motivated solely by malice and an intent to materially harm 3M.

49. As a result, 3M has been damaged, and continues to be damaged, in an amount to be proved at trial.

B. Count Two: Tortious Interference With Prospective Business Relationships

50. Plaintiff repeats and realleges the preceding paragraphs hereof as if fully set forth herein.

51. 3M has a number of prospective business relationships with the English government.

52. Defendants were, at all relevant times, aware of those prospective business relationships.

53. Nevertheless, as detailed above. Defendants have, without right, taken actions to meaningfully interfere with 3M's prospective business relationships.

54. Those actions constitute tortious interference with prospective business relationships.

55. Defendants have interfered and continue to interfere, without lawful justification or excuse, with 3M's prospective business relationships.

56. Defendants' actions to interfere with 3M's rights and obligations have been made intentionally, maliciously, and in bad faith.

57. Defendants' actions to interfere with 3M's prospective business relationships were taken by unlawful means and for unlawful purpose.

58. Defendants' wrongful, interfering conduct was and is independently tortious and/or unlawful.

59. Defendants' interference with 3M's prospective business relationships has resulted in actual harm and damage to 3M.

60. 3M is entitled to an award of compensatory and consequential damages in an amount to be determined by the trier of fact.

61. 3M is entitled to an award of exemplary damages in an amount to be determined by the trier of fact because Defendants' conduct was and is willful, wanton, malicious, and without lawful justification or excuse.

C. Count Three: Prima Facie Tort

62. 3M incorporates herein by reference the allegations set forth in the preceding paragraphs.

63. Defendants made the Communications with the intent to inflict harm on 3M by inducing and compelling 3M to engage in conduct from which it had a legal right to abstain, and to give up valuable rights which 3M had a legal right to pursue. Defendants made the Communications without excuse or justification, and were motivated solely by malice and disinterested malevolence.

64. By their acts, Defendants placed 3M in fear that Defendants would wrongfully induce the UK Ministry of Defence to withhold millions of dollars in valuable contracts from 3M.

65. Defendants' acts would not materially benefit Defendants, but were calculated to harm 3M materially and with respect to its business, financial condition, and reputation.

66. As a result of Defendants' acts, 3M has been damaged, and continues to be damaged, including special damages. Among other things, Defendants have incurred costs associated with responding to Defendants' wrongful acts.

D. Count Four: Civil Conspiracy

67. 3M incorporates herein by reference the allegations set forth in the preceding paragraphs. preceding paragraphs are incorporated herein by reference.

68. Defendants and others acted together to accomplish an unlawful object or a lawful object by unlawful means, including extortion and tortious interference.

69. Defendants had a meeting of the minds whereby they decided to take steps to accomplish their unlawful acts and omissions.

70. Defendants committed one or more unlawful overt acts in furtherance of this conspiracy, including, but not limited to, extortion and tortious interference.

71. The purpose of the conspiracy was to injure 3M for the financial gain of Defendants.

72. As a direct and proximate result of Defendants' civil conspiracy, 3M is entitled to actual, compensatory, consequential, and punitive damages in an amount to be determined by the trier of fact.

E. Count Five: Aiding And Abetting

73. The preceding paragraphs are incorporated herein by reference.

74. Defendants are liable to 3M for their wrongful acts described above.

75. Defendants had knowledge of each other's wrongful acts but, nevertheless, knowingly advised, encouraged, aided, abetted, and assisted each other and their wrongful acts.

76. As a result of their assistance and encouragement of each other's wrongful acts, Defendants committed the wrongful acts detailed herein.

77. As the direct and proximate result of the Defendants' wrongful conduct, 3M is entitled to actual, compensatory, consequential, and punitive damages in an amount to be determined by the trier of fact.

VI.

DEMAND FOR JURY TRIAL

78. Plaintiff hereby demands a jury trial on all claims and defenses.

VII.

PRAYER FOR RELIEF

WHEREFORE Plaintiff requests that the Court enter judgment in Plaintiff's favor and against Defendants, jointly and severally, as follows:

- a. awarding Plaintiff actual damages, including compensatory and consequential damages, in an amount to be determined at trial;
- b. awarding Plaintiff exemplary or punitive damages;
- c. awarding Plaintiff pre-judgment and post-judgment interest at the highest lawful rates;
- d. awarding Plaintiff such costs and disbursement as are incurred in prosecuting this action, including reasonable attorneys' and experts' fees; and
- e. granting Plaintiff such other and further relief as this Court deems just and proper.

DATED: June 19, 2011

Respectfully submitted,

By: *Alexander D. Widell*
William A. Brewer III
Alexander D. Widell
BICKEL & BREWER
767 Fifth Avenue, 50th Floor
New York, New York 10153
Telephone: (212) 489-1400
Facsimile: (212) 489-2384

- and -

Martin Pollner
LOEB & LOEB LLP
345 Park Avenue
New York, New York 10154
Telephone: (212) 407-4000
Facsimile: (212) 407-4990

**ATTORNEYS FOR PLAINTIFF
3M COMPANY**

Exhibit A

From: Harvey Boulter <Harvey.Boulter@portongroup.com>
To: William Brewer <WAB@bickelbrewer.com>
Date: 6/18/2011 3:16 AM
Subject: Re: Harvey meet Bill - Bill meet Harvey.

Dear Bill

I said I would write up the conversation from our side. As I said I would not normally be reaching out to you at this point however this morning, in dubai, I had 45 minutes with Dr Liam Fox, the British Defence Minister on our current favourite topic.

In summary, our dispute actually has little to do with the case in the Court, the opening statements are done and as discussed you will make headway next week as we will the week after. It is about losing face.

Government sold Acolyte to 3M after a great pitch that they were going to commercialise it. 3M, in their view, broke the trust relationship. It is unfortunate, on discovery, that George had his DNA on that decision and it now puts Gov in an awkward situation publicly.

As such they feel that you should do the right thing. I can tell you that even at USD20-25mn you will leave them not feeling great about the whole episode. In the end maybe your QC gets a judgement of GBP1mn - he will rightly tell you he got you a great result - a battle win - but 3M may lose the war (sorry figure of speech). It might leave Gov quietly seething, with ramifications for a while - they have memories like elephants.

At headline of \$30mn+ you will allow MoD to internally save face. IF it were to settle 3M would need to do an immediate charm offensive - my recommendation. The British generally are silent when they are upset - I am sure you realise this.

Of course a settlement might not be possible, but as a result of my meeting today you ought to understand that David Cameron's Cabinet might very shortly be discussing the rather embarrassing situation of George's knighthood. It was discussed today. Government's are big and sometimes decisions in one part are not well coordinated.

I am being asked, and have been given the sole authority by the MoD to settle on behalf of them.

From next week monday there are politics that will likely remove any further chance of settlement. We will both be committed to the end.

From my side, I don't hold a grudge, whether this is \$5mn or \$35mn it is small beer. We manage \$700mn and many of our investors call \$5mn a rounding error.

I said to Dr Fox I would try, I have done so. I expect I know the answer.

With kind regards

Harvey

Harvey Boulter
CEO, Porton Group
Mobile: +97150 788 0588
E-Mail: harvey.boulter@portongroup.com

Empower your Business with BlackBerry® and Mobile Solutions from Etisalat

Exhibit B

From: Harvey Boulter <Harvey.Boulter@portongroup.com>
To: "wab@bickelbrewer.com" <wab@bickelbrewer.com>
Date: 6/19/2011 3:25 AM
Subject: Bill

Bill

I need to tell something to Dr Fox's office on Sunday night prior to the commencement of his week Monday.

I don't really want to give a 'radio silence' message as he is Secretary of Defence and will not expect that. I am trying to manage all the dynamics carefully, please let me know what if anything I can say.

Regards

Harvey

Harvey Boulter
CEO, Porton Group
Mobile: +97150 788 0588
E-Mail: harvey.boulter@portongroup.com<mailto:harvey.boulter@portongroup.com>

This email contains confidential information and is intended only for the intended recipient. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

--- Scanned by eMail Protection Services
<http://www.harding-group.com/eps.html> ---

EXHIBIT I

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. Sherry Klein Heitler
Administrative Order

3M COMPANY,

Plaintiff,

- v -

INDEX NO.: 651708/11

HARVEY BOULTER, PORTON CAPITAL
TECHNOLOGY FUNDS, PORTON CAPITAL, INC.,
LANNY DAVIS, LANNY J. DAVIS & ASSOCIATES,
PLLC, and DAVIS-BLOCK LLC,

Defendants.

Administrative Order:

By letter dated July 22, 2011, counsel for plaintiff requests that this action, now pending before I.A.S. Part 61 (Singh, J.), be transferred to the Commercial Division pursuant to Uniform Rule 202.70 (e). Defendants Harvey Boulter, Porton Capital Technology Funds, and Porton Capital, Inc. oppose this request.

It is the plaintiff's contention that this action meets the standards for assignment to the Commercial Division pursuant to Uniform Rule 202.70 (a) and (b) (1), because it seeks damages in excess of \$150,000 and because the principal claims involve business torts and statutory and common law violations alleged to arise out of business dealings. However, the principal claims do not "arise out of business dealings (e.g., sales of assets or securities; corporate restructuring; partnership, shareholder, joint venture, and other business agreements . . .)." Uniform Rule 202.70 (b) (1). The complaint alleges that, during settlement negotiations in a pending action in the High Court of Justice in London, England, defendants engaged in blackmail and defamed the plaintiff, which damaged its reputation and interfered with prospective business relations. These claims do not arise out of business dealings, but rather, arise out of the litigation pending in London.

Further, it is not clear as to whether this action meets the \$150,000 monetary threshold for assignment to the Commercial Division in New York County, as the complaint is devoid of any monetary demand.

Accordingly, plaintiff's request to transfer this action into the Commercial Division is denied.

Dated: July 27 2011

ENTER:  _____, A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION