
From: Jody R Westby <westby@globalcyberlegal.com>
Sent: Friday, January 29, 2021 10:12 PM
To: Bryan Webb
Cc: Mark Rasch
Subject: Letter Regarding Legal Fees Not Gratuity
Attachments: DAGON - Letter to Bryan Webb 1-29-21 FINAL.pdf

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Dear Bryan,

Thanks so much for calling Mark back the other day. Attached is our response to the legal question you two discussed. We hope this is helpful but stand ready to provide additional information or clarification if needed. Just let us know. Thanks again for your attention to this matter.

Kind regards,
Jody and Mark

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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

From: Olens, Samuel S. <samuel.olens@dentons.com>
Sent: Saturday, February 12, 2022 9:42 AM
To: Bryan Webb
Subject: RE: Dagon Matter Offer of Settlement

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Bryan, see below for a partial response.

In *Wood v. Georgia*, 450 U.S. 261, 268-269 (1981) the U.S. Supreme Court “recognized the inherent dangers that arise when a criminal defendant is represented by a lawyer hired and paid by a third party...” The Court cited the ABA Model Code of Professional Responsibility EC 5-23 (1980) which states:

"A person or organization that pays or furnishes lawyers to represent others possesses a potential power to exert strong pressures against the independent judgment of those lawyers. Some employers may be interested in furthering their own economic, political, or social goals without regard to the professional responsibility of the lawyer to his individual client. Others may be far more concerned with establishment or extension of legal principles than in the immediate protection of the rights of the lawyer's individual client . . . Since a lawyer must always be free to exercise his professional judgment without regard to the interests or motives of a third person, the lawyer who is employed by one to represent another must constantly guard against erosion of his professional freedom."

Id. at fn. 17, p. 287. To be clear, even if counsel selected by the University is fully independent, does not represent the University in any other matter, and has no direct conflict of interest, the mere fact that the counsel is not only reimbursed through a third party payer agreement, but is in fact retained by the University (or selected by the University even if the retainer agreement is with Mr. Dagon) creates in a criminal case the kind of dual loyalty that cannot be waived. See, e.g., *United States v. Luchko*, 2006 U.S. Dist. LEXIS 82569, *13-14, (E.D. Pa., 2006); 2006 WL 3313946 (“ the conflict *may not be cured* by client consent.” § 81.4 (Rule 1.10, cmt. 6). Rule 1.8(f))” Accord, *In re State Grand Jury Investigation*, 200 N.J. 481, 983 A.2d 1097, 2009 N.J. LEXIS 1155 (N.J. Supreme Court -- inherent conflict for attorneys selected by third parties).

We have insulated GT from precisely such an allegation of conflict of interest by making it clear in our third party payer agreement that we represent Professor Dagon alone, and that our duty of loyal representation is to him, and that the University, by reimbursing his reasonable attorney’s fees, has no authority to direct the way in which we represent Dagon. This is compelled by the ethics rules.

It is apparent that GT wishes to retain other counsel for Professor Dagon precisely because the University wishes to direct the manner in which counsel will conduct the representation. This would be criminally unethical, and would open both GT and whatever counsel is selected to liability under the applicable ethics rules. As the New Jersey court observed, “One risk is that the lawyer will prevent his client from obtaining leniency by preventing the client from offering testimony against his former employer or from taking other actions contrary to the employer's interest” (footnotes omitted)); *State v. Norman*, 151 N.J. 5, 34, 697 A.2d 511 (1997). In *In re State Grand Jury Investigation*, 200 N.J. 481, 492, 983 A.2d 1097, 1104, 2009 N.J. LEXIS 1155, *24 noted above, the court noted that It is not the mere payment by a third party of the employees legal fees that create a conflict of interest. *Tolbert v. State*, 298 Ga. 147, 780 S.E.2d 298, 2015 Ga. LEXIS 908 Rather it is the fact that the employer seeks to direct who represents the employee for its own interests rather than for the interests of the employee. ^[1] This appears to be precisely what GT seeks to do.

We also rely on Georgia Ethics Rule 1.7, which precludes a representation where the lawyer has a duty of loyalty that precludes their independent judgment., noting in particular that “A lawyer shall not represent or continue to represent a client if there is a *significant risk that* the lawyer's own interests or *the lawyer's duties* to another client, a former client, or a third person will materially and adversely affect the representation of the client, except [if the client can waive the conflict.] The comments to the ethics opinion note that “Loyalty to a client is impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other competing responsibilities or interests. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.”

It should be noted that GT not only wants to select the counsel that would represent Dagon (in the middle of the ongoing criminal case) but to direct their actions for the benefit of GT, and NOT pursuant to the lawyer's duty of independent judgement on behalf of Dagon, the client. Moreover, if the lawyer is BOTH selected and paid by GT, without an appropriate third party payer agreement that makes it clear that the lawyer's sole and exclusive duty is to zealously represent the client, this would violate the rule and would subject the lawyer to BOTH discipline and removal from representation. As the commentary to the Georgia ethics rule notes, “[t]he lawyer's personal or economic interests should not be permitted to have an adverse effect on representation of a client. See Rules 1.1 and 1.5.” The GA ethics rule also notes that “ If the propriety of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client objective advice. A lawyer may not allow related business interests to affect representation...”

ABA Model Rule of Professional Responsibility (MPR) 1.8(f) provides:

A lawyer shall not accept compensation for representing a client from one other than the client unless:(1) the client gives informed consent;(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and(3) information relating to representation of a client is protected as required by Rule 1.6 [confidentiality].

In the case of Georgia Tech, the problem appears to be number 2 – that GT wishes to directly interfere with the independence of the lawyer they select. <https://www.americanbar.org/groups/litigation/committees/commercial-business/practice/2019/when-a-third-party-pays-legal-fees/>.

According to the letter sent from Michael Sussman's lawyer Michael Bosworth at Latham & Watkins dated January 21, 2022 and sent to SAUSA Andrew DiFillipis and filed with the U.S. District Court for the District of Columbia, the government has indicated that it intends to produce "tens of thousands of documents" six weeks before the proposed trial date, and that this does not include materials which are classified for national security purposes. The government's pleading of the same date indicates that, to date, the government has produced approximately 133,000 pages of materials and expects to produce an additional 492,285 additional pages in the last week of January. Included in this "discovery dump" by the prosecutor is what they describe as notes and other materials related to **"four current and former employees of the university referred to in the Indictment as "University-1."** See, Government's Discovery Update and Request for Additional Time to Produce Residual Discovery Materials, United States v. Sussman, Dkt 1:21-cr-00582-CRC, Document #33, filed January 25, 2022, page 3, par. 5 and page 5 par xi. This discovery does not include the results of electronic surveillance, information relating to the FBI Domestic Investigations and Operations Guide (DIOG) and what the OSC described as an additional 17000 documents. (Id. p. 9) and an additional 79,000 items related to the FBI files. (Id., p. 10). It also does not include documents in the possession of the Department of Justice's Office of Inspector General, or the FBI Inspection Division.

It is presumed that some of these documents are documents sought by Dagon's counsel that GT gave third parties but not their own employee per open record requests.

Noting GT pays other counsel higher hourly fees, potentially less experienced than Dagon's counsel in these types of cases, it is hard to view the continuing harassment and delays as other than bad faith, subjecting Dagon and the other university employees to potential perjury or worse during the future trial and future indictments.

GT needs to stop treating this as a car wreck injury case and treat their employees with the respect and representation they deserve.

Thank you.

Sam

 Samuel S. Olens

What's Next? The answer is Talent. With more than 20,000 people, 12,000 lawyers and 200 locations, Dentons has the talent for what you need, where you need it.

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From: Bryan Webb <bwebb@law.ga.gov>
Sent: Thursday, February 10, 2022 10:07 AM
To: Olens, Samuel S. <samuel.olens@dentons.com>
Subject: RE: Dagon Matter Offer of Settlement

[WARNING: EXTERNAL SENDER]

Thanks.

I will direct this to Tech.

Please let me know what bar rule that I may be violating and I will look into it and remedy.

bkw



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

From: Olens, Samuel S. <samuel.olens@dentons.com>
Sent: Thursday, February 10, 2022 9:27 AM
To: Bryan Webb <bwebb@law.ga.gov>
Subject: RE: Dagon Matter Offer of Settlement

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Good morning Bryan.

In a last attempt to avoid a suit and accompanying media attention, I once again respectfully request 1) the hourly rate of other retained counsel for this federal investigation, 2) all records previously given to third parties and not shared with the Professor's counsel despite open records requests and 3) a meeting with President Cabrera.

The most recent offer again violates Bar rules regarding representation of a client.

Thank you.

Sam

 **Samuel S. Olens**

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samuel.olens@dentons.com
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From: Olens, Samuel S. <samuel.olens@dentons.com>
Sent: Tuesday, February 08, 2022 1:35 PM
To: Bryan Webb <bwebb@law.ga.gov>
Subject: Re: Dagon Matter Offer of Settlement

Bryan, I am not in to formality. And frankly, such formality would not be helpful.

Thanks.

Sam Olens

Sent from my iPhone

On Feb 8, 2022, at 1:32 PM, Bryan Webb <bwebb@law.ga.gov> wrote:

[WARNING: EXTERNAL SENDER]

Thanks.

Do you mind if I forward them your response below or wait for a more formal one?

Hope all is well.

bkw

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

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

From: Olens, Samuel S. <samuel.olens@dentons.com>

Sent: Tuesday, February 8, 2022 1:17 PM

To: Bryan Webb <bwebb@law.ga.gov>

Subject: Re: Dagon Matter Offer of Settlement

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Bryan, very disappointing.

They are paying other counsel much more who have done much less.

I expect suit will be filed.

Thank you.

Sam Olens

Sent from my iPhone

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Samuel S. Olens

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Bio<<http://www.dentons.com/ch.aspx?email=samuel.olens@dentons.com&action=biolink>> |

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On Feb 8, 2022, at 12:44 PM, Bryan Webb <bwebb@law.ga.gov> wrote:

[WARNING: EXTERNAL SENDER]

Please accept this offer for settlement of this issue from my client, Georgia Tech.

Tech will agree to pay \$83,573.00 for past services. For future services on behalf of Mr. Dagon, Tech will agree to pay the rate of \$350.00/hour with a monthly billable cap of 25 hours. This would be a maximum of \$8,750.00 billed each month as the matter goes forward. This would continue until the combined total for past services and any future services reaches the amount of \$150,000.00.

I look forward to hearing back from you.

bkw

[<cid:image001.jpg@01D81CE9.8DF63430>] <<http://law.ga.gov>>

[Facebook] <<http://www.facebook.com/GeorgiaAttorneyGeneral>>

[Twitter] <http://www.twitter.com/georgia_ag>

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

^[1] The court there established a six part test for accepting payment from a third party. The Supreme Court held that third-party payment of attorney fees is permissible provided the following six conditions are satisfied (Id. at 495-96):

- (1) The informed consent of the client is secured;
- (2) The third-party payer is prohibited from, in any way, directing, regulating or interfering with the lawyer's professional judgment in representing his client;
- (3) There cannot be any current attorney-client relationship between the lawyer and third-party payer;
- (4) The lawyer is prohibited from communicating with the third-party payer concerning the substance of the representation;
- (5) The third-party payer shall process and pay all invoices within the regular course of its business, consistent with the manner, speed and frequency it pays its own counsel; and
- (6) Once a third-party payer commits to pay for the representation of another, the third-party payer shall not be relieved of its continuing obligation to pay without leave of court.

From: Jody R Westby <westby@globalcyberlegal.com>
Sent: Thursday, November 5, 2020 9:20 PM
To: Bryan Webb
Cc: Mark Rasch
Subject: Thank you & Docs Promised
Attachments: DAGON - THIRD PARTY LEGAL SERVICES PAYMENT AGREEMENT v2.docx; DAGON - Letter to Kate re Scope of Employment v6.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.

Dear Bryan,

Thank you for taking time at the end of a long day to speak with Mark and me. We enjoyed the conversation. As promised, I have attached the first letter we provided to Ling-Ling and the Third Party Payor Agreement we provided. Please let us know if you have any questions or need further information. Thanks again.

Kind regards,

Jody

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

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 _____, 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 with respect to a criminal grand jury investigation and a subpoena for documents and request that CLIENT provide voluntary cooperation to the investigation (“Services”).

1.5 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).

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 (a) COUNSEL’s representation of CLIENT with respect to the District of Columbia grand jury convened by Connecticut U.S. Attorney John Durham (also known as the “Durham investigation”), and (b) any subpoena served on CLIENT or claim against him filed in the civil litigation filed by Alfa Bank pending in Florida and Pennsylvania. Fees and costs shall not exceed \$200,000 without written authorization by THIRD PARTY.

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. 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

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.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.

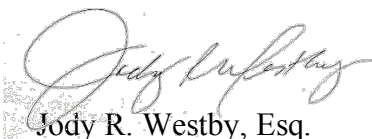
We are happy to address any concerns that you may have in this regard, but it seems clear to us that a person employed as a security researcher who conducts security research for his employer, and also brings millions of dollars in research grants to the school from this research, is acting within the 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

From: Kinney, Angela D. <angela.kinney@dentons.com>
Sent: Wednesday, December 15, 2021 3:09 PM
To: 'linglingnie@gatech.edu'; 'christian.fuller@legal.gatech.edu'; 'bwebb@law.ga.gov'; 'rebecca.sullivan@doas.ga.gov'; 'susan.setterstrom@doas.ga.gov'
Subject: David Dagon Letter
Attachments: Dagon Letter with all Exhibits.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

At the request of Sam Olens, please find attached a letter in regards to David Dagon with Exhibits.

Kind regards,
Angie



Angela D. Kinney

Legal Secretary

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

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December 15, 2021

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Susan Setterstrom, Assistant Director
Georgia Department of Administrative Services
200 Piedmont Avenue, Suite 1220, West Tower
Atlanta, Georgia 30334

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.

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 fulfillment 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”

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.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.

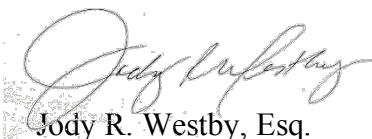
We are happy to address any concerns that you may have in this regard, but it seems clear to us that a person employed as a security researcher who conducts security research for his employer, and also brings millions of dollars in research grants to the school from this research, is acting within the 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”

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
Welch 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: Olens, Samuel S. <samuel.olens@dentons.com>
Sent: Thursday, December 23, 2021 12:19 PM
To: bwebb@law.ga.gov
Subject: Global Cyber and Professor Dagon
Attachments: Dagon Letter with all Exhibits.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 Bryan.

Any idea when I might hear back from you?

Have a great Christmas holiday.

Thank you.

Sam

 Samuel S. Olens

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From: Olens, Samuel S. <samuel.olens@dentons.com>
Sent: Friday, February 25, 2022 2:19 PM
To: bwebb@law.ga.gov
Subject: Thoughts post-letter
Attachments: DAGON - Letter to GaTech Re Legal Fees 10-11-21.pdf; DAGON - TIME LOG Start - 10-21 v1.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 Bryan.

I presume you have seen the above 2 documents several times. It simply blows away Tech's argument. In further response to your recent letter, no counter was made as Tech's offer was another insult that demonstrated Tech's total lack of knowledge in high level prosecutions.

I am putting the Professor and counsel in touch with a great Firm in Atlanta that is fully able to bring the necessary action. Unfortunately, the way the Professor's counsel have been treated sends a terrible message to their outstanding faculty.

And to be clear, none of these criticisms relate to you or the AG's office.

Thank you.

Sam

 Samuel S. Olens

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Jody R. Westby, Esq.

Phone: 202.255.2700

Fax: 202.337.0063

October 11, 2021

Christian Fuller, Esq.
Senior Counsel, Employment & Litigation
Georgia Institute of Technology
760 Spring Street NW, Suite 324
Atlanta, Georgia 30332-0495

Dear Christian:

We were retained by Mr. Dagon on August 5, 2020, after he had received a subpoena for documents from the Grand Jury involved in the Durham investigation. My colleague, Mark Rasch, and I reached out to Ms. Wasch on August 11, 2020, and were finally able to have a call with her on August 17, 2020; she asked that we keep her informed. On a September 16 call, we also discussed Georgia Tech paying Mr. Dagon's legal fees, and we agreed to send Ms. Wasch an "undertaking agreement," which is another name for the Third Party Payor Agreement.

In an email from me to Ms. Wasch on September 22, 2020, regarding a draft letter from Global Cyber Legal to the prosecutor, I mentioned that I would be sending her the undertaking agreement later that day. In an email from Ms. Wasch to my colleague Mark Rasch and me on September 23, 2020 – the very next day – Ms. Wasch stated conclusively, "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. Therefore, we cannot agree to contribute to or pay his attorneys' fees."

We followed up with our letter of September 28, 2020, explaining why his work was, indeed, within the scope of employment and explained the legal jeopardy facing Georgia Tech. Ms. Wasch replied on September 30, stating, "I apologize; this is not how we understood the situation. We have talked with some others internally, and would like to discuss this further." She asked to have a call with us, which we did on October 1, 2020.

On October 7, 2020, we sent the Third Party Payor Agreement to Ms. Wasch and advised her of the amount of our fees at that time (\$60k), explained what they were for, and said our hourly rate was discounted to \$350/hour. On October 13, Ms. Wasch wrote to me and said, "It would be helpful if you can provide documentation that the work in question was requested by DARPA or was otherwise performed in the course of Mr. Dagon's employment with Georgia Tech."

In a note on October 21, 2020, I stated, "We have been working hard today on a document that will hopefully provide useful information to help support a change of position within the Attorney General's office." We sent this detailed letter on October 22, 2020, which included the chronology of events. The letter also detailed an email from Manos Antonakakis to Mr. Dagon

on June 16, 2020, regarding their work at issue, stating that “the Dean and the consensus at GT is that...they consider it a work-related issue.”

In an email to Ling-Ling on October 30, 2020, I asked whether “you or the Attorney General had made a determination whether Mr. Dagon’s security research relevant to the grand jury investigation was within the scope of his employment and whether there is an agreement to reimburse Mr. Dagon’s reasonable attorney fees and costs upon the successful completion of the matter.” In this same note, I advised her that if Georgia Tech would not agree to reimbursement of his legal fees that we would seek funding from third parties in the academic freedom and civil liberties communities. On November 4, 2020, she replied to me stating:

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.

We connected with DAG Bryan Webb that day, and on December 23, I wrote to Ling-Ling and noted that it was our understanding that the Attorney General’s Office had authorized Georgia Tech to pay legal fees for Mr. Dagon, and I offered to provide any further documentation needed. On January, 7, 2021, Ms. Wasch advised us, “We are still working through some issues with DOAS, but hope to have a final decision [re the legal fees] next week.” Since the beneficiary of any insurance agreement with DOAS is Mr. Dagon, and not Georgia Tech, we frankly are confused about what issues Georgia Tech might have had to work through with DOAS. Until Mr. Dagon actually files a claim with DOAS, we do not believe DOAS has any role in the process.

We learned that after Mr. Webb had authorized Georgia Tech to pay our fees (he did not authorize any particular amount, nor did he state that the Institute was required to pay our fees), Ms. Wasch raised another issue in the Attorney General’s office, questioning whether a payment of Mr. Dagon’s legal fees by Georgia Tech would violate the gratuities clause in the Georgia state Constitution. It is our understanding that DAG Webb advised your office that such a payment would not be a violation of the gratuities clause. On February 26, 2021, Ms. Wasch wrote me to offer a payment on his legal fees of \$46,462.50, which she calculated to be 50% of the fees incurred (although she had never asked for a current accounting) at a rate of \$150/hour. We rejected that offer.

The Durham investigation involves one of the nation’s highest profile criminal matters, and the other parties involved have engaged some of the top civil and criminal attorneys in the country. This includes high-level former Department of Justice prosecutors, experienced civil and criminal litigators, and senior partners at some of the most prestigious law firms in the country. We understand that the hourly rate for several of the top lawyers involved in this matter runs between \$2000 - \$1100 per hour, and other defense attorneys’ rates are in the \$500 - \$700 per hour range. Mr. Rasch and I generally charge \$595 per hour for this work. When we accepted the engagement, we offered Mr. Dagon a discounted rate of \$350 per hour for each of us.

In other attorney fee award cases (in civil cases where the law permits the payment of attorney's fees), federal and Georgia courts have adopted the so-called "lodestar" test for determining whether fees are "reasonable." This test takes into account, not only the customary fee for similar work, but the sophisticated nature of the case, whether the case is one of "first impression" or is a routine matter, the level of skill and sophistication of counsel (on both sides), the difficulty of the case, and the level of knowledge necessary for a successful outcome.

This matter is one of the most complex investigations in history, pulling from investigations conducted by the FBI, Robert Mueller (the "Mueller investigation") and the House and Senate intelligence committees. It most certainly is not a routine matter and has drawn on our combined expertise regarding (a) the domain name system and legal issues regarding the use of that data, and (b) criminal prosecution and defense cases. This combination of experience is rare, and it is has been invaluable in Mr. Dagon's defense.

Under Georgia's lodestar test, we believe our fees are entirely reasonable in light of the sensitive and sophisticated nature of this investigation, as well as the potential harm, not only to Mr. Dagon, but also to Georgia Tech, DARPA, the millions of dollars in government contracts Georgia Tech may receive for this and similar research, and, finally, to the information security community at large. Our fees are substantially lower than rates charged by other counsel involved in this investigation and, indeed, those typically charged for complex white-collar cases like this, irrespective of jurisdiction.

In her May 10 letter, Ms. Wasch scolded me for providing "zealous representation without first consulting with OCG [sic]." The ethics rules not only require counsel to "act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf" (see, e.g., Georgia Bar Rule 1.3), but they also preclude communications which would constitute a waiver of applicable privileges (e.g., Georgia Bar Rule 1.6). She then goes on to lecture me about DOAS and the successful defense requirement, nothing that "Otherwise, gratuitously reimbursing expenses for undefined justifications is an inappropriate use of public dollars." (There is her gratuities argument again, even though it has been rejected by the AG's Office.)

Ms. Wasch goes on to some extent in her May 10 letter regarding DOAS and her understanding of their requirements, even stating, "neither the Institute, the AG's Office, nor DOAS has received any evidence that Mr. Dagon was charged or indicted with any criminal offense." How does she know what DOAS has received? Again, no claim has been filed with DOAS, and the Institute is not a beneficiary of the DOAS policy. Moreover, being charged or indicted is not a requirement for DOAS reimbursement.

Ms. Wasch also incorrectly states, "To be eligible for DOAS reimbursement, the state employee's criminal matter must have been successfully defended; meaning the employee was acquitted or the matter dismissed *and* the action has been concluded." This is incorrect. The formation of a Grand Jury is not formally announced and neither is its dissolution. Neither the public nor counsel are informed of when a grand jury has concluded its work. Moreover, Mr. Dagon is entitled to legal representation before a grand jury even if he is not the target of a grand jury and is never indicted. Put simply, a federal grand jury investigation is a "criminal

proceeding” whether any charges are ever levied against anyone. *United States v. Awadallah*, 349 F.3d 42, 52 (2d Cir. 2003).

We have spoken to DOAS and are fully aware of their requirements. Indictment or the bringing of charges (and ultimate dismissal or acquittal on those charges) is not a prerequisite for DOAS reimbursement. Indeed, a “successful defense” in a criminal matter includes convincing the prosecutor and the grand jury that the person and the institution they represent have done nothing unlawful, and therefore no charges are ultimately brought against either party. As you know, we were able to obtain full statutory immunity for Mr. Dagon with respect to the Grand Jury proceedings. This also is a “successful defense.”

Because of her repeated interactions with DOAS and her emphatic statements stressing their policy, we hope that Ms. Wasch has not done anything to prejudice DAOS against a potential claim Mr. Dagon may file with DOAS.

Ms. Wasch further accused Mr. Dagon of not following “our internal processes for requesting representation” and said “he did not engage with our legal team or ask for Georgia Tech’s consent when engaging your firm.” We have asked her for a copy of whatever policy or processes he should have followed, but she has not provided this information. Then, she states in her May 10, 2021 letter that his “failure to provide complete information...hampered OCG’s [sic] ability to determine whether...Mr. Dagon...was eligible for representation by the Georgia Attorney General’s office.” This is false. The Attorney General’s office already advised us that they could not represent Mr. Dagon; they do not represent individuals. Moreover, a State law enforcement agency could not ethically represent an individual in a federal criminal investigation.

Lack of Professional Respect

Third, Ms. Wasch’s remarks in her May 10 letter shows a lack of respect for my firm’s legal capabilities, especially those of Mark Rasch, who spent ten years prosecuting criminal cases at the Department of Justice. Mr. Rasch initiated the Department of Justice’s computer crime unit, investigated and prosecuted electronic espionage cases during the height of the cold war, prosecuted a U.S. Presidential candidate, prosecuted *la cosa nostra* in New York, drafted the federal computer crime statute, prosecuted the first case under that statute, worked intimately with (then) Senator Sam Nunn on establishing a federal/private information sharing center to protect the financial industry against cyber-crimes (the FS/ISAC), has tried more than 40 criminal cases, handled dozens of federal appeals, filed amicus briefs before the United States Supreme Court, and has taught evidence law, computer law, white collar criminal law (and grand jury practice) at a dozen academic institutions, as well as the Federal Law Enforcement Training Center, the FBI National Academy, the Attorney General’s Advocacy Institute at the Department of Justice, and the U.S. Army War College.

In attacking my credentials, Ms. Wasch also states that “you only point to articles you published in an ABA cybersecurity publication.” Wrong. My experience includes practicing law in two top tier New York law firms, and providing legal advice to the U.S. Department of Homeland Security for eight years on the types of communications traffic data – including DNS data – that are legal for use by cybersecurity researchers. In addition to my advice, this work also resulted

in two books authored by me and published by the American Bar Association: the *Legal Guide to Cybersecurity Research* and the *Legal Guide to Botnet Research*. These books are intended to be used by Institutional Review Boards, attorneys, cybersecurity researchers, and personnel responsible for overseeing cybersecurity research. This latter publication includes the following acknowledgement:

This publication was developed as a component of a technical research project led by Georgia Institute of Technology on “Countering Botnets: Anomaly-Based Detection, Comprehensive Analysis, and Efficient Mitigation.” Wenke Lee served as Principal Investigator (PI), with Nick Feamster and Jon Giffin serving as co-PIs....The author gratefully acknowledges the assistance and the technical expertise provided by Wenke Lee and David Dagon during the development of this publication.

Ms. Wasch insinuates that this “experience” is insufficient to justify our representation of Mr. Dagon. Indeed, it is this exact experience that has proven invaluable in defending Mr. Dagon and getting the Special Counsel to back off allegations that Georgia Tech’s use of the data was improper or illegal. Ms. Wasch also mistakenly concludes that we imply the Georgia Attorney General’s Office would be “inferior counsel.” No, we do not. We are implying that any private sector criminal counsel that you might retain to represent Mr. Dagon in this matter at the rate of \$150/hour would likely have experience inferior to ours.

I hope this background is helpful to you. I have attached a complete time log for our work on behalf of Mr. Dagon. We are willing to have a call to discuss any questions or concerns you may have. Thank you for your consideration. I look forward to your response and hope we can work together to quickly resolve this matter.

Yours truly,

A handwritten signature in cursive script, appearing to read "Jody R. Westby".

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

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

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

Date	Personnel	Description of Activity	Hours
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; review reply from joint defense counsel; emails w/ joint defense counsel	3.5
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

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

Date	Personnel	Description of Activity	Hours
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
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

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

Date	Personnel	Description of Activity	Hours
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
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

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

Date	Personnel	Description of Activity	Hours
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
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

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

Date	Personnel	Description of Activity	Hours
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
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

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

Date	Personnel	Description of Activity	Hours
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
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

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

Date	Personnel	Description of Activity	Hours
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. Rasch re prep for call w/ B. Webb; Review email from B. Webb re legal fees	2.5
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

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

Date	Personnel	Description of Activity	Hours
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
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

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

Date	Personnel	Description of Activity	Hours
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
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

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

Date	Personnel	Description of Activity	Hours
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
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

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

Date	Personnel	Description of Activity	Hours
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	FRCrim P 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
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

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

Date	Personnel	Description of Activity	Hours
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
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/	6.5

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

Date	Personnel	Description of Activity	Hours
		D. Dagon; review emails from joint defense counsel; emails to joint defense counsel	
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
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

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

Date	Personnel	Description of Activity	Hours
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
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

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

Date	Personnel	Description of Activity	Hours
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
TOTAL			938.0

TOTAL FEES: 938 hours @ \$350/HOUR = \$328,300.00

From: Bryan Webb <bwebb@law.ga.gov>
Sent: Thursday, November 5, 2020 9:11 AM
To: 'Jody R Westby'
Subject: RE: Georgia Tech

I can be around at 5:30.

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: Thursday, November 5, 2020 9:09 AM
To: Bryan Webb <bwebb@law.ga.gov>
Cc: Mark Rasch <rasch@globalcyberlegal.com>
Subject: Re: Georgia Tech

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.

Bryan,
Thank you for your reply. I have a call from 4:30 to 5:30 p.m. Would it be all right to call at 5:30 pm? If so, I will send a Zoom link.
Cheers,
Jody

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

On Nov 5, 2020, at 9:00 AM, Bryan Webb <bwebb@law.ga.gov> wrote:

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

From: Nie, Ling-Ling <linglingnie@gatech.edu>
Sent: Wednesday, November 4, 2020 5:34 PM
To: Jody R Westby; Mark Rasch
Cc: Wasch, Kate; Bryan Webb
Subject: Georgia Tech

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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

From: Jody R Westby <westby@globalcyberlegal.com>
Sent: Wednesday, November 18, 2020 8:32 AM
To: Bryan Webb
Cc: Mark Rasch
Subject: Re: Georgia Tech

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Dear Bryan,

Thanks again for your time on Nov 5 to discuss David Dagon's legal matter and the payment of his legal fees. We know what a crazy time this is for you, but we wondered if you had been able to make some progress on this. We look forward to hearing from you.

Kind regards,
Jody

Jody R Westby, Esq.
Managing Principal
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westby@globalcyberlegal.com
www.globalcyberlegal.com

On Nov 5, 2020, at 9:11 AM, Bryan Webb <bwebb@law.ga.gov> wrote:

I can be around at 5:30.

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: Thursday, November 5, 2020 9:09 AM
To: Bryan Webb <bwebb@law.ga.gov>
Cc: Mark Rasch <rasch@globalcyberlegal.com>
Subject: Re: Georgia Tech

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Bryan,
Thank you for your reply. I have a call from 4:30 to 5:30 p.m. Would it be all right to call at 5:30 pm? If so, I will send a Zoom link.
Cheers,
Jody

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westby@globalcyberlegal.com
www.globalcyberlegal.com

On Nov 5, 2020, at 9:00 AM, Bryan Webb <bwebb@law.ga.gov> wrote:

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

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Managing Principal

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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

From: Jody R Westby <westby@globalcyberlegal.com>
Sent: Tuesday, November 24, 2020 2:54 PM
To: Bryan Webb
Cc: Mark Rasch
Subject: Re: Georgia Tech

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.

Thank you very much, Bryan. 9:00 am tomorrow is perfect. I will send a Zoom link.

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

On Nov 24, 2020, at 2:42 PM, Bryan Webb <bwebb@law.ga.gov> wrote:

I am working tomorrow for half the day. I have a call at 10:30 that will last through about 11:30. I can be here before that call at 9:00 if you would like.

Thanks for the email. I needed to get back to you all.

Thanks

bkw

Sent from my iPhone

> On Nov 24, 2020, at 2:00 PM, Jody R Westby <westby@globalcyberlegal.com> wrote:

>

> 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.

>

>

> Dear Bryan,

> We would like to have a short call with you to get the current status. We would like to resolve this as soon as possible. Are you available anytime today or tomorrow? We don't care if it is evening if that is better for you.

> Thank you,

> Jody and Mark

>

> Jody R Westby, Esq.

> Managing Principal

> Global Cyber Legal LLC
> +1.202.255.2700
> westby@globalcyberlegal.com
> www.globalcyberlegal.com

>
>
>
> On Nov 18, 2020, at 8:31 AM, Jody R Westby <westby@globalcyberlegal.com> wrote:

>
> Dear Bryan,
> Thanks again for your time on Nov 5 to discuss David Dagon's legal matter and the payment of his legal fees. We know what a crazy time this is for you, but we wondered if you had been able to make some progress on this. We look forward to hearing from you.

> Kind regards,

> Jody

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>
>
>
> On Nov 5, 2020, at 9:11 AM, Bryan Webb <bwebb@law.ga.gov> wrote:

>
> I can be around at 5:30.

>
> bkw

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>
>
> 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

>
>
>
>
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> Sent: Thursday, November 5, 2020 9:09 AM
> To: Bryan Webb <bwebb@law.ga.gov>
> Cc: Mark Rasch <rasch@globalcyberlegal.com>

> Subject: Re: Georgia Tech

>

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> Bryan,

> Thank you for your reply. I have a call from 4:30 to 5:30 p.m. Would it be all right to call at 5:30 pm? If so, I will send a Zoom link.

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> Jody

>

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>

> 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,

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> Thank you very much,

> Jody

>

>

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>

> Hi Jody and Mark:

>

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>

> With kind regards,

> Ling-Ling

>

>

>

>

>

>

From: Jody R Westby <westby@globalcyberlegal.com>
Sent: Wednesday, November 25, 2020 4:14 PM
To: Bryan Webb
Cc: Mark Rasch
Subject: Third Party Payor Agreement & Civil Matters
Attachments: camp indiana order on motion to quash alfabank.pdf; alfa v center for public integrity complaint.pdf; fridman v bean amended complaint.pdf; DAGON - THIRD PARTY LEGAL SERVICES PAYMENT AGREEMENT v4.docx

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.

Dear Bryan,

Thank you very much for taking time to talk this morning to resolve this matter. Per our discussion, I have attached the Third Party Payor Agreement with language indicating that GCL is representing Mr. Dagon as an individual and is not representing Georgia Tech. Also, that our interests are currently aligned with Georgia Tech, but if those interests diverge, we will be representing Mr. Dagon. We included references to the civil cases, which I have also attached. Please let me know if you need anything further.

Lastly, Mark and I wish you a very Happy Thanksgiving and hope you get a little rest over the holiday!

Best regards,

Jody

Jody R Westby, Esq.

Managing Principal

Global Cyber Legal LLC

+1.202.255.2700

westby@globalcyberlegal.com

www.globalcyberlegal.com

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

IN THE MONROE CIRCUIT COURT 4

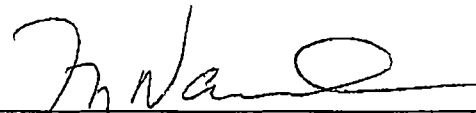
CAUSE NO. 53C04-2009-MI-1613

AO ALFA BANK,
PLAINTIFF,
VS.
JOHN DOE, ET AL.
DEFENDANT

ORDER

This cause now comes on for hearing regarding the Motion to Quash filed by Non-Party L. Jean Camp. Plaintiff AO Alfa Bank appears by attorneys, James Buchholz and Angelica Fuelling, who appear in person, and by attorney, Margaret Krawiec, who appears virtually. Non-party, L. Jean Camp, appears by attorney, Vivek R. Hadley, who appears in person, and by attorneys, Mark A. Lemley, Aditya V. Kamdar, and Ann O'Connor McCready, who appear virtually. Amicus Curiae Electronic Frontier Foundation, Inc. appears by attorney, Colleen M. Newbill, who appears in person and by attorney, Joseph A. Tomain, who appears virtually. The Court conducts the hearing by Webex meeting hosted by Sylvia Tsakos. The Court completes the hearing and takes the matter under advisement.

All Ordered this 19th day of November, 2020.



Frank M. Nardi, Special Judge
Monroe Circuit Court 4

Cc: Terrance Anderson
Jonathan Etra
Margaret Krawiec/Michael McIntosh
James Buchholz/Angelica Fuelling
Ann O'Connor McCready/Vivek Hadley
Mark Lemley, Aditya V. Kamdar
D. Michael Allen, Colleen M. Newbill, Joseph Tomain

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

SEP 14 2000

RECEIVED
CLERK
U.S. DISTRICT COURT

- - - - - X

OAO ALFA-BANK :
7 Novatorov St., Bldg. 2 :
Moscow 117421, Russian Federation, :

ZAO ALFA-ECO :
7 Novatorov St., Bldg. 1 :
Moscow 117421, Russian Federation, :

MIKHAIL FRIDMAN :
30 Bolshoy Afanasievskiy Per. #9 :
Moscow 121019, Russian Federation, :

and

PYOTR AVEN :
30 Bolshoy Afanasievskiy Per. # 8 :
Moscow 121019, Russian Federation, :

Plaintiffs, :

v. : No. _____

CENTER FOR PUBLIC INTEGRITY, :
KNUT ROYCE, and :
NATHANIEL HELLER, :

Defendants. :

- - - - - X

CASE NUMBER 1:00CV02208
JUDGE: Richard W. Roberts
DECK TYPE: Civil General
DATE STAMP: 09/14/2000

COMPLAINT

Plaintiffs OAO Alfa-Bank (“Alfa-Bank”), ZAO Alfa-Eco (“Alfa-Eco”),
Mikhail Fridman, and Pyotr Aven, complaining of Defendants Center for Public Integrity
 (“CPI”), Knut Royce, and Nathaniel Heller (collectively, “the CPI Defendants”), state as
 follows:

PRELIMINARY STATEMENT

1. This is an action for defamation arising out of an article written by defendants Royce and Heller and published by defendant CPI on its website, the *Public i*, entitled “Cheney Led Halliburton To Feast at Federal Trough / State Department Questioned Deal With Firm Linked to Russian Mob” (“the Article,” attached hereto as Exhibit A). The CPI Defendants have falsely and maliciously accused plaintiffs of being involved in drug trafficking and other criminal or otherwise disreputable activities, and of being connected to organized crime. The CPI Defendants’ assertions, which are false, have damaged plaintiffs’ reputation. Plaintiffs bring this action to clear their names, to recover compensation for their injuries, and to permanently enjoin publication of the Article.

PARTIES

2. Plaintiff Alfa-Bank is an open-joint stock company organized under the laws of the Russian Federation. Its principal place of business is at 7 Novatorov St., Bldg. 2, Moscow 117421, Russian Federation. Alfa-Bank is among the largest financial institutions in Russia and is authorized to conduct and does conduct business in Russia and internationally.

3. Plaintiff Alfa-Eco is a closed-joint stock company organized under the laws of the Russian Federation. Its principal place of business is at 7 Novatorov St., Bldg. 1, Moscow 117421, Russian Federation. Alfa-Eco is a trading company affiliated with Alfa-Bank.

4. Plaintiff Mikhail Fridman is a citizen of the Russian Federation. He resides at 30 Bolshoy Afanasievskiy Per. #9, Moscow 121019, Russian Federation. Mr. Fridman is Chairman of the Board of Directors of Alfa-Bank.

5. Plaintiff Pyotr Aven is a citizen of the Russian Federation. He resides at 30 Bolshoy Afanasievskiy Per. # 8, Moscow 121019, Russian Federation. Mr. Aven is President of Alfa-Bank.

6. Upon information and belief, defendant CPI is a corporation organized and acting under the laws of the District of Columbia. Its principal place of business is at 910 17th Street, N.W., Seventh Floor, Washington, D.C. 20006. CPI is engaged in the business of reporting on matters it deems to be of public interest. CPI maintains a website on the World Wide Web called the *Public i*, located at www.public-i.org, on which it publishes various articles.

7. Upon information and belief, defendant Knut Royce is an individual residing at 3619 Fordham Rd., N.W., Washington, D.C. 20016-1905. Upon information and belief, Mr. Royce is employed by CPI.

8. Upon information and belief, defendant Nathaniel Heller is an individual residing at 9143 Santayana Dr., Apt. 91, Fairfax, Va. 22031. Upon information and belief, Mr. Heller is employed by CPI.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(2), in that plaintiffs, on the one hand, are citizens of a foreign state, and defendants, on the other hand, are citizens of the United States, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

10. This Court has personal jurisdiction over defendant CPI pursuant to D.C. Code § 13-422(a), in that CPI is organized under the laws of and maintains its principal place of business in the District of Columbia. This Court has personal jurisdiction over defendant Heller pursuant to D.C. Code §§ 13-422(a), in that Mr. Heller is domiciled in the District of Columbia. Alternatively, this Court has personal jurisdiction over defendant Heller pursuant to D.C. Code §§ 13-423(a)(1) and 13-423(a)(3), in that plaintiffs' cause of action arises, respectively, out of business transacted by Mr. Heller in the District of Columbia and acts committed by Mr. Heller in the District of Columbia that have caused tortious injury to plaintiffs in the District of Columbia. This Court likewise has personal jurisdiction over defendant Royce pursuant to D.C. Code §§ 13-423(a)(1) and 13-423(a)(3), in that plaintiffs' cause of action arises, respectively, out of business transacted by Mr. Royce in the District of Columbia and acts committed by Mr. Royce in the District of Columbia that have caused tortious injury to plaintiffs in the District of Columbia.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2), in that a substantial part of the events giving rise to plaintiffs' claim occurred in the District of Columbia.

CAUSE OF ACTION

12. CPI published the Article on its *Public i* website on or about August 2, 2000. As of the filing of this Complaint, the Article remains accessible on this website. The Article published and/or republished numerous false and defamatory assertions of fact of and concerning plaintiffs ("the defamatory statements"). The defamatory statements falsely portrayed plaintiffs as involved in drug trafficking and other criminal or otherwise

disreputable activities, and as being connected to organized crime. The defamatory statements included the following:

a. That Alfa-Bank and Alfa-Eko were involved in the trafficking of drugs from the Far East to Europe in the early 1990s.

b. That shortly after its formation, Alfa-Bank hired “rogue” KGB agents who “quickly determined that dealing in drugs would bring the highest profits with literally no risk in Russia.”

c. That “Alfa Group’s top executives, oligarchs Mikhail Fridman and Pyotr Aven, ‘allegedly participated in the transit of drugs from Southeast Asia through Russia and into Europe’” and that a “large channel of heroin transit was established from Burma through Laos, Vietnam, to the Far East [Siberia].” “From there the drugs were camouflaged as flour and sugar shipments and forwarded on to Germany. The drug operation was controlled by a Chechen mob family.”

d. That in 1995, residents of the Siberian city of Khabarovsk became ill “after they had eaten heroin-laced sugar that had been shipped in a rail car container leased to Alfa Eko [sic]” and then sold to them by a railroad worker who had stolen a sack of sugar from the container.

e. That at the end of 1993, a top Alfa-Bank official met with Gilberto Rodriguez Orejuela, the now-imprisoned financial mastermind of Colombia’s notorious Cali cartel, to conclude a money laundering agreement.

f. That “top officials of the Alfa Group ‘cooperated’ with a number of Russian crime organizations, notably the notorious Solntsevo mob family in Moscow.”

13. The title of the Article – “Cheney Led Halliburton To Feast at Federal Trough / State Department Questioned Deal With Firm Linked to Russian Mob” – also defamed plaintiffs because, when viewed in the context of the Article itself, it falsely portrayed plaintiffs as being connected to organized crime in Russia.

14. The CPI Defendants published the defamatory statements with negligent disregard for the truth because they failed to act with ordinary care with respect to whether these statements were false. The CPI Defendants also published the defamatory statements with actual malice because they knew or acted with reckless disregard as to whether these statements were false.

15. To the extent the CPI Defendants published or republished defamatory statements attributed to others, they are not shielded from liability because the sources on which they relied either were anonymous or otherwise obviously unreliable: (a) a report said to have been delivered in 1997 to the national security committee of the Russian Duma by “anonymous officials” from the Russian Security Service or FSB, successor to the KGB; (b) an unnamed “former U.S. intelligence officer” who was allegedly given information by an unnamed “former KGB major” who was part of the KGB’s “ideological counterintelligence branch,” was working for “two banks formed by the KGB,” and “had himself been involved in the plan by the KGB and Communist Party to loot state enterprises;” and (c) “a private investigative report” commissioned in Russia by a party to a commercial dispute with an affiliate of Alfa-Bank which was “slipped” to the CIA through an intermediary.

16. The defamatory statements were not privileged.

17. The defamatory statements have been and are available to a large audience of individuals who understand the CPI Defendants' false assertions of fact to be about plaintiffs and to impugn plaintiffs in their trade, profession, community standing, and/or business ethics.

18. By imputing to plaintiffs the commission of a criminal offense or criminal offenses, the CPI Defendants have committed the tort of libel per se.

19. CPI has intentionally and maliciously defamed plaintiffs in order to harm plaintiffs in their personal and business relations.

20. As a direct and proximate result of the Article, plaintiffs Fridman and Aven have been damaged in their trade, profession, and community standing. As a direct and proximate result of the Article, the business ethics and business reputation of plaintiffs Alfa-Bank and Alfa-Eco have been impugned.

21. An actual controversy exists between the parties.

PRAYER FOR RELIEF

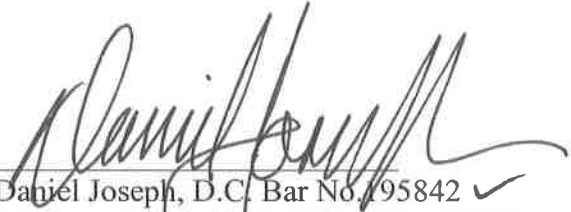
WHEREFORE, plaintiffs request that the Court:

- a. Pursuant to 28 U.S.C. § 2201, enter a declaratory judgment that the CPI defendants have defamed plaintiffs;
- b. Permanently enjoin the CPI Defendants from further publishing the Article and any of the defamatory statements therein;
- c. Award plaintiffs Fridman and Aven compensatory damages in an amount to be proved at trial;
- d. Award plaintiffs Fridman and Aven punitive damages;

- e. Award plaintiffs their costs, including reasonable attorneys' fees;
- and
- f. Grant plaintiffs such further relief as the Court may deem just and appropriate.

Dated: September 14, 2000

Respectfully submitted,



Daniel Joseph, D.C. Bar No. 195842
Jonathan S. Spaeth, D.C. Bar No. 394921
Joshua Toll, D.C. Bar No. 463073
Nicole L. Hagenbuch, D.C. Bar No. 468568
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COUNSEL FOR PLAINTIFFS

Exhibit A

The Public i

An Investigative Report of the Center for Public Integrity

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September 14, 2000

Main Page **Investigative Report**

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From the Editor

Feedback

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States Project

The 50 States Project is an on-going state-by-state analysis of lawmakers' conflicts of interest, based on their sources of income and assets, committee assignments, leadership positions and legislative duties.

Cheney Led Halliburton To Feast at Federal Trough

State Department Questioned Deal With Firm Linked to Russian Mob

By Knut Royce and Nathaniel Heller

(Washington, August 2) Under the guidance of Richard Cheney, a get-the-government-out-of-my-face conservative, Halliburton Company over the past five years has emerged as a corporate welfare hog, benefiting from at least \$3.8 billion in federal contracts and taxpayer-insured loans.

One of these loans was approved in April by the U.S. Export-Import Bank. It guaranteed \$489 million in credits to a Russian oil company whose roots are imbedded in a legacy of KGB and Communist Party corruption, as well as drug trafficking and organized crime funds, according to Russian and U.S. sources and documents.

Those claims are hotly disputed by the Russian oil firm's holding company.

Halliburton, which lobbied for the Ex-Im loan after the State Department initially asserted that the deal would run counter to the "national interest," will receive \$292 million of those funds to refurbish a massive Siberian oil field owned by the Russian company, the Tyumen Oil Co., which is controlled by a conglomerate called the Alfa Group.

The April Ex-Im taxpayer-insured loan, which has the effect of reducing the borrower's interest rate and extending its repayment term, is but the latest of a series of government bank guarantees from which Halliburton has benefited under Cheney, who joined the company as chairman and chief executive officer in 1995.

Since then Halliburton and its subsidiaries have undertaken foreign projects in which Ex-Im and its sister U.S. bank, the Overseas Private Investment Corp., have guaranteed or made direct loans totaling \$1.5 billion, mostly over the last two years. That compares with a total of about \$100 million the government banks insured and loaned in the five years before Cheney joined the company.

Under Cheney, Halliburton—largely through its Brown & Root subsidiary—has garnered \$2.3 billion in U.S. government contracts. This is almost double the \$1.2 billion it

Photo Illustration



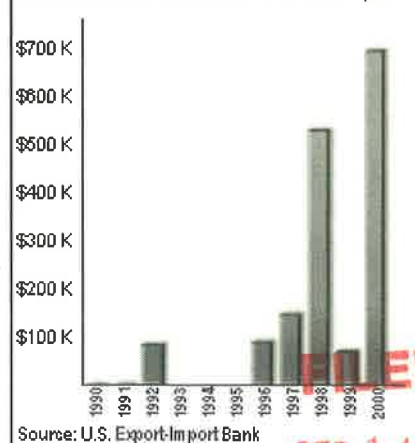
INTERNET LINKS :

- Alfa Bank
- BP-Amoco
- Halliburton Company
- Overseas Private Investment Corp.
- U.S. Export-Import Bank



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Export-Import Bank loans and guarantees to Halliburton and its subsidiaries over last 10 years



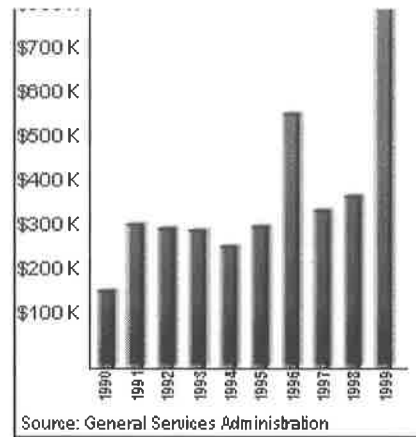
FILED SEP 14 2000

Total U.S. Government contracts (in US\$) awarded to Halliburton and its subsidiaries over the last 10 years

\$300 K |

00-2208

earned from the government in the five years before he arrived. Most of the contracts have been with the U.S. Army for engineering work in a variety of hot spots, including Bosnia, Albania, Kosovo and Haiti.



Halliburton spokeswoman Wendy Hall issued this statement:

"The Ex-Im Bank loan to Tyumen Oil Co. was carefully investigated by the Ex-Im Bank and approved by its governing body. Halliburton's participation in the loan complies with all applicable United States law and Ex-Im Bank regulation. The loan proceeds will be used to export millions of dollars of goods and services from the U.S. to Russia for much needed oil field improvements.

"These exports will create many jobs in the U.S.

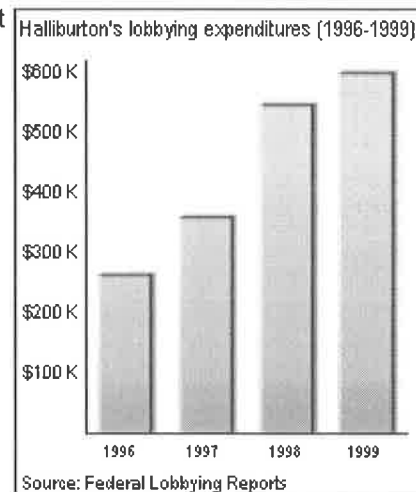
"Any innuendo that Halliburton or Dick Cheney has acted improperly in connection with the Ex-Im Bank loan is false and misleading."

Though there is no evidence that Cheney has espoused business dealings with criminal organizations, Cheney has said publicly that the government should lift restrictions on U.S. corporations in countries that the U.S. government says have sponsored terrorism, such as Libya and Iran.

High-level access

Wall Street analysts praise Cheney's stewardship of the company and attribute his ability to attract government contracts and grants to his high-level access to the corridors of power that stems from his days as defense secretary under President George Bush. If he becomes vice president, according to a Halliburton official who admires Cheney but asked to remain anonymous, "the company's government contracts would obviously go through the roof."

If Halliburton has benefited from government generosity, it also has reciprocated with substantial political contributions, largely to Republicans. During Cheney's five years at the helm, the company has donated \$1,212,000 in soft and hard money to candidates and parties, according to numbers compiled by the non-partisan Center for Responsive Politics. In the five years prior to his arrival, the company had given \$534,750.



Though the White House has been Democratic during those years, Congress, which appropriates funds for OPIC and the Ex-Im bank, has been controlled by Republicans.

The goodwill generated by those political contributions and extensive lobbying by Halliburton and its allies on the Tyumen project helped save the day after the White House and State Department in December directed the Ex-Im Bank to delay approval of the \$489 million credit guarantee. The administration wanted the breathing space after complaints by Western investors and companies that they had been defrauded by Tyumen in an unrelated dispute.

One of the aggrieved firms was BP-Amoco, the largest oil and gas producer in

the United States. It and the others claimed that through fraud and other unsavory practices in a Russian bankruptcy proceeding, Tyumen had effectively "stolen" a vast oil field in which they held substantial equity.

BP-Amoco commissioned a private investigative report on Tyumen, which was slipped to the CIA through an intermediary.

That report, a CIA official confirmed, contained 2 1/2 pages labeled "criminal situation." The CIA promptly classified the report "secret" and passed it along to the Ex-Im Bank. Further, the CIA briefed Ex-Im about its own material on Tyumen in December and told the bank that the BP-Amoco investigative report "tracked" with its own information.

'Criminal situation'

The CIA declined to discuss with *The Public i* what was contained in the brief section labeled "criminal situation."

Marsha E. Berry, vice president of communications for the Ex-Im Bank, said that the bank was "not aware of Tyumen's connections to the mob. We take all due diligence in researching our partners and making sure that they are legitimate."

An Ex-Im attorney who worked on the Tyumen account said that the bank checked with both the CIA and the U.S. Embassy in Moscow and concluded that there was "no evidence to support the allegations" raised in the BP-Amoco report, which he said included links to Russian organized crime. He would not further discuss the allegations. He said that the CIA had rated Tyumen in the upper quartile of Russian oil companies in above-board business practices.

Some allegations of organized crime and drug activities involving Tyumen's parent company, the Alfa Group, had been made public in Russia last year.

The allegations were contained in a report delivered in 1997 by anonymous officials from the FSB (the Russian equivalent of the FBI) to the national security committee of the Duma, or lower house of parliament.

A Russian-American specialist on business practices in the former Soviet Union who has worked with the White House and Pentagon told *The Public i* that the allegations contained in the 1997 report have been the subject of an investigation by the FSB but that the probe, for unexplained reasons, had been "put away for a better day."

Some of the key elements in the FSB report, a translation of which was obtained by *The Public i*, are virtually identical to those provided to a former senior American intelligence officer two years earlier by a former KGB major who had been part of the Soviet spy agency's ideological counterintelligence branch.

The former U.S. intelligence officer, who asked not to be further identified, wrote a contemporaneous report of what the former KGB major, at the time working for two banks formed by the KGB, told him in 1995. The intelligence specialist provided a copy of his report to *The Public i*.

Money laundering, drug trafficking

That document and the FSB report claim that Alfa Bank, one of Russia's largest and most profitable, as well as Alfa Eko, a trading company, had been deeply involved in the early 1990s in laundering of Russian and Colombian drug money and in trafficking drugs from the Far East to Europe.

The former KGB major, who with the fall of communism in the late 1980s had

himself been involved in the plan by the KGB and Communist Party to loot state enterprises, said that Alfa Bank was founded with party and KGB funds, and quickly attracted rogue agents who had served in anti-organized-crime units. "They (the rogue agents on the bank's payroll) quickly determined that dealing in drugs would bring the highest profits with literally no risk in Russia," according to the former KGB officer.

He claimed that a "large channel of heroin transit was established from Burma through Laos, Vietnam, to the Far East [Siberia]." From there the drugs were camouflaged as flour and sugar shipments and forwarded on to Germany. The drug operation was controlled by a Chechen mob family, he said.

The FSB report, too, claimed that the Alfa Group's top executives, oligarchs Mikhail Fridman and Pyotr Aven, "allegedly participated in the transit of drugs from Southeast Asia through Russia and into Europe."

Reached by telephone, Alexander Tolchinskiy, an officer of Alfa Bank in Moscow, described as "nonsense" the reports that Alfa or its bosses had been involved in the trafficking of drugs or the laundering of drug profits. Another Alfa official said that the reports were planted by representatives of a competing company, whom he would not identify, which wanted to take over the commodities trade.



'Way off the mark'

A lawyer at the blue-chip Washington law firm of Akin, Gump, which represents Tyumen, said that the claims that the company's top officers had been involved in narcotics trafficking and money laundering were "way off the mark." The lawyer declined to be further identified.

Rory Davenport of Fleischman Hillard, which handles Tyumen's public relations in Washington, said that his firm had performed a background check on Tyumen and "there was no concern" about Tyumen's alleged mob connection.

Both the FSB and KGB reports cite an event in 1995 in which residents of a Siberian town became "intoxicated," according to the American's report, and "poisoned," according to the FSB report, after they had eaten heroin-laced sugar that had been shipped in a rail car container leased to Alfa Eko, which specializes in the shipment of foodstuffs.

The account from the former KGB officer was that a railroad worker had stolen a sack of sugar from the container and sold it to the persons who became ill. The FSB document said that the incident occurred in Khabarovsk, a large city in Siberia. The former KGB officer only described the location as Siberia.

The FSB report said that within days of the incident, Ministry of Internal Affairs (MVD) agents conducted raids of Alfa Eko buildings and found "drugs and other compromising documentation."

Both reports claim that Alfa Bank has laundered drug funds from Russian and Colombian drug cartels.

The FSB document claims that at the end of 1993, a top Alfa official met with Gilberto Rodriguez Orejuela, the now-imprisoned financial mastermind of Colombia's notorious Cali cartel, "to conclude an agreement about the transfer of money into Alfa Bank from offshore zones such as the Bahamas, Gibraltar and others. The plan was to insert it back into the Russian economy through the purchase of stock in Russian companies."

The account from the former KGB officer is unclear about Alfa's alleged role with

Rodriguez, but apparently confirms that "in 1993-94 there were attempts of the so-called 'Chess Player' [Rodriguez's nickname] to launder and legalize large amounts of criminal money in Russia.' He reported that there was evidence "regarding [Alfa Bank's] involvement with the money laundering of . . . Latin American drug cartels."

Pattern not unusual

The former KGB officer claimed that the Alfa empire had its roots in a cooperative formed by KGB officers in 1987 to import computers. It would profit by avoiding import duties and launder funds by creating phony invoices to themselves reflecting 500 percent markups in their cost.

The FSB document said that in the 1980s, Alfa's Fridman "secretly cooperated with operatives of the KGB," was active in the Komsomol (Communist Youth League) and established the cooperatives Gelios and Orsk to purchase computers from abroad.

The former U.S. intelligence officer who interviewed the ex-KGB major said that such a pattern was not unusual. He said that the KGB and Komsomol often teamed up with bright young entrepreneurs like Fridman in the late 1980s and early 1990s and provided seed money to launch private ventures, often involving the importing of computers or the formation of banks. He said that Russian oligarch Mikhail Khodorkovsky, whose reputedly heavily mobbed-up Menatep bank folded in 1998, also got his seed money from the Komsomol and also initially dealt in computers. He said that 47 percent of the KGB agents in the Soviet Union had been groomed by Komsomol.

The FSB report also claims that top officials of the Alfa Group "cooperated" with a number of Russian crime organizations, notably the notorious Solntsevo mob family in Moscow. The Russian-American specialist on business practices in Russia, who has a wide array of contacts inside Russia's law enforcement and intelligence communities, agreed that Alfa Bank, as well as others, are used by the Solntsevo crime family.

As with most of Russia's post-Soviet privatization efforts, Alfa Group's takeover of Tyumen Oil was complicated and fraught with allegations of impropriety. In July of 1997, Novy Holdings, a joint venture involving Alfa and a New York-based Russian-American firm, Access Industries, purchased a 40 percent stake in Tyumen Oil from the Russian government for roughly \$810 million. The sale, however, was not without controversy. Russian President Boris Yeltsin himself instructed his privatization czar, Deputy Prime Minister Alfred Kokh, to "personally control the investment tender of the TNK company [Tyumen Oil]" because he was concerned that Tyumen's worth might have been grossly undervalued due to Alfa's improper influence on the audit of the oil giant.

A second cash auction for the remainder of the oil company was scheduled for later that year, with most analysts predicting that Alfa would seek to increase its stake to a majority position. But the auction was suspended in November of 1997, drawing criticism that the government was deliberately delaying the sale of Tyumen in order to give Alfa additional time to raise the necessary funds it needed to take control of the company. The most outspoken critic of Alfa's attempt to wrest control of Tyumen was Viktor Paly, general director of Nizhnevartovskneftegaz, Tyumen Oil's production subsidiary. Paly held a 9% stake in Tyumen Oil through an off-shore company Cadet Establishment.

By February of 1998, however, following meetings at Alfa's offices in Moscow, Paly agreed to divest his stake in Tyumen Oil to Alfa. One month later, Alfa bought an additional 1.17 percent of Tyumen Oil as part of the long-delayed second auction, raising its total stake in the oil company to a 51 percent controlling position.

Was Cheney's chief of staff

Tyumen could have significant access to the White House should the Bush-Cheney ticket win in the November presidential elections. Tyumen's lead attorney at Akin Gump is James C. Langdon Jr., a managing partner at the firm. He is also one of George W. Bush's "Pioneers," one of the elite fund raisers who have brought in at least \$100,000 for the Republican presidential hopeful.

Last June in Washington, Langdon helped coordinate a \$2.2 million fund raiser for Bush, and agreed to help recruit 100 lawyers and lobbyists in the capital to raise \$25,000 each. Langdon's secretary told *The Public i* that he was away on travel this week and could not be immediately reached.

Tyumen could also look to one of Cheney's deputies for access should the Republicans triumph in November. One of Halliburton's top lobbyists, Dave Gribbin, was Cheney's chief of staff at the Defense Department during the Bush administration, and his lobbying activities have borne fruit for Halliburton over the last several years.

As with Halliburton's campaign donations, the company's lobbying expenditures increased under Cheney's watch. In 1996, the company spent \$280,000 on lobbying. In 1997, the company increased those expenditures to \$360,000, to \$540,000 in 1998, and to \$600,000 in 1999. That upward trend parallels the increasing success Halliburton has had in winning government contracts, loans, and guarantees under Cheney's direction.

Not surprisingly, several key issues relating to Halliburton's success in securing government largesse appear frequently on the company's lobbying reports. Among them are "OPIC Reauthorization," Defense Appropriations Bills," and "Foreign Operations Appropriations Bills Funding EXIM, OPIC, and TDA" [the Trade and Development Agency, a government agency similar to Ex-Im and one that also funds Halliburton projects around the world]. Gribbin also lists "EXIM," "OPIC," and "TDA" as federal agencies that were contacted as part of the company's lobbying activities. Gribbin did not return repeated calls from *The Public i*.

In no small irony, the official Bush Web site, recently revamped to accommodate the addition of Cheney to the ticket, notes in the "Foreign Policy" section that the duo supports "redirecting American assistance, investment and loans to the Russian people, not to the bank accounts of corrupt officials."

Export-Import Bank and Overseas Private Investment Corp. projects involving Halliburton: 1990- 2000

Year	Amount	Type	Project	Country
Ex-Im Bank:				
1990	\$311,482	guarantee	Entreprise Nationale de Geophysique SP	Algeria
1990	\$311,482	loan	Entreprise Nationale de Geophysique SP	Algeria
1991	\$2,975,030	guarantee	Entreprise Nationale de Geophysique SP	Algeria
1991	\$2,975,030	loan	Entreprise Nationale de Geophysique SP	Algeria
1992	\$1,055,730	guarantee	Entreprise Nationale de Geophysique SP	Algeria
1992	\$1,055,730	loan	Entreprise Nationale de Geophysique SP	Algeria
1992	\$29,742,049	guarantee	Sonatrach	Algeria
1992	\$52,064,663	guarantee	Sonatrach	Algeria

*1994	\$266,271,425	guarantee	Samotlornefgaz	Russia
1996	\$88,535,400	guarantee	Special Purpose Entity	Angola
1997	\$134,604,799	guarantee	Sonatrach	Algeria
1997	\$15,393,372	guarantee	Sonatrach	Algeria
1998	\$161,139,799	guarantee	Pemex Project Funding Master Trust, The	Mexico
1998	\$375,379,380	guarantee	Pemex Project Funding Master Trust, The	Mexico
1999	\$64,151,962	loan	Soc National de Combustiveis de Angola	Angola
2000	\$400,000,001	guarantee	Pemex Project Funding Master Trust, The	Mexico
2000	\$36,838,454	guarantee	Samotlornefgaz	Russia
	\$1,632,805,788			

OPIC

1997	\$100,000,000	insurance	offshore gas development	Bangladesh
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* Carried over to year 2000 as part of guarantee to Tyumen.

Halliburton's fiscal year 1999 U.S. government contracts by agency (include subsidiaries of Halliburton)

Agency	Total Amount	No. of Transactions
Department of Defense - Navy	\$28,180,000	326
Department of Defense - Army (Except Corps of Engineers)	\$624,926,000	461
Department of Defense - Air Force (Headquarters)	\$6,310,000	20
Department of Defense - Army Corps of Engineers	\$267,000	2
Department of Defense - Army Corps of Engineers	-\$4,654,000	2
Department of Defense - Defense Information Systems Agency	\$332,000	1
Department of Health and Human Services - National Institutes of Health	\$40,477,000	280
Department of Interior - Geological Survey	\$27,000	1
Department of Interior - Minerals Management Service	\$50,000	1
Department of Interior - National Park Service	\$99,000	3
Department of State	\$31,200,000	7
Environmental Protection Agency	\$172,000	1
National Aeronautics and Space Administration	\$52,901,000	136
	\$780,287,000	1241

Knut Royce is a senior fellow and Nathaniel Heller is the James R. Soles Fellow at the Center for Public

Integrity. They were assisted by researchers Gil Shochat and Amy Zader.

Related Reports:

- Dick Cheney's role in the compensation packages of other CEOs could add a complicating factor to his defense of the \$13.6 million in stock and options that he received after leaving Halliburton to become Texas Gov. George W. Bush's running mate. (Washington Post, Aug. 30)
- Mixed reviews for Cheney in chief executive role at Halliburton. (New York Times, Aug. 24) (Free registration required)
- Out of D.C., Cheney still carried clout (Chicago Tribune, Aug. 10) (Free registration required)
- Cheney linked to oil-loans funding. (the Guardian, London, Aug. 5)
- Primary ways to nail jelly. (Harold Evans commentary, the Guardian, London, Aug. 7)

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alleged cooperation with the “Kremlin” to influence the 2016 presidential election. But neither the Plaintiffs nor Alfa committed any of the acts recklessly attributed to them by the Defendants. To the contrary, the Plaintiffs and Alfa are collateral damage in a U.S. political operation conducted by the Defendants, whose focus is an alleged relationship (between the Kremlin and the Trump campaign) which has nothing whatsoever to do with the Plaintiffs.

2. The specific “report” that includes facially defamatory statements about the Plaintiffs is one of seventeen written Company Intelligence Reports 2016 (“CIRs”) that comprise the Trump Dossier. The Defendants included Company Intelligence Report 112 (the “Report” or “CIR 112”) (which makes statements about the Plaintiffs) in the Trump Dossier, even though the Dossier’s purpose and intended subject matter have nothing to do with the Plaintiffs’ past, current or intended future activities. Broadly, those reports purport to describe details of an alleged scheme between the Russian government and the Trump presidential campaign to unlawfully manipulate the result of the 2016 presidential election in favor of candidate Trump. The Defendants gathered these reports as part of their engagement to conduct “opposition research” (known as “oppo research” by its practitioners and the media) against Trump. Opposition research, in essence, is the gathering of information for the purpose of eventually discrediting or otherwise harming a candidate for a public office. Opposition research is neither objective nor neutral. Instead, it is skewed from the outset in favor of appearing to find negative information about individuals—the essence of the product that political opposition research practitioners such as the Defendants are hired to produce.

3. As described below, the Defendants were initially hired to conduct this opposition research by Republican political opponents of candidate Trump during the primary phase of the 2016 election cycle. That engagement was terminated when it became clear that Mr. Trump would be the Republican nominee. At that point, Defendants solicited and obtained an engagement with the Democratic National Committee and the campaign of candidate Hillary Clinton to gather discrediting information about Mr. Trump, including any connections he might have to Russian businesses or Russia's government. To perform that research, the Defendants hired a private investigator—a former British intelligence officer named Christopher Steele, who operated through a London—based entity known as Orbis Business Intelligence Limited (“Orbis”). Steele claims to have used his own Russian sources—who were never identified—to compile the reports, which were then delivered to the Defendants over the course of several months in 2016. Eventually, the reports, including the false and defamatory Report at the heart of this case, were assembled in the document that has come to be known to the public as the Trump Dossier. Steele has acknowledged that his reports are unverified “raw intelligence” and has refused to identify his alleged “sources.” Indeed, not one of the reports in the Dossier has ever been verified and none of its sources has ever been publicly identified. Defendants recklessly placed the Dossier's allegations of criminal action by Plaintiffs beyond their control which allowed those allegations to get into the hands of media devoted to breaking news on the hottest subjects of the day: the Trump candidacy and his election as President.

4. CIR 112, dated September 14, 2016, falsely accuses the Plaintiffs of criminal bribery in the 1990s and participation in an alleged Trump-Russia scheme to

influence the 2016 presidential election. That alleged scheme was the overall subject matter of the Dossier. At all relevant times Defendants were aware that CIR 112 was not verified, that its content was provided by unidentified sources whose credibility could therefore not be assessed by a reader of the Dossier, and that the accusations made in CIR 112 about Plaintiffs defamed them. Defendants could easily have removed that Report from the Dossier before they started peddling it to media and journalists in September and October 2016. They chose not to do so. Nor did they attempt to determine the veracity of that Report with the Plaintiffs themselves.

5. At all times during the Defendants' engagement of Orbis and Steele, it was either intended or clearly foreseeable that if the Dossier's contents were made available to third parties, including journalists, such provocative material would be published and republished, including to the public at large. Indeed, that is the entire purpose of "oppo research" in American politics. Those third parties included government officials, as well as news media and journalists who could make its content public.

6. On information and belief, Defendants arranged for Steele to brief selected members of the print and online media about the information he was compiling on candidate Trump and his campaign. Consistent with the intended purpose of "oppo research" to publicly discredit its target, Steele's briefings were designed to generate interest in the Dossier and secure eventual public dissemination of its content. Briefings were held for journalists from the *New York Times*, the *Washington Post*, *CNN*, *Yahoo News*, and others in September 2016. *The New York Times*, *The Washington Post* and

Yahoo News were given a second briefing.¹ Shortly thereafter, *Yahoo News* published an article by Michael Isikoff that described some of the content of the Dossier (referred to there as “intelligence reports” and “reports”), which was still being compiled at that time.² Many other media articles reported speculative accounts of the Dossier’s existence and contents. In late October 2016, Steele gave an interview to David Corn, a writer for *Mother Jones* magazine, which, on October 31, 2016, published an article by Corn headlined “A Veteran Spy Has Given The FBI Information Alleging a Russian Operation to Cultivate Donald Trump.”³ Corn’s article stated that he had “reviewed” the early reports in the Dossier, and then quoted from those reports as well as statements made by Steele in the interview. The publication to third parties and public dissemination of the Dossier’s content had begun in earnest.

7. In addition to cultivating media interest, the Defendants also organized or approved a meeting in Great Britain between Steele and David Kramer, who held no public office but was the director of a private foundation affiliated with U.S. Senator John McCain. The purpose of that meeting was to show Kramer the content of the sixteen pre-election reports in the Dossier so he could brief Senator McCain, who at the time was a well-known and outspoken critic of Trump’s candidacy. Subsequently, in November

¹ *Defendants’ Response to Claimants Request For Information, Gubarev, et al. v. Orbis Business Intelligence Limited and Christopher Steele*, Claim No. HQ1700413, In the High Court of Justice, Queens Bench Division, May 18, 2017, p. 8 (“The Orbis/Steele Response”).

² Michael Isikoff, *U.S. intel officials probe ties between Trump advisor and Kremlin*, *Yahoo News*, Sept. 23, 2016, <https://www.yahoo.com/news/u-s-intel-officials-probe-ties-between-trump-adviser-and-kremlin-175046002.html>.

³ David Corn, *A Veteran Spy Has Given the FBI Information Alleging a Russian Operation to Cultivate Donald Trump*, *Mother Jones, Politics*, Oct. 31, 2016, <https://www.motherjones.com/politics/2016/10/veteran-spy-gave-fbi-info-alleging-russian-operation-cultivate-donald-trump/>

2016, Defendants provided (and thereby published) a copy of all sixteen of the Dossier's then existing reports to Kramer—for redelivery and further publication to Senator McCain—including the report (CIR 112) that falsely accused and defamed Plaintiffs.⁴

8. As the 2016 presidential election neared, both print and online media in the United States and abroad began to expand their coverage of the Dossier and its alleged content. That coverage only intensified after Trump won the election. On January 10, 2017, one of those media entities, BuzzFeed, Inc., published the entire Dossier on the Internet, describing it there as “explosive.” The copy of the Dossier that BuzzFeed published included the false and defamatory allegations of CIR 112 about the Plaintiffs and Alfa, along with the article entitled “These Reports Allege Trump Has Deep Ties to Russia.”⁵ The Dossier misspells Alfa's name throughout, incorrectly spelling it as “Alpha.” BuzzFeed's article did not mention CIR 112 or its allegations, but focused instead on president-elect Trump and his alleged relationships with Russia, explaining that it “was publishing the full document so that Americans can make up their minds about allegations about the president-elect that have circulated at the highest levels of the U.S. government.”⁶

9. The Defendants intended, anticipated, or foresaw a high likelihood that allowing their clients (named *infra*), third parties (like David Kramer and Senator

⁴ The Orbis/Steele Response, pp. 5-6.

⁵ Ken Bensinger, Miriam Elder, Mark Schoofs, *These Reports Allege Trump Has Deep Ties To Russia*, BuzzFeed News, Jan. 10, 2017, https://www.buzzfeed.com/kenbensinger/these-reports-allege-trump-has-deep-ties-to-russia?utm_term=.is1Q2ka2J.

⁶ *Id.*

McCain) and the media access to the Dossier's defamatory content would result in its republication by news media outlets, including online news media such as BuzzFeed.

10. Plaintiffs seek an award of compensatory and punitive damages for the harm to their personal and professional reputations, current business interests, and the impairment of business opportunities that resulted from the blatantly false and defamatory statements and implications about them published recklessly to third parties by the Defendants and republished by BuzzFeed and countless other media around the world.

THE PARTIES

11. Plaintiffs Fridman, Aven, and Khan are ultimate beneficial owners of Alfa. Fridman and Khan are each citizens of both Russia and Israel, and Aven is a citizen of Russia. Plaintiffs are not widely known in the United States, had no role or involvement in any aspect of the 2016 U.S. presidential election, and made no public comments about it.

12. On information and belief, defendant Bean LLC is a Delaware corporation that conducts business under the name Fusion GPS. Fusion is registered to transact business in Washington, D.C., where it is headquartered and conducts its operations.

13. Defendant Glenn Simpson, on information and belief, is a principal of Fusion. He was the primary actor involved in securing the Dossier from Orbis and Steele, arranging for press briefings about it in the late summer and early fall of 2016, and publishing the Dossier to various recipients including Fusion's clients, third parties like David Kramer and Senator McCain, other government officials and the news

media. Simpson conducts his business for Fusion from an office in Washington, D.C., where his business included his activities with respect to the Dossier. Both Simpson and his subcontractor Steele used their prior experience as, respectively, an investigative journalist for the Wall Street Journal and an operative in British intelligence who had covered Russian matters, to give their “oppo research” output a gloss of credibility and reliability which, in this case, was unwarranted. Simpson has described Fusion’s work as “journalism for rent” and claimed publicly that he and Fusion uphold strict standards that Simpson developed in his years as a journalist: “You can’t just say what you know. You have to say how you know it. And you have to be able to prove it.”⁷ And yet, Simpson and Fusion did not live up to their own professed standards when they published the Dossier. As Steele (Defendants’ supplier of the Dossier’s unverified, anonymous “raw intelligence” content) recently told a journalist, he did not interview his sources himself, but gathered his information through “intermediaries” and “subsources.” And as Steele further acknowledged, as much as 30% of the Dossier’s content may not be “accurate.”⁸ Those are the “standards” by which Defendants operated when they published CIR 112.

⁷ Jack Gillum, Shawn Boburg, ‘*Journalism for rent*’: Inside the secretive firm behind the Trump dossier, The Washington Post, Investigations, Dec. 11, 2017 (available at https://www.washingtonpost.com/investigations/journalism-for-rent-inside-the-secretive-firm-behind-the-trump-dossier/2017/12/11/8d5428d4-bd89-11e7-af84-d3e2ee4b2af1_story.html?utm_term=.5152414bbcce).

⁸ Luke Harding, *How Trump walked into Putin’s web*, The Guardian, News, Nov. 15, 2017, <https://www.theguardian.com/news/2017/nov/15/how-trump-walked-into-putins-web-luke>; <https://theguardian.com/us-new/2017/nov/15/christopher-steele-trump-russia-dossier-accurate>.

JURISDICTION AND VENUE

14. This case is within this Court's jurisdiction pursuant to 28 U.S.C. § 1332(a)(2). Venue is proper in this District pursuant to 28 U.S.C. § 1391. The matter in controversy in the cause of action asserted herein exceeds \$75,000.

FACTUAL ALLEGATIONS

15. On information and belief, the Defendants were engaged in 2015 by the Washington Free Beacon to conduct research from public sources about several Republican candidates for President, an engagement which ended in May 2016 when Donald J. Trump was emerging as the likely winner of the nomination.⁹ Even prior to that termination, Defendants approached Perkins Coie, a law firm representing the Democratic National Committee (DNC) and HFACC, Inc., the campaign organization supporting Hillary Rodham Clinton's candidacy for President, to solicit an engagement that would continue the research regarding Donald Trump which it had been pursuing on behalf of its previous client. Perkins Coie retained Defendants to provide such research services in April 2016, an engagement which continued until October 2016.¹⁰ The Defendants were tasked with conducting "oppo research" against Trump, including the gathering of compromising and salacious information about Trump's personal behavior

⁹ Alicia Cohn, *Conservative site funded project that led to Trump dossier*, The Hill, Home News, Oct. 27, 2017, <http://thehill.com/homenews/news/357599-conservative-publication-originally-funded-trump-dossier-report>.

¹⁰ Adam Entous, Devlin Barrett, Rosalind S. Helderan, *Clinton campaign, DNC paid for research that led to Russia dossier*, The Washington Post, National Security, Oct. 24, 2017 (available at <https://www.washingtonpost.com/world/national-security/clinton-campaign-dnc-paid-for-research-that-led-to-russia-dossier/2017/10/24/22>).

and business dealings in Russia. The Defendants in turn engaged Orbis and Steele for assistance in fulfilling this task.

16. Orbis proceeded to research Trump's personal behavior in Russia and business dealings with Russian government officials, business leaders, and business entities. Steele compiled the "investigative" results into at least seventeen written CIRs for delivery to the Defendants in Washington, D.C. By Steele's own description, the CIRs were "raw intelligence" containing unverified information from sources he did not personally interview.¹¹ The CIRs produced between June 2016 and the end of October 2016 (including CIR 112) were provided and thus published to lawyers at Perkins Coie and by them to their clients at the DNC and the HFACC.

17. After Trump received the Republican nomination for President in July 2016, many media reports subsequently surfaced asserting, correctly, that Fusion had entered into a new engagement with Democratic Party operatives interested in using the oppo research to support Hillary Clinton's candidacy. These media reports vastly increased other media's and the public's interest in the content of the Dossier.

18. As they continued their work for their new clients, the Defendants knew, anticipated or reasonably should have foreseen that, once in the hands of third parties such as David Kramer, Senator McCain, journalists like Michael Isikoff and David Corn, Perkins Coie, the political operatives at the DNC and HFACC, and their media contacts, the CIRs would be further disseminated publicly, thereby fostering widespread discussion about them in the United States when, in fact, Plaintiffs had no role whatsoever in any actions the Russian government or other Russian actors may have taken with regard to

¹¹ The Orbis/Steele Response, p.7, #17.

the 2016 election in the United States. That is exactly what happened. Much of the ensuing media attention and public discussion focused on Defendants' and Steele's roles in the creation and dissemination of the Dossier, and the interviews solicited by them. During this campaign to promote the public dissemination of their "oppo research," which, upon information and belief, included the provision of background briefing to the media by Defendants without attribution, Defendants never vouched for the credibility of their sources or the accuracy and reliability of the content of the Dossier and CIR 112. Despite the fact that they did not know whether the unverified, anonymous, inherently harmful accusations in CIR 112 about Plaintiffs were true or false, Defendants intentionally published the Dossier, including CIR 112, to Perkins Coie, David Kramer and John McCain, and foresaw (or reasonably should have foreseen) that it would then be republished to (1) Perkins Coie's clients (the DNC and the HFACC); (2) employees of the DNC and the HFACC; and (3) journalists and media. Elements of the Dossier, possibly including CIR112, may have been published even more extensively by being made available for viewing during arranged briefings of certain journalists. Worldwide publication of the entire Dossier, whether by BuzzFeed or anyone else, was inevitable after these reckless actions by Defendants.

19. CIR 112 specifically discusses the Plaintiffs. Its heading, "RUSSIA/US PRESIDENTIAL ELECTION: KREMLIN-ALPHA GROUP CO-OPERATION," is defamatory in the Trump/Russia context of the entire Dossier, as this heading suggests that Alfa and its executives, including the Plaintiffs, cooperated in the alleged Kremlin-orchestrated campaign to interfere in the 2016 U.S. presidential election—the overriding focus of Steele's reports. This is a plausible and, indeed, inescapable inference of fact

based on the headings of fifteen of the sixteen CIR's that Defendants dated and/or published before the end of October, 2016:

US PRESIDENTIAL ELECTION: REPUBLICAN CANDIDATE DONALD TRUMP'S ACTIVITIES IN RUSSIA AND COMPROMISING RELATIONSHIP WITH THE KREMLIN (CIR 80 – JUNE 20, 2016)

RUSSIA/US PRESIDENTIAL ELECTION: FURTHER INDICATIONS OF EXTENSIVE CONSPIRACY BETWEEN TRUMP'S CAMPAIGN TEAM AND THE KREMLIN (CIR 95 – UNDATED)

RUSSIA: SECRET KREMLIN MEETINGS ATTENDED BY TRUMP ADVISOR, CARTER PAGE IN MOSCOW (JULY 2016) (CIR 94 – JULY 19, 2016)

RUSSIA-US PRESIDENTIAL ELECTION: KREMLIN CONCERN THAT POLITICAL FALLOUT FROM DNC E-MAIL HACKING AFFAIR SPIRALING OUT OF CONTROL (CIR 97 – JULY 30, 2016)

RUSSIA/USA: GROWING BACKLASH IN KREMLIN TO DNC HACKING AND TRUMP SUPPORT OPERATIONS (CIR 100 - AUGUST 5, 2016)

RUSSIA/US PRESIDENTIAL ELECTION: SENIOR KREMLIN FIGURE OUTLINES EVOLVING RUSSIAN TACTICS IN PRO-TRUMP, ANTI-CLINTON OPERATION (CIR 101 – AUGUST 10, 2016)

RUSSIA/US PRESIDENTIAL ELECTION: REACTION IN TRUMP CAMP TO RECENT NEGATIVE PUBLICITY ABOUT RUSSIAN INTERFERENCE AND LIKELY RESULTING TACTICS GOING FORWARD (CIR 102 – AUGUST 10, 2016)

RUSSIA/US PRESIDENTIAL ELECTION: FURTHER DETAILS OF TRUMP LAWYER COHEN'S SECRET LIAISON WITH THE KREMLIN (CIR 136 – OCTOBER 20, 2016)

RUSSIA/UKRAINE: THE DEMISE OF TRUMP'S CAMPAIGN MANAGER PAUL MANAFORT (CIR 105 – AUGUST 22, 2016)

RUSSIA/US: KREMLIN FALLOUT FROM MEDIA EXPOSURE OF MOSCOW'S INTERFERENCE IN THE US PRESIDENTIAL CAMPAIGN (CIR 111 – SEPTEMBER 14, 2016)

RUSSIA/US PRESIDENTIAL ELECTION: KREMLIN-ALPHA GROUP CO-OPERATION (CIR 112 – SEPTEMBER 14, 2016)

RUSSIA/US PRESIDENTIAL ELECTION: REPUBLICAN CANDIDATE TRUMP'S PRIOR ACTIVITIES IN ST. PETERSBURG (CIR 113 – SEPTEMBER 14, 2016)

RUSSIA: KREMLIN ASSESSMENT OF TRUMP AND RUSSIA INTERFERENCE IN US PRESIDENTIAL ELECTION (CIR 130 – OCTOBER 12, 2016)

RUSSIA/US PRESIDENTIAL ELECTION: FURTHER DETAILS OF KREMLIN LIAISON WITH TRUMP CAMPAIGN (CIR 134 – OCTOBER 18, 2016)

20. CIR 112, in sections labeled “Summary” and “Detail,” makes a series of factual allegations about the “current closeness” of an “Alpha Group/PUTIN relationship,” including that “[s]ignificant favors continue to be done in both directions” and that “FRIDMAN and AVEN [are] still giving informal advice to PUTIN, especially on the US.”

21. The Summary section of CIR 112 identifies a former employee of Alfa, Oleg Govorun, who is now the head of a government department in Putin’s administration, as a “key intermediary” in the “PUTIN-Alfa relationship.” CIR 112 alleges that Govorun “delivered illicit cash directly to PUTIN” “throughout the 1990s,” when Govorun was an “Alpha executive” and Putin was the Deputy Mayor of St. Petersburg.

22. The first paragraph of the Detail section of CIR 112 states the full names of Plaintiffs Fridman, Aven, and Khan. It then includes a report from an unnamed “Russian government official:”

although they have had their ups and downs, the leading figures in Alpha currently are on very good terms with PUTIN. Significant favors continued to be done in both directions, primarily political ones for PUTIN and business/legal ones for Alpha. Also, FRIDMAN and AVEN continued to give informal advice to PUTIN on

foreign policy, and especially about the US where he distrusted advice being given him by officials.

23. Under any reasonable reading of CIR 112, alone, and in the context of the full Dossier and the headings of sixteen of its seventeen CIR's ("the Trump/Russia context"), Plaintiffs Fridman, Aven, and Khan, along with Alfa, are alleged to maintain a highly inappropriate, and even criminal, relationship with Putin, based on criminal interaction dating back to the 1990s. By clear and defamatory implication, CIR 112 purports to tie the Plaintiffs to a Kremlin-orchestrated campaign to interfere in the 2016 U.S. election.

24. The second paragraph of the Detail section alleges that Mr. Fridman "recently met directly with PUTIN" and that "much of the dialogue and business between them was mediated" by Govorun, the former Alfa employee. The paragraph describes Govorun as a "senior Presidential Administration official" who is "trusted by PUTIN:"

during the 1990s GOVORUN had been Head of Government Relations at Alpha Group and in reality the 'driver' and 'bag carrier' used by FRIDMAN and AVEN to deliver large amounts of illicit cash to the Russian president, at that time deputy Mayor of St. Petersburg. Given that and the continuing sensitivity of the PUTIN-Alpha relationship, and need for plausible deniability, much of the contact between them was now indirect and entrusted to the relatively low profile GOVORUN.

25. These allegations are false. Oleg Govorun was not employed by Alfa Bank until after Mr. Putin left St. Petersburg to join the Yeltsin administration in Moscow. The defamatory nature of these allegations, even when read alone, is clear: CIR 112 alleges that, in the 1990s, Alfa (a member of "Alpha Group") and two of its

largest beneficial owners purportedly engaged in acts of criminal bribery of Vladimir Putin, a public official, to secure favorable business treatment.

26. Those statements, considered in the Trump/Russia context of the Dossier as a whole, imply that the alleged improper relationship between Alfa, the Plaintiffs, and Putin, which purportedly started in the 1990s, is currently ongoing, and that Govorun, the alleged “bag carrier” of the 1990s, who is now a senior official in Putin’s administration, serves as the trusted intermediary between the Plaintiffs and Putin in the alleged cooperation of Plaintiffs in the Trump/Russia conspiracy.

27. The third paragraph of the Detail section characterizes the “PUTIN-Alpha relationship as both a carrot and stick:”

Alpha held ‘kompromat’ on PUTIN and his corrupt business activities from the 1990s whilst although not personally overly bothered by Alpha’s failure to reinvest the proceeds of its TNK oil company sales into the Russian economy since, the Russian president was able to use pressure on this count from senior Kremlin colleagues as a lever on FRIDMAN and AVEN to make them do his political bidding.

28. This passage is defamatory in several ways: read in the context of the Dossiser’s Trump/Russia theme, it suggests that Plaintiffs Fridman and Aven use their knowledge of past bribery of Putin—“kompromat”—as a means of criminally extorting continuing favorable treatment for their business interests from his government. It also implies that Alfa and two of its largest beneficial owners, Plaintiffs Fridman and Aven, willingly maintain a close relationship with Putin and cooperated in some unspecified way in the Kremlin’s alleged campaign to interfere in the U.S. election in an effort to avoid retribution from Putin for not reinvesting business proceeds in Russia.

29. The statements about the Plaintiffs in the context of the Dossier as a whole are false, defamatory, and gravely damaging. The statements in the Detail section of CIR 112 about Plaintiffs allege a criminal relationship with Mr. Putin in the 1990s, in addition to and apart from the defamatory implications described above, even if considered independently, raising substantial questions about why these almost twenty-year-old allegations were included by Defendants in a Dossier of “oppo research” about Donald Trump. The statements of CIR 112, published in an unverified report attributed to an anonymous “top level Russian official” of unknown credibility or existence, raise a clear and plausible inference of reckless disregard of truth or falsity by Defendants.

CAUSE OF ACTION

30. Plaintiffs repeat and reallege paragraphs 1-29 above.

31. By their direct and intentional publication to third parties such as clients, news media, journalists, and others, and by the foreseeable republication of the Dossier and CIR 112 by someone in that group, the Defendants published to a worldwide public false and defamatory statements concerning Plaintiffs and Alfa, including that:

- (a) they are implicated in the scandalous allegations involving Russia and President Trump referred to in CIR 112 and the other CIRs in the Dossier;
- (b) they and other officials and employees of Alfa “cooperated” with an alleged Kremlin campaign to interfere in the U.S. presidential election;
- (c) they are parties to a highly inappropriate, and even criminal, relationship with Vladimir Putin;

(d) they engaged in acts of criminal bribery of Vladimir Putin, then the Deputy Mayor of St. Petersburg, in the 1990s to secure favorable business treatment; and

(e) they continue to use their knowledge of past bribery of Putin as a means of criminally extorting continuing favorable treatment for their business interests from the Putin government.

32. Readers of the CIRs and Dossier were also led to understand, incorrectly, that as a result of their alleged past—and current—close relationships and corrupt dealings with Mr. Putin, the Plaintiffs and Alfa were and are required to do Putin's bidding, including by cooperating in the Kremlin's alleged efforts to influence the outcome of the recent U.S. presidential election.

33. The false statements by the Defendants referred to above defamed the Plaintiffs and Alfa, and have caused and will continue to cause serious injury to their personal, professional, and institutional reputations.

34. The false and defamatory statements published and republished by the Defendants concerning the Plaintiffs and Alfa, as well as the obvious implications of those statements, were made negligently or with reckless disregard of whether they were true or false.

35. Defendants are liable for the defamation of Plaintiffs and Alfa, and the resulting harm caused by the news media coverage of the Dossier, including the republication by BuzzFeed and countless other media.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury on all issues so triable.

WHEREFORE, Plaintiffs Mikhail Fridman, Petr Aven, and German Khan demand judgment against Defendants Bean LLC, Fusion GPS, and Glenn Simpson for:

- a. compensatory damages in an amount to be proved at trial, together with interest and the costs and disbursements of this action, plus reasonable attorneys' fees;
- b. punitive damages in an amount to be determined at trial; and
- c. such other and further relief as this Court may deem just and proper.

Dated: New York, New York
December 12, 2017

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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).

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.

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 Owned 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: Jody R Westby <westby@globalcyberlegal.com>
Sent: Tuesday, December 8, 2020 6:01 PM
To: Bryan Webb
Cc: Mark Rasch
Subject: Re: Follow up from Call re Dagon Fee Matter

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.

Dear Bryan,

To date, Mark has logged 188.3 hours and I have logged 183.4 hours, for a total of 371.7 hours at \$350/hour = \$130,095. Please let me know if you need anything further.

Cheers,

Jody

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

On Dec 8, 2020, at 1:31 PM, Bryan Webb <bwebb@law.ga.gov> wrote:

Thank you.

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: Tuesday, December 8, 2020 1:31 PM
To: Bryan Webb <bwebb@law.ga.gov>
Cc: Mark Rasch <rasch@globalcyberlegal.com>
Subject: Re: Follow up from Call re Dagon Fee Matter

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.

Yes, will get that to you today. Thanks, Bryan!

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

On Dec 8, 2020, at 1:27 PM, Bryan Webb <bwebb@law.ga.gov> wrote:

One thing that would be helpful for me:

Could you all give me any idea of the amount of time (hours) that you all have spent on this matter thus far?

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: Monday, December 7, 2020 11:29 PM

To: Bryan Webb <bwebb@law.ga.gov>

Cc: Mark Rasch <rasch@globalcyberlegal.com>

Subject: Follow up from Call re Dagon Fee Matter

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.

Dear Bryan,

Thanks so much for taking time to bring us up-to-date just before the Thanksgiving holiday. We hope you had a nice time with your family. We wanted to check in to see if the changes we made to the Third Party Payor Agreement were satisfactory and find out the current status. Can you fill us in or would it be easier to have a short call? Just let us know what is most convenient for you. Thanks so much!

Cheers,

Jody

Jody R Westby, Esq.

Managing Principal

Global Cyber Legal LLC

+1.202.255.2700

westby@globalcyberlegal.com

www.globalcyberlegal.com

From: Bryan Webb <bwebb@law.ga.gov>
Sent: Tuesday, December 8, 2020 1:26 PM
To: 'Jody R Westby'
Cc: Mark Rasch
Subject: RE: Follow up from Call re Dagon Fee Matter

Sure.

I got an email back from the folks at Tech yesterday and I am going over a few more things with them. My hope is that I can get you more information by end of this week and I will endeavor to do so.

Thanks

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: Monday, December 7, 2020 11:29 PM
To: Bryan Webb <bwebb@law.ga.gov>
Cc: Mark Rasch <rasch@globalcyberlegal.com>
Subject: Follow up from Call re Dagon Fee Matter

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Dear Bryan,

Thanks so much for taking time to bring us up-to-date just before the Thanksgiving holiday. We hope you had a nice time with your family. We wanted to check in to see if the changes we made to the Third Party Payor Agreement were satisfactory and find out the current status. Can you fill us in or would it be easier to have a short call? Just let us know what is most convenient for you. Thanks so much!

Cheers,

Jody

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

From: Jody R Westby <westby@globalcyberlegal.com>
Sent: Thursday, December 17, 2020 10:40 AM
To: Bryan Webb
Cc: Mark Rasch
Subject: Status?

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.

Hi, Bryan! Mark and I just wanted to check in to see if there has been any advancement re Dagon fee matter. Is there anything else you need from us?

Thanks so much for your assistance with this.

Cheers,

Jody

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

From: Mark Rasch <rasch@globalcyberlegal.com>
Sent: Tuesday, December 22, 2020 2:48 PM
To: Jody R Westby; Bryan Webb
Subject: RE: Status?

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.

Bryan

Just called you (I think it was forwarded to your cell) and left a message. I would like to follow up with you today on the phone to see what the status of this is. Jody and I are really looking forward to resolving this before the end of the year. Let me know when it's a good time to talk, or just call me at the number below.

Merry Christmas and Happy Holidays. I'm sure nothing interesting is happening in Georgia these days.

Mark

Mark D. Rasch, Esq.
Global CyberLegal
rasch@globalcyberlegal.com
Tel: (301) 547-6925
* Admitted NY, MA, MD

>>> NOTICE: This message (including any attachments) may constitute an attorney-client communication and may contain information that is PRIVILEGED and CONFIDENTIAL and/or ATTORNEY WORK PRODUCT. If you are not an intended recipient, you are hereby notified that any dissemination of this message is 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 rasch@globalcyberlegal.com Thank you

From: [Jody R Westby](#)
Sent: Thursday, December 17, 2020 10:39 AM
To: [Bryan Webb](#)
Cc: [Mark Rasch](#)
Subject: Status?

Hi, Bryan! Mark and I just wanted to check in to see if there has been any advancement re Dagon fee matter. Is there anything else you need from us?

Thanks so much for your assistance with this.

Cheers,
Jody

Jody R Westby, Esq.
Managing Principal

Global Cyber Legal LLC
+1.202.255.2700
westby@globalcyberlegal.com
www.globalcyberlegal.com

From: "Mark D. Rasch, Esq." <rasch@globalcyberlegal.com>
Sent: Tuesday, March 2, 2021 12:26 PM
To: bwebb@law.ga.gov
Subject: RE: Follow up from Call re Dagon Fee Matter

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.

Bryan

Do you have a few minutes to chat today on this never-ending matter? Just want to clarify a few things with respect to Georgia Tech.

Let me know your schedule.. should only take a few minutes...

Mark

On Tue, 8 Dec 2020 18:31:01 +0000, Bryan Webb wrote:

Thank you.

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
Sent: Tuesday, December 8, 2020 1:31 PM
To: Bryan Webb

Cc: Mark Rasch
Subject: Re: Follow up from Call re Dagon Fee Matter

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.

Yes, will get that to you today. Thanks, Bryan!

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

On Dec 8, 2020, at 1:27 PM, Bryan Webb wrote:

One thing that would be helpful for me:

Could you all give me any idea of the amount of time (hours) that you all have spent on this matter thus far?

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
Sent: Monday, December 7, 2020 11:29 PM
To: Bryan Webb

Cc: Mark Rasch
Subject: Follow up from Call re Dagon Fee Matter

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.

Dear Bryan,

Thanks so much for taking time to bring us up-to-date just before the Thanksgiving holiday. We hope you had a nice time with your family. We wanted to check in to see if the changes we made to the Third Party Payor Agreement were satisfactory and find out the current status. Can you fill us in or would it be easier to have a short call? Just let us know what is most convenient for you. Thanks so much!

Cheers,
Jody

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

From: "Mark D. Rasch, Esq." <rasch@globalcyberlegal.com>
Sent: Wednesday, March 3, 2021 1:32 PM
To: bwebb@law.ga.gov
Subject: RE: [SUSPECTED SPAM] Fwd: RE: Payment Issue

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.

No problem... call when you can.. 301 547 6925...

go tribe

On Wed, 3 Mar 2021 18:26:18 +0000, Bryan Webb <bwebb@law.ga.gov> wrote:

Hey,

I got your email. Likely I can talk to you a little later today. . .working on something right now. Sorry I did not contact you yesterday. . .this email actually went into my collection of suspected spam and I had to retrieve it this morning. I can probably take a call today on this around 4:30.

Thanks

bkw



Bryan Webb
Deputy Attorney General
Office of the 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

From: "Mark D. Rasch, Esq." <rasch@globalcyberlegal.com>
Sent: Tuesday, March 2, 2021 6:38 PM
To: Bryan Webb <bwebb@law.ga.gov>
Subject: [SUSPECTED SPAM] Fwd: RE: Payment Issue

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.

Bryan

The attached is what I wanted to discuss with you. Knowing your schedule, I know that evenings are best, but I don't want to intrude on your personal time (remember personal time??) What time is best for us to talk?

Mark Rasch

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

Subject: RE: Payment Issue

Date: Fri, 26 Feb 2021 20:29:31 +0000

From: "Wasch, Kate" <kate.wasch@legal.gatech.edu>

To: Jody R Westby <westby@globalcyberlegal.com>, "Nie, Ling-Ling" <linglingnie@gatech.edu>

Cc: Mark Rasch <rasch@globalcyberlegal.com>

Dear Jody:

Thanks for your patience, and our apologies for the delay in getting back to you. We have reviewed your request for attorney fees incurred in representing Mr. Dagon in the DOJ investigation. Georgia Tech is willing to pay \$46,462.50, which is 50% of the fees incurred. While your rates may be fair for the market in DC, our normal SAAG rates are closer to \$150 per hour, and that lower rate is what we would have required had Mr. Dagon followed our internal processes for requesting representation. As we noted in previous discussions, he did not engage with our legal team or ask for Georgia Tech's consent when engaging your firm. Under the circumstances, we believe this is a reasonable and fair contribution.

I hope you have a pleasant weekend.

Kate

Kate Wasch
Chief Counsel
Employment & Litigation
Office of Legal Affairs
Georgia Institute of Technology
Office (404) 894-4812

Cell (404) 242-4587

Most communications to or from Georgia Tech employees are a public record and available to the public and the media upon request under Georgia's broad open records law. Therefore, this e-mail communication and any response may be subject to public disclosure.

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

From: Jody R Westby
Sent: Tuesday, February 23, 2021 10:27 PM
To: Nie, Ling-Ling ; Wasch, Kate
Cc: Mark Rasch
Subject: Payment Issue

Dear Ling-Ling and Kate,

We are wondering about the status of payment for the legal fees in the David Dagon matter. We understand that the Attorney General's office has no objection to your making this payment. We have served your employee well regarding matters within the scope of his employment and would really like to resolve the payment issue. Can you kindly advise of status?

Thank you.

Best regards,

Jody

Jody R Westby, Esq.
Managing Principal
Global Cyber Legal LLC
+1.202.255.2700

westby@globalcyberlegal.com

<https://nam12.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.globalcyberlegal.com%2F&data=04%7C01%7Ckate.wasch%40legal.gatech.edu%7C9816af26608840191a1708d8d87409d6%7C482198bbae7b4b258b7a6d7f32faa083%7C0%7C0%7C637497340809515359%7CUnknown%7CTWFpbGZsb3d8eyJWIjojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C1000&sdata=8gVx2uQJQUf0GMRd67c5dZXtXZJm4L83JIKqNvDYRcU%3D&reserved=0>

From: Wasch, Kate <kate.wasch@legal.gatech.edu>
Sent: Friday, March 26, 2021 4:33 PM
To: Jody R Westby; Nie, Ling-Ling
Cc: Mark Rasch; Bryan Webb
Subject: RE: Payment Issue

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.

Jody, I am sorry that this process is taking so long on our end, but there are a lot of moving parts. We will get back to you next week with some dates and times for a conversation.

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

From: Jody R Westby <westby@globalcyberlegal.com>
Sent: Friday, March 26, 2021 11:36 AM
To: Wasch, Kate <kate.wasch@legal.gatech.edu>; Nie, Ling-Ling <linglingnie@gatech.edu>
Cc: Mark Rasch <rasch@globalcyberlegal.com>
Subject: Re: Payment Issue

Dear Ling-Ling and Kate,
I am checking in to see if you received my note below. We really need to discuss this with you. Please advise of your availability.
Thank you,
Jody

Jody R Westby, Esq.
Managing Principal
Global Cyber Legal LLC
+1.202.255.2700
westby@globalcyberlegal.com
<https://nam12.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.globalcyberlegal.com%2F&data=04%7C01%7Ckate.wasch%40legal.gatech.edu%7Cdfedb05101c4a37a20c08d8f06ced2e%7C482198bbae7b4b258b7a6d7f32faa083%7C0%7C0%7C637523697915596757%7CUnknown%7CTWFPbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C1000&msdata=NOeTLAO1LFiIBYLagku7tW93qSR3xuA5qLFR3Qh7jm4%3D&reserved=0>

On Mar 23, 2021, at 4:30 PM, Jody R Westby <westby@globalcyberlegal.com> wrote:

Dear Ling-Ling and Kate:
We would like to schedule a call to discuss payment of fees. We are available:
Wed the 24th 10:30 a.m. to noon and 4-6 p.m.
Thursday the 25th morning until noon
Friday the 26th all day
Monday the 29th 10:30 a.m to 11:30 a.m. and 3-6 p.m.
Hopefully, you have an open slot within those windows, otherwise, please let us know when would be convenient.

Thank you,
Jody

Jody R Westby, Esq.
Managing Principal
Global Cyber Legal LLC
+1.202.255.2700

westby@globalcyberlegal.com

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On Mar 10, 2021, at 8:43 PM, Jody R Westby <westby@globalcyberlegal.com> wrote:

Dear Ling-Ling and Kate:

Please see attached letter in response to your email below. Perhaps we should have a call to discuss after you have had time to review it. Thank you.

Cheers,
Jody

Jody R Westby, Esq.
Managing Principal
Global Cyber Legal LLC
+1.202.255.2700

westby@globalcyberlegal.com

<https://nam12.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.globalcyberlegal.com%2F&data=04%7C01%7Ckate.wasch%40legal.gatech.edu%7Cdfedb05101c4a37a20c08d8f06ced2e%7C482198bbae7b4b258b7a6d7f32faa083%7C0%7C0%7C637523697915596757%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C1000&msdata=NOeTLAO1LFIBYlagku7tW93qSR3xuA5qLFR3Qh7jm4%3D∓reserved=0>

<DAGON - Letter to GaTech Re Legal Fee Offer v5.docx> On Feb 26, 2021, at 3:29 PM, Wasch, Kate
<kate.wasch@legal.gatech.edu> wrote:

Dear Jody:

Thanks for your patience, and our apologies for the delay in getting back to you. We have reviewed your request for attorney fees incurred in representing Mr. Dagon in the DOJ investigation. Georgia Tech is willing to pay \$46,462.50, which is 50% of the fees incurred. While your rates may be fair for the market in DC, our normal SAAG rates are closer to \$150 per hour, and that lower rate is what we would have required had Mr. Dagon followed our internal processes for requesting representation. As we noted in previous discussions, he did not engage with our legal team or ask for Georgia Tech's consent when engaging your firm. Under the circumstances, we believe this is a reasonable and fair contribution.

I hope you have a pleasant weekend.

Kate

Kate Wasch
Chief Counsel
Employment & Litigation
Office of Legal Affairs
Georgia Institute of Technology
Office (404) 894-4812
Cell (404) 242-4587

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

From: Jody R Westby <westby@globalcyberlegal.com>
Sent: Tuesday, February 23, 2021 10:27 PM
To: Nie, Ling-Ling <linglingnie@gatech.edu>; Wasch, Kate <kate.wasch@legal.gatech.edu>
Cc: Mark Rasch <rasch@globalcyberlegal.com>
Subject: Payment Issue

Dear Ling-Ling and Kate,

We are wondering about the status of payment for the legal fees in the David Dagon matter. We understand that the Attorney General's office has no objection to your making this payment. We have served your employee well regarding matters within the scope of his employment and would really like to resolve the payment issue. Can you kindly advise of status?

Thank you.

Best regards,
Jody

Jody R Westby, Esq.
Managing Principal
Global Cyber Legal LLC
+1.202.255.2700

westby@globalcyberlegal.com

<https://nam12.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.globalcyberlegal.com%2F&data=04%7C01%7Ckate.wasch%40legal.gatech.edu%7Cdfeedb05101c4a37a20c08d8f06ced2e%7C482198bbae7b4b258b7a6d7f32faa083%7C0%7C0%7C637523697915596757%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Iik1haWwiLCJXVCi6Mn0%3D%7C1000&msdata=NOeTLA01LFIlBYLagku7tW93qSR3xuA5qLFR3Qh7jm4%3D&reserved=0>

From: Mark Rasch <rasch@globalcyberlegal.com>
Sent: Thursday, April 8, 2021 3:03 PM
To: Bryan Webb
Subject: Re: Payment Issue

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.

No problem. And by “approved” I simply meant “didn’t object” not that you compelled or authorized it

On Apr 8, 2021, at 2:51 PM, Bryan Webb <bwebb@law.ga.gov> wrote:

I can call you at that number below.

Keep in mind, my role in this has been/is to have answered a simple question on the issue whether the law allowed a payment to be made at all. I saw in a letter you wrote that the AGs office had “approved” payment, but that is a little strong of a word for what my role here has been. I do not approve or disapprove of anything. I give my client legal advice and they make decisions.

I am in the middle of some stuff right now but I will call in a little bit.

Hope you are well.

bkw

<p><image001.jpg></p> <p><image002.png></p> <p><image003.png></p>	<p>Bryan Webb Deputy Attorney General Office of the 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</p>
---	--

From: Mark Rasch <rasch@globalcyberlegal.com>
Sent: Thursday, April 8, 2021 2:35 PM
To: Bryan Webb <bwebb@law.ga.gov>
Subject: RE: Payment Issue

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.

Bryan

The issue has still not been resolved. Is there some time we can talk?

Mark

On Mar 3, 2021, at 1:32 PM, Mark D. Rasch, Esq.
<rasch@globalcyberlegal.com> wrote:

No problem... call when you can.. 301 547 6925...

go tribe

On Wed, 3 Mar 2021 18:26:18 +0000, Bryan Webb <bwebb@law.ga.gov>
wrote:

Hey,

I got your email. Likely I can talk to you a little later today. . .working on something right now. Sorry I did not contact you yesterday. . .this email actually went into my collection of suspected spam and I had to retrieve it this morning. I can probably take a call today on this around 4:30.

Thanks

bkw

<image001.jpg>

<image002.png>

<image003.png>

Bryan Webb
Deputy Attorney General
Office of the 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

From: "Mark D. Rasch, Esq." <rasch@globalcyberlegal.com>
Sent: Tuesday, March 2, 2021 6:38 PM

To: Bryan Webb <bwebb@law.ga.gov>
Subject: [SUSPECTED SPAM] Fwd: RE: Payment Issue

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.

Bryan

The attached is what I wanted to discuss with you. Knowing your schedule, I know that evenings are best, but I don't want to intrude on your personal time (remember personal time??) What time is best for us to talk?

Mark Rasch

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

Subject: RE: Payment Issue

Date: Fri, 26 Feb 2021 20:29:31 +0000

From: "Wasch, Kate" <kate.wasch@legal.gatech.edu>

To: Jody R Westby <westby@globalcyberlegal.com>, "Nie, Ling-Ling" <linglingnie@gatech.edu>

Cc: Mark Rasch <rasch@globalcyberlegal.com>

Dear Jody:

Thanks for your patience, and our apologies for the delay in getting back to you. We have reviewed your request for attorney fees incurred in representing Mr. Dagon in the DOJ investigation. Georgia Tech is willing to pay \$46,462.50, which is 50% of the fees incurred. While your rates may be fair for the market in DC, our normal SAAG rates are closer to \$150 per hour, and that lower rate is what we would have required had Mr. Dagon followed our internal processes for requesting representation. As we noted in previous discussions, he did not engage with our legal team or ask for Georgia Tech's consent when engaging your firm. Under the circumstances, we believe this is a reasonable and fair contribution.

I hope you have a pleasant weekend.

Kate

Kate Wasch
Chief Counsel
Employment & Litigation
Office of Legal Affairs
Georgia Institute of Technology

Office (404) 894-4812
Cell (404) 242-4587

Most communications to or from Georgia Tech employees are a public record and available to the public and the media upon request under Georgia's broad open records law. Therefore, this e-mail communication and any response may be subject to public disclosure.

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

From: Jody R Westby
Sent: Tuesday, February 23, 2021 10:27 PM
To: Nie, Ling-Ling ; Wasch, Kate
Cc: Mark Rasch
Subject: Payment Issue

Dear Ling-Ling and Kate,
We are wondering about the status of payment for the legal fees in the David Dagon matter. We understand that the Attorney General's office has no objection to your making this payment. We have served your employee well regarding matters within the scope of his employment and would really like to resolve the payment issue. Can you kindly advise of status?
Thank you.
Best regards,
Jody

Jody R Westby, Esq.
Managing Principal
Global Cyber Legal LLC
+1.202.255.2700
westby@globalcyberlegal.com
<https://nam12.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.globalcyberlegal.com%2F&data=04%7C01%7Ckate.wasch%40legal.gatech.edu%7C9816af26608840191a1708d8d87409d6%7C482198bbae7b4b258b7a6d7f32faa083%7C0%7C0%7C637497340809515359%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikk1haWwiLCJXVCi6Mn0%3D%7C1000&sdata=8gVx2uQJQUf0GMRd67c5dZXtXZJm4L83JIKqNvDYRcU%3D&reserved=0>

From: Olens, Samuel S. <samuel.olens@dentons.com>
Sent: Monday, January 10, 2022 10:32 AM
To: Bryan Webb
Subject: RE: Global Cyber and Professor Dagon

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 morning Bryan. Happy new year.

I am just checking in for a status.

Special counsel has contacted counsel in D.C. There is a May trial date.

Thanks.

Sam

 Samuel S. Olens

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From: Olens, Samuel S. <samuel.olens@dentons.com>
Sent: Tuesday, December 28, 2021 9:02 AM
To: Bryan Webb <bwebb@law.ga.gov>
Subject: Re: Global Cyber and Professor Dagon

Thanks Bryan.

I hope you and your family had a great Christmas.

Enjoy some time off.

Sam

Sam Olens

Sent from my iPhone

On Dec 28, 2021, at 8:59 AM, Bryan Webb <bwebb@law.ga.gov> wrote:

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Good morning!

I apologize. This came in when I was out for a bit and I meant to send you a message yesterday but catching up with the emails got me behind a little.

I am discussing this internally this week here at the Law Department and I will need to get with the folks at Tech. My guess is most of them are out for the holiday until next week, but after I get a chance to discuss with them and internally and determine who will be the point person on this matter, I will get back to you.

Even if it is in the context of a representation letter it is always good to hear from you Mr. Olens. I hope that you and your family had a nice holiday and that you are all well in the New Year!

Give me a little time and I will be back in touch. Thanks.

bkw



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Atlanta, Georgia 30334

From: Olens, Samuel S. <samuel.olens@dentons.com>

Sent: Thursday, December 23, 2021 12:19 PM

To: Bryan Webb <bwebb@law.ga.gov>

Subject: Global Cyber and Professor Dagon

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Good afternoon Bryan.

Any idea when I might hear back from you?

Have a great Christmas holiday.

Thank you.

Sam



Samuel S. Olens

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From: Olens, Samuel S. <samuel.olens@dentons.com>
Sent: Tuesday, January 11, 2022 4:52 PM
To: Bryan Webb
Subject: RE: Global Cyber and Professor Dagon

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Thanks Bryan. I'm good from 11-1 and 4-6 on Thursday.

Thanks.

Sam

 Samuel S. Olens

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From: Bryan Webb <bwebb@law.ga.gov>
Sent: Tuesday, January 11, 2022 1:03 PM
To: Olens, Samuel S. <samuel.olens@dentons.com>
Subject: RE: Global Cyber and Professor Dagon

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Good afternoon,

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Do you want to set up a time to talk maybe tomorrow or Thursday afternoon? I have scheduled meetings all day tomorrow and in the morning on Thursday. But I want to go ahead and have a call with you prior to sending out a formal letter response.

Thanks

bkw



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Special counsel has contacted counsel in D.C. There is a May trial date.

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From: Olens, Samuel S. <samuel.olens@dentons.com>
Sent: Tuesday, December 28, 2021 9:02 AM
To: Bryan Webb <bwebb@law.ga.gov>
Subject: Re: Global Cyber and Professor Dagon

Thanks Bryan.

I hope you and your family had a great Christmas.

Enjoy some time off.

Sam

Sam Olens

Sent from my iPhone

On Dec 28, 2021, at 8:59 AM, Bryan Webb <bwebb@law.ga.gov> wrote:

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Give me a little time and I will be back in touch. Thanks.

bkw



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40 Capitol Square SW
Atlanta, Georgia 30334

From: Olens, Samuel S. <samuel.olens@dentons.com>

Sent: Thursday, December 23, 2021 12:19 PM

To: Bryan Webb <bwebb@law.ga.gov>

Subject: Global Cyber and Professor Dagon

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Good afternoon Bryan.

Any idea when I might hear back from you?

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Sam



Samuel S. Olens

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From: bwebb@law.ga.gov
Sent: Thursday, January 13, 2022 12:56 PM
To: samuel.olens@dentons.com
Subject: RE: Global Cyber and Professor Dagon

My hope is to give you a call here a little after 2:30.

I am in intern interviews up until around 2:00 and based on your email from the other day, I was thinking that would be a good time.

Thanks

bkw

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

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

From: Olens, Samuel S. <samuel.olens@dentons.com>
Sent: Thursday, January 13, 2022 12:34 PM
To: Bryan Webb <bwebb@law.ga.gov>
Subject: Re: Global Cyber and Professor Dagon

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Bryan, I never heard back from you.

When should we touch base?

Thanks.

Sam Olens

Sent from my iPhone

[http://logo.dentons.com/dentons_logo.png]

Samuel S. Olens

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samuel.olens@dentons.com<<mailto:samuel.olens@dentons.com>>

Bio<<http://www.dentons.com/ch.aspx?email=samuel.olens@dentons.com&action=biolink>> |

Website<<http://www.dentons.com>>

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> On Jan 11, 2022, at 4:51 PM, Olens, Samuel S. <samuel.olens@dentons.com> wrote:

>

From: Olens, Samuel S. <samuel.olens@dentons.com>
Sent: Friday, January 21, 2022 4:21 PM
To: Bryan Webb
Subject: RE: Global Cyber and Professor Dagon

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Hi Bryan.

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From: Olens, Samuel S. <samuel.olens@dentons.com>

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To: Bryan Webb <bwebb@law.ga.gov>

Subject: Re: Global Cyber and Professor Dagon

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Sam Olens

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From: bwebb@law.ga.gov
Sent: Tuesday, February 8, 2022 12:44 PM
To: samuel.olens@dentons.com
Subject: Dagon Matter Offer of Settlement

Please accept this offer for settlement of this issue from my client, Georgia Tech.

Tech will agree to pay \$83,573.00 for past services. For future services on behalf of Mr. Dagon, Tech will agree to pay the rate of \$350.00/hour with a monthly billable cap of 25 hours. This would be a maximum of \$8,750.00 billed each month as the matter goes forward. This would continue until the combined total for past services and any future services reaches the amount of \$150,000.00.

I look forward to hearing back from you.

bkw



Bryan Webb
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bwebb@law.ga.gov
Georgia Department of Law
40 Capitol Square SW
Atlanta, Georgia 30334

From: bwebb@law.ga.gov
Sent: Thursday, February 10, 2022 10:07 AM
To: samuel.olens@dentons.com
Subject: RE: Dagon Matter Offer of Settlement

Thanks.

I will direct this to Tech.

Please let me know what bar rule that I may be violating and I will look into it and remedy.

bkw



Bryan Webb
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From: Olens, Samuel S. <samuel.olens@dentons.com>
Sent: Thursday, February 10, 2022 9:27 AM
To: Bryan Webb <bwebb@law.ga.gov>
Subject: RE: Dagon Matter Offer of Settlement

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Good morning Bryan.

In a last attempt to avoid a suit and accompanying media attention, I once again respectfully request 1) the hourly rate of other retained counsel for this federal investigation, 2) all records previously given to third parties and not shared with the Professor's counsel despite open records requests and 3) a meeting with President Cabrera.

The most recent offer again violates Bar rules regarding representation of a client.

Thank you.

Sam

 **Samuel S. Olens**

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From: Olens, Samuel S. <samuel.olens@dentons.com>
Sent: Tuesday, February 08, 2022 1:35 PM
To: Bryan Webb <bwebb@law.ga.gov>
Subject: Re: Dagon Matter Offer of Settlement

Bryan, I am not in to formality. And frankly, such formality would not be helpful.

Thanks.

Sam Olens

Sent from my iPhone

On Feb 8, 2022, at 1:32 PM, Bryan Webb <bwebb@law.ga.gov> wrote:

[WARNING: EXTERNAL SENDER]

Thanks.

Do you mind if I forward them your response below or wait for a more formal one?

Hope all is well.

bkw

Bryan Webb
Deputy Attorney General
Office of the Attorney General Chris Carr
Government Services & Employment
(404) 458-3542
mailto:bwebb@law.ga.gov

Georgia Department of Law
40 Capitol Square SW
Atlanta, Georgia 30334

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

From: Olens, Samuel S. <samuel.olens@dentons.com>
Sent: Tuesday, February 8, 2022 1:17 PM
To: Bryan Webb <bwebb@law.ga.gov>
Subject: Re: Dagon Matter Offer of Settlement

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.

Bryan, very disappointing.

They are paying other counsel much more who have done much less.

I expect suit will be filed.

Thank you.

Sam Olens

Sent from my iPhone

[http://logo.dentons.com/dentons_logo.png]

Samuel S. Olens

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samuel.olens@dentons.com<<mailto:samuel.olens@dentons.com>>

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Aréchaga, Viana & Brause > Lee International > Kensington Swan > Bingham Greenebaum > Cohen & Grigsby > For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

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On Feb 8, 2022, at 12:44 PM, Bryan Webb <bwebb@law.ga.gov> wrote:

[WARNING: EXTERNAL SENDER]

Please accept this offer for settlement of this issue from my client, Georgia Tech.

Tech will agree to pay \$83,573.00 for past services. For future services on behalf of Mr. Dagon, Tech will agree to pay the rate of \$350.00/hour with a monthly billable cap of 25 hours. This would be a maximum of \$8,750.00 billed each month as the matter goes forward. This would continue until the combined total for past services and any future services reaches the amount of \$150,000.00.

I look forward to hearing back from you.

bkw

[cid:image001.jpg@01D81CE9.8DF63430]<<http://law.ga.gov>>

[Facebook]<<http://www.facebook.com/GeorgiaAttorneyGeneral>>

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

From: Olens, Samuel S. <samuel.olens@dentons.com>
Sent: Tuesday, March 1, 2022 8:45 PM
To: bwebb@law.ga.gov
Subject: Attorney's bill
Attachments: DAGON - INVOICE TO GT 2-28-22.pdf

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An FYI.

Thank you.

Sam

 Samuel S. Olens

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INVOICE

February 28, 2022

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

INVOICE NO. GCR-GT-021-003

Invoice for legal services rendered for the period November 1, 2021 through February 28, 2022.

FEES

Date	Personnel	Description	Hours
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

Date	Personnel	Description	Hours
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
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

Date	Personnel	Description	Hours
2/15/22	Rasch	Common defense Zoom call, emails, strategy meeting Re DiF	1.5
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
TOTAL			69.7

Current Balance: 69.7 hours @ \$350/hour = \$ 24,395.00

Prior Balance: 143.9 hours @ \$350/hour = \$ 50,365.00

Prior Balance: 938 hours @ \$350/hour= \$328,300.00

TOTAL FEES DUE @ \$350/hour = \$403,060.00

Total Hours To Date: 1151.60 hours @ \$395/hour = \$454,882.00
Per retainer

AMOUNT DISCOUNTED from \$395/hour = \$ 51,822.00

Please remit payment by wire or ACH transfer to:

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Thank you!