

December 15, 2021

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RE: David Dagon and Global Cyber Legal LLC

I represent Global Cyber Legal LLC (“GCL”) and their client, David Dagon (“Clients”). I have been retained to represent both Clients with regard to past and future legal fees associated with the United States Department of Justice (“DOJ”) Special Counsel investigation and a related civil lawsuit. I write this letter to provide some background about these legal matters, clarify some issues that have been of concern to various entities, and to finalize an agreement for one or all of the recipients of this letter to assume responsibilities for Mr. Dagon’s legal fees incurred as a result of his employment at Georgia Tech.

Background

Mr. Dagon is a Term Research Engineer II at the Georgia Institute of Technology (“Georgia Tech”). He retained GCL to represent him in connection with the criminal investigations being conducted by the DOJ Office of Special Counsel and associated grand juries regarding the 2016 FBI and DOJ investigations into Russian interference in the 2016 Presidential election and the Trump campaign. Specifically, Mr. Dagon retained well-known and respected cybersecurity and white collar criminal attorneys Mark D. Rasch and Jody R. Westby.

Part of the DOJ investigations discussed above focus on what role various cybersecurity researchers had in collecting, analyzing, or disseminating findings about the purported “Trump-Russia” covert communications that were given to DOJ and other Government agencies. The Special Counsel’s investigation involved some of the top cybersecurity researchers in America, including Dr. Manos Antonakakis (PhD’12), Associate Professor in the School of Electrical and Computer Engineering (ECE) and an adjunct faculty member in the College of Computing (CoC) at Georgia Tech; Dr. Angelos Keromytis, Professor, John H. Weitenauer Jr. Chair, and Georgia Research Alliance (GRA) Eminent Scholar at the Georgia Institute of Technology; David Dagon, Term Research Engineer II, School of Electrical and Computer Engineering at Georgia Tech; Dr. L. Jean Camp, Professor of Informatics at Indiana University; and others.

In April 2020, FBI agent Tim Fuhman contacted David Dagon regarding the Special Counsel’s investigation. Mr. Dagon emailed Mr. Fuhman and requested that he contact his supervisor, Manos Antonakakis (“Manos”). By May 2020, Georgia Tech’s legal office had a request from Special Agent Fuhman to interview David Dagon. Mr. Dagon talked to Kate Wasch, Lead Employment & Litigation Counsel for Georgia Tech, and asked about obtaining counsel; he was told to “wait and see” what happens. On July 6, 2020, Manos wrote to Georgia Tech’s General Counsel, Ling-Ling Nie, and Kate Wasch, and asked, “Hey Kate and Ling-Ling, Dave is looking for some advice. Can we please provide guidance to our researcher on how he should reply back to the DOJ investigator?”

In August, Mr. Dagon received a grand jury subpoena from the Special Counsel to Glomar Research, a small LLC Mr. Dagon set up and used for small, fast equipment purchases he needed for Georgia Tech projects. Mr. Dagon retained GCL within days of receiving the subpoena, noting to GCL that he wanted them to protect (a) his interests, (b) the interests of his research, (c) the integrity of the U.S. Government contracts he was instrumental in bringing to Georgia Tech, (d) the continued funding of this research, and (e) the reputation of Georgia Tech as the nation’s top university in cybersecurity research.

GCL promptly reached out to Georgia Tech’s legal office on August 11, 2020 and had a call with Kate Wasch on August 17, 2020. On September 16, 2020, GCL raised the issue of Georgia Tech paying Mr. Dagon’s legal fees with Kate Wasch and on October 7, 2020, sent her a Third Party Payor Agreement. From this point forward, GCL has continually reached out to Georgia Tech and the Office of the Attorney General seeking payment of legal fees.

Subpoena
to counsel
referred
GCL

Since the initial subpoena was issued, Mr. Dagon received another subpoena from the Special Counsel for testimony, which culminated in several days of meetings with the Special Counsel's team and several days of grand jury testimony. The Special Counsel's investigation continues to this date; two indictments have been issued. The Special Counsel has advised Mr. Dagon that he will need to testify in at least one of these trials, which is currently expected to begin in July 2022.

Around the same time as the indictments, the identities of Messrs. Antonakakis and Dagon were revealed to the attorneys in the civil litigation filed by Alfa Bank, Russia's largest private bank, which is owned by oligarchs. Importantly, on September 23, 2021, GCL advised Georgia Tech that Mr. Dagon had received subpoenas for testimony and document production in this "John Doe" Florida Litigation, *Alfa Bank v. Doe*. This civil lawsuit presents many similar issues to the DOJ investigation discussed above.

GCL notified Mr. Christian Fuller, Senior Employment and Litigation Counsel at Georgia Tech, of the subpoenas and indicated that Mr. Dagon desired for GCL to also represent him in the civil matter. GCL was agreeable to doing so. Significantly, Mr. Fuller also indicated that his office preferred that GCL continue representing Mr. Fuller in connection with the civil subpoenas. *See* Exhibit 1.

After further correspondence between Mr. Fuller and GCL, Mr. Fuller informed GCL that it should reach out to the Georgia Department of Administrative Services ("DOAS") regarding payment for past and future payments associated with the DOJ investigation and the civil matter.

Clients have now retained the undersigned to ensure that they are equitably compensated and protected. Our Clients are fully entitled to reimbursement for reasonable past representation and future occurrences. I have reviewed all of the written correspondence between GCL and interested parties and write to clarify a few main points.

Mr. Dagon was acting within the scope of his employment

Initially, I understand that there was some question about whether Mr. Dagon was acting within the scope of his employment with Georgia Tech when he conducted the research at issue in these matters. Mr. Dagon was a Term Research Engineer II at all relevant points. Both the DOJ investigation and the civil lawsuit relate directly to activities performed by Mr. Dagon during the scope of his employment.

On September 28, 2020, GCL provided a detailed Memorandum to Georgia Tech outlining how these activities were also authorized *and directed* by other State agents. *See* Exhibit 2. Briefly, this Memorandum highlights how Mr. Dagon performed much of his work in preparation for and in fulfilment of the DARPA contract Mr. Dagon helped secure for Georgia Tech. Indeed, Mr. Dagon was presented with an award from Georgia Tech for "initiating team research to create a new thought leadership during the period of January 1, 2015 to December 31,

2017.” Not coincidentally, this period of time coincides with the time period that is being looked at by the DOJ investigation.

After review of this Memorandum, the General Counsel of Georgia Tech, Ling-Ling Nie, acknowledged our Clients’ position that this was within the scope of Mr. Dagon’s employment. *See Exhibit 3.* Given that GCL’s information about the scope of employment “impact[s] other decisions going forward, particularly attorney representation for David” Dagon, Ms. Nie directed GCL to contact Mr. Webb regarding payment.

We trust from all of this correspondence that the initial threshold question of scope of employment has been resolved. However, I am happy to speak with you in more detail if you have any additional questions.

Mr. Dagon is not under federal investigation

Second, Mr. Dagon is not and has never been subject to indictment and was never a target of the grand jury investigation. I understand that, at various points, the DOAS General Liability Agreement has been cited as stating that reimbursement will occur for “reasonable legal fees and other expenses incurred in the successful defense of a criminal action directly related to the performance” of the employees’ duties. CGL-401-14-21.

To ensure that all of his interests were fully protected, Ms. Westby and Mr. Rasch sought—and were granted—*full statutory immunity* for Mr. Dagon by the federal District Court in connection with the Special Counsel investigation. This constitutes a successful defense of the criminal matter. This case is simply not one where CGL-401-14-21 would apply to bar any sort of payment before an “exoneration.” Given the nature of the investigations, exoneration in the normal sense of being found not guilty at a trial in the matter, or having the charges dismissed, simply will not occur in a grand jury situation. Indeed, Mr. Dagon has full statutory immunity, which ensures he will not face criminal charges. And, as described below, pursuant to the Third Party Payor Agreement, Mr. Dagon has agreed he would return all reimbursed legal fees if he were convicted of any crimes related to these matters.

There has been extensive correspondence amongst the interested parties regarding this point. Because I do not seek to simply rehash what has already been said, I will just offer to speak with anyone with additional questions about this opinion. But the wording of the DOAS policy certainly does not preclude reimbursement of Mr. Dagon’s legal fees.

Payment of fees does not violate the Georgia Constitution

Finally, I understand that the Attorney General’s Office has looked into the question of whether the payment of these legal fees would violate the gratuities clause of the Georgia Constitution, Art. III, § VI, Para. V(a). On January 29, 2021, GCL sent Mr. Webb a detailed Memorandum explaining how the payment of the attorneys’ fees is legal and does not violate the gratuities clause. *See Exhibit 4.* Briefly, the reimbursement of legal fees incurred in the ordinary

course of an employee's work is not a "special reward" or "gift" to the employee whose legitimate and necessary expenses are reimbursed. And although Mr. Dagon has been granted full immunity, the third-party payer agreement expressly provided that Mr. Dagon would return any legal fees paid if he is found guilty of any criminal conduct with respect to the grand jury investigation.

On February 23, 2021, GCL notified Ms. Nie that it understood Mr. Webb had determined there was no issue with the gratuities clause and Georgia Tech's payment of GCL legal fees. Three days later, Ms. Wasch wrote GCL and offered to pay \$46,462.50 of GCL's fees, which she calculated to be at about \$150/hour, based on an earlier hours report.

The fees of Mr. Dagon's counsel are reasonable

GCL has rightly rejected this offer as insufficient. GCL's fees for representation of Mr. Dagon are \$350/hour, providing a nice discount to the State, as their regular rate is \$595/hour, and the retainer agreement with Mr. Dagon was discounted to \$395/hour. These fees are imminently reasonable as to both rate and number of hours, especially considering the complexity of this matter and the duration of representation -- nearly 18 months of legal services have been provided to Mr. Dagon.

Special Counsel investigations are fundamentally different from other criminal investigations, involve multiple agencies and departments, and present highly political and complex legal and factual issues. Indeed, they are more complex than other federal criminal investigations conducted by DOJ. As one commentator noted with respect to fees in Independent Counsel ("IC") investigations:

There are several reasons why these legal fees are so high. First, officials often face multiple investigations regarding the same allegations....Second, in responding to investigations that are so easily politicized, government officials naturally want to retain white collar criminal defense lawyers who have expertise in dealing with politics. These lawyers are generally able to command high fees. ... A former IC has stated that "lawyers must be hired, even by the most insignificant witnesses. The dire consequences of merely misspeaking, which could result in a false-statement charge, are high, given the [IC's] vast powers." Many others have noted that IC investigations often become politically charged. In such an atmosphere, it is not surprising that even "mere witnesses" feel the need for someone to look out for their best interests.¹

The Special Counsel investigation has run longer than the Mueller investigation. It has been multifaceted and involved not only Mr. Dagon and other cybersecurity researchers, but also swept in the entities from which Georgia Tech acquired the data used in their research. The hours

¹ Kathleen Clark, "Paying the Price for Heightened Ethics Scrutiny: Legal Defense Funds and Other Ways That Government Officials Pay Their Lawyers," 50 Stan. L. Rev. 65, 1997 (emphasis added), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=110533.

expended and rates charged are not only commensurate with the complexity and difficulty of the investigation, but also with the sensitivity and political nature of the Special Counsel investigation, the number of moving parts, and the need to protect the integrity not only of Mr. Dagon, but of the research and Georgia Tech from allegations, among others, that data was altered, manipulated or falsified and that it was unlawful for this research to be presented to the U.S. Government – allegations which were wholly fictitious.

Indeed, with respect to the indictment resulting from the Special Counsel investigation (*United States v. Sussmann*, Dkt. No. 1:12-CR-00582-CRC, D. D.C.), the prosecutor advised the court on December 7, 2021, that “the Government has produced to date more than 91,000 pages in unclassified discovery and more than 5,000 pages in classified discovery.” The Special Counsel has told Mr. Dagon that he expects to call him to testify at this trial. Suffice it to say, this investigation is no “run of the mill” case.

This is not a “favor” that Mr. Dagon asks of his employer. It is clearly in the interest of the State of Georgia for persons interviewed in the Special Counsel investigation concerning information acquired in the course of performing their State duties to have their attorney’s fees reimbursed.

As I believe all agree, GCL is well-qualified to represent Mr. Dagon’s interests, a point that I do not believe any on this letter have disputed. Further, I do not believe the Georgia Attorney General has proffered an individual that it believes could handle this representation as efficiently and effectively. And there are issues of, *inter alia*, privilege and waiver that would likely prevent the Georgia Attorney General from representing Mr. Dagon.

I am also troubled by the precedent that Georgia’s reticence to stand behind its personnel will set if this matter becomes public. The payment of Mr. Dagon’s past and future fees would be consistent with how other states have treated similar cases. The University of Indiana retained outside counsel to quash a similar civil subpoena on behalf of Professor L. Jean Camp. That representation was successful. *See Alfa-Bank v. Doe*, 171 N.E.3d 1018 (2021). The University of Indiana similarly retained separate outside counsel to represent Prof. Camp in connection with the Special Counsel investigation and both teams are still engaged and being paid by the University of Indiana.

I struggle to distinguish the almost factually-identical situation involving Ms. Camp with the State’s treatment of Mr. Dagon. I do not believe it would behoove anyone for this situation to be made public, but I also do not believe that the State’s unequal treatment of its professors compared to other states would be a good look for this State. At the very least, I worry about this having a chilling effect on recruitment and retention across all public institutions of higher learning in this state. At a minimum, it is inconsistent with principles of academic freedom and would likely result in less rigorous cybersecurity research out of fear that more aggressive research may lead to personal liability or financial ruin. Indeed, we are aware of some cybersecurity students at Georgia Tech who have wondered whether they should “pull back” on their searches of data for fear it might be deemed political or controversial. In the current threat

environment, where the U.S. Government, every state government, and American industry is under attack from nation states or state-sponsored actors, discouraging students from learning about these events will likely cause them to turn to other academic institutions.

Conclusion

Our Clients have provided timely request for payment and have been diligent in those requests. GCL has provided a Third Party Payor Agreement to Mr. Webb. My understanding is that Mr. Webb proposed some limited changes, which were incorporated into the most recent version of this Agreement. *See Exhibit 5.* Our Clients have submitted reasonable hours and fees for both the civil and criminal matters, for which they should be paid, with agreement to similarly cover ongoing fees in both matters.

I trust that we can discuss any additional questions so that we can reach an amicable solution that works for all parties involved and serves to protect the interests of your organizations, Mr. Dagon, GCL, and the State of Georgia as a whole. Please reach out directly with any questions or concerns.

Sincerely,



Sam Olens

SSO/mas

EXHIBIT “1”

From: Fuller, Christian christian.fuller@legal.gatech.edu
Subject: RE: Dagon Representation
Date: October 7, 2021 at 5:21 PM
To: Jody R Westby westby@globalcyberlegal.com
Cc: Elizabeth Young EYoung@LAW.GA.GOV



Jody: Yes, we did say that it would be preferred your representation, but I was hoping we (GT) could have first negotiated any rates you will charge going forward.

Other local firms have offered to give a discounted (local) rate on this subpoena matter—we hope you and Mark will extend the same courtesy.

Also, on this civil matter, we would like to be kept abreast of the situation as it unfolds.

Look forward to receiving your invoice and us continuing to discuss compensation for your reasonable efforts.

Thanks again,

Christian

From: Jody R Westby <westby@globalcyberlegal.com>
Sent: Thursday, October 7, 2021 4:58 PM
To: Fuller, Christian <christian.fuller@legal.gatech.edu>
Cc: Elizabeth Young <EYoung@LAW.GA.GOV>
Subject: Re: Dagon Representation

Hi, Christian! I thought we agreed on the call that we would represent him. Attached is the letter we sent. My apologies, I should have sent you the copy immediately. No word back yet. We have also lined up local counsel and have the pro hac vice application. I am also preparing the accounting of fees to send you and will have that to you tomorrow.

Thank you.

Cheers,

Jody

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EXHIBIT “2”

GLOBAL CYBER LEGAL LLC

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Washington, DC 20007

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September 28, 2020

Kate Wasch, Esq.
Chief Counsel, Employment & Litigation
Office of Legal Affairs
Georgia Institute of Technology
760 Spring Street NW, Suite 324
Atlanta, Georgia 30332-0495

Dear Kate:

Thank you for your response to our inquiry whether Georgia Tech would agree to pay for David Dagon's legal fees with respect to the investigation being conducted by a D.C. grand jury on behalf of Connecticut United States Attorney John Durham ("the Durham investigation"). You state in your reply that:

It is not clear to me that the work David did was undertaken in his role as a GT employee. He may have used data to which he had access by virtue of his employment at GT, but the work was not part of his GT duties."

We hope, via this letter, to clarify any confusion regarding Georgia Tech's and Mr. Dagon's role and whether Mr. Dagon's actions were undertaken within the scope of Mr. Dagon's employment for Georgia Tech.

Background

At the outset, we note that Mr. Dagon was, at all relevant times, employed as a Research Scientist by Georgia Tech, specifically to conduct research and obtain funding in the areas of Internet attribution, IoT devices, and DNS research. Your own policies indicate that research faculty's "primary job responsibility involves leading, developing, and delivering the research, extension, and technology transfer programs of the Institute."

<http://policylibrary.gatech.edu/faculty-handbook/2.3.1-members-0>

This is precisely what Mr. Dagon has done in his job performance during his employment at Georgia Tech.

Mr. Dagon's work for Georgia Tech included the attribution work he did on the Mariposa botnet, for which Mr. Dagon received an award and commendation from then FBI Director Mueller, and for which the University released several press releases. In addition, Georgia Tech presented Mr. Dagon with an exceptional award for "Outstanding achievement in research program development, for initiating team research to create a new thought leadership platform during the period of January 2012 to December 2014." The award was accompanied by a generous cash

payment. Georgia Tech presented Mr. Dagon with yet another of these rarely bestowed awards for “Initiating team research to create a new thought leadership platform during the period January 1, 2015 to December 31, 2017” – *the exact period of time that is being examined by the Durham investigation.*

Work Performed by Mr. Dagon for Georgia Tech That is Subject to the Investigation

The work that Mr. Dagon did on attribution analysis of communications traffic, which relates to the current legal matter, involved research on the Democratic National Convention hack, the Advanced Persistent Threat-28 (APT-28) malware, analysis of potential attack traffic related to the 2016 election (including traffic between the Trump Organization, Spectrum Health, and Alfa Bank), and analysis of Yota phone communications traffic. This work is no less within the scope of Mr. Dagon’s employment than the work he did on the Mariposa botnet.

Indeed, much of this work was done in preparation for and in fulfillment of the obligations of the multi-million-dollar DARPA contract he helped bring to Georgia Tech (and about which the University similarly issued a press release). To suddenly decide that this attribution work was “not within the scope of Mr. Dagon’s employment” would, of course, put this funding at risk, and would similarly implicate any remedies or defenses the University may have under O.C.G.A. 50-21-25, not only with respect to the Durham investigation, but generally. In short, Mr. Dagon’s attribution research was not a frivolous pursuit, but was integral to the research he secured for Georgia Tech. Any assertion to the contrary is disingenuous.

As we noted in our previous call, when Mr. Dagon undertook a thorough review of work related to the investigation, which was performed from the end of 2016 forward, *he discovered that almost all of the initial work performed by him was on behalf of Georgia Tech under the DARPA contract: the work related to queries submitted by the U.S. Department of Justice (DOJ) through DARPA regarding Russian communications between Alfa Bank and the Trump organization and Mr. Trump’s use of a Russian Yota phone — the exact subject matter of the criminal Grand Jury subpoena that Mr. Dagon received from the Durham investigation.* The requests were sufficient to require Mr. Dagon and Prof. Antonakakis (“Manos”) to set up a file within the DARPA project called “DOJ” and a sub file called “Mueller” because they knew that these requests were coming from DOJ and being sent back (via DARPA) to DOJ and the Mueller investigation.

This is precisely what the Durham investigators are looking at – the work Mr. Dagon did under the DARPA contract on behalf of Georgia Tech. In particular, the research that Mr. Dagon conducted on DNS records starting in late 2016 and continuing through early 2017, and the research he conducted related to the Yota phone were always conducted as part of Mr. Dagon’s duties as a security researcher employed by Georgia Tech.

This work was in furtherance of his duties and obligations at Georgia Tech; it was for the benefit of Georgia Tech; and it was within the scope of his employment at Georgia Tech. In addition, his response to first the FBI/DOJ inquiries that were made through DARPA, and his later response to the grand jury subpoena and other investigative queries have always been within the scope of his employment and meticulously coordinated with his employer.

All of the initial meetings and discussions that Mr. Dagon held among security researchers and Internet service providers (ISPs) about the data that Georgia Tech would need to create a database for the analysis of DNS records and the methods that Mr. Dagon would use to analyze DNS records (not just related to the Trump Organization and Alfa Bank, but in general) were conducted on behalf of Georgia Tech. Indeed, Mr. Dagon's trip to the 2016 Messaging, Malware and Mobile Anti-Abuse Working Group (M3AAWG) meeting in Philadelphia, at which the initial discussions among researchers and ISPs took place regarding the DNC hack and analysis of traffic data, was a trip that was authorized and funded by Georgia Tech and was clearly within the scope of Mr. Dagon's employment.

Additionally, the queries against the database created under or in furtherance of the DARPA contract, including the specific queries made for or on behalf of the Department of Justice and/or its component agencies (including the FBI), as well as those made on behalf of the Department of Defense, were done as part of Mr. Dagon's work for Georgia Tech, and were within the scope of his employment. Mr. Dagon's work with respect to the Yota phones may also implicate grants that Mr. Dagon was instrumental in obtaining for Georgia Tech from other entities like the National Institutes of Standards and Technology (NIST), which related to the analysis of signatures and behavior of certain Internet of Things (IoT) devices. This was research for which Mr. Dagon was responsible for bringing in funds for Georgia Tech, and his associated research was conducted within the scope of Mr. Dagon's employment.

While Georgia Tech did not direct any specific inquiry or report, Mr. Dagon's DNS research in general – and the specific inquiries and analysis which are the subject of the Durham grand jury probe – are, and have always been, part of Mr. Dagon's work on behalf of Georgia Tech. Indeed, Georgia Tech benefits from – and has always benefited from – Mr. Dagon's work, as well as from the tremendous prestige, capabilities, and funding that Mr. Dagon has brought to Georgia Tech as a result of his world renown expertise and research, which are reflected in the award of the DARPA contract and the research which is the subject of the grand jury investigation.

This research is not something that Mr. Dagon undertook as a “frolic and detour” or for private commercial advantage. Indeed, as we discussed, even Mr. Dagon's use of the commercial entity “Glomar Research” was to conveniently purchase certain hardware for Georgia Tech research on behalf of the DARPA contract and his employer. Importantly, Mr. Dagon kept Manos and other officials at Georgia Tech apprised of his work, his research plans, and findings. There were ample opportunities for Georgia Tech to advise him during these months that this work was not something they wanted him to do or considered within the scope of employment. No one ever advised him of such. To the contrary, the insights gained from this work allowed Georgia Tech to select and price datasets for the DARPA project, making it all the more successful.

We have reviewed the DARPA contract that you provided (which was not the contract applicable to the DARPA work referenced in this letter), which lists Glomar Research as a subcontractor. This reinforces that Mr. Dagon's use of Glomar Research was not unrelated to his work for Georgia Tech and was done for the benefit of Georgia Tech.

Mr. Dagon has always treated his actions, both in conducting the research at issue and responding to the Durham investigation as being part of his responsibility as an employee of Georgia Tech. For example, on April 30, 2020, in an email to DOJ investigator Tim Fuhrman, following a conversation between Mr. Dagon and Fuhrman, Mr. Dagon stated:

“As we discussed, we’re required to work through the school’s liaison process. Prof. Manos Antonakakis, addressed above, is my co-PI on research projects and supervises my work in the lab....So can you briefly relay to Prof. Antonakakis the nature of your inquiry? He can then engage our university and federal liaison staff. You noted this concerns the general type of DNS information discussed in this public report:

https://justthenews.com/sites/default/files/2020-04/Ankura_AlfaBank_Res=earchAnalysis_Apr2020dh.pdf.pdf

....I suspect that your inquiry may be relevant to Georgia Tech, and our sponsored research projects.”

Clearly, in responding to the Durham investigation – the precise matter for which Mr. Dagon seeks reimbursement of legal fees – Mr. Dagon was acting as an employee of Georgia Tech and was deferring to his employer. A subsequent email from Manos to Mr. Dagon on June 16, 2020, stated:

“Just talked to the Dean and the consensus at GT is that we will not be doing anything to help DoJ unless legal documents are presented to us. GT legal will handle any subpoenas arriving to my or your mail boxes on this topic because they consider it a work-related issue. Both the GT lawyers and/or the local FBI folks are under the impression that subpoenas will not arrive to us because if DoJ wanted to reach that point they would have already.... We are under very strict communication guidelines when it comes to this issue. You do not talk to the DoJ investigator without the presence of a GT lawyer on the line. You forward to me and the Chief of Police any new communication requests from DoJ in this subject and you do not correspond with them unless GT legal asks you to.”

On July 6, 2020, Manos sent an email to you and Ling-Ling and stated:

“Hey Kate and Ling-Ling, Dave is looking for some advice. Can we please provide some guidance to our researcher on how he should reply back to the DoJ investigator?”

In sum, Mr. Dagon’s entire response to the Durham investigation has been coordinated with your office, and has been as an agent and representative of Georgia Tech. His seeking and obtaining private counsel were within his personal right and with the intention to minimize unwanted publicity or attention to Georgia Tech. The fact that the issues being investigated by the Durham prosecutors are wholly without merit – both factually and legally – enhance the argument that Mr. Dagon’s lawful research was within the scope of his employment, and his response to the investigation is similarly within that scope.

Indeed, it was for this reason that we both agreed that a representative of your office should be present if Mr. Dagon decided to present evidence to the Durham investigators, and that any statements he made would be as a representative of his employer. Thus, Mr. Dagon's work which is the subject of the Durham investigation, his response to subpoenas, and his response to the Durham investigation in its entirety is work performed within the scope of Mr. Dagon's employment at Georgia Tech.

Mr. Dagon's Request for Legal Fees

Mr. Dagon's request for the university to pay his legal fees associated with this matter is not out of the ordinary. Prof. L. Jean Camp of Indiana University, for example, who has received a subpoena for the criminal grand jury investigation and the pending civil litigation filed by Alfa Bank, is being represented by counsel paid for by the university. Similar action is not without precedent in Georgia.

O.C.G.A. § 45-9-21(c) provides an example of a statute which permits a public entity to reimburse a government employee the costs and expenses associated with responding to criminal investigations that arise within the scope of their employment. *Bd. of Comm'rs v. Saba*, 278 Ga. 176, 598 S.E.2d 437 (2004)

In other cases, Georgia Courts have held that government agencies either had the authority to, or the legal requirement to, reimburse employees' legal expenses if those expenses were incurred in connection with their duties as government employees. Accord, *Gwinnett Cty. v. Blaney*, 275 Ga. 696, 572 S.E.2d 553 (2002) (espousing the general rule that the legal expenses of a government employee should be reimbursed if the employee was acting within the scope of their employment).

As the Court noted in *Heiskell v. Roberts*, 342 Ga. App. 109, 109, 802 S.E.2d 385, 387 (2017) "when "an official, acting in his official capacity, is required to hire outside counsel to assert a legal position the local government attorney ... will not assert, and the official is successful in asserting his or her position, the local government must pay the official's attorney fees." *Gwinnett County v. Yates*, 265 Ga. 504, 508 (2) (458 SE2d 791) (1995). "This is not because of any bad faith or improper conduct on the part of the local government, in this case, the county. Rather, attorney fees in this instance are simply an expense of government operation." *Gwinnett Cty. v. Yates*, 265 Ga. 504, 508-09, 458 S.E.2d 791, 795 (1995)

In this instance, it is doubtful that either Georgia Tech counsel or the Georgia Attorney General would be capable of representing Mr. Dagon in connection with the Durham investigation due to issues of privilege, waiver, and information sharing inherent in the nature of the Durham investigation. The Attorney General would be put in the untenable position, as a law enforcement entity, of having to assert Mr. Dagon's right not to testify before a federal grand jury – the assertion of which right could rightly serve the interests of Georgia Tech. Thus, it serves the interests of Georgia Tech and the State to have Mr. Dagon represented by private counsel with the concomitant authority to assert certain privileges which might be waived with representation provided by the Attorney General.

It is also important to note that should Georgia Tech assert that Mr. Dagon's work within the scope of the investigation was not within the scope of his employment, there might be serious,

adverse consequences in the event that Georgia Tech is civilly sued by entities like Alfa Bank, which has already filed two civil "John Doe" lawsuits in Florida and Pennsylvania. Alfa Bank has issued dozens of subpoenas to individuals (including to numerous cybersecurity researchers) and institutions in an effort to attach institutions and names to the various "John Doe's" in the complaint. A position that Mr. Dagon was not acting as an employee of the State might be used to vitiate any immunity that Georgia Tech could otherwise assert in a civil case, and such a position is inconsistent with the facts. Mr. Dagon was and is an employee of Georgia Tech with the responsibility of researching precisely the kind of activities he had undertaken.

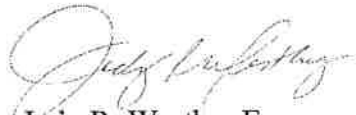
We are happy to address any concerns that you may have in this regard, but it seems clear to us that a person employed as a security researcher who conducts security research for his employer, and also brings millions of dollars in research grants to the school from this research, is acting within the scope of his employment in doing so. We hope this information clarifies the issue and that Georgia Tech will agree to assume responsibility for his legal fees.

Per our earlier discussion, we have attached a draft Third Party Payor Agreement, which is commonly used when an employer assumes responsibility for legal fees of one of its employees. Thank you for your attention to this matter. We look forward to your response.

Yours truly,



Mark D. Rasch, Esq.
Admitted in NY MA MD



Jody R. Westby, Esq.
Admitted in DC, PA, CO

EXHIBIT “3”

From: Nie, Ling-Ling linglingnie@gatech.edu
Subject: Georgia Tech
Date: November 4, 2020 at 5:34 PM
To: Jody R Westby westby@globalcyberlegal.com, Mark Rasch rasch@globalcyberlegal.com
Cc: Wasch, Kate kate.wasch@legal.gatech.edu, Bryan Webb bwebb@law.ga.gov



Hi Jody and Mark:

I apologize for the delay in getting back to you on this, and appreciate your patience as we worked through it on our end. Thank you for providing your chronology of events and additional details, which were very helpful and informative.

After further review, we more clearly understand now the work performed by David Dagon that is at issue here and your position that it was performed within the scope of his employment. Given that this would impact other considerations going forward, particularly attorney representation for David, I am copying Bryan Webb, Deputy Attorney General, on this e-mail so that you can connect with him for further discussion on that point.

With kind regards,
Ling-Ling

EXHIBIT “4”

GLOBAL CYBER LEGAL LLC

4501 Foxhall Crescents NW
Washington, DC 20007 USA

Phone: + 1.202.255.2700

Fax: +1.202.337.0063

January 29, 2021

Bryan Webb, Esq,
Deputy Attorney General
Office of Attorney General Chris Carr
Government Services & Employment
State of Georgia
40 Capitol Square SW
Atlanta, GA 30334

Re: Reimbursement of Legal Expenses
Georgia Tech Employee David Dagon

Dear Bryan:

Thank you for taking my call on Wednesday. As you know, Jody Westby and I represent Georgia Institute of Technology (“Georgia Tech”) employee David Dagon in connection with an ongoing investigation being conducted by Connecticut United States Attorney and current Special Counsel John Durham into allegations made of a computer connection between the Trump Organization and entities in the Russian Republic in the lead up to the 2016 election. Part of the investigation focuses on the role various cybersecurity researchers may have had in collecting, analyzing, or disseminating information about the so-called “Trump-Russia” connection that was given to the Department of Justice. The researchers included David Dagon, a Research Scientist at Georgia Tech and Dr. L. Jean Camp, Professor of Informatics at the Indiana University School of Informatics and Computing (among others).

Global Cyber Legal has diligently represented Mr. Dagon in connection with this grand jury investigation, and have successfully protected his interests. We will continue to do so.

Payment of Legal Fees as Benefit or Gratuity

I understand that your office is currently looking at a question of whether, under the provision of Art. III, § VI, Para. V(a) of the Georgia Constitution, Georgia Tech would have the lawful authority to reimburse Mr. Dagon for the legal fees he has expended. The question is whether the payment of legal fees by Georgia Tech to or on behalf of its employee David Dagon, would constitute a “gift,” “gratuity,” or “additional compensation” under the Constitution¹ or whether such payment would serve as a benefit to Georgia Tech.

¹ As the Georgia Supreme Court noted more than 70 years ago in interpreting this provision in *McCook v. Long*, 193 Ga. 299, 303, 18 S.E.2d 488, 490, 1942 Ga. LEXIS 382, *9:

In interpreting the provisions of a constitution, it is to be presumed that the words therein used were employed in their natural and ordinary meaning. *Epping v. Columbus*, 117 Ga. 263 (43 S. E. 803). The Merriam edition of Webster's International Dictionary gives the

This “gratuities” clause provides that:

a) Except as otherwise provided in the Constitution, (1) the General Assembly shall not have the power to grant any donation or gratuity or to forgive any debt or obligation owing to the public, and (2) the General Assembly shall not grant or authorize extra compensation to any public officer, agent, or contractor after the service has been rendered or the contract entered into.

Ga. Const. Art. III, § VI, Para. VI.

As we discussed, among the individuals who have been swept up in the Durham investigation is Indiana University Professor L. Jean Camp. When Professor Camp first received notice of the Durham investigation, Jacqueline Simmons, the Vice President and General Counsel of the University of Indiana agreed immediately to pay directly for Professor Camp’s outside legal counsel. She at once recognized the benefit to the University and to the State of Indiana of Professor Camp’s research that was the subject of the Durham investigation, and also that the successful defense of the charges would reflect well upon the University’s entire research community. If you have any questions about this, I highly recommend that you contact GC Simmons at (812) 855-3312 or by email to simmonja@iu.edu. As you know, the University of Indiana, like Georgia Tech, is a public university, with the same duties to protect the public fisc.

It is our position that the State of Georgia is not restricted from similarly paying Mr. Dagon’s legal fees. The activities at issue in the investigation were performed by Mr. Dagon within the scope of his employment by Georgia Tech. His research has been awarded and recognized by the Federal Bureau of Investigation and law enforcement around the globe, bringing significant recognition to Georgia Tech and helping to bolster its reputation as a world class institution for computer science and electrical engineering. Moreover, the specific research at hand involved a work performed under a \$20+ million Department of Defense contract that Mr. Dagon helped bring to the University and serves as co-principal investigator.

Thus, a successful defense of Mr. Dagon in the grand jury investigation has benefitted Georgia Tech and the State of Georgia by protecting the reputation of its educational institution and the Department and ensuring the continued accessibility of federal funding to the Program. Such representation was necessary and essential to these benefits. It is important to note that the entire cybersecurity research community, which is rather small, is watching this matter closely. The University of Indiana’s immediate backing of L. Jean Camp and payment of her legal fees has earned it praise in this community. If Mr. Dagon’s fees are not similarly paid, Georgia Tech will likely pay a price in recruitment of researchers and professors and its reputation will likely suffer.

following definitions of the word "gratuity," omitting those meanings classed by the authors as obsolete and rare: "2. Something given freely or without recompense; a gift. 3. Something voluntarily given in return for a favor or now esp. a service; hence, a bounty; a tip; a bribe." The later editions of Bouvier do not give a definition of the word gratuity, but in the earlier ones a gratuity is defined to be "a present, a recompense, a free gift." Compare *Davis v. Morgan*, 117 Ga. 504 (43 S. E. 732, 61 L. R. A. 148, 97 Am. St. R. 171).

Accord, *Garden Club of Ga. v. Shackelford*, 266 Ga. 24 (1) (463 SE2d 470) (1995); *DeKalb County v. Perdue*, 286 Ga. 793, 796, 692 S.E.2d 331, 334, 2010 Ga. LEXIS 267, *7, 2010 Fulton County D. Rep. 870.

The reimbursement of legal fees incurred in the ordinary course of an employee's work is not a "special reward" or "gift" to the employee whose legitimate and necessary expenses are reimbursed. By way of analogy, a private employer's reimbursement of an employee's legal expenses incurred in the course of employment is deductible to the employer as a business expense, but not includable as income to the employee, precisely because the employee has received no "benefit" from the business expense. This is true under circumstances, like those at hand, where legal expenses are incurred for actions which arose within the scope of employment that were directly related to Mr. Dagon's job function.

Moreover, such an interpretation is consistent with the provisions of O.C.G.A. 45-9-1 which provides:

(a) In addition to any other compensation which may be paid to an officer, official, or employee of any agency, board, bureau, commission, department, or authority of the executive, judicial, or legislative branch of government of this state, each such agency, board, bureau, commission, department, or authority is authorized, in its discretion, to purchase policies of liability insurance or contracts of indemnity or to formulate sound programs of self-insurance utilizing funds available to such agency, board, bureau, commission, department, or authority, insuring or indemnifying such officers, officials, or employees to the extent that they are not immune from liability against personal liability for damages arising out of the performance of their duties or in any way connected therewith. Such policies of liability insurance, contracts of indemnity, or programs of self-insurance may also provide for reimbursement to an officer, official, or employee of any agency, board, bureau, commission, department, or authority of this state for reasonable legal fees and other expenses incurred in the successful defense of any criminal proceeding, including, but not limited to, any criminal cause of action, suit, investigation, subpoena, warrant, request for documentation or property, or threat of such action whether formal or informal where such action arises out of the performance of his or her official duties. In addition, in the case of an officer, official, or employee who is required to maintain a professional license, such reimbursement may also be provided for legal fees and other expenses so incurred in the successful defense of a charge arising out of the performance of his or her official duties in proceedings before a professional licensing board, disciplinary board or commission, or other similar body. Legal fees and other expenses shall be subject to adjustment by and the approval of the Attorney General.

Ga. Code Ann. § 45-9-1 (West) (emphasis added).

In *Key v. Georgia Dep't of Admin. Servs.*, 340 Ga. App. 534, 539, 798 S.E.2d 37, 42 (2017), the Court noted that "the legislature's stated intent ... was to protect state employees against personal liability based on their conduct while performing their jobs." Whether that protection is provided through State paid insurance or by the State directly, the payments are clearly not a gift under the gratuities provision. If the State is authorized under the Constitution to incur an expense related to purchasing insurance or to self-insure to reimburse the expenses of an employee related to attorney's fees and expenses relating to the defense of criminal proceedings arising out of the performance of that employees' official duties, there is no reason to believe that the direct payment of these same expenses by the State should be considered any more of a "gift" or "gratuity" under the Constitution. The payment of legal fees and expenses - whether

paid by insurance or directly -- is simply not a gift or gratuity to the employee. Were this not the case, then O.C.G.A. 45-9-1 which, by statute authorizes such payments, would not survive constitutional scrutiny.

Our additional understanding of Georgia law is that, if the State (or its agency or subdivision) receives a “substantial benefit” from the proposed payment, the payment is not a gratuity. *Smith v. Board of Comm'rs*, 244 Ga. 133, 259 S.E.2d 74, 1979 Ga. LEXIS 1149; *McLucas v. State Bridge Bldg. Auth.*, 210 Ga. 1, 11 (77 SE2d 531) (1953) (quoting *Georgia v. Cincinnati So. Ry.*, 248 U. S. 26 [(39 SCt 14, 63 LE 104)] (1928)); cited in *Avery v. State of Ga.*, 295 Ga. 630, 633, 761 S.E.2d 56, 60, 2014 Ga. LEXIS 547, *8, 2014 WL 2925147; *Accord, Smith v. Fuller*, 135 Ga. 271 (69 S. E. 177, Ann. Cas. 1912A, 70). While Mr. Dagon’s legal expenses are not, technically speaking, an expense OF the State of Georgia, they are an expense incurred for the benefit of the State of Georgia, and, in our opinion, not a personal gratuity or gift.

Indeed, many states either require or permit reimbursement of employee criminal defense legal expenses for public sector employees if such expenses are incurred as a result of their employment. See KY. REV. STAT. ANN. §§ 63.070-63.075 (West 2006); LA. REV. STAT. ANN. § 13:5108.3(B) (2014); MISS. CODE ANN. § 25-1-47 (2010); N.J. STAT. ANN. §§ 18A:12-20, 18A:16-6.1, 40A:14-155 (West 2014); N.Y. PUB. OFF. LAW § 19(2)(a); PA. R.J.A. No. 1922; TENN. CODE ANN. § 8-46-205 (2014)(impeachment proceedings); UTAH CODE ANN. § 52-6-201(1); VA. CODE ANN. § 51.1-124.28 (2013). For example, the New York Public Officers Law provides in relevant part that:

... it shall be the duty of the state to pay reasonable attorneys’ fees and litigation expenses incurred by or on behalf of an employee in his or her defense of a criminal proceeding in a state or federal court arising out of any act which occurred while such employee was acting within the scope of his public employment or duties upon his acquittal or upon the dismissal of the criminal charges against him or reasonable attorneys’ fees incurred in connection with an appearance before a grand jury which returns no true bill against the employee where such appearance was required as a result of any act which occurred while such employee was acting within the scope of his public employment or duties unless such appearance occurs in the normal course of the public employment or duties of such employee.

NY CLS Pub O § 19 (emphasis added).

Similarly, UTAH CODE ANN. § 52-6-201(1). provides:

If a state grand jury indicts, or if an information is filed against, an officer or employee, in connection with or arising out of any act or omission of that officer or employee during the performance of the officer or employee’s duties, within the scope of the officer or employee’s employment, or under color of the officer or employee’s authority, and that indictment or information is quashed or dismissed or results in a judgment of acquittal, . . . that officer or employee shall be entitled to recover reasonable attorney fees and court costs necessarily incurred in the defense of that indictment or information from the public entity.

New Jersey has general statutes permitting reimbursement of government employees and a specific statute with respect to reimbursing the criminal legal expenses of employees of educational institutions. N.J. State Ann. § 18A:16-6.1 provides:

Should any criminal or quasi-criminal action be instituted against any [officer or employee of a board of education] for any such act or omission and should such proceeding be dismissed or result in a final disposition in favor of such person, the board of education shall reimburse him for the cost of defending such proceeding, including reasonable counsel fees and expenses of the original hearing or trial and all appeals. No employee shall be entitled to be held harmless or have his defense costs defrayed as a result of a criminal or quasi-criminal complaint filed against the employee by or on behalf of the board of education.

Georgia law expressly provides for the purchase of insurance, contracts of indemnity, or self-insurance programs to achieve these same purposes, and the New York and other statutes reflect the prevailing position that legal expenses incurred by virtue of a public employee's performance of their official duties are expenses of the sovereign, not of the employee, and that the payment or reimbursement of these expenses is not a "gift" or "special reward" to the employee.

These statutes have a few requirements -- that the investigation relate to activities that occurred within the scope of employment, and that the employee not be found criminally liable for the actions which were within the scope of employment. The Third Party Legal Services Payment Agreement that we have provided you contains similar provisions; Mr. Dagon would have to return any funds paid for legal fees if he is found is guilty of criminal conduct with respect to the grand jury investigation.

Mr. Dagon's Actions Were Within the Scope of His Employment

It is important to point out that the investigation -- by both the Special Counsel and the related grand jury -- relates directly to activities performed by various cybersecurity researchers (including Mr. Dagon) which were not only conducted within the scope of their employment and for the benefit of the State of Georgia, but also which were authorized and directed by agents of the State. This is not an example of an employee incurring legal expenses as a result of personal conduct (or misconduct), or indeed an employee engaging in misconduct at all.² If you desire,

² On Dec. 1, 202 former U.S. Attorney General William Barr announced that, on October 19, 2020 he had appointed John Durham, the U.S. attorney for the District of Connecticut, as a "special counsel" or "special assistant" to investigate the FBI's probe of Russian interference in the 2016 election pursuant to 28 U.S.C § 509, § 510 and § 515. The appointment letter (available at <https://int.nyt.com/data/documenttools/durham-special-counsel/7ff8599351b63336/full.pdf>) presumably continues US Attorney's Durham's prior investigative authority, and specifically notes that Durham "is authorized to investigate whether any federal official, employee, or any other person or entity violated the law in connection with the intelligence, counter-intelligence, or law enforcement activities directed at the 2016 presidential campaigns, Individual associated with those campaigns, and individuals associated with the administration of President Donald J. Trump, including but not limited to Crossfire Hurricane and the investigation of Special Counsel Robert S. Mueller, III." As it pertains to Georgia Tech employee David Dagon, the investigation focuses on his collection, analysis and possible dissemination of information from a database of DNS and other information security related records maintained by him and others at Georgia Tech which related to evidence of electronic connections between computer networks associated with the Trump Organization and other computer networks associated with the Russian Federation in the summer and fall of 2016.

we are prepared to provide detailed information as to why Mr. Dagon's activities which are the subject of the grand jury investigation are both within the scope of his employment, were authorized by his employer, and were for the benefit of the State of Georgia. Suffice it to say, through Mr. Dagon's efforts, Georgia Tech was able to attract and retain a multi-million-dollar research grant from the U.S. Department of Defense's Advanced Research Project Agency (DARPA), and to establish Georgia Tech as one of the leading research institutions with respect to information security and threats to national security.

We also want to reiterate that no one has done anything wrong or illegal. It may be a natural inclination for those who do not understand the collaborative role and interaction between government agencies and cybersecurity researchers to assume that any research into attacks on political parties or candidates would be outside the scope of employment, when in actuality looking at potential criminal conduct is very much what they do.

The Defense of the Durham Investigation Benefits the State of Georgia

While we represent Mr. Dagon and his interests, as we must under the applicable Canons of Ethics, our defense of the Mr. Dagon, an agent of the State of Georgia who was acting within the scope of his employment, necessarily and directly benefits the State of Georgia, and its preeminent research institution, the Georgia Institute of Technology. Without addressing the merits (or lack thereof) of the Durham investigation, the response to the grand jury investigation has been designed to protect the ability of Georgia Tech to continue to fulfill the goals and objectives of a highly sensitive DARPA contract, to expand funding for the work, and to continue to work with the federal government to disseminate critical national security information concerning cybersecurity threats to the nations' infrastructure. The defense of Mr. Dagon has served to protect the integrity and reputation of Georgia Tech, to enhance its ability to continue to attract high-quality information security researchers, professors, and others, and to maintain its well-earned reputation as a facility of higher education and research in the field of cybersecurity. Because the defense inures to the benefit of the State and Georgia Tech, it is similarly not a "gift" or "gratuity" to Mr. Dagon.

"Successful Defense"

The final issue is the fact that the Durham investigation is reportedly continuing, and therefore, as a technical matter, there has been no "acquittal" or final disposition of the case, and no final "no true bill" of Indictment issued with respect to Mr. Dagon.

A few observations here. First, we note that, pursuant to the Department of Justice Manual, Section 9-11.151, Mr. Dagon has been advised that he is NOT a target of the Durham investigation.³ He has been advised that his work with Georgia Tech is "within the scope of the grand jury's investigation," but that there is no evidence or accusation of criminal conduct by Mr. Dagon. The nature of the federal grand jury is such that it has broad investigative powers⁴

³ A "target" is a person as to whom the prosecutor or the grand jury has substantial evidence linking him or her to the commission of a crime and who, in the judgment of the prosecutor, is a putative defendant. Department of Justice Manual, Section 9-11.151

⁴ See, e.g., *Trump v. Vance*, 2020 U.S. Dist. LEXIS 150786, *35-36, __ F. Supp. 3d __, 2020 WL 4861980 ("the Supreme Court has stated that "[a] grand jury investigation is not fully carried out until every available clue has been run down and all witnesses examined in every proper way to find if a crime has been committed." *United States v. R. Enterprises, Inc.*, 498 U.S. 292, 297, 111 S. Ct. 722, 112 L. Ed. 2d 795 (1991) (quoting *Branzburg v. Hayes*, 408 U.S. 665, 701, 92 S. Ct. 2646, 33 L. Ed. 2d 626 (1972)). To this end, a grand jury can "investigate merely on

whether or not a crime has, in fact, been committed by anyone. Thus, the fact that there is a grand jury investigation does not imply that anyone -- much less Mr. Dagon -- committed any offense at all.

While a federal grand jury typically has a specified “term,” after which its authority expires, the prosecutor may convene a new grand jury to take over the investigative role. As such, the “investigation” does not “end,” and persons like Mr. Dagon are typically never notified of the results of the investigation, or indeed that the investigation has -- or has not -- ended. Federal Grand Jury secrecy rules, most notably Rule 6(e), F.R. Crim. P. may even restrict the ability of the prosecutor to tell someone that the case is over. As such, in a federal criminal investigation like that conducted by Mr. Durham, there is typically no “event” that triggers an “exoneration” or a successful completion of the case. While a prosecutor may notify a target of a grand jury investigation that their target status has ended (DOJ Manual, 9-11-155), nothing in the law or regulation contemplates having the Department of Justice, the special counsel, or the grand jury notify the public or witnesses that the investigation has been concluded without the bringing of charges.⁵

As a practical matter, there is no “exoneration.” The case simply concludes without anyone knowing it. Thus, in a very real sense, the case is “successful” for the person with information sought by a federal grand jury when nothing happens. Without disclosing information that is either privileged or covered by grand jury secrecy, it is our reasonable belief that, with respect to Mr. Dagon at least, the grand jury investigation has concluded.

Finally, I would again note that the Third-Party Legal Fees Payment obligates Mr. Dagon to repay any advanced or reimbursed fees if he is found guilty of criminal conduct with respect to the grand jury investigation. As a result, the State of Georgia would not be put in a position of having paid to Mr. Dagon any form of “gift” or “gratuity” in connection with the advancement or reimbursement of legitimate legal expenses incurred as a direct result of his actions within the

suspicion that the law is being violated, or even just because it wants assurance that it is not.” *Id.* at 297 (quoting *United States v. Morton Salt Co.*, 338 U.S. 632, 642-43, 70 S. Ct. 357, 94 L. Ed. 401, 46 F.T.C. 1436 (1950)); see also *People v. Doe*, 84 A.D.2d 182, 445 N.Y.S.2d 768, 777 (App. Div. 2d Dep't 1981). By conducting a “thorough and extensive investigation,” the grand jury advances society's interest in the fair enforcement of criminal laws. *Virag*, 430 N.E.2d at 1252 (quoting *Wood*, 370 U.S. at 392)”

⁵ Former A.G. Barr’s charge to Special Counsel Durham on October 19, 2020 did note that “In addition to the confidential report required by 28 C.F.R. 600.8(c) the Special Counsel, to the maximum extent possible and consistent with the law and the policies and practices of the Department of Justice, shall submit to the Attorney General a final report, and such interim reports as he deems appropriate, in a form that will permit public dissemination.” 28 CFR 600.8(c) provides that “At the conclusion of the Special Counsel’s work, he or she shall provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel.” The rules of grand jury secrecy continue to apply to the contents of such a report. *U.S. House of Representative v. United States DOJ* (In re Committee on the Judiciary), 951 F.3d 589, 445 U.S. App. D.C. 372, 2020 U.S. App. LEXIS 7471 (grand jury secrecy rules permit disclosure of special counsel report and notes to the House Judiciary committee as being a “judicial proceeding” under the meaning of the rule); *In re Application of Reporters Comm. for Freedom of the Press*, 2019 U.S. Dist. LEXIS 165910, 2019 WL 4707242 (no right of the public or of reporters to access to grand jury materials of special counsel). Indeed, federal rules may actually preclude the government from making known to the public even those portions of a special counsel report which do not rely on grand jury information. *United States v. Concord Mgmt. & Consulting LLC*, 2019 U.S. Dist. LEXIS 225949, *15, 2019 WL 7758635 (“government violated [D.C. Local Crim.] Rule 57.7 by making or authorizing the release of public statements that linked the defendants' alleged activities to the Russian government and provided an opinion about the defendants' guilt and the evidence against them”)

scope of his employment. Additionally, the fact that these funds are paid by the State prior to the final disposition of the matter subject to repayment should not make them a "gift" or "gratuity." See, e.g., 1973 Op. Att'y Gen. No. 73-87 (advancing travel funds to an employee rather than reimbursing after the fact not a gratuity under the Constitution), Accord, Op. Att'y Gen. U73-2 (January 5, 1973)(unofficial).

We hope this information is helpful and addresses your concerns. Please feel free to let us know if we can provide further information or clarification. Thank you for your attention to this matter.

Yours truly,



Mark D. Rasch, Esq.
Admitted in NY MA MD



Jody R. Westby, Esq.
Admitted in DC, PA, CO

EXHIBIT “5”

*Approved by Bryan
Webb, includes changes
as requested*

THIRD PARTY LEGAL SERVICES PAYMENT AGREEMENT

This Third Party Legal Services Payment Agreement ("Agreement") is made by and between Global Cyber Legal LLC ("COUNSEL"), a Delaware limited liability company, and Georgia Institute of Technology ("THIRD PARTY"), a Georgia public corporation and David Dagon ("CLIENT"), effective _____. THIRD PARTY, COUNSEL, and CLIENT shall be collectively referred herein as "the Parties." The Parties agree as follows:

1. Premises.

- 1.1 COUNSEL is Global Cyber Legal LLC, a law firm providing legal services on civil, criminal, and administrative matters.
- 1.2 CLIENT is David Dagon, a cybersecurity researcher who is, and at all applicable times has been, an employee of Third Party.
- 1.3 THIRD PARTY is Georgia Institute of Technology, a public research university and institute of technology in Atlanta, Georgia.
- 1.4 COUNSEL has been engaged by CLIENT to provide legal assistance ("Services") with respect to (a) a criminal grand jury investigation ("Investigation") and subpoenas for documents and testimony, (b) a request from the Assistant United States Attorney that CLIENT provide voluntary cooperation to the Investigation, and (c) expected subpoenas for documents and/or testimony in three civil actions filed by Russian entity AO Alfa Bank and its affiliates and subsidiaries ("Alfa Bank Civil Cases") involving the research performed by cybersecurity researchers, including CLIENT. The Investigation includes, but is not limited to the investigation conducted by the United States Department of Justice, under the supervision of United States Attorney for the District of Connecticut, John Durham, into the circumstances surrounding the FBI/DOJ and U.S. Government investigation of the relationship between Donald J. Trump, the Trump Organization, the 2016 Trump Campaign, Alfa Bank, and other entities associated with the Russian Federation. The Alfa Bank Civil Cases involve actions and subpoena enforcement actions in the United States, specifically *AO Alfa-Bank v. John Doe, et al.*, 15th Judicial Circuit of Florida, Civ. Action No. 50-2020-CA-006304-XXXX-MB; *AO Alfa-Bank v. John Doe*, Civil Action CI-20-04003, Court of Common Pleas, Lancaster County, Pennsylvania; *Mikhail Fridman v. Bean, LLC*, Dkt. No. 1:17-cv-02041-RJL, U.S.D.C., District of Columbia; and subpoena enforcement action against cybersecurity researcher L. Jean Camp, Monroe County (Indiana) Circuit Court IV, Cause No. 53C04-2009-MI-001613, and similar subpoenas have been issued to various cybersecurity researchers whose research, like that of CLIENT, may have touched upon Alfa Bank.
- 1.5 CLIENT has retained COUNSEL to represent him personally in connection with these matters which have arisen within the scope of CLIENT's employment with THIRD PARTY. COUNSEL does not represent THIRD PARTY. Although COUNSEL and THIRD PARTY are presently aligned in their interests, should their respective interests diverge, COUNSEL will represent CLIENT.
- 1.6 COUNSEL is required to inform and obtain consent from CLIENT regarding any Third Party agreements impacting the scope of representation by applicable ethics rules, ABA Model Rule of Professional Responsibility 1.8(f).

(11)

2. THIRD PARTY Payment Liability and Agreement to Pay.

THIRD PARTY hereby agrees to pay fees and costs incurred by COUNSEL in performing Services subject to the terms of this Agreement. THIRD PARTY's agreement to pay for Services under this Agreement is limited to COUNSEL's representation of CLIENT with respect to the matters set forth in Paragraph 1.4 of this Agreement. Fees and costs shall not exceed \$200,000 without written authorization by THIRD PARTY.

no longer valid

3. THIRD PARTY Indemnification and Right to Refuse Payment.

THIRD PARTY's liability and obligation to pay fees and costs for Services pursuant to this Agreement shall be null and void and it shall have right to indemnification from CLIENT for all fees and costs already paid in connection with Services if it is determined by a court of competent jurisdiction that CLIENT is guilty of criminal conduct with respect to the grand jury investigation.

4. Duties Owed to Client.

THIRD PARTY acknowledges and agrees that COUNSEL owes ethical duties to the CLIENT, and that COUNSEL represents CLIENT in these matters. All decisions regarding the legal strategy and status of the matter shall be discussed only with the CLIENT, unless the CLIENT gives COUNSEL express written permission to discuss with THIRD PARTY or Joint Defense Agreement permits such communications and disclosures.

5. Receipt of Confidential Information / No Waiver of Privilege.

In addition to the duties in Section 4., THIRD PARTY acknowledges that it will have no right to information regarding the representation, provided however that COUNSEL may, at their sole discretion, share confidential information with THIRD PARTY, and CLIENT may share confidential information with THIRD PARTY at any time particularly for purposes of termination for cause under Section 9. THIRD PARTY acknowledges and agrees that receipt of confidential client information shall not in any way waive any privilege or protection for Client's confidential information, secrets and attorney work-product. Nothing contained herein shall prevent the parties from entering into a separate agreement regarding the sharing of information in pursuance of a joint legal defense.

6. Attorneys' Fees.

Legal services will be provided by members of COUNSEL. Attorneys' fees are based on how much time is spent on the applicable matter and by whom. Billing will be in minimum time increments of one-tenth of an hour (.10) even if the actual time expended is less. Hourly rates will be based on Attorneys' then-current rates, but in no case shall exceed three hundred and fifty dollars (\$350) per hour, with travel time billed at one-half of the standard rate.

7. Costs.

THIRD PARTY will pay for reasonable costs associated with the representation that COUNSEL incurs in providing the Services. Any cost expected to be over \$2,000 must be approved by THIRD PARTY in advance.

8. Billing and Payment.

COUNSEL will bill THIRD PARTY monthly, which will include reasonable detail as to the services rendered. Statements are due within 30 days of receipt by THIRD PARTY PAYOR. THIRD PARTY shall promptly pay such fees and costs.

9. Termination and Withdrawal.

Any Party may terminate at any time upon written notice to the other Parties, subject to this Section. At termination, all charges are due according to Sections 6 and 7 of this Agreement. On giving or receiving a termination notice, COUNSEL shall cooperate as appropriate in transferring any applicable legal representation to such attorneys as directed by the CLIENT, and otherwise cooperating in winding up any applicable legal services; provided, however, that nothing in this Agreement shall limit the ability of CLIENT from arranging directly with COUNSEL for continued legal services. Unless COUNSEL otherwise agree in writing, on termination they will provide no further services and advance no further costs on behalf of the CLIENT. COUNSEL may terminate this Agreement at any time, subject to the Rules of Professional Conduct as to the termination regarding the CLIENT.

10. Disclaimer of Guarantee.

THIRD PARTY acknowledges that nothing in this Agreement constitutes a promise or guarantee about the outcome of the matter, and that COUNSEL are not making any such promises or guarantees, or otherwise any assurances as to outcome. It is impossible to determine in advance the amount of time that will be needed to complete any particular tasks or the total cost of the engagement, and if COUNSEL provides an estimate of time or costs, it is an estimate only and not a maximum or fixed fee.

11. Consent to Electronic Communication.

The Parties acknowledge that they intend to use common electronic communications technology, including, without limitation, email, cellular telephones, and file-sharing systems such as Google Drive or Drop Box. The current state of communications technology is such that using the aforesaid technology may place confidential or privileged information at risk of inadvertent disclosure. The Parties agree and acknowledge that the convenience and usefulness of such technology outweighs the associated risk, and consents to the use of such technology and assume the risks associated therewith. Additionally, any document related to this Agreement or the performance of the legal services may be transmitted by facsimile or other electronic means.

12. General.

This Agreement is binding on all Parties and each Party's successors, assigns, executors, and administrators. Each Party agrees to execute, with acknowledgment or certification as necessary, all instruments and agreements that are reasonably necessary or convenient in fulfilling the purposes of this Agreement. This Agreement: (1) may be executed in counterparts (including separate signature pages and electronically transmitted copies), each of which shall be deemed an original and all of which shall constitute one and the same agreement; (2) shall be construed under Georgia law without regard to the conflicts-of-law provisions thereof; (3) this Agreement contains the entire agreement among the Parties concerning the subject

matter of this Agreement; and (4) may be amended only by a written instrument signed by the Parties.

This Agreement shall be governed by the laws of the State of Georgia, and the parties agree that venue shall be proper in the Courts of Fulton County, or the United States District Court for the Northern District of Georgia.

If part of this Agreement is for any reason held to be invalid, illegal, or unenforceable, the invalidity, illegality, or unenforceability shall not affect any other provisions, and this Agreement shall be equitably construed as if it did not contain the invalid, illegal, or unenforceable provision.

Each Party executing this Agreement states that they have carefully read this Agreement and know its contents, that their duly authorized counsel has explained this Agreement to them to the extent that they have determined necessary or desirable, that they understand this Agreement, and that they have executed this Agreement voluntarily.

Each Party executing this Agreement on behalf of an entity or another person warrants that they have the power and authority to execute this Agreement on behalf of such entity or other person.

GLOBAL CYBER LEGAL LLC

By: _____

Jody R. Westby
Managing Principal

GEORGIA INSTITUTE OF TECHNOLOGY

By: _____

Ling-Ling Nie
General Counsel and Vice President for
Ethics and Compliance

DAVID DAGON

By: _____

David Dagon
Research Scientist for Georgia Institute of
Technology

From: Kinney, Angela D.
Sent: Fri, 17 Jun 2022 17:52:35 +0000
To: Winkles, Logan
Cc: Jody R Westby; westby@globalcyberlegal.com; rasch@globalcyberlegal.com; dagon@mx9.sudo.sh; Olens, Samuel S.
Subject: RE: DAGON
Attachments: DAGON - Letter to DOAS from Sam 6-6-22 v4.pdf

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Good afternoon

After several attempts, I have successfully been able to forward the attached document to Jody, who confirmed receipt.

Please accept my apologies.

Best,
Angie



Angela D. Kinney

Legal Secretary

Assistant To: Eric J. Tanenblatt, Chan Creswell, Samuel S. Olens

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angela.kinney@dentons.com

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From: Kinney, Angela D.
Sent: Friday, June 17, 2022 12:49 PM
To: 'Jody R Westby' <westby@globalcyberlegal.com>
Subject: RE: DAGON

Hi Jody

I have had our service team take another look at this and use a different compression method. Could you please confirm receipt.



Angela D. Kinney

Legal Secretary

Assistant To: Eric J. Tanenblatt, Chan Creswell, Samuel S. Olens

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From: Jody R Westby <westby@globalcyberlegal.com>
Sent: Friday, June 17, 2022 12:39 PM
To: Kinney, Angela D. <angela.kinney@dentons.com>
Cc: Olens, Samuel S. <samuel.olens@dentons.com>; Mark Rasch <mrdasch@gmail.com>
Subject: Re: DAGON

[WARNING: EXTERNAL SENDER]

Sam/Angela,

I suggest you fax the letter and attachments to him and also send a hard copy via mail. It will be important for him to be able to forward them to his boss or others. You can electronically send by compressing them with good compression technology (your IT team can do this) or you can send them a link via Box or Dropbox. Remember, these need to go to Bryan Webb also.

Thx, J

Jody R. Westby, Esq.
Managing Principal
Global Cyber Legal LLC
Washington, DC 20007
202 255-2700
westby@globalcyberlegal.com
www.globalcyberlegal.com



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On Jun 17, 2022, at 8:03 AM, Kinney, Angela D. <angela.kinney@dentons.com> wrote:

Good morning Jody

I am having issues getting the second email to go through. I have contacted my service team for assistance so hopefully this will get resolved quickly.

Best,
Angie

Angela D. Kinney
Legal Secretary
Assistant To: Eric J. Tanenblatt, Chan Creswell, Samuel S. Olens

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From: Jody R Westby <westby@globalcyberlegal.com>
Sent: Thursday, June 16, 2022 10:14 PM
To: Kinney, Angela D. <angela.kinney@dentons.com>
Cc: Olens, Samuel S. <samuel.olens@dentons.com>
Subject: Re: DAGON

[WARNING: EXTERNAL SENDER]

Angela,

Was this email supposed to be the attachments and billing log? Just wondered, as they are important and referenced in the letter and document the funds we are requesting, and you mentioned in your first email that you would be sending another email, but this seems to be the same as the first email. Can you please check?

Cheers,

Jody

Jody R. Westby, Esq.
Managing Principal
Global Cyber Legal LLC
Washington, DC 20007
202 255-2700
westby@globalcyberlegal.com
www.globalcyberlegal.com

<image001.png>

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strictly prohibited. If you have received this message in error, please do not read, copy or forward this message. Please permanently delete all copies and any attachments and notify the sender immediately by sending an e-mail to westby@globalcyberlegal.com.

Thank you.

On Jun 16, 2022, at 7:46 PM, Kinney, Angela D. <angela.kinney@dentons.com> wrote:

Good afternoon Logan.

Attached please find our formal letter/claim for reimbursement of legal fees as the matter has now concluded successfully. A second email will follow with additional documentation and the legal invoices.

Thank you!

Sam

<image001.png>

Samuel S. Olens

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samuel.olens@dentons.com

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<Letter to Logan Winkles - DAGON(121747480.1).pdf>

Attachment A

RE: [EXTERNAL EMAIL] - Glomar Research LLC - Rule 6(e) FR Crim. P.

From: "DeFilippis, Andrew (USANYS)" <Andrew.DeFilippis@usdoj.gov>

Date: 10/24/2020 19:30

To: Jody R Westby <westby@globalcyberlegal.com>

Cc: "Mark D. Rasch, Esq." <rasch@globalcyberlegal.com>, "Fuhrman, Tim (JMD)" <Tim.Fuhrman@usdoj.gov>, "DeFilippis, Andrew (JMD)" <Andrew.DeFilippis2@usdoj.gov>, "Scarpelli, Anthony (USADC)" <Anthony.Scarpelli@usdoj.gov>, "Patel, Neeraj (USACT)" <Neeraj.Patel@usdoj.gov>, "Eckenrode, John (JMD)" <John.Eckenrode@usdoj.gov>

Jody/Mark,

[REDACTED]

[REDACTED]

To recap a few other items discussed on the call yesterday:

First, your client is a subject of our investigation under the DOJ's broad definition of that term. He is not a target, and we have not concluded that anyone committed a crime in connection with the Alfa Bank or Yotaphone allegations, or that your client acted in bad faith in connection with those allegations. You have proffered repeatedly that your client believes he and others acted in complete good faith and committed no crime. As stated on numerous occasions, the government has no pre-ordained views or conclusions on these matters, and we are simply gathering relevant facts.

[REDACTED]

Third, you stated that you are considering whether Mr. Dagon might invoke his Fifth Amendment rights in response to the grand jury's subpoena. We have made no decision regarding how we might respond to such an invocation.

Please let us know when you are ready and available to discuss these issues further. Finally, we ask that you keep these matters strictly confidential. Thanks very much.

Andrew J. DeFilippis
Assistant United States Attorney
Southern District of New York
1 St. Andrew's Plaza
New York, NY 10007
(212) 637-2231

-----Original Message-----

From: Jody R Westby <westby@globalcyberlegal.com>

Attachment B



From: Bryan Webb bwebb@law.ga.gov
Subject: RE: Georgia Tech
Date: November 5, 2020 at 9:04 AM
To: Jody R Westby westby@globalcyberlegal.com

I am not available on Thursday until after 4:30 and I am not available on Friday until after 4:30. I have depositions that I am involved in on these days. If you wish to call me today after 4:30 or so that will be fine.

bkw

Bryan Webb
 Deputy Attorney General
 Office of Attorney General Chris Carr
 Government Services & Employment
 Tel: 404-458-3542
 bwebb@law.ga.gov
 Georgia Department of Law
 40 Capitol Square SW
 Atlanta, Georgia 30334

-----Original Message-----

From: Jody R Westby <westby@globalcyberlegal.com>
Sent: Wednesday, November 4, 2020 8:34 PM
To: Nie, Ling-Ling <linglingnie@gatech.edu>
Cc: Mark Rasch <rasch@globalcyberlegal.com>; Wasch, Kate <kate.wasch@legal.gatech.edu>; Bryan Webb <bwebb@law.ga.gov>
Subject: Re: Georgia Tech

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Dear Ling-Ling and Bryan,
 Ling-Ling, thank you for your note. Bryan, are you available for a call at 3:30 pm. tomorrow, Thursday, Nov. 5? If not, what is your availability on Friday? We are facing some external time pressures so sooner is better.
 Thank you very much,
 Jody

Jody R Westby, Esq.
 Managing Principal
 Global Cyber Legal LLC
 +1.202.255.2700
 westby@globalcyberlegal.com
 www.globalcyberlegal.com

On Nov 4, 2020, at 5:33 PM, Nie, Ling-Ling <linglingnie@gatech.edu> wrote:

Hi Jody and Mark:

I apologize for the delay in getting back to you on this, and appreciate your patience as we worked through it on our end. Thank you for providing your chronology of events and additional details, which were very helpful and informative.

After further review, we more clearly understand now the work performed by David Dagon that is at issue here and your position that it was performed within the scope of his employment. Given that this would impact other considerations going forward, particularly attorney representation for David, I am copying Bryan Webb, Deputy Attorney General, on this e-mail so that you can connect with him for further discussion on that point.

With kind regards,
 Ling-Ling

Attachment C

From: Abdallah, Chaouki T <ctabdallah@gatech.edu>
Sent: Friday, September 24, 2021 1:56 PM
To: Meeks, Blair
Cc: Cabrera, Angel; Neville, Frank E; McLaughlin, Steven W; Fox, Kelly; Kopkowski, Renee; Elizabeth Young; Fuller, Christian; Wasch, Kate; Lunon, Darryl; Nie, Ling-Ling
Subject: Re: Media statement for NYT

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Great!

Chaouki T. Abdallah
Professor of Electrical & Computer Engineering
Executive Vice President for Research
Georgia Institute of Technology

On Sep 24, 2021, at 13:54, Meeks, Blair <wmeeks7@gatech.edu> wrote:

Hi team,
Here is a reviewed draft of the statement we'd like to provide the NYT.
Please call me with any suggested changes - available by mobile [REDACTED] when you need to reach out.
Thank you!
Blair

A federal agency selected Georgia Tech and its researchers to work on some highly sensitive, extremely sophisticated computer systems research because of the school's and its researchers' world class reputations in this field and their high degree of integrity. The research was very much about securing the United States of America, its systems of governance and its people. All of the work conducted by Georgia Tech researchers was done in a strictly non-partisan way. These researchers focus on data, and everything they did in this case was a result of delving for the truth in the interests of national security.

It is important to point out that there is no suggestion in the indictment of any wrongdoing by anyone associated with Georgia Tech. Everyone connected with Georgia Tech has been cooperative with all aspects of the investigation into this matter.

W. Blair Meeks
Assistant Vice President External Communications

Office: 404-894-9793; Mobile: [REDACTED]

www.gatech.edu



Attachment D

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
8/5/2020	Westby	T/c w/ D. Dagon re GJ subpoena & representation; t/c w/ M. Rasch re same.	1.7
8/6/2020	Westby	Review email from D. Dagon & docs; reply	1.5
8/7/2020	Westby	Email to D. Dagon re info needed; t/c w/ D. Dagon; t/c w/ M. Rasch; review doc from D. Dagon	2.5
8/9/2020	Rasch	T/c w/ Common Counsel review white papers; Review Just Security article; revise letter to AUSA; identify expert witnesses;	3.3
8/10/2020	Westby	Review email from M. Rasch & draft response to subpoena; t/c w/ D. Dagon & M. Rasch	2.0
8/11/2020	Westby	Review notes from D. Dagon & docs	2.0
8/12/2020	Westby	T/c w/ D. Dagon; review docs from D. Dagon; review email from M. Rasch to K. Wasch	2.5
8/13/2020	Rasch	Revise letter to AUSA; call to T. Fuhrman	3.5
8/16/2020	Westby	T/c w/ D. Dagon	1.0
8/17/2020	Rasch	Response to K. Wasch; t/c w/ J. Westby	2.8
8/17/2020	Westby	T/c w/ D. Dagon; t/c w/ K. Wasch	2.0
8/18/2020	Rasch	Draft subpoena; review docs/articles	1.7
8/19/2020	Rasch	EFt subpoena response; review documents, legal research re joint defense	4.4
8/19/2020	Westby	T/c w/ D. Dagon; review doc from D. Dagon; edit response to subpoena	2.5
8/23/2020	Rasch	Refine letter; review Senate Intel rpt; review Ankura and Mandiant rpts;	3.6
8/24/2020	Rasch	T/c w/ AUSA; review docs; research	1.8
8/24/2020	Westby	Review note from D. Dagon & doc; t/c w/ AUSA	2.0
8/25/2020	Rasch	Call w/ Common counsel t/c w/ D. Dagon; review documents & online research	3.3
8/25/2020	Westby	Review note from D. Dagon & article at link; email joint defense counsel & respond to reply; email K. Wasch	1.0
8/26/2020	Rasch	T/c w/ Common counsel; review GT policies; draft response re scope of investigation; prepare response to AUSA	4.7
8/26/2020	Westby	Review note from D. Dagon & reply; t/c w/ joint defense counsel (2); email joint defense counsel	3.5
8/27/2020	Rasch	F/up w/ Common counsel (2); review Alfa Bank docs; review Senate Intel rpt; review Dagon info; t/c w/ K. Wasch	4.1
8/27/2020	Westby	T/c w/ D. Dagon; review articles from links from D. Dagon; review email from K. Wasch; t/c w/ K. Wasch & M. Rasch;	3.5

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
		review reply from joint defense counsel; emails w/ joint defense counsel	
8/28/2020	Rasch	T/c w/ joint defense; review civil subpoena demands; review strategy; revise response; t/c w/ D. Dagon	6.8
8/28/2020	Westby	Review notes and doc from D. Dagon; t/c w/ joint defense attys; t/c w/ D. Dagon	3.0
8/29/2020	Rasch	Review articles; review draft white paper; t/c w/ D. Dagon; develop strategy re DNS records	4.9
8/31/2020	Westby	Review docs from D. Dagon; t/c w/ D. Dagon	2.5
9/1/2020	Westby	Call Common Counsel; review email from joint defense counsel & reply	0.5
9/2/2020	Westby	Review note from D. Dagon; review articles; email joint defense counsel re sharing response to AUSA; email joint counsel re draft letter; emails w/ joint defense counsel; t/c w/ joint defense counsel	2.5
9/3/2020	Westby	Review email from joint defense counsel; review PA & FL civil cases; email D. Dagon & joint defense counsel re same	1.5
9/4/2020	Westby	Review note from D. Dagon; t/c w/ D. Dagon; edit response to letter to AUSA; send letter to K. Wasch for GT review; reply note to D. Dagon; t/c w/ joint defense counsel	3.5
9/5/2020	Westby	Send note to D. Dagon; review email from joint defense counsel & white papers; review white papers; share draft letter to AUSA w/ joint defense counsel	1.5
9/7/2020	Westby	Review note from D. Dagon; reply; review email from joint defense counsel & reply	0.6
9/8/2020	Westby	Review third white paper from joint defense counsel; send note to D. Dagon; t/c w/ D. Dagon; t/c w/ joint defense counsel	2.5
9/10/2020	Westby	Review email from joint defense counsel and anonymous email; t/c w/ joint defense counsel; t/c w/ M. Rasch; email K. Wasch	2.0
9/11/2020	Westby	T/c w/ D. Dagon; t/c w/ joint defense counsel	2.0
9/12/2020	Westby	T/c w/ M. Rasch; t/c to Common Counsel; email joint defense counsel & respond to reply	0.8
9/14/2020	Rasch	Review letter from joint counsel; t/c w/ D. Dagon	1.0
9/14/2020	Westby	T/c w/ D. Dagon; review email from joint defense counsel & reply; t/c w/ joint defense counsel (2); review anonymous vmail;	3.5
9/15/2020	Rasch	T/c w/ D. Dagon	0.8
9/15/2020	Westby	T/c w/ D. Dagon; research articles; email D. Dagon re anonymous vmail; review email from joint defense counsel & civil subpoenas; t/c w/ joint defense counsel	4.0

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
9/16/2020	Rasch	T/c w/ joint counsel; review subpoena compliance; t/c w/ J. Westby re K. Wasch reply	2.7
9/16/2020	Westby	T/c w/ D. Dagon; t/c w/ joint defense counsel; review email from K. Wasch & reply	1.5
9/22/2020	Rasch	Research scope of employment, sovereign immunity duty to reimburse; draft letter to GT;	4.7
9/22/2020	Westby	T/c w/ D. Dagon; review email from M. Rasch; email joint defense counsel	2.3
9/23/2020	Rasch	T/c w/ joint counsel; research third party payment; draft letter to GT	1.0
9/23/2020	Westby	T/c w/ D. Dagon; review email from K. Wasch; draft letter to K. Wasch re Dagon employment & legal fees; review docs from D. Dagon; email joint defense counsel	3.5
9/24/2020	Rasch	Draft letter to GT re scope of employment; t/c w/ D. Dagon; t/c w/ joint counsel; review LW letter to AUSA; research DOJ policies & practices;	6.3
9/24/2020	Westby	T/c w/ D. Dagon; review notes from D. Dagon; emails w/ joint defense counsel	3.0
9/25/2020	Rasch	T/c w/ N. McQuaid	0.7
9/25/2020	Westby	Notes to/from D. Dagon; t/c w/ D. Dagon; t/c w/ joint defense counsel (2)	3.5
9/27/2020	Westby	Review notes from D. Dagon; review note from joint defense counsel & review draft letter; reply to joint defense counsel	0.8
9/28/2020	Rasch	Draft memo to GT on scope of employment; research DOJ policies/ t/c w/ D. Dagon	2.8
9/28/2020	Westby	T/c w/ D. Dagon; send draft letter to K. Wasch to D. Dagon for review; t/c w/ joint defense counsel re draft letter	2.5
9/29/2020	Westby	Review notes from D. Dagon; t/c w/ D. Dagon; review civil subpoenas; email joint defense counsel; email joint defense counsel; t/c w/ joint defense counsel; review email from joint defense counsel & reply	4.0
9/30/2020	Rasch	T/c w/ D. Dagon re Ankura rpt; review civil allegations, Senate Intel rpt, Mandiant rpt;	2.9
9/30/2020	Westby	T/c w/ D. Dagon & M. Rasch; review email from K. Wasch & reply	2.5
10/1/2020	Rasch	Tel call D. Dagon/J Westby Re expert witness and scope of employment; call w P Vixie Re: Data Availability and analysis	2.7
10/1/2020	Westby	T/c/ w/ D. Dagon; review notes and doc from D. Dagon; t/c w/ K. Wasch & L. Nie; email joint defense counsel re expert witnesses	5.0

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
10/2/2020	Rasch	Review Pastebin postings, public posting, articles; draft third party payor agreement	1.8
10/2/2020	Westby	T/c w/ D. Dagon; review notes & doc from D. Dagon; t/c w/ researcher; email joint defense counsel	6.0
10/4/2020	Westby	Review notes from D. Dagon	0.5
10/6/2020	Rasch	Zoom Meeting w J Westby Re Third Party Payor/Indemnification Agreement, scope of employment; tel cal w/ joint defense	6.8
10/6/2020	Westby	Review notes from D. Dagon; mtg w/ M. Rasch; draft Third Party Payor agreement; t/c w/ D. Dagon; review email from joint defense counsel & reply; email joint defense counsel	3.5
10/7/2020	Rasch	Draft Letter to Ling Ling/GT & K Walsh Re Joint Defense and Scope of Employment; review Filkins article; tel calls w/ joint counsel; tel cal w J. Westby	10.3
10/7/2020	Westby	T/c w/ D. Dagon re status; review new Filkins article; article on DOJ changing policy on election interference; emails to joint defense counsel; email L. Nie & K. Wasch;	3.5
10/8/2020	Rasch	Tel Call D Dagon, Review Alfa Bank documents, Review D Dagon Analysis, Draft response to Alfa Bank theories, Cendyne Claims, map claims to DNS records and D Dagon presentation; edit response to subpoena; tel cal w J. Westby	7.2
10/8/2020	Westby	T/c w/ joint defense counsel; t/c w/ D. Dagon re status; prepare summary doc of claims/issues, utility of report; t/c w/ D. Dagon re same; email joint defense counsel re summary doc;	5.0
10/9/2020	Rasch	Tel Cal Common Counsel, J Westby -	1.6
10/9/2020	Westby	Arrange call w/ joint defense to discuss summary paper & strategy	0.5
10/10/2020	Rasch	Tel Cal Common counsel, J Westby	1.9
10/11/2020	Rasch	Review Mark Bradmy article, tel call w J Westby, Review online postings re Alfa Bank litigation	3.9
10/12/2020	Westby	T/c w/ joint defense counsel (2); t/c w/ D. Dagon; review online postings	2.5
10/13/2020	Rasch	Tel Call J Westby, call we Common counsel; tel cal w D. Dagon	4.0
10/13/2020	Westby	T/c w/ joint defense counsel; T/c w/ D. Dagon; review email from K. Wasch; t/c w/ D. Dagon & M. Rasch re same; T/c w/ joint defense counsel; t/c w/ D. Dagon re anonymous writer;	4.0
10/14/2020	Rasch	Review Epoch Times posting, expert witness reports, Alfa Bank defenses; tel cal D. Dagon J. Westby	3.2
10/14/2020	Westby	T/c w/ D. Dagon re anonymous docs; draft response to K. Wasch; email D. Dagon & M. Rasch re same	4.5

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
10/15/2020	Rasch	Research - scope of employment, GA state regulations, reimbursement policies, AG policies	3.8
10/15/2020	Rasch	Draft talking points memo - Tel Call J Westby	2.7
10/15/2020	Westby	T/c w/ joint defense counsel; t/c w/ D. Dagon & M. Rasch re response to GT; review memo from D. Dagon; email K. Wasch requesting t/c; research faculty handbook and GT research policies; develop talking points for call w/ GT; email to D. Dagon & M. Rasch for review;	6.5
10/15/2020	Rasch	Review GT Faculty Manual, GT Lawsuits and settlements, AG litigation, Restatement Agency, LOAS policies	2.9
10/16/2020	Rasch	Tel Call A. McReedy re IU reimbursement policy; Tel Call Re Alfa Bank Lawsuit J Westby- Review Alfa Complaint, Amicus briefs; tel cal w common counsel; legal research – privilege issues, foreign prosecution	6.8
10/16/2020	Westby	Review email from AUSA & subpoena; forward to D. Dagon; t/cs w/ joint defense counsel; review reply from K. Wasch & reply; t/c w/ D. Dagon; review amicus filing by EFF	4.5
10/17/2020	Westby	Review email from joint defense counsel & reply; email joint defense counsel	0.2
10/18/2020	Westby	Review report from joint defense counsel; t/c w/ D. Dagon; t/c w/ J. Levine; prepare Kovel agreement & email to J. Levine; review news articles & email to D. Dagon & M. Rasch	6.0
10/19/2020	Westby	T/c w/ K. Wasch & LL Nie; t/c w/ D. Dagon; t/c w/ M. Rasch;	2.5
10/20/2020	Westby	Draft letter to LL Nie; revise notes from M. Rasch	3.0
10/21/2020	Westby	Revise letter to LL Nie; t/c w/ M. Rasch re edits to draft; t/c w/ D. Dagon; email LL Nie;	6.0
10/22/2020	Westby	Review edits from D. Dagon; edit letter to LL Nie; review edits from M. Rasch; review legal research; finalize letter to LL Nie; email letter to LL Nie	5.5
10/23/2020	Westby	T/c w/ M. Rasch to prepare for call w/ AUSA; t/c w/ A. DeFilippis; t/c w/ M. Rasch & D. Dagon; t/c w/ joint defense counsel; review email re deadline for civil case ID of Jane/John Does	4.5
10/24/2020	Westby	Review email from A. DeFilippis & reply; t/c w/ M. Rasch; t/c w/ D. Dagon	2.0
10/27/2020	Westby	Email joint defense counsel re call; review docs in file	1.0
10/28/2020	Westby	T/c w/ joint defense counsel; review Alfa civil suits (Bean & Fridman); t/c w/ M. Rasch	2.7
10/30/2020	Westby	Email LL Nie re response to letter	0.3
11/4/2020	Rasch	Tel Call Common counsel J Westby	0.2

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
11/4/2020	Westby	Review email from LL Nie; Email B. Webb; review reply from B. Webb to schedule call; t/c w/ D. Dagon; review email from joint defense counsel & reply	2.8
11/5/2020	Rasch	Review expert witness documents. Jones Report, tel cal D Dagon, J Westby, tel cal common counsel, tel cal B Webb, tel cal former GA State AG, revise scope of employment memo	10.8
11/5/2020	Westby	T/c w/ M. Rasch; t/c w/ B. Webb; t/c w/ D. Dagon; email B. Webb w/ 1st ltr and 3rd party payor agreement	2.3
11/9/2020	Rasch	T/c w/Common Counsel review media reports; review draft letter from Common Counsel; tel cal former GA AG, draft letter to DeFilippis, tel cal w J. Westby	8.4
11/9/2020	Westby	Joint defense counsel call; review draft letter to AUSA; edit letter; email letter to AUSA; review response & discuss w/ M. Rasch; emails to joint defense counsel	2.5
11/10/2020	Rasch	Tel Call Common Counsel J Westby, tel cal D. Dagon	2.4
11/10/2020	Westby	Review emails from AUSA re letter; emails to joint defense counsel; t/cs w/ joint defense counsel; email D. Dagon re same; draft reply letter to AUSA; t/c w/ M. Rasch re same; email AUSA w/ response	5.5
11/11/2020	Rasch	Tel Call A Fillipis, J Westby. Fuhrman, et al - re privilege and grand jury, draft letter to DeFilippis re privilege, tel calls common counsel J Westby	5.5
11/11/2020	Westby	T/c w/ AUSA; emails w/ joint defense counsel; t/cs w/ joint defense counsel; email to D. Dagon re signing document for AUSA;	4.0
11/12/2020	Rasch	Review DeFilippis letters to counsel; tel cal J Westby	2.2
11/12/2020	Westby	Email executed docs to AUSA; review email from AUSA re response to letter & FBI interviews; t/c w/ M. Rasch	2.0
11/15/2020	Westby	Email response to AUSA re FBI interviews	0.2
11/18/2020	Rasch	Tel Call common counsel Westby	1.0
11/18/2020	Westby	Email B. Webb re fee issue; t/c w/ joint defense counsel;	1.2
11/20/2020	Rasch	Tel Call common counsel Westby	0.9
11/24/2020	Westby	Email B. Webb re fee issue; arrange for t/c;	0.2
11/25/2020	Rasch	Redraft Third Party Payor Agreement/Tel Call B Webb J Westby	3.2
11/25/2020	Westby	T/c w/ B. Webb; revise third party payor agreement per t/c w/ B. Webb; email to B. Webb	1.0
11/26/2020	Rasch	Meeting with J Westby	0.5
12/7/2020	Rasch	Meeting w J Westby RE Status, call w B. Webb, Draft letter to B. Webb	2.0
12/7/2020	Westby	T/c w/ D. Dagon; email B. Webb re status;	0.6

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
12/8/2020	Rasch	Call to K. Wasch; draft response to AUSA; call to J. Westby, redraft letter to B. Webb, mtg w J Westby	5.9
12/8/2020	Westby	T/c w/ joint defense counsel; review email from B. Webb & reply	0.7
12/20/2020	Rasch	Review Forbes Article Re Investigation, research Georgia constitution, gratuities clause	1.8
12/29/2020	Rasch	Tel Call w Common Counsel Re Investigation	1.0
12/29/2020	Westby	T/c w/ joint defense counsel re subpoenas to GJ	1.0
1/25/2021	Rasch	Tel cal w Common Defense, research BAA and joint defense issues,	1.0
1/25/2021	Westby	Email to B. Webb re legal fees; review BAA; forward to joint defense counsel; draft letter to B. Webb	2.7
1/26/2021	Westby	T/c w/ joint defense counsel re subpoena to GJ & documents produced; research reimbursement of legal fees by DOAS; draft letter to B. Webb	3.5
1/27/2021	Rasch	Draft Letter to Ling Ling Re: Scope of Independent Counsel Investigation, letter to B. Webb, DOAS policy and DARPA, Tel Call former GA AG Re: Indemnification	4.2
1/28/2021	Rasch	Research - scope of immunity, 18 USC 6001, act of production, agency	3.0
1/28/2021	Westby	Email joint defense counsel re 5th A & review replies; draft letter to B. Webb	4.5
1/29/2021	Rasch	Draft Letter to AG Webb RE Scope of Employment,	4.2
1/29/2021	Westby	Research gratuities clause; finalize letter to B. Webb; email B. Webb w/ letter	3.5
1/30/2021	Rasch	Research - Trump Russia Cyberattack reports, news articles	3.3
2/3/2021	Westby	T/c w/ joint defense counsel	0.5
2/22/2021	Westby	Review emails from joint defense counsel re Alfa; request for joint defense call	0.5
2/23/2021	Westby	Email Ling-Ling re legal fees	0.2
2/26/2021	Rasch	Tel Call S. Common Defense Counsel, Email re legal fees, Joint defense call w J. Westby	1.2
2/26/2021	Westby	Review email from K. Wasch re legal fee payment; discuss w/ M. Rasch; joint defense call; t/c w/ D. Dagon	3.3
2/28/2021	Westby	Review email from joint defense counsel; reply	0.2
3/1/2021	Rasch	Revise Letter to G Tech re legal fees, tel cal w J. Westby and common counsel	1.8
3/1/2021	Westby	T/c w/ joint defense counsel; send docs to joint defense	0.8
3/2/2021	Westby	T/c w/ joint defense counsel; review file; send docs; draft letter to GT re legal fees	1.6
3/3/2021	Westby	Conduct research re applicability of DNS data to wiretap, PR/TT, Stored Comm Act; draft note re findings; email M.	2.5

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
		Rasch re prep for call w/ B. Webb; Review email from B. Webb re legal fees	
3/4/2021	Rasch	Research DOAS policies/ Reimbursement, research SCA, trap and trace, tel cal w J. Westby; draft letter to AG re reimbursement, draft letter to LL, tel cal D Dagon	6.5
3/4/2021	Westby	T/c w/ D. Dagon; t/c w/ joint defense counsel; review letter to GT re legal fees; email D. Dagon re letter to GT re legal fees	3.0
3/5/2021	Westby	T/c w/ joint defense counsel (2); revise letter to GT to include DOAS reimbursement	2.5
3/6/2021	Westby	Research applicability of DNS data to pen register/trap trace & stored comm act; email joint defense counsel re same	1.3
3/7/2021	Westby	Email joint defense counsel re Alfa litigation	0.3
3/8/2021	Westby	Email to DOAS re reimbursement; view reply; schedule call; review email from joint defense re Alfa litigation	0.6
3/9/2021	Rasch	T/c w/ joint defense counsel; t/c w/ DOAS, review Alfa Bank subpoena; research DNS record availability;	3.9
3/9/2021	Westby	T/c w/ DOAS re legal fee reimbursement	0.5
3/10/2021	Westby	Review email from joint defense re docs from Alice; email K. Wasch & Ling-Ling re letter re legal fee offer	1.5
3/11/2021	Rasch	Tel call to D Dagon,	2.2
3/14/2021	Westby	Review emails from joint defense re 5th A & reply	0.6
3/17/2021	Rasch	Research GT Policies, review docs from K Wasch and Ling Ling, fee research	1.9
3/19/2021	Rasch	Review DARPA contract and policies, tel cal w consulting counsel re DARPA reimbursement policies, duty to defend contract	4.2
3/19/2021	Westby	Review research on FAR & payment of legal fees	0.5
3/20/2021	Rasch	Research FAR requirements reimbursement of attorney fees	3.8
3/22/2021	Rasch	Research - GA AG Policies - Conflict of Interest and dual representation,	2.7
3/23/2021	Westby	Email K. Wasch re call to discuss fees;	0.2
3/26/2021	Westby	Email Ling-Ling & K. Wasch re legal fees; review reply	0.2
3/29/2021	Rasch	Tel Call w Common Defense Counsel, tel cal w J. Westby, follow up research	1.0
3/29/2021	Westby	T/c w/ joint defense counsel	0.5
3/30/2021	Westby	Email joint counsel; T/c w/ joint defense counsel; research BAA	1.3
3/31/2021	Westby	Review email from joint counsel; research response; reply	0.8
4/1/2021	Westby	Email K. Wasch & Ling-Ling re legal fees; review email from D. Lunon re legal fees	0.9
4/2/2021	Westby	Email to D. Lunon; email joint defense counsel	0.3

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
4/5/2021	Westby	Review email from D. Lunon re legal fee status	0.1
4/9/2021	Rasch	Draft letter to GT counsel re scope of employment; t/c	1.3
4/15/2021	Westby	Review draft letter to DOAS	0.3
4/21/2021	Westby	Review email from joint defense counsel; reply	0.2
4/21/2021	Rasch	Letter to DOAS, common counsel email	0.5
4/22/2021	Westby	Email D. Dagon re DOAS letter	0.2
4/26/2021	Westby	Email D. Lunon re legal fee issue	0.3
4/28/2021	Westby	Review email from D. Lunon re fees & reply	0.5
5/6/2021	Westby	Emails to joint defense counsel ; t/c w/ joint defense counsel	1.0
5/6/2021	Rasch	Tel Call w Common Defense Counsel re joint defense	1.4
5/7/2021	Westby	T/c w/ joint defense counsel; review emails from joint defense counsel & reply	1.0
5/8/2021	Rasch	Call w/ J. Westby re subpoena; review subpoena; call w/ D. Dagon re same	2.0
5/9/2021	Rasch	T/c w/ Common Counsel review white paper; review Tea Pain reports; draft response to AUSA; review DNS availability	5.5
5/10/2021	Westby	Review letter from K. Wasch re legal fees; t/c w/ joint defense counsel; emails w/ joint defense counsel	1.4
5/11/2021	Westby	T/c w/ joint defense counsel; draft response to GT letter re fees	3.5
5/12/2021	Westby	T/c w/ joint defense counsel; draft response to GT letter re fees; email D. Dagon	2.5
5/12/2021	Rasch	Tel Cal Common Counsel - letter to Wasch/Ling Ling	1.9
5/14/2021	Westby	Edit GT letter re fees; email D. Dagon	2.5
5/17/2021	Westby	Edit GT letter; email D. Dagon;	2.0
5/19/2021	Westby	Review email from D. Dagon; t/c w/ D. Dagon	1.6
5/20/2021	Rasch	Revise letter to Kate re legal fees	1.0
5/20/2021	Westby	Review edits to GT letter from M. Rasch; email M. Rasch re same	1.5
5/21/2021	Westby	Review edits to GT letter;	1.0
6/8/2021	Rasch	Research GJ & special counsel, review subpoena, prepare draft response	1.2
6/23/2021	Rasch	Common Interest Call w Common Counsel, research re scope of privilege, Klein issues	1.2
6/23/2021	Westby	T/c w/ joint defense counsel	0.5
6/24/2021	Westby	Review docs from joint defense counsel; email joint defense counsel	0.5
6/29/2021	Westby	T/c w/ joint defense counsel; email M. Rasch re same; email joint defense counsel	1.2

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
6/29/2021	Rasch	Research - Articles on Investigation, tel call J. Westby	2.7
6/30/2021	Westby	T/c w/ D. Dagon; review email from joint defense counsel re Alfa activity; t/c w/ joint defense counsel	2.6
6/30/2021	Rasch	Tel Call D. Dagon J. Westby	2.0
7/1/2021	Westby	T/c w/ joint defense counsel (3)	1.5
7/1/2021	Rasch	Tel Call w Common counsel - research caselaw	1.2
7/2/2021	Rasch	Tel Call w Common Defense Counsel	1.2
7/2/2021	Westby	T/c w/ joint defense counsel; review letter from joint defense counsel	0.8
7/5/2021	Westby	T/c w/ joint defense counsel	0.5
7/6/2021	Rasch	Call w joint defense counsel	1.0
7/6/2021	Westby	Review email from DeFilippis & reply; t/c w/ De F; t/c w/ joint defense counsel (3); email to D. Dagon	2.8
7/7/2021	Westby	T/c w/ joint defense counsel; review email from DeF & proffer agreement; reply to DeF re same	1.2
7/7/2021	Rasch	Tel Cal Common Counsel - DeFilippis, J. Westby, proffer session	1.0
7/8/2021	Rasch	T/c w/ J. Westby; review subpoena response; draft response to subpoena	1.0
7/8/2021	Westby	T/c w/ joint counsel; Review emails from DeF & reply	0.7
7/9/2021	Rasch	Tel Call w D. Dagon; tel call common interest	3.9
7/9/2021	Westby	T/c w/ DeF; t/c w D. Dagon; review docs from D. Dagon;	3.0
7/10/2021	Rasch	Research on Prosecutorial Misconduct	4.0
7/10/2021	Westby	Draft letter to DeF; review email from DeF;	1.0
7/12/2021	Rasch	Tel call w A DeF - legal ethics, threats of prosecution	1.0
7/12/2021	Westby	T/c w/ S. Saltzburg; review doc from D. Dagon; edit letter to DeF; T/c w/ joint counsel	2.4
7/13/2021	Rasch	Common Interest Call w Counsel; tel cal D Dagon	4.8
7/13/2021	Westby	Review email from DeF & subpoena; t/c w/ D. Dagon; t/c w/ joint counsel(2); email S. Saltzburg; finalize letter to DeF & send; review email from DeF & reply; emails to D. Dagon; emails to joint defense counsel	4.7
7/14/2021	Rasch	Common Interest calls; tel cal D Dagon J Westby	5.3
7/14/2021	Westby	T/c w/ joint defense counsel (6); review email from DeF; t/c w/ DeF; review doc from D. Dagon	5.7
7/15/2021	Rasch	Letter to DeF; tel cal common interest; tel cal Christian F re fees	4.0
7/15/2021	Westby	T/c w/ C. Fuller re legal fees, Dagon status; review doc from D. Dagon; review draft letter to DeF; emails to S. Saltzburg; review emails from joint defense counsel; t/c w/ joint defense counsel; t/c w/ D. Dagon; email letter to DeF	4.5

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
7/16/2021	Rasch	Call w D Dagon	2.0
7/16/2021	Westby	Review email from DeF & reply; discuss dates for testimony; t/c w/ D. Dagon; t/c w/ DeF; send D. Dagon draft letter re immunity	3.5
7/17/2021	Rasch	Common Interest Call	1.0
7/17/2021	Westby	Review email from DeF re testimony; t/c w/ D. Dagon; t/c w/ joint defense counsel	2.4
7/19/2021	Rasch	Grand Jury Prep	2.0
7/19/2021	Westby	T/c w/ joint defense counsel; email D. Dagon re DOJ reimbursement; emails w/ joint defense counsel	0.8
7/20/2021	Rasch	Subpoena duces tecum review; tel cal J Westby	4.0
7/20/2021	Westby	Review email from C. Fuller re note from DARPA GC & document production & reply; email DeF re testimony & documents; review email from DeF & reply; t/c w/ D. Dagon	4.8
7/21/2021	Rasch	FRCrP 6 research; tel call common counsel, tel cal w GA AG Beth Young, tel cal w J Westby	5.3
7/21/2021	Westby	Review emails from DOJ; review emails from joint defense counsel; review email from E. Young & reply; t/c w/ E. Young; review email from DeF & reply; t/c w/ M. Rasch; t/c w/ D. Dagon; t/c w/ DeF; review email from E. Young & GT subpoena; draft email to DeF re document production	4.8
7/22/2021	Westby	Review doc from D. Dagon; review emails from joint defense counsel; t/c w/ D. Dagon	1.4
7/23/2021	Rasch	Draft letter to DeFilippis re DARPA; tel cal common counsel; tel cal J Westby	5.0
7/23/2021	Westby	Review emails from E. Young & reply; email De F re document production; email E. Young re responsive documents; email D. Dagon	1.2
7/24/2021	Rasch	Review document production; tel call common counsel	4.7
7/24/2021	Westby	Review email from DeF & reply; t/c w/ joint defense counsel; t/c w/ D. Dagon	4.0
7/25/2021	Westby	Email DeF;	0.2
7/26/2021	Rasch	Review documents; research, tel cal w D Dagon, J Westby to prep for mtg w DeF and GJ	8.0
7/26/2021	Westby	Review email from E. Young re doc production & reply; review doc from D. Dagon; Review email from DeF re immunity & reply; review file; mtg w/ D. Dagon	7.0
7/27/2021	Rasch	Tel Call D Dagon to prep; letter to GA AG re document production, review documents	7.0
7/27/2021	Westby	Mtg w/ D. Dagon re DeF meeting & testimony; review emails from E. Young re docs & reply	8.0
7/28/2021	Rasch	Mtg w DeFilippis, mtg w D Dagon, tel calls joint counsel	10.0

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
7/28/2021	Westby	Mtg w/ DeF; mtg w/ Dagon; review email from joint counsel; joint counsel calls	12.0
7/29/2021	Rasch	Mtg w DeFilippis, mtg w D Dagon, GJ testimony, review docs, tel calls common interest; review Rhamnousia logs	11.2
7/29/2021	Westby	Mtg w/ DeF; GJ testimony; mtg w/ Dagon; review immunity order; review emails from E. Young re Rhamnousia chat logs & reply; t/c w/ joint defense counsel	11.8
7/30/2021	Rasch	Tel calls joint counsel, review documents, tel cal D Dagon	4.0
7/30/2021	Westby	T/c w/ joint counsel; review docs from D. Dagon; review email from DeF & reply; t/c w/ D. Dagon	4.3
8/1/2021	Westby	Review email from DeF; t/c w/ DeF; t/c w/ Dagon;	1.7
8/2/2021	Rasch	Joint Defense call, tel cal D Dagon J Westby, review docs	4.0
8/2/2021	Westby	Review docs from D. Dagon; review emails from DeF; review emails from E. Young; t/c w/ D. Dagon; review emails from joint defense counsel; email joint defense counsel re docs needed	4.5
8/3/2021	Rasch	Witness preparation, review documents	4.0
8/3/2021	Westby	T/c w/ joint defense counsel (2); review docs from joint defense counsel; review email from DeF and docs; emails w/ DeF re mtgs & testimony; mtg w/ D. Dagon	8.8
8/4/2021	Westby	Mtg w/ D. Dagon; mtg w/ DeF;	11.0
8/4/2021	Rasch	Tel cal w D Dagon, tel cal w DeF & team	5.5
8/5/2021	Rasch	Tel call J Westby, D Dagon	1.7
8/5/2021	Westby	Review emails from joint defense counsel; mtg w/ D. Dagon; GJ testimony; t/c w/ joint defense counsel; review email from DoJ re reimbursement & reply	6.5
8/6/2021	Westby	Review emails from joint defense counsel & reply t/c w/ joint defense counsel (2);	2.0
8/9/2021	Rasch	Common Defense Call, document review	3.2
8/9/2021	Westby	Email DeF documents; t/c w/ joint defense counsel; email docs to joint defense counsel; review docs & file from GJ; review doc from D. Dagon	7.5
8/10/2021	Rasch	Tel cal w J Westby	1.0
8/10/2021	Westby	Review email from joint defense counsel;	0.5
8/11/2021	Rasch	Common Defense comms, tel cal D Dagon	1.5
8/11/2021	Westby	Review doc from D. Dagon; review email from joint defense counsel & reply;	1.0
8/12/2021	Westby	T/c & emails w/ joint defense counsel; t/c w/ D. Dagon	3.5
8/13/2021	Rasch	Review Grand Jury process; OSINT legal review	3.0
8/13/2021	Westby	Email joint defense counsel;	0.5

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
8/14/2021	Westby	Review email from joint defense counsel; draft letter to DeF; t/c w/ D. Dagon; email joint defense counsel	1.5
8/15/2021	Rasch	Draft letter DeFilippis, tel cal J Westby D Dagon	4.0
8/15/2021	Westby	Review doc from D. Dagon; t/c w/ M. Rasch; draft letter to DeF; review email from DeF w/ Qs to answer; t/c w/ D. Dagon; review emails from joint defense counsel; emails to joint defense counsel	6.5
8/16/2021	Rasch	Tel cal w common counsel, tel cal D Dagon	3.5
8/16/2021	Westby	T/c w/ joint defense counsel; t/c w/ D. Dagon; draft answers to DeF Qs;	7.5
8/17/2021	Rasch	Witness prep Dagon, research - 1001 caselaw, special counsel, tel cal common counsel	5.0
8/17/2021	Westby	Review doc from D. Dagon; t/c w/ joint defense counsel; edit answers to DeF Qs; email DeF with answers to Q; email joint defense counsel	5.0
8/18/2021	Rasch	Witness prep Dagon, draft responses to DOJ questions	6.5
8/18/2021	Westby	Review email from DeF; review email from M. Rasch re same; email DeF w/ answers; review email from DeF; t/c w/ D. Dagon; reply to DeF	4.8
8/19/2021	Rasch	Mtg w D Dagon, tel cal J Westby, Grand Jury testimony	6.5
8/19/2021	Westby	Review email from DeF; review email from M. Rasch; email DeF; t/c w/ M. Rasch; t/c w/ D. Dagon; review email from J. Eckenrode; t/c w/ M. Rasch; review doc from D. Dagon	4.3
8/20/2021	Rasch	Common Interest Call, tel cal D Dagon	2.0
8/21/2021	Westby	Joint defense counsel call;	0.5
8/23/2021	Rasch	Common Interest call, review docs from D Dagon	2.4
8/23/2021	Westby	Joint defense counsel calls (4); review file docs from D. Dagon;	3.5
8/24/2021	Rasch	Common Interest Call w Common Counsel	1.5
8/24/2021	Westby	Review docs from D. Dagon; t/c w/ joint defense counsel (2); email docs to joint defense counsel; draft letter to DeF	5.5
8/25/2021	Westby	Review doc from D. Dagon; t/c w/ D. Dagon; edit letter to DeF; email joint defense counsel;	5.4
8/26/2021	Rasch	Research Alfa Bank litigation	2.0
8/26/2021	Westby	Draft & finalize letter to DeF; emails to joint defense counsel; email letter to DeF	6.5
8/27/2021	Rasch	Research scope of investigation, DOJ policies, draft letter to DeFilippis, Garland, Durham	5.0
8/27/2021	Westby	Send emails to joint defense counsel; t/c w/ joint defense counsel; review doc from D. Dagon	2.0
8/28/2021	Westby	Review doc from D. Dagon; emails to joint defense counsel & review replies	2.0

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
8/30/2021	Westby	T/c w/ joint defense counsel (2); emails to joint defense counsel;	2.8
8/31/2021	Westby	Email letter to AG Garland & Durham	0.5
9/1/2021	Rasch	Research draft letter to DeF re scope of investigation, tel cal joint counsel, review D. Jones litigation - report	6.2
9/3/2021	Rasch	Tel cal D Dagon J Westby, review docs from D Dagon	2.3
9/3/2021	Westby	Review docs in file; t/c w/ M. Rasch; t/c w/ D. Dagon	2.5
9/5/2021	Rasch	Review documents, emails re press reports	1.2
9/16/2021	Rasch	Common Interest Calls, review indictment, review D. Jones suit, tel cal D Dagon J Westby	5.5
9/16/2021	Westby	Review D. Jones suit against Alfa; review indictment; t/c w/ DeF; emails & t/c w/ joint defense counsel; t/c w/ D. Dagon; review email from J. Durham	4.5
9/17/2021	Rasch	Review Durham response & draft reply; tel call common counsel	3.7
9/17/2021	Westby	T/c w/ joint defense counsel; emails w/ joint defense counsel; review draft response to J. Durham;	3.0
9/19/2021	Westby	Emails w/ joint defense counsel;	0.5
9/20/2021	Rasch	Common Interest Call	1.2
9/20/2021	Westby	T/c w/ joint defense counsel; t/c w/ D. Dagon; review emails from joint defense counsel & reply	1.9
9/21/2021	Rasch	DOAS research	1.9
9/21/2021	Rasch	Alfa Bank subpoena research	3.3
9/21/2021	Westby	T/c w/ joint defense counsel (2); review Alfa subpoenas; review docs from joint defense counsel; t/c w/ D. Dagon & M. Rasch; review doc from D. Dagon	4.7
9/22/2021	Rasch	Research Alfa Bank litigation, draft letter to GT	3.4
9/22/2021	Westby	T/c w/ joint defense counsel; review file; review Alfa activity & docs; discuss response to Alfa; review draft email to K. Wasch; t/c w/ D. Dagon	5.5
9/23/2021	Westby	Review docs from D. Dagon; review emails from joint defense counsel; t/c w/ joint defense counsel;	3.5
9/24/2021	Rasch	Research motion to quash	3.4
9/24/2021	Westby	Review doc from D. Dagon; t/c w/ joint defense counsel; review file; email C. Fuller re t/c & Alfa;	3.0
9/25/2021	Rasch	Research independent counsel statute	2.0
9/28/2021	Westby	T/c w/ C. Fuller & E. Young; review doc from D. Dagon;	1.5
9/28/2021	Rasch	Tel cal w Christian F & Beth Young, tel cal J Westby	1.5
9/29/2021	Rasch	Research Alfa subpoena - GA law, protective order, tel cal J Westby	5.7

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
9/29/2021	Westby	Review draft motion to Quash and letter re 5th A re Alfa subpoenas; t/c w/ M. Rasch re same;	2.5
9/30/2021	Rasch	Draft motion to quash, review filings from common counsel, research GA Anti SLAPP	6.7
9/30/2021	Westby	T/c w/ joint defense counsel; review docs; discuss Alfa response; t/c w/ D. Dagon; review doc from D. Dagon	3.3
10/1/2021	Rasch	OSC investigation research; tel call common counsel	3.3
10/1/2021	Westby	Review email from joint defense counsel & Alfa motions; t/c w/ joint defense counsel; review motions from joint defense counsel; email D. Dagon	4.5
10/2/2021	Rasch	Draft letter to Alfa counsel re 5 th A	2.0
10/4/2021	Westby	Review letter re 5 th to Alfa counsel; finalize	1.5
10/5/2021	Westby	Email letter to Alfa Counsel re 5 th , t/c w/ joint defense counsel	1.4
10/7/21	Westby	Review email from C. Fuller & reply; send certified letters to Alfa Counsel re 5 th A	1.2
10/12/2021	Westby	Draft note to C. Fuller re civil litigation; review draft from M. Rasch; t/c w/ joint defense counsel; review email from C. Fuller & reply; review letter from Skadden; discuss reply w/ M. Rasch	4.5
10/12/2021	Rasch	Call with counsel re Alfa subpoena; Research - GA law - meet and confer	5.2
10/13/2021	Westby	Review draft response to Skadden from M. Rasch, finalize & send to Skadden; forward Skadden letter to C. Fuller; review email from joint counsel on civil lit; discuss motion to quash & pro hac vice; email C. Fuller re t/c;	4.0
10/13/2021	Rasch	Draft letter to Skadden Re Alfa Subpoena; Draft motion to quash subpoena and deposition	5.7
10/14/2021	Westby	Review pro hac vice apps, provide info needed for filing; review letter from Skadden; review Sussmann bill of particulars; t/c w/ Dagon; finalize & send response to Skadden	5.0
10/14/2021	Rasch	Research - 1A law, Doe unmasking, Academic Freedom, Tel call R Raider, Research GA law re suppression; Letter to Skadden	5.3
10/15/2021	Westby	Review email from D. Dagon; review emails re local GA counsel; email w/ joint counsel re civil lit; discuss motion for protective order & motion to quash; review draft; review letter from Skadden & reply; review email from Skadden; t/c w/ local counsel in GA; discuss motion to quash; review email from C. Fuller; email w/ DOAS Open Records request;	5.5
10/15/2021	Rasch	Draft motion to quash subpoena and deposition; pro hac vice; open records requests, tel call w joint counsel J Westby	6.7
10/16/2021	Westby	Review draft for motion to quash and PO; review email from joint counsel; review email from C. Fuller & reply	3.0

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
10/16/2021	Rasch	Research Anti Slapp/Academic Freedom Prepare Motion for protective order, draft order	3.0
10/17/2021	Westby	Review draft for motion to quash & PO; t/c w/ joint counsel (2); t/c w/ D. Dagon; review emails re pro hac vice; emails w/ joint counsel re Alfa; review Rasch memo in support;	4.5
10/17/2021	Rasch	Redraft motion to quash, research protective order; Tel calls with co counsel/common interest J. Westby	4.5
10/18/2021	Westby	T/c w/ Skadden; review emails re pro hac vice & motion & PO; review drafts; review depo Qs from Skadden; review email from D. Dagon; t/c w/ Dagon; review email from Skadden & reply; review email from joint counsel re Alfa; review email from D. Dagon; draft letter to C. Fuller; emails w/ DOAS re ORR	5.7
10/18/2021	Rasch	Tel calls with co counsel/common interest - motion to quash; Research/draft protective order motion	6.0
10/19/2021	Westby	Review email from Skadden & reply; review email from C. Fuller & reply; review emails from M. Rasch; draft letter to C. Fuller; email DOAS re ORR; email C. Fuller re speaking to D. Dagon, draft letter to C. Fuller; email;	3.7
10/19/2021	Rasch	Open records request, research protective order tel calls w counsel; Review Proposed Depo Question - tel calls w counsel	2.9
10/20/2021	Westby	Email DOAS re ORR; emails w/ joint counsel	1.0
10/20/2021	Rasch	Letter to Skadden, letter to GT Counsel, Tel call w co counsel	2.9
10/21/2021	Westby	Review email from joint counsel; t/calls w/ joint counsel; review email from joint counsel; prepare & submit ORR to GT; emails to D. Dagon;	2.5
10/21/2021	Rasch	Tel call w co counsel, Open Records issues, response to Alfa	3.5
10/22/2021	Westby	Review email from joint counsel; review Alfa filings;	1.7
10/22/2021	Rasch	Calls with Counsel - research on Alfa Bank subpoena - motion for extension; Review state pleadings - related cases; FL law, extension of time	6.6
10/23/2021	Rasch	Review Proposed Depo Question - tel calls w counsel	4.0
10/24/2021	Westby	Review emails from joint counsel & reply; t/c w/ D. Dagon; email D. Dagon re Qs from Skadden	2.0
10/24/2021	Rasch	Research FL law - SLAPP, privilege; calls w common counsel, J. Westby	2.5
10/25/2021	Westby	Review email from joint counsel; t/c w/ EFF re amicus; review emails from joint counsel;	3.8
10/25/2021	Rasch	Prepare FL motion to oppose extension, tel call w counsel	3.9
10/26/2021	Westby	Emails w/ Eff; send letter to EFF; review emails from joint counsel; email DOAs re ORR;	2.5
10/26/2021	Rasch	Tel call w EFF, amicus briefs, research FL law, calls w counsel	4.9

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
10/27/2021	Westby	Emails to/from EFF; review draft amicus; review email from joint counsel;	2.4
10/27/2021	Rasch	Prepare letter filing in FL - research waiver of jurisdiction, calls w counsel; call w/ D. Dagon/JW	4.2
10/28/2021	Westby	Review emails from joint counsel re amicus; draft/edit letter to FL; email joint counsel; review emails from joint counsel;	2.0
10/28/2021	Rasch	Draft letters to FL Court/ Tel calls w Counsel	3.1
10/29/2021	Westby	Review emails from joint counsel; edit letter to FL & send to joint counsel	3.0
10/29/2021	Rasch	Tel calls w counsel - Letter to Court	2.9
10/30/2021	Westby	Review FL docket & extension for time; t/c w/ D. Dagon; email EFF;	2.8
10/30/2021	Rasch	Research Letter to Court and Jurisdiction	2.0
10/31/2021	Westby	T/c w/ D. Dagon; review edits from joint counsel; edit draft letter to FL; review email from D. Dagon;	2.0
10/31/2021	Rasch	Call w D. Dagon/J W	2.5
11/1/21	Westby	Review emails from joint counsel; edit letter; review emails from D. Dagon; draft transmittal letter to FL; revise letter to FL; review email from EFF; review email from joint counsel; review order on hearing for time extension; email joint counsel; finalize letter and send final version to joint counsel; email C. Fuller re t/c	3.0
11/1/21	Rasch	Joint defense call re civil case Alfa Bank; respond to FL motion for continuance	1.6
11/2/21	Westby	Review emails from joint counsel; Finalize letter to FL; t/calls w/ joint counsel; t/c w/ M. Rasch re filing letter; send letter to FL judge; review finalized answers to Alfa Qs; email answers to Skadden;	1.8
11/2/21	Rasch	Prepare letter to FL Court Re Extension; Prepare FL Deposition answers t/call w J Westby	1.4
11/10/21	Rasch	Tel call w joint defense US v Sussman, research data integrity and third party	0.8
11/15/21	Rasch	Research Re: post immunity privilege in civil depositions	1.1
11/23/21	Rasch	Joint defense conf call, Review Alfa Bank litigation in DC/ME	1.0
12/30/21	Westby	Review email from Andrew DeF & reply; t/c/ w/ M. Rasch re same; t/c w/ D. Dagon	.5
12/30/21	Rasch	Tel Call J Westby, David Dagon	0.5
12/31/21	Westby	Emails to joint defense; t/c w/ D. Dagon	1.0
12/31/21	Rasch	Common interest call	1.0
1/2/22	Rasch	Common interest tel call	0.7
1/5/22	Westby	T/c w/ DeF; t/c w/ M. Rasch re same	.5
1/5/22	Rasch	Tel call w A. DeF/ J. Westby	0.5

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
1/6/22	Westby	T/c w/ joint defense counsel; review email & docs from joint defense counsel; review In re Sealed Motion case	3.8
1/6/22	Rasch	Tel cal -common interest, research grand jury secrecy issue	3.0
1/7/22	Westby	T/c w/ joint defense counsel	1.0
1/7/22	Rasch	Common interest call	1.0
1/9/22	Westby	Review doc from joint defense counsel; review file	1.5
1/9/22	Rasch	Common interest call	1.0
1/11/22	Westby	Review doc from FBI; T/c w/ Dagon	1.5
1/11/22	Rasch	Common interest call; call w J Westby; tel cal Dagon	1.4
1/12/22	Westby	T/c w/ joint defense	.5
1/13/22	Westby	T/c w/ joint defense; review file & doc production	2.0
1/13/22	Rasch	Common interest call, review discovery documents, protective order	1.2
1/18/22	Westby	T/c w/ joint defense counsel	1.2
1/18/22	Rasch	Zoom call - common interest	1.2
1/20/22	Westby	Review emails from joint defense counsel; reply	.4
1/24/22	Westby	T/c w/ joint defense counsel; comms w/ client; review email from Skadden re Alfa depo; t/c w/ M. Rasch to discuss Skadden email	2.0
1/24/22	Rasch	Common interest call - review Alfa Bank demand for deposition, privilege issue post immunity	2.5
1/27/22	Westby	Review email from Alfa re depo & reply	.2
1/31/22	Rasch	Review GT documents found online, review US v Sussman discovery pleadings	1.0
2/2/22	Rasch	Tel call J Westby, D Dagon, respond to pleading US v. Sussman by DeF	0.8
2/2/22	Westby	Review email from DeF & reply; forward to client; t/c w/ M. Rasch	.5
2/12/22	Westby	Review email from joint counsel; review motion by DeF; t/c w/ M. Rasch	1.0
2/12/22	Rasch	Tel call w J. Westby, common defense email review	0.8
2/13/22	Westby	T/c w/ joint counsel (2); t/c w/ client; review doc from client; prepare talking points	4.5
2/13/22	Rasch	Common defense calls; call w D Dagon, confirm DNS and other records	3.2
2/14/22	Westby	T/c w/ joint counsel (2); review documents from client; prepare talking points; review email from joint counsel; review filing by joint counsel;	4.5
2/14/22	Rasch	Review documents re US v Sussman pleading, prepare response to DeF arguments	3.0
2/15/22	Westby	T/c w/ joint counsel; email joint counsel	1.0
2/15/22	Rasch	Common defense Zoom call, emails, strategy meeting Re DiF	1.5

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
2/17/22	Westby	T/c w/ C. Soghoian; t/c w/ M. Rasch; review motion to dismiss;	2.0
2/17/22	Rasch	Tel Call, J. Westby. US v. Sussman motion to dismiss, Tel call w Senate Staff RE DNS privacy	1.2
2/18/22	Rasch	Common defense calls	1.1
2/18/22	Westby	T/c w/ joint counsel re DNS/EOP;	1.0
2/23/22	Rasch	Tel Calls research and purpose of data collection, EOP DNS and internal/external	1.8
3/2/22	Westby	T/c w/ joint counsel; review email from joint counsel	.8
3/2/22	Rasch	Common defense t/c	1.0
3/3/22	Westby	Review Alfa Bank court order; review Alfa Bank filing; t/c w/ M. Rasch re same	.8
3/3/22	Westby	Review email from joint counsel & reply; review email from D. Dagon & attachment; t/c w/ Dagon	1.2
3/3/22	Rasch	Call w/ J. Westby re Alfa Bank; Review docs US v Sussmann, t/c w/ joint defense	1.8
3/4/22	Westby	Review email from Alfa Bank counsel re dismissal; t/c w/ M. Rasch re same; email client re same; t/c w/ Hill staff re open records emails; t/c w/ joint counsel; review document from Dagon & reply	2.0
3/4/22	Rasch	Alfa Bank extension review; call w/ J. Westby	2.0
3/5/22	Rasch	Joint defense call/ review 900 pages of GT docs from ORR	1.2
3/6/22	Westby	Review ORR GT docs	1.2
3/7/22	Rasch	Review D. Dagon docs; joint defense call; t/c w/ J. Westby	2.5
3/7/22	Westby	T/c w/ joint counsel; review email from Alfa Bank counsel; t/c w/ M. Rasch re same; t/c w/ joint counsel; review doc from Dagon	2.5
3/8/22	Westby	Draft letter to DeF re Dagon testimony; email letter to DeF; review response	1.0
3/8/22	Rasch	Communication w/ DeF; draft letter re access to testimony	1.0
3/10/22	Westby	Review email from joint defense counsel; t/c w/ joint defense counsel; review info sent from joint defense	1.0
3/10/22	Rasch	Joint defense call; review docs from joint defense	1.0
3/11/22	Westby	Review email from joint defense re Alfa & reply	.2
3/11/22	Rasch	Call w/ joint defense; review GA Open Records Act	.2
3/15/22	Westby	Review email from OSC & reply; t/c w/ M. Rasch; t/c w/ D. Dagon	1.5
3/15/22	Rasch	Joint defense call/ call w/ D. Dagon; review GT emails	1.6
3/16/22	Westby	T/c w/ DeF & team; t/c w/ D. Dagon	1.0
3/16/22	Rasch	Call w/ DeF; joint defense call; review GT ORR docs	.9
3/17/22	Westby	Email w/ Joint defense counsel;	.2
3/17/22	Rasch	Review GT ORR docs; emails & call w/ J. Westby	.2

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
3/18/22	Westby	T/c w/ joint defense counsel;	.5
3/18/22	Rasch	Call w/ joint defense re emails and ORR docs	.5
3/19/22	Westby	Review email from D. Dagon & review attachment; t/c w D. Dagon	1.2
3/19/22	Rasch	Dagon document review; research	1.1
3/22/22	Westby	T/c w/ joint counsel; review email from joint counsel; email w/ OSC; t/c w/ Dagon	1.4
3/22/22	Rasch	Joint defense call; legal research; call w/ D. Dagon	1.5
3/24/22	Westby	Review email from joint counsel; review doc from Dagon	.5
3/24/22	Rasch	Review joint defense emails; email from D. Dagon	.5
3/25/22	Westby	Review email from joint counsel; review letter from GT; t/c w/ M. Rasch, Dagon	1.0
3/25/22	Rasch	Common defense emails; GT doc review; call w/ D. Dagon	1.0
3/29/22	Westby	Email OSC re access transcripts; review ORR docs	4.3
3/29/22	Rasch	Draft pleading re access to GJ transcripts; GT doc review; emails re same	4.0
3/30/22	Westby	Tc w/ joint counsel; review information from joint defense; t/c w/ M. Rasch' review email from OSC & reply	1.3
3/30/22	Rasch	Call w/ J. Westby; call w/ joint counsel; doc review	1.6
3/31/22	Westby	Email joint counsel re docs to review;	.5
3/31/22	Rasch	Joint defense communications	.7
4/5/22	Westby	Review Sussmann motion re accuracy of data; review OSC filings;	.5
4/5/22	Rasch	Doc review; DeF filings, US v Sussmann	.5
4/6/22	Westby	Review email from joint counsel; review info re OSC position; t/c w/ M. Rasch	1.0
4/6/22	Rasch	Email from joint defense counsel	.9
4/7/22	Westby	Email M. Schamel & review reply	.2
4/7/22	Rasch	Review data re Manos Antonakakis	.3
4/11/22	Westby	T/c w/ M. Schamel; t/c w/ M. Rasch	.8
4/11/22	Rasch	Call w/ J. Westby; call w/ M. Schamel	.8
4/15/22	Westby	Review emails from joint counsel & reply re joint call; review court docs;	.6
4/15/22	Rasch	Review pleadings in Sussmann case; doc review ORR docs	.6
4/16/22	Westby	Review pleadings in Sussmann case; review ORR docs	1.0
4/16/22	Rasch	Review pleadings in Sussmann case; document review	1.0
4/18/22	Westby	Review emails from joint counsel; t/c w/ joint counsel & document; email expert witness; emails w/ joint counsel	2.8
4/18/22	Rasch	Review GT docs; joint defense call; review expert witness scope	3.0
4/19/22	Westby	T/c w/ joint counsel; review ORR docs; email joint counsel; t/c w/ M. Rasch; review draft from M. Rasch	2.5

GLOBAL CYBER LEGAL – TIME LOG FOR WESTBY & RASCH IN DAGON MATTER

Date	Personnel	Description of Activity	Hours
4/19/22	Rasch	Review docs; joint defense call	2.3
4/25/22	Westby	Review order in Sussmann case; t/c w/ M. Rasch	1.0
4/25/22	Rasch	T/c w/ J. Westby; review pleadings/order	1.0
4/26/22	Westby	Review email from joint counsel & reply;	1.0
4/26/22	Rasch	T/c w/ J. Westby; review trial docs	.8
4/27/22	Westby	Review docs in Sussmann matter	4.5
4/27/22	Rasch	Sussmann doc review	4.5
4/28/22	Westby	Review emails w/ joint counsel; t/c w/ M. Rasch	.6
4/28/22	Rasch	Review transcript hearing scope of admissibility; call w/ J. Westby	.6
5/5/22	Westby	Review email from DeF & subpoena for trial testimony & reply; email D. Dagon re same	.5
5/5/22	Rasch	Review grand jury transcripts of D. Dagon; 302s, Jencks	.7
5/6/22	Westby	Emails w/ DeF re testimony & transcripts; review court filings; email w/ M. Schamel re subpoena	1.5
5/6/22	Rasch	Review Jencks materials re testimony of witnesses	.8
5/7/22	Rasch	Review pleadings, scope of examination, GT ORR docs	1.4
5/9/22	Westby	Review court filings; email w/ M. Bosworth; t/c w/ DeF & team	1.5
5/11/22	Westby	Review court filings, witness lists; email joint defense counsel; t/c w/ joint defense counsel	1.3
5/11/22	Rasch	Review court orders re scope of direct/cross; t/c w/ Westby	1.0
5/12/22	Westby	Review court filings, court order	1.0
5/12/22	Rasch	Review order of court	1.0
5/13/22	Westby	Review court order	1.0
5/13/22	Rasch	Review testimony & trial briefs	1.0

TOTAL FEES: 1245.5 hours @ \$350/HOUR = \$435,925.00

Discounted for GT from \$395/hour

Total Hours To Date: 1245.5 hours @ \$395/hour = \$491,972.50

Per retainer (reduced for Dagon from \$595/hour)

Total Hours to Date: 1245.5 hours @ \$595/hour = \$741,072.50

Regular rate

AMOUNT DISCOUNTED from \$395/hour = \$ 56,047.50

AMOUNT DISCOUNTED from \$595/hour = \$305,147.50

TOTAL EXPENSES: \$ 3,500.00

Pro Hac Vice / Non-party subpoena: Kilpatrick Townsend, Atlanta, GA

TOTAL AMOUNT OWED: \$439,425.00

From: Wasch, Kate
Sent: Mon, 5 Apr 2021 16:23:09 +0000
To: Lunon, Darryl
Cc: Sullivan, Rebecca; Setterstrom, Susan
Subject: Re: Dagon Follow-up
Attachments: image001.png

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am available at nine. I can make myself available at 11, given a little notice.

Kate Wasch
Chief Counsel, Employment & Litigation

On Apr 5, 2021, at 10:36 AM, Lunon, Darryl <dl91@gatech.edu> wrote:

Good for your Rebecca!

I am available the following times tomorrow: 0900-0930, 1100-1200, and 200-230pm. Please let me know if any of these work.

Darryl

From: Sullivan, Rebecca <Rebecca.Sullivan@doas.ga.gov>
Sent: Monday, April 5, 2021 10:02 AM
To: Setterstrom, Susan <susan.setterstrom@doas.ga.gov>; Lunon, Darryl <dl91@gatech.edu>
Cc: Wasch, Kate <kate.wasch@legal.gatech.edu>
Subject: RE: Dagon Follow-up

Actually, I have planned to take Thursday and Friday off this week (spring break for my kids). Would tomorrow work sometime between 10 and 3?

From: Setterstrom, Susan <susan.setterstrom@doas.ga.gov>
Sent: Monday, April 5, 2021 9:56 AM
To: Lunon, Darryl <dl91@gatech.edu>; Sullivan, Rebecca <Rebecca.Sullivan@doas.ga.gov>
Cc: Wasch, Kate <kate.wasch@legal.gatech.edu>
Subject: Re: Dagon Follow-up

Good Morning:

I'm available for both dates and times proposed by Mr. Lunon for a discussion this week.

Susan W. Setterstrom
Assistant Director
Liability Program Director
Georgia Department of Administrative Services
Direct: 404-656-4817
Cell: 678-836-3504
Susan.Setterstrom@doas.ga.gov
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Feedback? Please share your thoughts on DOAS' [Facebook](#), [Twitter](#), or [LinkedIn](#) page!

From: Lunon, Darryl <dl91@gatech.edu>
Sent: Thursday, April 1, 2021 7:00 PM
To: Sullivan, Rebecca <Rebecca.Sullivan@doas.ga.gov>
Cc: Wasch, Kate <kate.wasch@legal.gatech.edu>; Setterstrom, Susan <susan.setterstrom@doas.ga.gov>
Subject: RE: Dagon Follow-up

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Rebecca,

Thank you for the warm welcome and thank you for agreeing to meet! I am not available at 1100 on next Wednesday, but available after 330p on Thursday, 8 April OR after 200pm on Friday, 9 April.

PS: Sorry for emailing so late; definitely didn't intend for you to be working so late

Darryl

From: Sullivan, Rebecca <Rebecca.Sullivan@doas.ga.gov>
Sent: Thursday, April 1, 2021 6:50 PM
To: Lunon, Darryl <dl91@gatech.edu>
Cc: Wasch, Kate <kate.wasch@legal.gatech.edu>; Setterstrom, Susan <susan.setterstrom@doas.ga.gov>
Subject: RE: Dagon Follow-up

Hi Darryl and welcome to state government! I look forward to meeting you.

We are happy to discuss DOAS's perspective regarding Mr. Rasch's statements and his creative proposal. I am aware that Mr. Rasch reached out to our liability program director Susan Setterstrom a few weeks ago and discussed the General Liability Agreement provision regarding reimbursement of legal fees incurred in the successful defense of a criminal action directly related to an employee's official duties.

I'll set up a Teams meeting next week for the four of us to discuss. Are you and Kate available sometime Wednesday afternoon? Unless Susan corrects me, I believe we are both available after 11 that day.

Best:

Rebecca Sullivan

Assistant Commissioner and General Counsel

[Georgia Department of Administrative Services](#)

(404) 985-5333 (cell)

(404) 651-5935

Rebecca.sullivan@doas.ga.gov

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From: Lunon, Darryl <dl91@gatech.edu>
Sent: Thursday, April 1, 2021 6:03 PM
To: Sullivan, Rebecca <Rebecca.Sullivan@doas.ga.gov>
Cc: Wasch, Kate <kate.wasch@legal.gatech.edu>
Subject: Dagon Follow-up

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Good evening Ms. Sullivan,

I am the new Deputy General Counsel at Georgia Tech and wanted to take a moment to introduce myself. I am also looking forward to hearing your remarks at our OGC Staff meeting at the end of this month.

When available, I would like to get your thoughts on the Dagon Matter. I understand Ling-Ling spoke with you about this at the latter part of 2020. She has assigned this matter to Kate and I for resolution. To that end, we would appreciate any feedback you could provide.

For reference, I have included the latest correspondence from Global Cyber Legal, Mr. Dagon's counsel. There are representations made in this document that are not the Institute's understanding of DOAS' position on this matter.

Thank you for your time and I look forward to speaking with you soon.

Darryl

Very Respectfully,

Darryl W. Lunon, II

Deputy General Counsel &
Chief Ethics and Compliance Officer

Georgia Institute of Technology

221 Uncle Heinie Way

Atlanta, Georgia 30332-0257

O | 404.385.1608

C | 404.804.9171

E | dl91@gatech.edu

<image001.png>

COMMUNITY

WARRIORS

COMMUNITY

WARRIORS

COMMUNITY

WARRIORS

From: Middleton, Gwen
Sent: Thu, 31 Mar 2022 17:26:06 +0000
To: Winkles, Logan
Subject: FW: David Dagon and Global Cyber Legal LLC
Attachments: Sam Olens_March 30 2022.pdf

Should have copied you for your records...

From: Middleton, Gwen
Sent: Wednesday, March 30, 2022 4:59 PM
To: sam.olens@dentons.com
Subject: David Dagon and Global Cyber Legal LLC

Attorney Olens,

Please find attached communication from General Counsel Logan Winkles regarding the above referenced subject.

This communication is also being sent via US mail.

With best regards,

Gwen Middleton
Executive Business Operations Manager
Georgia Department of Administrative Services
(404) 657-9441
gwen.middleton@doas.ga.gov
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Brian P. Kemp
Governor

Rebecca N. Sullivan
Commissioner

Via United States and Electronic Mail

March 30, 2022

Samuel S. Olens, Esq.
DENTONS
303 Peachtree Street, NE
Suite 5300
Atlanta, Georgia 30308
Sam.olens@dentons.com

Re: David Dagon and Global Cyber Legal LLC

Dear Mr. Olens,

I write in response to your letter dated December 15, 2021, in which you have requested reimbursement from the Department of Administrative Services under O.C.G.A. § 45-9-1 and DOAS's General Liability Agreement ("GLA"). As an initial matter, I note that you have made a similar demand of Georgia Tech. This letter is not intended to address any claims or responses between your client and Georgia Tech, but is limited to the request for reimbursement under O.C.G.A. § 45-9-1.

As you noted, O.C.G.A. § 45-9-1 allows DOAS to reimburse a state employee "for reasonable legal fees or other expenses incurred in the *successful defense* of any criminal proceeding...where such action arises out of the performance of his or her official duties." According to your letter, Global Cyber Legal, LLC ("GCL") was retained in August 2020 after a grand jury issued a subpoena to Glomar Research, LLC, an entity created by Mr. Dagon. Importantly, however, neither the relevant statute nor the GLA provides for reimbursement of legal fees incurred by a corporate entity like Glomar Research.

In your letter, you also noted that GCL was retained to protect "(a) [Mr. Dagon's] interests, (b) the interests of his research, (c) the integrity of the U.S. Government contracts he was instrumental in bringing to Georgia Tech, (d) the continued funding of this research, and (e) the reputation of Georgia Tech as the nation's top university in cybersecurity research." While those interests may all be sufficiently important to obtain representation, they are not interests that are covered by the GLA or contemplated by O.C.G.A. § 45-9-1.

Finally, even if GCL's representation did fall within the coverage of the policy, Mr. Dagon has not established that he obtained a successful defense because, as you noted in your letter, he "is not and has never been subject to indictment and was never a target of the grand jury investigation." In order to achieve a successful defense, the individual employee must, at the very least, have some risk of

David Dagon and Global Cyber Legal LLC

Page 2 of 2

criminal liability. Any other interpretation would render the requirement of a successful defense meaningless. *See Scott v. State*, 295 Ga. 39, 40 (2014) (statute must be construed “to give sensible and intelligent effect to all its provisions and to refrain from any interpretation which renders any part of the statute meaningless”). This does not mean that an individual must be formally charged or indicted to be entitled to reimbursement, but there can be no “successful defense” where Mr. Dagon concedes that he is not and has never been the subject of a criminal investigation.

Given the foregoing, DOAS cannot provide coverage or reimbursement for the fees that Mr. Dagon or Glomar Research incurred. If I can be of any additional service, please do not hesitate to let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Logan B. Winkles', with a long horizontal flourish extending to the right.

Logan B. Winkles
General Counsel

From: proofpoint-pps@ppops.net
Sent: Thu, 16 Jun 2022 16:59:27 -0400
Subject: An email sent to you was rejected due to size limit.

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Message: 2022-06-16 - 16:59:27

An email from samuel.olens@dentons.com with the subject: Client: DAGON was rejected due to a size restriction.

The Max Size (including attachments and individual compressed files) cannot exceed 50mb. Please have the sender reduce the email size and resend.

If you have questions, please log a ticket with the Service Desk and have it assigned to: SGAEML-Proofpoint

Thank You

From: Kinney, Angela D.
Sent: Thu, 16 Jun 2022 21:28:10 +0000
To: Olens, Samuel S.; Winkles, Logan
Cc: Olens, Samuel S.; dagon@mx9.sudo.sh; westby@globalcyberlegal.com; rasch@globalcyberlegal.com
Subject: DAGON
Attachments: Letter to Logan Winkles - DAGON(121747480.1).pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon Logan.

Attached please find our formal letter/claim for reimbursement of legal fees as the matter has now concluded successfully. A second email will follow with additional documentation and the legal invoices.

Thank you!

Sam



Samuel S. Olens

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samuel.olens@dentons.com

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June 16, 2022

Logan Winkles, Esq.
General Counsel & Assistant Commissioner of Government Affairs
Department of Administrative Services
200 Piedmont Avenue, S.E.
Suite 182 West Tower
Atlanta, Georgia 30334-9010

Via Email: logan.winkles1@doas.ga.gov

Dear Mr. Winkles:

I am confused by your March 29, 2022 response to my December 11, 2021 letter denying coverage or reimbursement for Mr. Dagon's legal fees for criminal defense. Please note that Mr. Dagon *had not yet applied to the Department of Administrative Services ("DOAS") for reimbursement*. Rather, my December 11, 2021 letter was to advise DOAS and the Office of the Attorney General that Mr. Dagon might file a claim in the future for reimbursement of his reasonable attorney fees.

This matter is now concluded, and I am writing to notify you that Mr. Dagon is now filing a claim with DOAS for reimbursement of legal fees for criminal defense and to address a number of misperceptions in your March 29, 2022 letter.

Background

As you know from my earlier letter, Mr. David Dagon, a Georgia Tech Research Scientist, was subpoenaed to produce documents and testify before a federal grand jury investigating the U.S. Government's handling of allegations of Russia-Trump relations during the Trump campaign and 2016 election. The investigation was headed by John Durham, a Special Counsel appointed by former Attorney General William Barr. Several Georgia Tech cybersecurity researchers were involved in the investigation.

Mr. Dagon had been interviewed at Georgia Tech by FBI agents assigned to the Special Counsel's team. The Georgia Tech legal team and his supervisor at Georgia Tech told him not to communicate with the FBI agent and to notify the Georgia Tech chief of police. Mr. Dagon followed those instructions when contacted repeatedly by the FBI agent. In time, this stonewalling annoyed the agent, and Mr. Dagon was subpoenaed by the Special Counsel to produce documents to the grand jury.

Mr. Dagon had previously asked the Georgia Tech legal department about hiring legal counsel. He was not advised of any policy or procedure, but was told to "wait and see." When he received the subpoena, he retained Global Cyber Legal ("GCL") to represent him. GCL was advised that Mr. Dagon was a subject of the investigation. We attach hereto an email from the Department of Justice's Office of Special Counsel indicating that Mr. Dagon was a subject of the investigation. See Attachment A.

GCL brought up representation with Georgia Tech shortly after being retained. On November 4, 2020, the General Counsel for Georgia Tech introduced GCL to Bryan Webb in the Attorney General's Office regarding representation. See Attachment B, email exchange between Ling-Ling Nie, General Counsel of Georgia Tech and Bryan Webb regarding legal representation for Mr. Dagon. GCL and Mr. Webb had a call on November 5, 2020, in which Mr. Webb stated that the Attorney General's Office could not represent Mr. Dagon.

Ultimately, Mr. Dagon was given formal statutory immunity by the Special Counsel, and he cooperated with the Special Counsel's team and testified before the grand jury on three separate occasions. The Special Counsel ultimately brought a single false statement charge against Michael Sussmann, a prominent cyber lawyer in Washington, DC. GCL represented Mr. Dagon for nearly two years, from August 5, 2020 through the end of the Sussmann trial on May 31, 2022, since Mr. Dagon had been subpoenaed to testify at the trial.

Before responding to your March 29 letter, I was waiting to find out whether Mr. Dagon would be required to testify for the Government in *United States v. Sussmann* in federal court in Washington, D.C. Mr. Dagon was not required to testify, either by the Office of Special Counsel or the defense in that matter, and, on May 31, 2022, the jury in the District of Columbia unanimously found Mr. Sussmann not guilty of the single false statement charge levied against him. Thus, as this matter is now concluded for Mr. Dagon, he has "successfully defended" the criminal matter, and he is requesting payment of his legal fees and other expenses incurred in his successful defense in this criminal action.

DOAS General Liability Contract

Under the DOAS General Liability Contract (“Contract”) Section A. 1., Mr. Dagon is a “covered party” eligible for payment of legal fees under Section B. SUPPLEMENTARY PAYMENTS, Reimbursement for Legal Fees for Criminal Defense. That section states:

DOAS will reimburse any eligible Covered Party (as specified in O.C.G.A. §45-9-1) for reasonable legal fees and other expense incurred in the successful defense of a criminal action directly related to the performance of the Covered Party’s official duties, provided the legal fees and the other expenses are approved by the Attorney General of the State of Georgia.

Section F. CONDITIONS, 12. Reimbursement of Expenses states in part:

Reasonable reimbursement of expenses incurred by a Covered Party at the request of the Attorney General or DOAS in the investigation or defense of any claim or “lawsuit” will be paid for the Covered Party.

All of the issues in the criminal matter involved conduct by Mr. Dagon within his scope of employment and there was no wrongdoing by Mr. Dagon. The following draft statement for *The New York Times*, prepared by W. Blair Meeks, Assistant Vice President External Communications and approved by Chaouki T. Abdallah, Professor of Electrical and Computer Engineering and Executive Vice President for Research at Georgia Tech, stated:

A federal agency selected Georgia Tech and its researchers to work on some highly sensitive, extremely sophisticated computer systems research because of the school’s and its researchers’ world class reputations in this field and their high degree of integrity. The research was very much about securing the United States of America, its systems of governance and its people. All of the work conducted by Georgia Tech researchers was done in a strictly non-partisan way. These researchers focus on data, and everything they did in this case was a result of delving for the truth in the interests of national security.

It is important to point out that there is no suggestion in the indictment [of Mr. Sussmann] of any wrongdoing by anyone associated with Georgia Tech. Everyone connected with Georgia Tech has been cooperative with all aspects of the investigation into this matter.

See Attachment C.

With the completion of the Sussmann case, we are now formally filing a claim on Mr. Dagon's behalf for reimbursement of his legal fees for criminal defense under the Contract.

No Claim For Glomar Research Work

The Special Counsel first issued a subpoena to Glomar Research LLC (“Glomar”), which is owned by Mr. Dagon. *Mr. Dagon does not seek DOAS reimbursement for fees associated with any work he performed for Glomar.* Mr. Dagon used Glomar as a mechanism for purchasing minor pieces of equipment which he used in his Georgia Tech research work. He produced only three pages of documents under the subpoena, which were receipts for equipment he used in his work at Georgia Tech. Thus, in purchasing items for Georgia Tech through Glomar for which he was reimbursed, his actions were part of his official duties at Georgia Tech.

The test is not the name of the entity referenced in the subpoena, but rather, whether the legal fees were incurred in the successful defense of a criminal matter which *arose out of Mr. Dagon's performance of his official duties.* They were. Shortly after receiving the initial subpoena, Mr. Dagon also received grand jury subpoenas for his own production of documents arising out of his Georgia Tech research, and for his testimony about that research.

Thus, Mr. Dagon only seeks reimbursement of legal fees for his successful defense of a criminal action which *arose out of his performance of his official duties as a Research Scientist for Georgia Tech.* The reimbursement of fees is entirely appropriate.¹ Publicly posted documents obtained through an Open Records Request (“ORR”) indicate that Georgia Tech has been paying the legal expenses of two other employees also involved in the same grand jury investigation, those of Manos Antonatakis and Angelos Keromytis.

There is no legal reason to conclude that Professor Antonatakis's and Keromytis's legal expenses are reimbursable, but those of Mr. Dagon are not. In fact, it would be employment discrimination

¹ See, Opinion of U.S. Department of Justice's Office of Legal Counsel 44 Op. O.L.C. __ (Oct. 7, 2020) <https://www.justice.gov/olc/file/1347786/download> (U.S. government's reimbursement of legal fees and other expenses of current and former government employees who are subjects of a Trump/Russia special counsel investigation necessary not only because the employees committed no crime and incurred substantial legal defense costs, but also because their successful defense was in the interest of and for the benefit of the government for whom they worked. The OLC noted, “Such [Special Counsel] investigations often require current and former federal employees to incur substantial attorney's fees simply because they witnessed sensitive government deliberations in the course of doing their jobs. Absent reimbursement, the prospect of incurring such fees would deter individuals from serving in key government positions and from performing their duties” The OLC went on to note “the United States has a strong interest in reimbursing current or former government officials who incur attorney's fees as a result of appearing as witnesses in Independent Counsel investigations” and that “the United States has a strong interest in avoiding the chilling effects that the prospect of liability for attorney's fees would have on “Administration officials simply, and properly, doing their jobs” The mere fact that reimbursing Mr. Dagon's reasonable legal fees also serves the interests of the State of Georgia and of Georgia Tech is not, in our opinion, a reason for DOAS to refuse reimbursement.

to assert otherwise, especially since Mr. Dagon worked under the supervision of Prof. Antonakakis. All three were dragged into the grand jury criminal investigation as a result of their official duties, and were subpoenaed to produce documents and records and provide statements. Moreover, Mr. Dagon received immunity pursuant to 18 U.S.C. § 6001, whereas Prof. Antonakakis did not. Prof. Antonakakis was subpoenaed to testify at the Sussmann trial, but on May 21, 2022, he asserted his right against self-incrimination and declined to testify. Despite this fact, Prof. Antonakakis's legal expenses have reportedly been reimbursed by Georgia Tech.

The Purpose of the Representation Was to Defend A Criminal Action

Another misconception in your March 29, 2022 letter surrounds the purpose of GCL's representation of Mr. Dagon. As we previously stressed, GCL sought to protect Mr. Dagon from criminal prosecution, and to preserve the reputation of Mr. Dagon and Georgia Tech and his research and related DARPA contracts.

The criminal defense of Mr. Dagon surrounded allegations that he and his fellow researchers fabricated, altered, or cherry picked data from various DNS databases and caused this falsified data to be presented to the U.S. Government as part of their work at Georgia Tech. Such allegations were patently false. The Special Counsel also asserted that the mere use of the DNS databases -- the core of the research performed under multimillion dollar DARPA contracts awarded to Georgia Tech --- was unlawful, and that the database was a proprietary government database which was, in some sense, misused or misappropriated by the Georgia Tech researchers. These allegations were also false and had no foundation. The allegations also included rumors that the researchers violated federal wiretap, trap and trace, and computer crime statutes in the acquisition and use of the DNS data² which they analyzed within the scope of their duties at Georgia Tech. Again, these allegations were false and unsubstantiated, *but all of these allegations required a criminal defense.*

In a very real sense, Mr. Dagon and other Georgia Tech researchers involved in the Special Counsel investigation, including but not limited to Manos Antonakakis, Angelos Keromytis, Michael Farrell, and Charles Lever, were dragged into a complicated web of criminal allegations and accusations *all of which arose out of their performance of their official duties at Georgia Tech.*

In short, the criminal allegations clearly related to the activities of Mr. Dagon in the performance of his official duties -- and nothing else. Mr. Dagon defended himself by defending his research. The fact that the allegations were false does not mean that they were not serious. GCL's successful representation of Mr. Dagon included protecting his reputation and demonstrating that he

² These allegations are repeated in the civil lawsuit *Trump v. Clinton*, Dkt. No. 2:22-cv-14102 (S.D.FL., 2022) which includes as defendants certain unnamed "John Does."

committed no crime, thus, ensuring that he was not prosecuted. This is clearly the kind of activity for which reimbursement is required under the contract.

Mr. Dagon Was a Subject of the Federal Investigation

You also appear to have misread our statement that “Mr. Dagon is not and has never been subject to indictment and was never the target of the grand jury investigation” as an assertion that he was never the subject of the investigation. Your March 29, 2022 letter states, “This does not mean that an individual must be formally charged or indicted to be entitled to reimbursement, but there can be no “successful defense” where Mr. Dagon concedes that he is not and has never been the subject of a criminal investigation.” *Mr. Dagon very clearly was the subject of the investigation, and we clearly noted this fact, citing directly to the United States Attorney’s Manual definition of a “subject” of a grand jury investigation.*³ The difference between subject to an indictment and being the subject of a criminal investigation is crucial. It is also interesting to note that Prof. Antonakakis was not a subject of the investigation; he was only a witness, yet his fees are being paid.

GCL’s success in ensuring that Mr. Dagon was not the subject of an indictment demonstrates the success of GCL’s defense of Mr. Dagon.

Mr. Dagon Was At Risk of Criminal Prosecution

Your assertion that Mr. Dagon was not at risk of prosecution (as opposed to our assertion that he had committed no offense) is wholly incorrect. He was clearly at risk that the Special Counsel would seek to prosecute him - a threat that was repeated loudly and often by the Special Counsel and their team. After Mr. Dagon was notified by the prosecutor that he was a subject of the grand jury investigation, GCL had numerous calls with the Special Counsel team and had to coordinate closely with joint defense counsel. GCL had to negotiate the scope and extent of the immunity it was able to obtain for Mr. Dagon, review thousands of pages of documents, and prepare Mr. Dagon for three days of meetings with the Special Counsel team and three days of testimony before the grand jury.

³ See, United States Attorney’s Manual, Section 9-11.151, *In re North*, 11 F.3d 1075, 1077, 1993 U.S. App. LEXIS 31118, *3, 304 U.S. App. D.C. 179 noting that 28 U.S.C. § 593(f)(1) permitted reimbursement of attorney’s fees and costs only to “an individual who is *the subject* of an investigation conducted by an independent counsel” noting that “[m]ere witnesses likely do not have to retain counsel, and that targets of the investigation who may have participated in criminal activity may not be entitled to such reimbursement.”

In a motion filed by the Government on April 15, 2022, the Office of Special Counsel noted:

The only witness currently immunized by the government, Researcher-2 [Mr. Dagon], was conferred with that status on July 28, 2021....And the Government immunized Researcher-2 because, among other reasons, at least five other witnesses who conducted work relating to the Russian Bank-1 [Alfa Bank] allegations invoked (or at least indicated their intent to invoke) their right against self-incrimination. The Government therefore pursued Researcher-2's immunity in order to uncover otherwise-unavailable facts underlying the opposition research project that Tech Executive-1 and others carried out in advance of the defendant's meeting with the FBI.⁴

Even with the grant of immunity, Mr. Dagon remained at risk of prosecution, as the immunity extended only as far as that provided by 18 USC § 6001 and *Kastigar v. United States*, 406 US 441 (1972). As the U.S. Supreme Court noted concerning former President Trump's status as a "subject" of a New York grand jury:

Few individuals will simply brush off an indication that they may be within a prosecutor's crosshairs. Few will put the matter out of their minds and go about their work unaffected. For many, the prospect of prosecution will be the first and last thing on their minds every day.

Trump v. Vance, ___ U.S. ___, 140 S. Ct. 2412, 2447 n. 9 (2020).

There Is No Requirement That A Person Be Indicted or Charged or Have Actual Criminal Liability to Be Entitled to Reimbursement Under the Policy or the Statute

We also reject your limited definition of "criminal matter" as requiring that the Covered Party demonstrate that they have *actual criminal liability* as a condition precedent for coverage. This position would perversely provide taxpayer funding to actual criminals who had actual "criminal liability" but managed to escape justice and deny coverage to those like Mr. Dagon who committed no offense whatsoever, but who was repeatedly threatened with criminal prosecution by the Office of Special Counsel.

Mr. Dagon needed a lawyer not because he had done something criminal, but because he was under threat of prosecution after NOT having done anything criminal. Your implied representation that a Covered Person must demonstrate *actual criminal liability* as a condition precedent to coverage

⁴ *United States v. Sussman*, Dkt. No. 1:21-cr-00582-CRC Document 70, Filed April 15, 2022 (Government's Opposition to Defendant's Motions in Limine and Rule 404(b) Objections, p. 13-14) [hereinafter referred to as "Government's Opposition to Defendant's Motions"].

is unsupported by the language and purpose of the statute. Indeed, it is inconsistent with the structure of the former Independent Counsel statute, which permitted reimbursement of legal fees for government employees caught up in Independent Counsel investigations provided that they were *not targets* of the investigation (e.g., that they had no actual criminal liability), as well as the opinion of the US DOJ Office of Legal Counsel indicating that U.S. government employees' legal expenses incurred in connection with the Trump/Russia Special Counsel (Mueller) investigation should have their legal expenses reimbursed provided that they were not charged with or convicted of a crime.

Your assertion that a precondition of a “successful representation” in a “criminal action” requires proof of *actual criminal liability* seems inconsistent with these laws and regulations and is not supported by the language of the contract or the statute which authorized it.

Mr. Dagon’s “successful defense” was more than simply obtaining immunity from prosecution. Through the diligence, hard work, and the detailed review of thousands of pages of evidence, as well as close coordination with joint defense counsel, GCL worked to get the Special Counsel’s team to understand that the DNS data were not altered, manipulated, “cherry picked” or misused by the Georgia Tech researchers. Indeed, the prosecutors noted in a court filing that Mr. Dagon had spoken with Mr. Sussmann solely for the purpose of ascertaining whether the data provided to the Georgia Tech researchers had been legally collected and shared with the Georgia Tech research team.⁵ Mr. Dagon was trying to *protect himself and Georgia Tech*; nevertheless, as a subject of the investigation he was under threat of criminal prosecution, and remained so at least until the conclusion of the Sussmann prosecution..

GCL’s representation of Mr. Dagon resulted in him not being charged with a crime. That is a successful defense.⁶

DOAS’ Definition of “Criminal Action” Is Unduly Narrow And Inconsistent With the Statutory Language

We also observe that, while the Contract provides coverage for a “criminal action” the statute, which must be read in conjunction with the policy terms⁷ explains that the term “criminal action” is broader than a simple criminal prosecution, and includes “*any criminal cause of action, suit, investigation, subpoena, warrant, request for documentation or property, or threat of such action*”

⁵ Government’s Opposition to Defendant’s Motions at 17-18.

⁶ See, e.g., *Thompson v. Clark*, Dkt. No. 20–659, ___ U.S. ___, 142 S. Ct. 1332 (April 4, 2022)(slip. op. at 11-12)(noting that it is not necessary for a person to be charged and acquitted for there to be a “favorable termination” of a criminal case).

⁷ See, e.g., Brief for DOAS in *Key v. Georgia Department of Administrative Services*, Dkt. No. A16A1999, Ga. Ct. App., 2016 GA App. Ct. Briefs LEXIS 403, p. 17-18 (filed August 3, 2016).

whether formal or informal where such action arises out of the performance of his or her official duties.” O.C.G.A. 45-9-1 (emphasis added).

Your unduly narrow reading of the term “criminal action” to mean only those cases in which the Covered Party had *actual criminal liability* (had actually committed a crime) would cause precisely the harm you complain of -- it would fail to give meaning to key portions of the statute in abrogation of the intent of the legislature.

DOAS Must Reimburse Mr. Dagon’s Legal Fees For Responding to the Civil Alfa Bank Subpoenas

Additionally, we are submitting herewith GCL’s invoice for legal fees incurred at the direction of the Georgia Tech General Counsel’s Office (in coordination with the Attorney General’s Office) in connection with responding to a lawsuit which sought damages because of alleged “personal injury” and alleged “wrongful acts” related to Alfa Bank and its Russian oligarch owners. The allegations concerned the alleged acts and omissions of unnamed DNS security researchers.

Pursuant to the request of Georgia Tech’s legal department, GCL prepared motions to quash subpoenas and for protective orders, and retained local counsel in Georgia to assist in that respect. Georgia Tech’s legal also provided input into the nature and substance of these motions and to defenses they wanted GCL to assert in this regard. Ultimately, GCL was able to negotiate Mr. Dagon’s responses to subpoenas, and Mr. Dagon asserted his right against self-incrimination. On March 4, 2022, Alfa Bank dismissed its civil actions.

Conclusion

In sum, Mr. Dagon, as an employee of Georgia Tech, is an eligible covered party. Mr. Dagon was a subject of the investigation, and he was at risk of criminal prosecution. Legal fees related to his criminal defense, included subpoenas, discovery demands, days of meetings with the Special Counsel’s team, grand jury testimony, and preparation for trial. All of this work was clearly related to Mr. Dagon’s official duties as a Research Scientist at Georgia Tech. The legal fees incurred by Mr. Dagon were in connection with his defense to the criminal action, which was successful. Mr. Dagon was not charged.

Finally, both the hourly rate (substantially reduced, and then reduced again) and the scope of the hours expended over a two year period are reasonable in light of the nature, intricacy, and sensitivity of the matters under investigation, as well as the complexity of the technology, the national security implications, and the extraordinary degree of scrutiny afforded to this investigation.

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Sincerely,



Sam Olens

Attachment A: Email from A. DeFilippis Regarding Dagon's Subject Status

Attachment B: Email between Ling-Ling Nie and Bryan Webb

Attachment C: Draft Statement from Georgia Tech for NYT

Attachment D: Invoices for Dagon Legal Fees

cc: David Dagon
Global Cyber Legal LLC

SSO/adk

From: proofpoint-pps@ppops.net
Sent: Thu, 16 Jun 2022 17:36:08 -0400
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Thank You

From: Kinney, Angela D.
Sent: Thu, 16 Jun 2022 23:46:15 +0000
To: Winkles, Logan
Cc: Olens, Samuel S.; dagon@mx9.sudo.sh; westby@globalcyberlegal.com; rasch@globalcyberlegal.com
Subject: DAGON
Attachments: Letter to Logan Winkles - DAGON(121747480.1).pdf

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Good afternoon Logan.

Attached please find our formal letter/claim for reimbursement of legal fees as the matter has now concluded successfully. A second email will follow with additional documentation and the legal invoices.

Thank you!

Sam



Samuel S. Olens

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June 16, 2022

Logan Winkles, Esq.
General Counsel & Assistant Commissioner of Government Affairs
Department of Administrative Services
200 Piedmont Avenue, S.E.
Suite 182 West Tower
Atlanta, Georgia 30334-9010

Via Email: logan.winkles1@doas.ga.gov

Dear Mr. Winkles:

I am confused by your March 29, 2022 response to my December 11, 2021 letter denying coverage or reimbursement for Mr. Dagon's legal fees for criminal defense. Please note that Mr. Dagon *had not yet applied to the Department of Administrative Services ("DOAS") for reimbursement*. Rather, my December 11, 2021 letter was to advise DOAS and the Office of the Attorney General that Mr. Dagon might file a claim in the future for reimbursement of his reasonable attorney fees.

This matter is now concluded, and I am writing to notify you that Mr. Dagon is now filing a claim with DOAS for reimbursement of legal fees for criminal defense and to address a number of misperceptions in your March 29, 2022 letter.

Background

As you know from my earlier letter, Mr. David Dagon, a Georgia Tech Research Scientist, was subpoenaed to produce documents and testify before a federal grand jury investigating the U.S. Government's handling of allegations of Russia-Trump relations during the Trump campaign and 2016 election. The investigation was headed by John Durham, a Special Counsel appointed by former Attorney General William Barr. Several Georgia Tech cybersecurity researchers were involved in the investigation.

Mr. Dagon had been interviewed at Georgia Tech by FBI agents assigned to the Special Counsel's team. The Georgia Tech legal team and his supervisor at Georgia Tech told him not to communicate with the FBI agent and to notify the Georgia Tech chief of police. Mr. Dagon followed those instructions when contacted repeatedly by the FBI agent. In time, this stonewalling annoyed the agent, and Mr. Dagon was subpoenaed by the Special Counsel to produce documents to the grand jury.

Mr. Dagon had previously asked the Georgia Tech legal department about hiring legal counsel. He was not advised of any policy or procedure, but was told to "wait and see." When he received the subpoena, he retained Global Cyber Legal ("GCL") to represent him. GCL was advised that Mr. Dagon was a subject of the investigation. We attach hereto an email from the Department of Justice's Office of Special Counsel indicating that Mr. Dagon was a subject of the investigation. See Attachment A.

GCL brought up representation with Georgia Tech shortly after being retained. On November 4, 2020, the General Counsel for Georgia Tech introduced GCL to Bryan Webb in the Attorney General's Office regarding representation. See Attachment B, email exchange between Ling-Ling Nie, General Counsel of Georgia Tech and Bryan Webb regarding legal representation for Mr. Dagon. GCL and Mr. Webb had a call on November 5, 2020, in which Mr. Webb stated that the Attorney General's Office could not represent Mr. Dagon.

Ultimately, Mr. Dagon was given formal statutory immunity by the Special Counsel, and he cooperated with the Special Counsel's team and testified before the grand jury on three separate occasions. The Special Counsel ultimately brought a single false statement charge against Michael Sussmann, a prominent cyber lawyer in Washington, DC. GCL represented Mr. Dagon for nearly two years, from August 5, 2020 through the end of the Sussmann trial on May 31, 2022, since Mr. Dagon had been subpoenaed to testify at the trial.

Before responding to your March 29 letter, I was waiting to find out whether Mr. Dagon would be required to testify for the Government in *United States v. Sussmann* in federal court in Washington, D.C. Mr. Dagon was not required to testify, either by the Office of Special Counsel or the defense in that matter, and, on May 31, 2022, the jury in the District of Columbia unanimously found Mr. Sussmann not guilty of the single false statement charge levied against him. Thus, as this matter is now concluded for Mr. Dagon, he has "successfully defended" the criminal matter, and he is requesting payment of his legal fees and other expenses incurred in his successful defense in this criminal action.

DOAS General Liability Contract

Under the DOAS General Liability Contract (“Contract”) Section A. 1., Mr. Dagon is a “covered party” eligible for payment of legal fees under Section B. SUPPLEMENTARY PAYMENTS, Reimbursement for Legal Fees for Criminal Defense. That section states:

DOAS will reimburse any eligible Covered Party (as specified in O.C.G.A. §45-9-1) for reasonable legal fees and other expense incurred in the successful defense of a criminal action directly related to the performance of the Covered Party’s official duties, provided the legal fees and the other expenses are approved by the Attorney General of the State of Georgia.

Section F. CONDITIONS, 12. Reimbursement of Expenses states in part:

Reasonable reimbursement of expenses incurred by a Covered Party at the request of the Attorney General or DOAS in the investigation or defense of any claim or “lawsuit” will be paid for the Covered Party.

All of the issues in the criminal matter involved conduct by Mr. Dagon within his scope of employment and there was no wrongdoing by Mr. Dagon. The following draft statement for *The New York Times*, prepared by W. Blair Meeks, Assistant Vice President External Communications and approved by Chaouki T. Abdallah, Professor of Electrical and Computer Engineering and Executive Vice President for Research at Georgia Tech, stated:

A federal agency selected Georgia Tech and its researchers to work on some highly sensitive, extremely sophisticated computer systems research because of the school’s and its researchers’ world class reputations in this field and their high degree of integrity. The research was very much about securing the United States of America, its systems of governance and its people. All of the work conducted by Georgia Tech researchers was done in a strictly non-partisan way. These researchers focus on data, and everything they did in this case was a result of delving for the truth in the interests of national security.

It is important to point out that there is no suggestion in the indictment [of Mr. Sussmann] of any wrongdoing by anyone associated with Georgia Tech. Everyone connected with Georgia Tech has been cooperative with all aspects of the investigation into this matter.

See Attachment C.

With the completion of the Sussmann case, we are now formally filing a claim on Mr. Dagon's behalf for reimbursement of his legal fees for criminal defense under the Contract.

No Claim For Glomar Research Work

The Special Counsel first issued a subpoena to Glomar Research LLC (“Glomar”), which is owned by Mr. Dagon. *Mr. Dagon does not seek DOAS reimbursement for fees associated with any work he performed for Glomar.* Mr. Dagon used Glomar as a mechanism for purchasing minor pieces of equipment which he used in his Georgia Tech research work. He produced only three pages of documents under the subpoena, which were receipts for equipment he used in his work at Georgia Tech. Thus, in purchasing items for Georgia Tech through Glomar for which he was reimbursed, his actions were part of his official duties at Georgia Tech.

The test is not the name of the entity referenced in the subpoena, but rather, whether the legal fees were incurred in the successful defense of a criminal matter which *arose out of Mr. Dagon's performance of his official duties.* They were. Shortly after receiving the initial subpoena, Mr. Dagon also received grand jury subpoenas for his own production of documents arising out of his Georgia Tech research, and for his testimony about that research.

Thus, Mr. Dagon only seeks reimbursement of legal fees for his successful defense of a criminal action which *arose out of his performance of his official duties as a Research Scientist for Georgia Tech.* The reimbursement of fees is entirely appropriate.¹ Publicly posted documents obtained through an Open Records Request (“ORR”) indicate that Georgia Tech has been paying the legal expenses of two other employees also involved in the same grand jury investigation, those of Manos Antonatakis and Angelos Keromytis.

There is no legal reason to conclude that Professor Antonatakis's and Keromytis's legal expenses are reimbursable, but those of Mr. Dagon are not. In fact, it would be employment discrimination

¹ See, Opinion of U.S. Department of Justice's Office of Legal Counsel 44 Op. O.L.C. __ (Oct. 7, 2020) <https://www.justice.gov/olc/file/1347786/download> (U.S. government's reimbursement of legal fees and other expenses of current and former government employees who are subjects of a Trump/Russia special counsel investigation necessary not only because the employees committed no crime and incurred substantial legal defense costs, but also because their successful defense was in the interest of and for the benefit of the government for whom they worked. The OLC noted, “Such [Special Counsel] investigations often require current and former federal employees to incur substantial attorney's fees simply because they witnessed sensitive government deliberations in the course of doing their jobs. Absent reimbursement, the prospect of incurring such fees would deter individuals from serving in key government positions and from performing their duties” The OLC went on to note “the United States has a strong interest in reimbursing current or former government officials who incur attorney's fees as a result of appearing as witnesses in Independent Counsel investigations” and that “the United States has a strong interest in avoiding the chilling effects that the prospect of liability for attorney's fees would have on “Administration officials simply, and properly, doing their jobs” The mere fact that reimbursing Mr. Dagon's reasonable legal fees also serves the interests of the State of Georgia and of Georgia Tech is not, in our opinion, a reason for DOAS to refuse reimbursement.

to assert otherwise, especially since Mr. Dagon worked under the supervision of Prof. Antonakakis. All three were dragged into the grand jury criminal investigation as a result of their official duties, and were subpoenaed to produce documents and records and provide statements. Moreover, Mr. Dagon received immunity pursuant to 18 U.S.C. § 6001, whereas Prof. Antonakakis did not. Prof. Antonakakis was subpoenaed to testify at the Sussmann trial, but on May 21, 2022, he asserted his right against self-incrimination and declined to testify. Despite this fact, Prof. Antonakakis's legal expenses have reportedly been reimbursed by Georgia Tech.

The Purpose of the Representation Was to Defend A Criminal Action

Another misconception in your March 29, 2022 letter surrounds the purpose of GCL's representation of Mr. Dagon. As we previously stressed, GCL sought to protect Mr. Dagon from criminal prosecution, and to preserve the reputation of Mr. Dagon and Georgia Tech and his research and related DARPA contracts.

The criminal defense of Mr. Dagon surrounded allegations that he and his fellow researchers fabricated, altered, or cherry picked data from various DNS databases and caused this falsified data to be presented to the U.S. Government as part of their work at Georgia Tech. Such allegations were patently false. The Special Counsel also asserted that the mere use of the DNS databases -- the core of the research performed under multimillion dollar DARPA contracts awarded to Georgia Tech --- was unlawful, and that the database was a proprietary government database which was, in some sense, misused or misappropriated by the Georgia Tech researchers. These allegations were also false and had no foundation. The allegations also included rumors that the researchers violated federal wiretap, trap and trace, and computer crime statutes in the acquisition and use of the DNS data² which they analyzed within the scope of their duties at Georgia Tech. Again, these allegations were false and unsubstantiated, *but all of these allegations required a criminal defense.*

In a very real sense, Mr. Dagon and other Georgia Tech researchers involved in the Special Counsel investigation, including but not limited to Manos Antonakakis, Angelos Keromytis, Michael Farrell, and Charles Lever, were dragged into a complicated web of criminal allegations and accusations *all of which arose out of their performance of their official duties at Georgia Tech.*

In short, the criminal allegations clearly related to the activities of Mr. Dagon in the performance of his official duties -- and nothing else. Mr. Dagon defended himself by defending his research. The fact that the allegations were false does not mean that they were not serious. GCL's successful representation of Mr. Dagon included protecting his reputation and demonstrating that he

² These allegations are repeated in the civil lawsuit *Trump v. Clinton*, Dkt. No. 2:22-cv-14102 (S.D.FL., 2022) which includes as defendants certain unnamed "John Does."

committed no crime, thus, ensuring that he was not prosecuted. This is clearly the kind of activity for which reimbursement is required under the contract.

Mr. Dagon Was a Subject of the Federal Investigation

You also appear to have misread our statement that “Mr. Dagon is not and has never been subject to indictment and was never the target of the grand jury investigation” as an assertion that he was never the subject of the investigation. Your March 29, 2022 letter states, “This does not mean that an individual must be formally charged or indicted to be entitled to reimbursement, but there can be no “successful defense” where Mr. Dagon concedes that he is not and has never been the subject of a criminal investigation.” *Mr. Dagon very clearly was the subject of the investigation, and we clearly noted this fact, citing directly to the United States Attorney’s Manual definition of a “subject” of a grand jury investigation.*³ The difference between subject to an indictment and being the subject of a criminal investigation is crucial. It is also interesting to note that Prof. Antonakakis was not a subject of the investigation; he was only a witness, yet his fees are being paid.

GCL’s success in ensuring that Mr. Dagon was not the subject of an indictment demonstrates the success of GCL’s defense of Mr. Dagon.

Mr. Dagon Was At Risk of Criminal Prosecution

Your assertion that Mr. Dagon was not at risk of prosecution (as opposed to our assertion that he had committed no offense) is wholly incorrect. He was clearly at risk that the Special Counsel would seek to prosecute him - a threat that was repeated loudly and often by the Special Counsel and their team. After Mr. Dagon was notified by the prosecutor that he was a subject of the grand jury investigation, GCL had numerous calls with the Special Counsel team and had to coordinate closely with joint defense counsel. GCL had to negotiate the scope and extent of the immunity it was able to obtain for Mr. Dagon, review thousands of pages of documents, and prepare Mr. Dagon for three days of meetings with the Special Counsel team and three days of testimony before the grand jury.

³ See, United States Attorney’s Manual, Section 9-11.151, *In re North*, 11 F.3d 1075, 1077, 1993 U.S. App. LEXIS 31118, *3, 304 U.S. App. D.C. 179 noting that 28 U.S.C. § 593(f)(1) permitted reimbursement of attorney’s fees and costs only to “an individual who is *the subject* of an investigation conducted by an independent counsel” noting that “[m]ere witnesses likely do not have to retain counsel, and that targets of the investigation who may have participated in criminal activity may not be entitled to such reimbursement.”

In a motion filed by the Government on April 15, 2022, the Office of Special Counsel noted:

The only witness currently immunized by the government, Researcher-2 [Mr. Dagon], was conferred with that status on July 28, 2021....And the Government immunized Researcher-2 because, among other reasons, at least five other witnesses who conducted work relating to the Russian Bank-1 [Alfa Bank] allegations invoked (or at least indicated their intent to invoke) their right against self-incrimination. The Government therefore pursued Researcher-2's immunity in order to uncover otherwise-unavailable facts underlying the opposition research project that Tech Executive-1 and others carried out in advance of the defendant's meeting with the FBI.⁴

Even with the grant of immunity, Mr. Dagon remained at risk of prosecution, as the immunity extended only as far as that provided by 18 USC § 6001 and *Kastigar v. United States*, 406 US 441 (1972). As the U.S. Supreme Court noted concerning former President Trump's status as a "subject" of a New York grand jury:

Few individuals will simply brush off an indication that they may be within a prosecutor's crosshairs. Few will put the matter out of their minds and go about their work unaffected. For many, the prospect of prosecution will be the first and last thing on their minds every day.

Trump v. Vance, ___ U.S. ___, 140 S. Ct. 2412, 2447 n. 9 (2020).

There Is No Requirement That A Person Be Indicted or Charged or Have Actual Criminal Liability to Be Entitled to Reimbursement Under the Policy or the Statute

We also reject your limited definition of "criminal matter" as requiring that the Covered Party demonstrate that they have *actual criminal liability* as a condition precedent for coverage. This position would perversely provide taxpayer funding to actual criminals who had actual "criminal liability" but managed to escape justice and deny coverage to those like Mr. Dagon who committed no offense whatsoever, but who was repeatedly threatened with criminal prosecution by the Office of Special Counsel.

Mr. Dagon needed a lawyer not because he had done something criminal, but because he was under threat of prosecution after NOT having done anything criminal. Your implied representation that a Covered Person must demonstrate *actual criminal liability* as a condition precedent to coverage

⁴ *United States v. Sussman*, Dkt. No. 1:21-cr-00582-CRC Document 70, Filed April 15, 2022 (Government's Opposition to Defendant's Motions in Limine and Rule 404(b) Objections, p. 13-14) [hereinafter referred to as "Government's Opposition to Defendant's Motions"].

is unsupported by the language and purpose of the statute. Indeed, it is inconsistent with the structure of the former Independent Counsel statute, which permitted reimbursement of legal fees for government employees caught up in Independent Counsel investigations provided that they were *not targets* of the investigation (e.g., that they had no actual criminal liability), as well as the opinion of the US DOJ Office of Legal Counsel indicating that U.S. government employees' legal expenses incurred in connection with the Trump/Russia Special Counsel (Mueller) investigation should have their legal expenses reimbursed provided that they were not charged with or convicted of a crime.

Your assertion that a precondition of a “successful representation” in a “criminal action” requires proof of *actual criminal liability* seems inconsistent with these laws and regulations and is not supported by the language of the contract or the statute which authorized it.

Mr. Dagon’s “successful defense” was more than simply obtaining immunity from prosecution. Through the diligence, hard work, and the detailed review of thousands of pages of evidence, as well as close coordination with joint defense counsel, GCL worked to get the Special Counsel’s team to understand that the DNS data were not altered, manipulated, “cherry picked” or misused by the Georgia Tech researchers. Indeed, the prosecutors noted in a court filing that Mr. Dagon had spoken with Mr. Sussmann solely for the purpose of ascertaining whether the data provided to the Georgia Tech researchers had been legally collected and shared with the Georgia Tech research team.⁵ Mr. Dagon was trying to *protect himself and Georgia Tech*; nevertheless, as a subject of the investigation he was under threat of criminal prosecution, and remained so at least until the conclusion of the Sussmann prosecution..

GCL’s representation of Mr. Dagon resulted in him not being charged with a crime. That is a successful defense.⁶

DOAS’ Definition of “Criminal Action” Is Unduly Narrow And Inconsistent With the Statutory Language

We also observe that, while the Contract provides coverage for a “criminal action” the statute, which must be read in conjunction with the policy terms⁷ explains that the term “criminal action” is broader than a simple criminal prosecution, and includes “*any criminal cause of action, suit, investigation, subpoena, warrant, request for documentation or property, or threat of such action*”

⁵ Government’s Opposition to Defendant’s Motions at 17-18.

⁶ See, e.g., *Thompson v. Clark*, Dkt. No. 20–659, ___ U.S. ___, 142 S. Ct. 1332 (April 4, 2022)(slip. op. at 11-12)(noting that it is not necessary for a person to be charged and acquitted for there to be a “favorable termination” of a criminal case).

⁷ See, e.g., Brief for DOAS in *Key v. Georgia Department of Administrative Services*, Dkt. No. A16A1999, Ga. Ct. App., 2016 GA App. Ct. Briefs LEXIS 403, p. 17-18 (filed August 3, 2016).

whether formal or informal where such action arises out of the performance of his or her official duties.” O.C.G.A. 45-9-1 (emphasis added).

Your unduly narrow reading of the term “criminal action” to mean only those cases in which the Covered Party had *actual criminal liability* (had actually committed a crime) would cause precisely the harm you complain of -- it would fail to give meaning to key portions of the statute in abrogation of the intent of the legislature.

DOAS Must Reimburse Mr. Dagon’s Legal Fees For Responding to the Civil Alfa Bank Subpoenas

Additionally, we are submitting herewith GCL’s invoice for legal fees incurred at the direction of the Georgia Tech General Counsel’s Office (in coordination with the Attorney General’s Office) in connection with responding to a lawsuit which sought damages because of alleged “personal injury” and alleged “wrongful acts” related to Alfa Bank and its Russian oligarch owners. The allegations concerned the alleged acts and omissions of unnamed DNS security researchers.

Pursuant to the request of Georgia Tech’s legal department, GCL prepared motions to quash subpoenas and for protective orders, and retained local counsel in Georgia to assist in that respect. Georgia Tech’s legal also provided input into the nature and substance of these motions and to defenses they wanted GCL to assert in this regard. Ultimately, GCL was able to negotiate Mr. Dagon’s responses to subpoenas, and Mr. Dagon asserted his right against self-incrimination. On March 4, 2022, Alfa Bank dismissed its civil actions.

Conclusion

In sum, Mr. Dagon, as an employee of Georgia Tech, is an eligible covered party. Mr. Dagon was a subject of the investigation, and he was at risk of criminal prosecution. Legal fees related to his criminal defense, included subpoenas, discovery demands, days of meetings with the Special Counsel’s team, grand jury testimony, and preparation for trial. All of this work was clearly related to Mr. Dagon’s official duties as a Research Scientist at Georgia Tech. The legal fees incurred by Mr. Dagon were in connection with his defense to the criminal action, which was successful. Mr. Dagon was not charged.

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Sincerely,



Sam Olens

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Attachment B: Email between Ling-Ling Nie and Bryan Webb

Attachment C: Draft Statement from Georgia Tech for NYT

Attachment D: Invoices for Dagon Legal Fees

cc: David Dagon
Global Cyber Legal LLC

SSO/adk

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Thank You

From: Winkles, Logan
Sent: Fri, 17 Jun 2022 14:03:28 +0000
To: Kinney, Angela D.
Cc: Olens, Samuel S.; dagon@mx9.sudo.sh; westby@globalcyberlegal.com; rasch@globalcyberlegal.com
Subject: RE: DAGON

Thank you. I've received the letter, but not the attachments.

From: Kinney, Angela D. <angela.kinney@dentons.com>
Sent: Thursday, June 16, 2022 7:46 PM
To: Winkles, Logan <logan.winkles1@doas.ga.gov>
Cc: Olens, Samuel S. <samuel.olens@dentons.com>; dagon@mx9.sudo.sh; westby@globalcyberlegal.com; rasch@globalcyberlegal.com
Subject: DAGON

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Good afternoon Logan.

Attached please find our formal letter/claim for reimbursement of legal fees as the matter has now concluded successfully. A second email will follow with additional documentation and the legal invoices.

Thank you!

Sam

 Samuel S. Olens

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From: Kinney, Angela D.
Sent: Fri, 17 Jun 2022 14:04:40 +0000
To: Winkles, Logan
Subject: RE: DAGON

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Angela D. Kinney

Legal Secretary

Assistant To: Eric J. Tanenblatt, Chan Creswell, Samuel S. Olens

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From: Winkles, Logan <logan.winkles1@doas.ga.gov>
Sent: Friday, June 17, 2022 10:03 AM
To: Kinney, Angela D. <angela.kinney@dentons.com>
Cc: Olens, Samuel S. <samuel.olens@dentons.com>; dagon@mx9.sudo.sh;
westby@globalcyberlegal.com; rasch@globalcyberlegal.com
Subject: RE: DAGON

[WARNING: EXTERNAL SENDER]

Thank you. I've received the letter, but not the attachments.

From: Kinney, Angela D. <angela.kinney@dentons.com>
Sent: Thursday, June 16, 2022 7:46 PM
To: Winkles, Logan <logan.winkles1@doas.ga.gov>
Cc: Olens, Samuel S. <samuel.olens@dentons.com>; dagon@mx9.sudo.sh;
westby@globalcyberlegal.com; rasch@globalcyberlegal.com
Subject: DAGON

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Good afternoon Logan.

Attached please find our formal letter/claim for reimbursement of legal fees as the matter has now concluded successfully. A second email will follow with additional documentation and the legal invoices.

Thank you!

Sam



Samuel S. Olens

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From: Kinney, Angela D.
Sent: Fri, 17 Jun 2022 14:55:28 +0000
To: Winkles, Logan
Cc: dagon@mx9.sudo.sh; westby@globalcyberlegal.com; rasch@globalcyberlegal.com
Subject: DAGON
Attachments: Letter to Logan Winkles - DAGON(121747480.1).pdf

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Good morning Logan

Attached are the additional documentation and the legal invoices.

Thank you!

Sam



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June 16, 2022

Logan Winkles, Esq.
General Counsel & Assistant Commissioner of Government Affairs
Department of Administrative Services
200 Piedmont Avenue, S.E.
Suite 182 West Tower
Atlanta, Georgia 30334-9010

Via Email: logan.winkles1@doas.ga.gov

Dear Mr. Winkles:

I am confused by your March 29, 2022 response to my December 11, 2021 letter denying coverage or reimbursement for Mr. Dagon's legal fees for criminal defense. Please note that Mr. Dagon *had not yet applied to the Department of Administrative Services ("DOAS") for reimbursement*. Rather, my December 11, 2021 letter was to advise DOAS and the Office of the Attorney General that Mr. Dagon might file a claim in the future for reimbursement of his reasonable attorney fees.

This matter is now concluded, and I am writing to notify you that Mr. Dagon is now filing a claim with DOAS for reimbursement of legal fees for criminal defense and to address a number of misperceptions in your March 29, 2022 letter.

Background

As you know from my earlier letter, Mr. David Dagon, a Georgia Tech Research Scientist, was subpoenaed to produce documents and testify before a federal grand jury investigating the U.S. Government's handling of allegations of Russia-Trump relations during the Trump campaign and 2016 election. The investigation was headed by John Durham, a Special Counsel appointed by former Attorney General William Barr. Several Georgia Tech cybersecurity researchers were involved in the investigation.

Mr. Dagon had been interviewed at Georgia Tech by FBI agents assigned to the Special Counsel's team. The Georgia Tech legal team and his supervisor at Georgia Tech told him not to communicate with the FBI agent and to notify the Georgia Tech chief of police. Mr. Dagon followed those instructions when contacted repeatedly by the FBI agent. In time, this stonewalling annoyed the agent, and Mr. Dagon was subpoenaed by the Special Counsel to produce documents to the grand jury.

Mr. Dagon had previously asked the Georgia Tech legal department about hiring legal counsel. He was not advised of any policy or procedure, but was told to "wait and see." When he received the subpoena, he retained Global Cyber Legal ("GCL") to represent him. GCL was advised that Mr. Dagon was a subject of the investigation. We attach hereto an email from the Department of Justice's Office of Special Counsel indicating that Mr. Dagon was a subject of the investigation. See Attachment A.

GCL brought up representation with Georgia Tech shortly after being retained. On November 4, 2020, the General Counsel for Georgia Tech introduced GCL to Bryan Webb in the Attorney General's Office regarding representation. See Attachment B, email exchange between Ling-Ling Nie, General Counsel of Georgia Tech and Bryan Webb regarding legal representation for Mr. Dagon. GCL and Mr. Webb had a call on November 5, 2020, in which Mr. Webb stated that the Attorney General's Office could not represent Mr. Dagon.

Ultimately, Mr. Dagon was given formal statutory immunity by the Special Counsel, and he cooperated with the Special Counsel's team and testified before the grand jury on three separate occasions. The Special Counsel ultimately brought a single false statement charge against Michael Sussmann, a prominent cyber lawyer in Washington, DC. GCL represented Mr. Dagon for nearly two years, from August 5, 2020 through the end of the Sussmann trial on May 31, 2022, since Mr. Dagon had been subpoenaed to testify at the trial.

Before responding to your March 29 letter, I was waiting to find out whether Mr. Dagon would be required to testify for the Government in *United States v. Sussmann* in federal court in Washington, D.C. Mr. Dagon was not required to testify, either by the Office of Special Counsel or the defense in that matter, and, on May 31, 2022, the jury in the District of Columbia unanimously found Mr. Sussmann not guilty of the single false statement charge levied against him. Thus, as this matter is now concluded for Mr. Dagon, he has "successfully defended" the criminal matter, and he is requesting payment of his legal fees and other expenses incurred in his successful defense in this criminal action.

DOAS General Liability Contract

Under the DOAS General Liability Contract (“Contract”) Section A. 1., Mr. Dagon is a “covered party” eligible for payment of legal fees under Section B. SUPPLEMENTARY PAYMENTS, Reimbursement for Legal Fees for Criminal Defense. That section states:

DOAS will reimburse any eligible Covered Party (as specified in O.C.G.A. §45-9-1) for reasonable legal fees and other expense incurred in the successful defense of a criminal action directly related to the performance of the Covered Party’s official duties, provided the legal fees and the other expenses are approved by the Attorney General of the State of Georgia.

Section F. CONDITIONS, 12. Reimbursement of Expenses states in part:

Reasonable reimbursement of expenses incurred by a Covered Party at the request of the Attorney General or DOAS in the investigation or defense of any claim or “lawsuit” will be paid for the Covered Party.

All of the issues in the criminal matter involved conduct by Mr. Dagon within his scope of employment and there was no wrongdoing by Mr. Dagon. The following draft statement for *The New York Times*, prepared by W. Blair Meeks, Assistant Vice President External Communications and approved by Chaouki T. Abdallah, Professor of Electrical and Computer Engineering and Executive Vice President for Research at Georgia Tech, stated:

A federal agency selected Georgia Tech and its researchers to work on some highly sensitive, extremely sophisticated computer systems research because of the school’s and its researchers’ world class reputations in this field and their high degree of integrity. The research was very much about securing the United States of America, its systems of governance and its people. All of the work conducted by Georgia Tech researchers was done in a strictly non-partisan way. These researchers focus on data, and everything they did in this case was a result of delving for the truth in the interests of national security.

It is important to point out that there is no suggestion in the indictment [of Mr. Sussmann] of any wrongdoing by anyone associated with Georgia Tech. Everyone connected with Georgia Tech has been cooperative with all aspects of the investigation into this matter.

See Attachment C.

With the completion of the Sussmann case, we are now formally filing a claim on Mr. Dagon's behalf for reimbursement of his legal fees for criminal defense under the Contract.

No Claim For Glomar Research Work

The Special Counsel first issued a subpoena to Glomar Research LLC (“Glomar”), which is owned by Mr. Dagon. *Mr. Dagon does not seek DOAS reimbursement for fees associated with any work he performed for Glomar.* Mr. Dagon used Glomar as a mechanism for purchasing minor pieces of equipment which he used in his Georgia Tech research work. He produced only three pages of documents under the subpoena, which were receipts for equipment he used in his work at Georgia Tech. Thus, in purchasing items for Georgia Tech through Glomar for which he was reimbursed, his actions were part of his official duties at Georgia Tech.

The test is not the name of the entity referenced in the subpoena, but rather, whether the legal fees were incurred in the successful defense of a criminal matter which *arose out of Mr. Dagon's performance of his official duties.* They were. Shortly after receiving the initial subpoena, Mr. Dagon also received grand jury subpoenas for his own production of documents arising out of his Georgia Tech research, and for his testimony about that research.

Thus, Mr. Dagon only seeks reimbursement of legal fees for his successful defense of a criminal action which *arose out of his performance of his official duties as a Research Scientist for Georgia Tech.* The reimbursement of fees is entirely appropriate.¹ Publicly posted documents obtained through an Open Records Request (“ORR”) indicate that Georgia Tech has been paying the legal expenses of two other employees also involved in the same grand jury investigation, those of Manos Antonatakis and Angelos Keromytis.

There is no legal reason to conclude that Professor Antonatakis's and Keromytis's legal expenses are reimbursable, but those of Mr. Dagon are not. In fact, it would be employment discrimination

¹ See, Opinion of U.S. Department of Justice's Office of Legal Counsel 44 Op. O.L.C. __ (Oct. 7, 2020) <https://www.justice.gov/olc/file/1347786/download> (U.S. government's reimbursement of legal fees and other expenses of current and former government employees who are subjects of a Trump/Russia special counsel investigation necessary not only because the employees committed no crime and incurred substantial legal defense costs, but also because their successful defense was in the interest of and for the benefit of the government for whom they worked. The OLC noted, “Such [Special Counsel] investigations often require current and former federal employees to incur substantial attorney's fees simply because they witnessed sensitive government deliberations in the course of doing their jobs. Absent reimbursement, the prospect of incurring such fees would deter individuals from serving in key government positions and from performing their duties” The OLC went on to note “the United States has a strong interest in reimbursing current or former government officials who incur attorney's fees as a result of appearing as witnesses in Independent Counsel investigations” and that “the United States has a strong interest in avoiding the chilling effects that the prospect of liability for attorney's fees would have on “Administration officials simply, and properly, doing their jobs” The mere fact that reimbursing Mr. Dagon's reasonable legal fees also serves the interests of the State of Georgia and of Georgia Tech is not, in our opinion, a reason for DOAS to refuse reimbursement.

to assert otherwise, especially since Mr. Dagon worked under the supervision of Prof. Antonakakis. All three were dragged into the grand jury criminal investigation as a result of their official duties, and were subpoenaed to produce documents and records and provide statements. Moreover, Mr. Dagon received immunity pursuant to 18 U.S.C. § 6001, whereas Prof. Antonakakis did not. Prof. Antonakakis was subpoenaed to testify at the Sussmann trial, but on May 21, 2022, he asserted his right against self-incrimination and declined to testify. Despite this fact, Prof. Antonakakis's legal expenses have reportedly been reimbursed by Georgia Tech.

The Purpose of the Representation Was to Defend A Criminal Action

Another misconception in your March 29, 2022 letter surrounds the purpose of GCL's representation of Mr. Dagon. As we previously stressed, GCL sought to protect Mr. Dagon from criminal prosecution, and to preserve the reputation of Mr. Dagon and Georgia Tech and his research and related DARPA contracts.

The criminal defense of Mr. Dagon surrounded allegations that he and his fellow researchers fabricated, altered, or cherry picked data from various DNS databases and caused this falsified data to be presented to the U.S. Government as part of their work at Georgia Tech. Such allegations were patently false. The Special Counsel also asserted that the mere use of the DNS databases -- the core of the research performed under multimillion dollar DARPA contracts awarded to Georgia Tech --- was unlawful, and that the database was a proprietary government database which was, in some sense, misused or misappropriated by the Georgia Tech researchers. These allegations were also false and had no foundation. The allegations also included rumors that the researchers violated federal wiretap, trap and trace, and computer crime statutes in the acquisition and use of the DNS data² which they analyzed within the scope of their duties at Georgia Tech. Again, these allegations were false and unsubstantiated, *but all of these allegations required a criminal defense.*

In a very real sense, Mr. Dagon and other Georgia Tech researchers involved in the Special Counsel investigation, including but not limited to Manos Antonakakis, Angelos Keromytis, Michael Farrell, and Charles Lever, were dragged into a complicated web of criminal allegations and accusations *all of which arose out of their performance of their official duties at Georgia Tech.*

In short, the criminal allegations clearly related to the activities of Mr. Dagon in the performance of his official duties -- and nothing else. Mr. Dagon defended himself by defending his research. The fact that the allegations were false does not mean that they were not serious. GCL's successful representation of Mr. Dagon included protecting his reputation and demonstrating that he

² These allegations are repeated in the civil lawsuit *Trump v. Clinton*, Dkt. No. 2:22-cv-14102 (S.D.FL., 2022) which includes as defendants certain unnamed "John Does."

committed no crime, thus, ensuring that he was not prosecuted. This is clearly the kind of activity for which reimbursement is required under the contract.

Mr. Dagon Was a Subject of the Federal Investigation

You also appear to have misread our statement that “Mr. Dagon is not and has never been subject to indictment and was never the target of the grand jury investigation” as an assertion that he was never the subject of the investigation. Your March 29, 2022 letter states, “This does not mean that an individual must be formally charged or indicted to be entitled to reimbursement, but there can be no “successful defense” where Mr. Dagon concedes that he is not and has never been the subject of a criminal investigation.” *Mr. Dagon very clearly was the subject of the investigation, and we clearly noted this fact, citing directly to the United States Attorney’s Manual definition of a “subject” of a grand jury investigation.*³ The difference between subject to an indictment and being the subject of a criminal investigation is crucial. It is also interesting to note that Prof. Antonakakis was not a subject of the investigation; he was only a witness, yet his fees are being paid.

GCL’s success in ensuring that Mr. Dagon was not the subject of an indictment demonstrates the success of GCL’s defense of Mr. Dagon.

Mr. Dagon Was At Risk of Criminal Prosecution

Your assertion that Mr. Dagon was not at risk of prosecution (as opposed to our assertion that he had committed no offense) is wholly incorrect. He was clearly at risk that the Special Counsel would seek to prosecute him - a threat that was repeated loudly and often by the Special Counsel and their team. After Mr. Dagon was notified by the prosecutor that he was a subject of the grand jury investigation, GCL had numerous calls with the Special Counsel team and had to coordinate closely with joint defense counsel. GCL had to negotiate the scope and extent of the immunity it was able to obtain for Mr. Dagon, review thousands of pages of documents, and prepare Mr. Dagon for three days of meetings with the Special Counsel team and three days of testimony before the grand jury.

³ See, United States Attorney’s Manual, Section 9-11.151, *In re North*, 11 F.3d 1075, 1077, 1993 U.S. App. LEXIS 31118, *3, 304 U.S. App. D.C. 179 noting that 28 U.S.C. § 593(f)(1) permitted reimbursement of attorney’s fees and costs only to “an individual who is *the subject* of an investigation conducted by an independent counsel” noting that “[m]ere witnesses likely do not have to retain counsel, and that targets of the investigation who may have participated in criminal activity may not be entitled to such reimbursement.”

In a motion filed by the Government on April 15, 2022, the Office of Special Counsel noted:

The only witness currently immunized by the government, Researcher-2 [Mr. Dagon], was conferred with that status on July 28, 2021....And the Government immunized Researcher-2 because, among other reasons, at least five other witnesses who conducted work relating to the Russian Bank-1 [Alfa Bank] allegations invoked (or at least indicated their intent to invoke) their right against self-incrimination. The Government therefore pursued Researcher-2's immunity in order to uncover otherwise-unavailable facts underlying the opposition research project that Tech Executive-1 and others carried out in advance of the defendant's meeting with the FBI.⁴

Even with the grant of immunity, Mr. Dagon remained at risk of prosecution, as the immunity extended only as far as that provided by 18 USC § 6001 and *Kastigar v. United States*, 406 US 441 (1972). As the U.S. Supreme Court noted concerning former President Trump's status as a "subject" of a New York grand jury:

Few individuals will simply brush off an indication that they may be within a prosecutor's crosshairs. Few will put the matter out of their minds and go about their work unaffected. For many, the prospect of prosecution will be the first and last thing on their minds every day.

Trump v. Vance, ___ U.S. ___, 140 S. Ct. 2412, 2447 n. 9 (2020).

There Is No Requirement That A Person Be Indicted or Charged or Have Actual Criminal Liability to Be Entitled to Reimbursement Under the Policy or the Statute

We also reject your limited definition of "criminal matter" as requiring that the Covered Party demonstrate that they have *actual criminal liability* as a condition precedent for coverage. This position would perversely provide taxpayer funding to actual criminals who had actual "criminal liability" but managed to escape justice and deny coverage to those like Mr. Dagon who committed no offense whatsoever, but who was repeatedly threatened with criminal prosecution by the Office of Special Counsel.

Mr. Dagon needed a lawyer not because he had done something criminal, but because he was under threat of prosecution after NOT having done anything criminal. Your implied representation that a Covered Person must demonstrate *actual criminal liability* as a condition precedent to coverage

⁴ *United States v. Sussman*, Dkt. No. 1:21-cr-00582-CRC Document 70, Filed April 15, 2022 (Government's Opposition to Defendant's Motions in Limine and Rule 404(b) Objections, p. 13-14) [hereinafter referred to as "Government's Opposition to Defendant's Motions"].

is unsupported by the language and purpose of the statute. Indeed, it is inconsistent with the structure of the former Independent Counsel statute, which permitted reimbursement of legal fees for government employees caught up in Independent Counsel investigations provided that they were *not targets* of the investigation (e.g., that they had no actual criminal liability), as well as the opinion of the US DOJ Office of Legal Counsel indicating that U.S. government employees' legal expenses incurred in connection with the Trump/Russia Special Counsel (Mueller) investigation should have their legal expenses reimbursed provided that they were not charged with or convicted of a crime.

Your assertion that a precondition of a “successful representation” in a “criminal action” requires proof of *actual criminal liability* seems inconsistent with these laws and regulations and is not supported by the language of the contract or the statute which authorized it.

Mr. Dagon’s “successful defense” was more than simply obtaining immunity from prosecution. Through the diligence, hard work, and the detailed review of thousands of pages of evidence, as well as close coordination with joint defense counsel, GCL worked to get the Special Counsel’s team to understand that the DNS data were not altered, manipulated, “cherry picked” or misused by the Georgia Tech researchers. Indeed, the prosecutors noted in a court filing that Mr. Dagon had spoken with Mr. Sussmann solely for the purpose of ascertaining whether the data provided to the Georgia Tech researchers had been legally collected and shared with the Georgia Tech research team.⁵ Mr. Dagon was trying to *protect himself and Georgia Tech*; nevertheless, as a subject of the investigation he was under threat of criminal prosecution, and remained so at least until the conclusion of the Sussmann prosecution..

GCL’s representation of Mr. Dagon resulted in him not being charged with a crime. That is a successful defense.⁶

DOAS’ Definition of “Criminal Action” Is Unduly Narrow And Inconsistent With the Statutory Language

We also observe that, while the Contract provides coverage for a “criminal action” the statute, which must be read in conjunction with the policy terms⁷ explains that the term “criminal action” is broader than a simple criminal prosecution, and includes “*any criminal cause of action, suit, investigation, subpoena, warrant, request for documentation or property, or threat of such action*”

⁵ Government’s Opposition to Defendant’s Motions at 17-18.

⁶ See, e.g., *Thompson v. Clark*, Dkt. No. 20–659, ___ U.S. ___, 142 S. Ct. 1332 (April 4, 2022)(slip. op. at 11-12)(noting that it is not necessary for a person to be charged and acquitted for there to be a “favorable termination” of a criminal case).

⁷ See, e.g., Brief for DOAS in *Key v. Georgia Department of Administrative Services*, Dkt. No. A16A1999, Ga. Ct. App., 2016 GA App. Ct. Briefs LEXIS 403, p. 17-18 (filed August 3, 2016).

whether formal or informal where such action arises out of the performance of his or her official duties.” O.C.G.A. 45-9-1 (emphasis added).

Your unduly narrow reading of the term “criminal action” to mean only those cases in which the Covered Party had *actual criminal liability* (had actually committed a crime) would cause precisely the harm you complain of -- it would fail to give meaning to key portions of the statute in abrogation of the intent of the legislature.

DOAS Must Reimburse Mr. Dagon’s Legal Fees For Responding to the Civil Alfa Bank Subpoenas

Additionally, we are submitting herewith GCL’s invoice for legal fees incurred at the direction of the Georgia Tech General Counsel’s Office (in coordination with the Attorney General’s Office) in connection with responding to a lawsuit which sought damages because of alleged “personal injury” and alleged “wrongful acts” related to Alfa Bank and its Russian oligarch owners. The allegations concerned the alleged acts and omissions of unnamed DNS security researchers.

Pursuant to the request of Georgia Tech’s legal department, GCL prepared motions to quash subpoenas and for protective orders, and retained local counsel in Georgia to assist in that respect. Georgia Tech’s legal also provided input into the nature and substance of these motions and to defenses they wanted GCL to assert in this regard. Ultimately, GCL was able to negotiate Mr. Dagon’s responses to subpoenas, and Mr. Dagon asserted his right against self-incrimination. On March 4, 2022, Alfa Bank dismissed its civil actions.

Conclusion

In sum, Mr. Dagon, as an employee of Georgia Tech, is an eligible covered party. Mr. Dagon was a subject of the investigation, and he was at risk of criminal prosecution. Legal fees related to his criminal defense, included subpoenas, discovery demands, days of meetings with the Special Counsel’s team, grand jury testimony, and preparation for trial. All of this work was clearly related to Mr. Dagon’s official duties as a Research Scientist at Georgia Tech. The legal fees incurred by Mr. Dagon were in connection with his defense to the criminal action, which was successful. Mr. Dagon was not charged.

Finally, both the hourly rate (substantially reduced, and then reduced again) and the scope of the hours expended over a two year period are reasonable in light of the nature, intricacy, and sensitivity of the matters under investigation, as well as the complexity of the technology, the national security implications, and the extraordinary degree of scrutiny afforded to this investigation.

For all these reasons, we believe that reimbursement of Mr. Dagon's attorney's fees and expenses are required by the terms of both the statute and the contract.

I am certain that you will act in good faith and process such payment immediately, as Mr. Dagon has already suffered significant financial hardships through the two years of the investigation with no reimbursement of legal fees. He is likely to suffer additional, significant harm in the event you delay. For the purposes of processing, you may consider this letter to be Mr. Dagon's formal application for reimbursement of his legal fees for criminal defense and personal injury. A complete log of GCL's billing for its representation of Mr. Dagon is attached hereto as Attachment D. Please let me know if you need any further documentation or wish to discuss this matter further.

Sincerely,



Sam Olens

Attachment A: Email from A. DeFilippis Regarding Dagon's Subject Status

Attachment B: Email between Ling-Ling Nie and Bryan Webb

Attachment C: Draft Statement from Georgia Tech for NYT

Attachment D: Invoices for Dagon Legal Fees

cc: David Dagon
Global Cyber Legal LLC

SSO/adk

From: proofpoint-pps@ppops.net
Sent: Fri, 17 Jun 2022 12:19:09 -0400
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Thank You