

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

[illegible]

Y.

Case 2018L012318

JURY DEMANDED

Defendants.

Plaintiffs, LEHRAM CAPITAL INVESTMENTS, LTD. and DANIEL RODRIGUEZ, Individually, by their attorneys, KONICEK & DILLON, P.C., for its Complaint against Baker & McKenzie International, Baker McKenzie, Baker & McKenzie, LLP, and Baker & McKenzie, state as follows:

1. Lehram Capital Investments, Ltd. (hereinafter “Lehram”) is a London-based investment firm focusing in the acquisition and production of minerals, including coal.

2. Baker & McKenzie is an international law firm with its principal place of business in Cook County, Illinois. The business structure appears to be one unified body of thousands of lawyers in dozens of domestic and international offices holding themselves out to the public as “Baker & McKenzie”. For example, Baker & McKenzie boasts about its recognition as the “Leading Global Law Firm” promoting its global dominance by announcing the “election of 67 new partners” and describing their election “as the latest investment in the Firm’s

expertise” thereby growing “the total number of partners worldwide to 1,600.” The Partners who were elected from Baker & McKenzie worldwide offices including: offices located in Moscow, Brussels, Bangkok, Sydney, London, Hong Kong, Munich, Bogota, Toronto and Paris. Baker & McKenzie is registered under SCR 721 as Baker & McKenzie, LLP. Upon information and belief, Baker & McKenzie registers in each jurisdiction in which it has an office, according to the particular jurisdictional requirements. The defendants include any trade name, d/b/a, partner, member, shareholder associated with Baker & McKenzie International, including Baker McKenzie, Baker & McKenzie, Baker & McKenzie, LLP (collectively “Baker & McKenzie”).

3. Roman Butenko is, upon information and belief, a Russian citizen and an associate in Baker & McKenzie’s Washington, D.C. office.

4. The Principal Shareholder of Lehram, Daniel Rodriguez, citizen of Spain and holding a world class MBA degree, has experience in acquiring and operating mines, including locations in Europe, Africa and South America.

5. As part of his business, Daniel Rodriguez had hired Baker & McKenzie to advise him on various legal issues that arose in his global acquisitions and activities requiring legal advisory.

6. Rodriguez relied upon the marketing of Baker & McKenzie as a one-stop, global firm suited in particular to Rodriguez’s international businesses for the past eight years.

7. On October 16, 2013, Lehram acquired 100% of the shares in Gramoteinskaya Mine, LLC, a company registered in Russia (“the Mine”) from a subsidiary of London-based Evraz Holdings.

8. The acquisition was part of a "package transaction" by which Lehram purchased from Evraz Holdings two coal mines whereby Lehram assumed approximately \$70 million in indebtedness.

9. The Mine is a coal mine located near the town of Gramoteino in Kemerovo region. The Mine has coal reserves in the approximate amount of 301,000,000 tons and annual production in excess of 2.5 million tons per year

10. Shortly after the acquisition of the Mine, on December 6, 2013, Mr. Igor Rudyk, a Director of Lehram and the General Manager of the Mine, was summoned to meet the Deputy Governor of the Kemerovo region, at the Office of the Government of Kemerovo in Kemerovo.

11. The pretext of the meeting was to discuss issues regarding the ongoing development of the mine. However, instead of discussing the business topic, Rudyk was met by Russian authorities. He was asked to have Lehram give up its ownership of the Mine. Mr. Rudyk refused.

12. Mr. Rudyk was arrested by Russian immigration authorities claiming he breached immigration laws. He was taken to the Central Court in Kemerovo and where a judge summarily concluded he violated Russian law by impermissibly remaining in Russia with an expired passport.

13. Mr. Rudyk was taken to a Russian prison and was placed in detention.

14. After being held for a number of days, Mr. Rudyk was taken from the prison, handcuffed, to meet again with the Deputy Governor of the Kemerovo region. The individuals present at the meeting included a prosecutor and other persons unknown to Mr. Rudyk. Mr. Rudyk was not afforded legal representation neither access to medical care for a health problem

he had while he was in detention. Instead, he was informed by the Deputy Governor that unless he signed documents he would be prosecuted and would spend, at a minimum, five years in prison.

15. Mr. Rudyk was presented with documents and instructed to sign.

16. Fearing he would be imprisoned, and fearing for his life, Mr. Rudyk executed the "transfer" documents.

17. Mr. Rudyk was never given copies of the documents he signed.

18. Mr. Rudyk did not have the authority to transfer the shares without Board approval and a Corporate Resolution.

19. After executing the documents, Mr. Rudyk was taken back to the prison where he was detained until December 30, 2013. He was then taken from prison to the airport, where Lehram purchased him a flight ticket to escape Russia and leave to Kazakhstan.

20. In December of 2015, Lehram filed a claim before the Kemerovo region Arbitrazh Court seeking to invalidate, undo the transaction and recover the ownership of the mine. The claim was filed against ZRGSHO LLC (Russian name, Zavod Po Remontu Gorno Shakhtnogo Oborudovaniya LLC "ZRGSHO LLC") and it aimed to invalidate the transaction and repossess the legitimate ownership of the mine.

21. In January, 2016, based on his relationship with Baker & McKenzie as a "one-stop global firm" Rodriguez reached out to Baker & McKenzie

22. In January 2016, Baker & McKenzie was hired by Lehram to recover the Mine.

23. It was not until February 2016 that Lehram first saw the documents that were purportedly presented to Mr. Rudyk. These documents purport to transfer the shares in

Gramoteinskaya Mine, LLC to an entity owned and controlled by the Shchukin Family, Plant for Repair of Mining Equipment LLC. The Shchukin family has strong ties and connections to the Deputy Governor and the Governor of Kemerovo Aman Tuleev.

24. Baker & McKenzie had many clients in the region of Kemerovo, including the original seller of the Mine, Evraz Holdings. Some of these clients are known to rely on the “patronage” of the Governor of Kemerovo region in Russia.

25. Baker & McKenzie failed to disclose these connections and that they may affect Baker & McKenzie’s advice on how to proceed with the Lehram claims.

26. For example, Plaintiffs discovered evidence relating to the wrongful conduct of the Governor of the Kemerovo region contained in a video. The video shows, among other things, the Governor transferring the asset to companies controlled by the Shchukin Family two days before Mr. Rudyk supposedly executed the transfer documents. The video shows the Governor bragging about the “transfer” while Mr. Rudyk was jailed.

27. Baker & McKenzie attorneys consistently advised Lehram against using the video during hearings.

28. During the proceedings to recover the ownership of the Mine, Baker & McKenzie learned that the shares of the Gramoteinskaya Mine, LLC had been transferred from ZRGSHO LLC to Cyrith Holdings Limited, another entity owned by the Shchukin Family.

29. Baker & McKenzie advised Lehram to withdraw the repossession component of the claim against ZRGSHO LLC and file a repossession claim against Cyrith Holdings Limited. Under Russian law, the repossession claim needed to be filed within three (3) years after the illegal asset seizure took place, on or before December 18, 2016.

30. Baker & McKenzie's attorney, Roman Butenko, dismissed the Repossession component of the claim against ZRGSHO LLC.

31. However, Baker & McKenzie did not proceed with the advice and did not file against Cyrith Holdings, Ltd. Rather, in August 2016 while Rodriguez was in Moscow on a different matter, Baker & McKenzie invited him for lunch to discuss a potential option to regain ownership of the Mine.

32. Baker & McKenzie incorrectly filed a claim in the civil court challenging a Notary's signature on the documents recovered in February 2016 (see ¶ 23). The civil court in Russia is distinct from the Commercial or Arbitration Courts. The civil court has a 10-day limitation to challenge the Notary. On the other hand, the Arbitration Court has a 3-year limit.

33. As a result of filing a challenge to the Notary in the wrong jurisdictional court, Lehram's challenge to the Notary was lost based on the limitation.

34. Baker & McKenzie sought and received an opinion from the Ministry of Justice of the Russian Federation that a "notary has no right to identify a person by use of a passport with expired validity period at the moment of performance of a notarial act."

35. But for the filing in the wrong court, the challenge would have been successful. Mr. Rydyk's passport had expired at the time his signature was purportedly notarized.

36. Baker & McKenzie knew Lehram was having financial difficulty and therefore seeking litigation financing. Lehram sought Baker & McKenzie's assistance. The potential financing was supposed to pay Baker & McKenzie. At this lunch meeting, Baker & McKenzie explained to Rodriguez that the Shchukin Family had used the same modus operandi to take control of another mine in Russia, which was owned by a wealthy client of Baker & McKenzie.

That client was able to successfully negotiate a resolution and regain control of its Mine. Baker & McKenzie described this client as a reliable and successful Russian businessman.

37. Baker & McKenzie recommended that this client finance Lehram's case.

38. In September of 2016, Baker & McKenzie introduced Lehram to the "nominee" of the wealthy client, the name of the nominee was Anton Tsygankov.

39. After introduction by Baker & McKenzie, Rodriguez contacted Tsygankov by phone, with translation assistance, where Tsygankov suggested that a Petition be initiated for a criminal investigation against the Shchukin Family and the officials involved in the illegal transfer of the shares.

40. Mr. Rodriguez was confused by the call and contacted Baker & McKenzie about the "strategy" suggested by Tsygankov. Baker & McKenzie advised Rodriguez that the strategy was previously successful and should be replicated and pursued by Lehram.

41. Following the advice of Baker & McKenzie, in early October 2016, a Petition by Lehram was filed to initiate a criminal case.

42. Thereafter, Baker & McKenzie arranged a meeting between Lehram and their client's nominee, Tsygankov, at the Baker & McKenzie office in Moscow.

43. In this meeting, Mr. Rodriguez, on behalf of Lehram, was told that in order to successfully effectuate the criminal investigation, Lehram would have to pay to Tsygankov, nominee of Baker & McKenzie's wealthy client, Gavril Yushvaev, \$300,000 U.S. Dollars and assign fifty percent of the Mine taken from Lehram.

44. Mr. Rodriguez terminated the meeting because it was not what Baker & McKenzie explained to him, *i.e.*, that the intent of the meeting was to reach an agreement

whereby Tsygankov and his Principal, Yushvaev, would provide litigation funding to pay Baker & McKenzie to continue pursuing the claim to recover ownership of the Mine.

45. After terminating the meeting, Rodriguez met with the Baker & McKenzie partner at a local restaurant to discuss the meeting. The partner scratched out a "contract" with the terms and presented it to Rodriguez. (See **EXHIBIT A and EXHIBIT B**; Exhibit B identifies the handwriting and interpretation of Exhibit A.)

46. Rodriguez was advised by the Baker & McKenzie partner to accept the terms.

47. Rodriguez concluded that the payments were inconsistent with the purpose of litigation funding to support Baker & McKenzie's legal fees to further continuing the proceedings aimed to recover the ownership of the Mine against Cyrith Holdings.

48. In November of 2016, Baker & McKenzie contacted Lehram and revisited the option of Lehram paying its wealthy client (Yushvaev). Baker & McKenzie advised Rodriguez that the strategy could result in a recovery for Lehram and that Yushvaev should be trusted. New terms were proposed based on smaller payments by Lehram of \$5,000 U.S. Dollars per month and the transition of fifty percent of the Mine.

49. Baker & McKenzie arranged a meeting between Rodriguez of Lehram and the wealthy client, Yushvaev. This meeting took place at the end of November of 2016.

50. On or about December 8, 2016, Baker & McKenzie sent an e-mail to Lehram at 22:05 Central European Time (00:05 Moscow time) urgently telling Rodriguez to call. In the call, Rodriguez was advised by Baker & McKenzie that the Shchukin Family had approached Yushvaev about a potential settlement on the Lehram case. Rodriguez was informed that there had been a meeting and that there was an offer to return the Mine.

51. Rodriguez was told by Baker & McKenzie that there was another meeting scheduled and that he would be contacted within two to three weeks. Rodriguez was advised by Baker & McKenzie to maintain the strategy. The partner at Baker & McKenzie also emphasized that Lehram must perform its side of the bargain by transferring fifty percent of the Mine once it was recovered to Yushvaev.

52. Approximately two weeks later, Lehram was informed that the Shchukin Family did not wish to communicate directly with Lehram and that Lehram should be represented by Yushvaev's nominee, Tsygankov, at the meeting.

53. Supposedly, on December 23, 2016, a meeting took place. However, the Shchukin Family refused to return the Mine.

54. By that point in time, the Statute of Limitation had run on the repossession claim against Cyrith Holdings Limited and Baker & McKenzie failed to file the repossession claim within the three year Statute of Limitation.

55. In late January 2017 Daniel met with Baker & McKenzie in Moscow for an update. During that meeting, the partner from Baker & McKenzie advised that the purported settlement meeting on December 23, 2016 was unsuccessful because Tsygankov, in addition to negotiating for the Lehram Mine, negotiated other assets owned by the Shchukin Family, including the ownership a coal mine named Poloshukinskaya. The Shchukin Family refused and terminated the settlement meeting.

56. Sometime later, to protect itself, Baker & McKenzie presented Lehram with a purported "Waiver" wherein Baker & McKenzie wanted Lehram to confirm it had been warned

about entering into the relationship with Yushvaev and that Baker & McKenzie was detached and not involved in the terms of the agreement and structure. (See EXHIBIT C).

57. The waiver was untrue and Lehram refused to sign.

COUNT I – PROFESSIONAL NEGLIGENCE

Plaintiff, LEHRAM CAPITAL INVESTMENTS, LTD., repeats and re-alleges Paragraphs 1-57.

58. At all relevant times, Baker & McKenzie had a duty to act as reasonably careful lawyers would in the same or similar circumstances.

59. Baker & McKenzie failed to act as reasonably careful lawyers in the following ways:

- a) Baker & McKenzie failed to fully disclose and explain the conflict it created when it introduced its client Yushvaev to Lehram as a “funder” of the litigation;
- b) Baker & McKenzie failed to disclose that it was limited by its own self-interest in prosecuting the repossession claim and presenting evidence which could be adverse to its own financial interests;
- c) Baker & McKenzie advised a plan that elevated the interests of one client over the other;
- d) Baker & McKenzie withdrew the repossession component of the claim and failed to timely file the repossession claim against Cyrith Holdings, Ltd.;
- e) Baker & McKenzie failed to timely prosecute the claims of Lehram;
- f) Baker & McKenzie filed claims in the wrong jurisdictional court.

60. As a result of these acts or omissions, the Plaintiff, Lehram, lost its opportunity to recover its shares in the Mine, which had a value in excess of \$200,000,000.

WHEREFORE, Plaintiff, Lehram Capital Investments, Ltd., respectfully requests judgment in its favor and against the Defendants, Baker & McKenzie International, Baker McKenzie, Baker & McKenzie, and Baker & McKenzie, LLP in an amount to exceed \$75,000.00

COUNT II
PROFESSIONAL NEGLIGENCE

Plaintiffs, LEHRAM CAPITAL INVESTMENTS, LTD. and Daniel Rodriguez,
Individually, for Count II of the Complaint against Baker & McKenzie, state as follows:

61. Prior to Baker & McKenzie's advice to Rodriguez and Lehram to contact Tsygankov and Yushvaev, Rodriguez enjoyed a respectable reputation in the international business community, including private investment and banking communities.

62. Ethical reputation is paramount in this international investment and banking community.

63. Rodriguez, before meeting with Tsygankov and Yushvaev, had no knowledge about their backgrounds. He was advised by Baker & McKenzie that these persons were credible and had client relationships with Baker & McKenzie through businesses.

64. But for Baker & McKenzie's introduction and advice, Rodriguez would never have associated with either person.

65. Yushvaev is a Russian citizen convicted of a violent crime. This fact is confirmed by SEC filings. As of December 31, 2005, Yushvaev was a director and largest shareholder in WIMM-BILL-DANN Foods OJSC ("WIMM"), a Russian Federation Corporation registered in the United States pursuant to Section 12(b) of the Securities Exchange Act of 1934. (See SEC Filing 20-F Annual Report, p. 103, p. 109)

66. In its SEC annual reporting as of December 31, 2005, WIMM disclosed, under Section 1, the following:

Certain of our shareholders and directors, including the Chairman of our Board of Directors, are together controlling shareholders in a group of related companies sometimes referred to as "Trinity." The Trinity group engages in agro business, security services,

casinos and construction. We purchased Municipal Guard Agency, a security services company, from the Trinity group in 2001. Prior to and in the beginning of 2002, we obtained security services from Trinity-Negus, and we currently purchase milk from certain milk supply companies in the Trinity group. See “Item 7. Major Shareholders and Related Party Transactions—B. Related Party Transactions” for a description of these transactions. The Trinity group has been the subject of speculation in the Russian press, including with respect to possible links with organized crime. However, no charges have been brought by governmental authorities against any of our shareholders or directors and, to the best of our knowledge, none has been threatened. In addition, our largest shareholder, who has been a member of our Board of Directors since June 14, 2005, was convicted of a violent crime in 1980 under the Soviet system and served nine years in a labor camp. Press speculation about these or other matters relating to our shareholders or directors could adversely affect our reputation and the value of our securities. (See December 31, 2005, SEC Filing 20-F Annual Report, p. 16)

67. The largest shareholder, according to the SEC filings, is Gavril Yushvaev, who, as stated above, was convicted for a violent crime.

68. WIMM is the subject of an ongoing SEC investigation. The investigation relates to a former General Counsel’s, for PepsiCo, Inc., investigation into corrupt practices of WIMM. PepsiCo Inc. acquired WIMM, a Russian dairy company. The General Counsel uncovered corruption arising out of WIMM’s improper reporting of earnings and expenses, improper land deals, improper consulting contracts and gratuities to a Russian regional governor. (EXHIBIT D, Wall Street Journal, September 27, 2017).

69. From February 2017 until late October 2017, the owners of Lehram, including Rodriguez, were victims of threatening phone calls, intimidation and pressure to stop seeking justice from a person identified as being connected to the Shchukin Family and associated with Gavril Yushvaev. One of the known persons who made the threats is Dmitry Anatolievich Tsvetkov, the son-in-law of a member of the Russian Parliament. These persons disclosed private information about Lehram and Rodriguez which was only known to Baker & McKenzie. On October 16, 2017, Baker & McKenzie held a joint meeting with members of the Shchukin

Family and Lehram. In this meeting, the Shchukin Family confirmed their association with Yushvaev. Negotiations failed.

70. Baker & McKenzie failed to disclose the criminal past of Gavril Yushvaev.

71. Had Baker & McKenzie disclosed to Rodriguez and Lehram, the true background of Yushvaev, Rodriguez would have refused to even consider entering into any conversations, discussion, arrangement or meeting with Gavril Yushvaev, or his proxies.

72. Lehram fully relied on Baker & McKenzie's "quality & reliability seal"; however Lehram was misled by Baker & McKenzie in order to benefit Baker & McKenzie's other client.

73. The subject of Lehram's meetings with Yushvaev and his proxies became public and known in the investment and banking communities.

74. Since then, Daniel and Lehram have suffered damage to their reputations in the international business community and international bank community.

75. But for Baker & McKenzie's failure to disclose Yushvaev's full background, Daniel and Lehram would not have suffered damage to their reputation.

76. As a result of Yushvaev's limited involvement, Daniel and Lehram lost business opportunities, including the ability to monetize the shares or claims of Lehram.

WHEREFORE, Plaintiffs, Lehram Capital Investments, Ltd. and Daniel Rodriguez, Individually, respectfully requests that this Court enter judgment in favor of Plaintiffs and against Defendants, Baker & McKenzie International, Baker McKenzie, and Baker & McKenzie, Baker & McKenzie, LLP in a compensatory amount to exceed \$75,000 and award punitive damages to be determined by a jury.

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Geneva, IL 60134
630-262-9655
dan@konicekdillonlaw.com

Respectfully Submitted,



Attorney for Plaintiff

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

| | | |
|--------------------------------------|---|---------------|
| LEHRAM CAPITAL INVESTMENTS, LTD. and |) | |
| DANIEL RODRIGUEZ, |) | |
| |) | |
| Plaintiffs, |) | |
| v. |) | Case |
| |) | |
| BAKER & MCKENZIE INTERNATIONAL, |) | |
| BAKER MCKENZIE, |) | |
| BAKER & MCKENZIE, LLP, and BAKER & |) | |
| MCKENZIE, |) | JURY DEMANDED |
| |) | |
| Defendants. |) | |

§1-109 VERIFICATION BY CERTIFICATION

I, DANIEL RODRIGUEZ, under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.


Daniel Rodriguez

13.11.2018

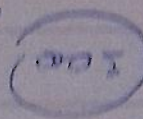
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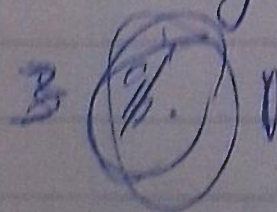
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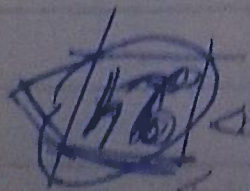


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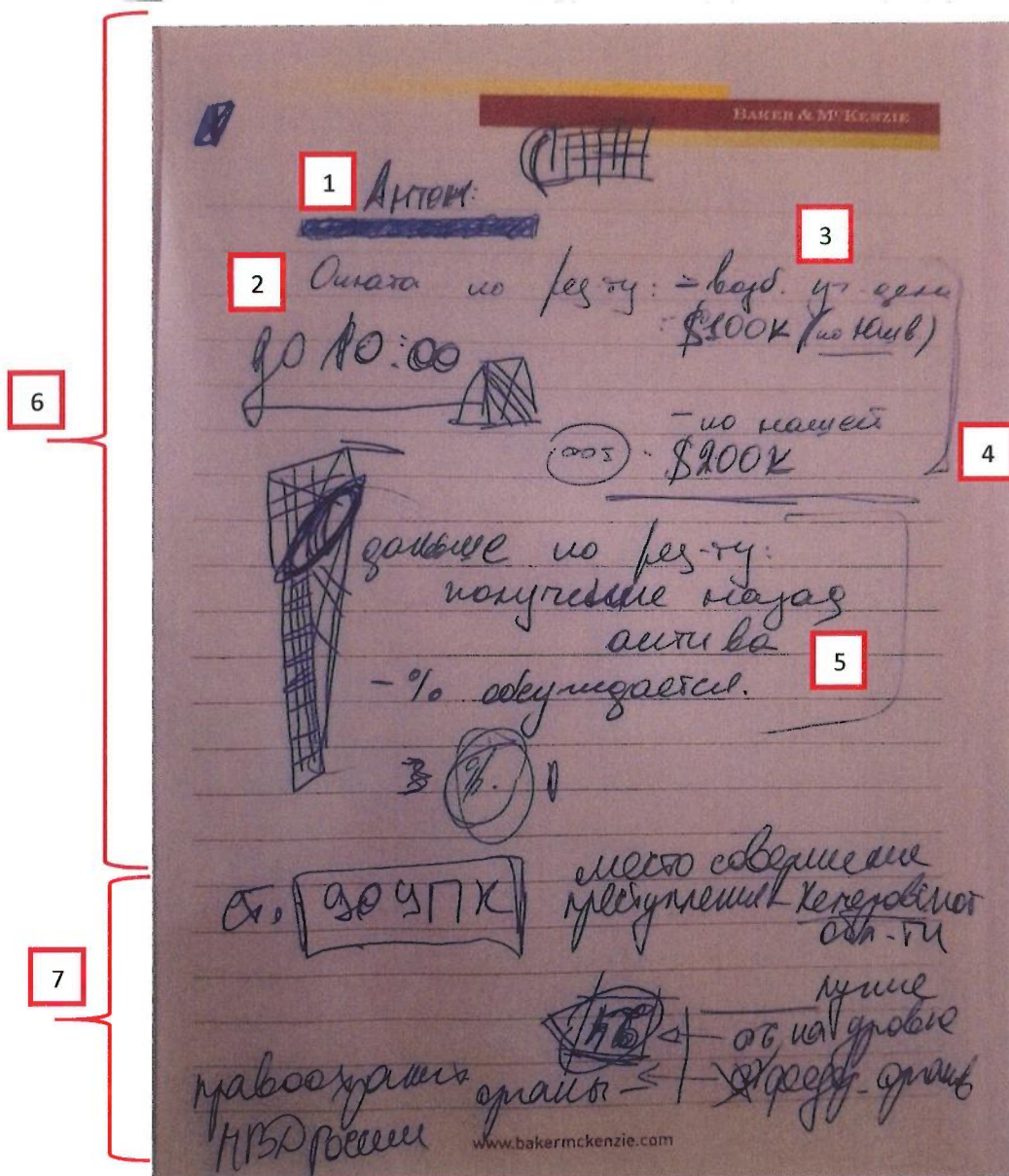
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ХРРРРРРР

Exhibit
BEXHIBIT B

1. Anton Tsygankov is proposed to be the nominee of Gavril Yushvaev
2. Payments required by Lehram for the criminal investigation which BM advised it to initiate and be converted into a criminal case against Alexander Shchukin.
3. Payment of USD 100,000 to Gavril Yushvaev if Lehram wanted to have the support of Gavril Yushvaev's criminal case to support Lehram's case.
4. Payment of USD 200,000 to Gavril Yushvaev if Lehram wanted their criminal investigation to become a criminal case against Alexander Shchukin.
5. Payment of 50% of the ownership of the Mine.
6. Points 1-5 it is the handwriting of BM's Partner Alexander Gomonov.
7. Part 7 was hand written by a member of Lehram after receiving the contract / proposal from BM.



March 2017

To Baker & McKenzie

Dear Sirs

1. INTRODUCTION

- 1.1. Lehram Capital (Kemp House 152, City Road, EC1V, 2NX) is a client of Baker & McKenzie.
- 1.2. Baker & McKenzie advised Lehram Capital on a number of legal issues. At a request of Lehram Capital a partner of Baker & McKenzie Mr Alexander Gomonov has introduced Mr Daniel Rodriguez and Mrs Maria Sokolova to Mr Igor Gorin. Such introduction was requested because Lehram Capital did not have sufficient budget to finance the work by Baker & McKenzie and Lehram Capital were seeking an alternative financially more favourable for Lehram Capital service provider.
- 1.3. Mr Daniel Rodriguez and Mrs Maria Sokolova acting on behalf of Lehram Capital conducted negotiations with Mr Igor Gorin and his nominees (including Mr Anton Tsygankov) and entered into some arrangements with them. They have also discussed related matters with Alexander Gomonov seeking his personal view/opinion.

2. ACKNOWLEDGEMENT AND WAIVER

- 2.1. Lehram Capital, Mr Daniel Rodriguez and Mrs Maria Sokolova hereby acknowledge and confirm that:
 - 2.1.1. all their discussions with Alexander Gomonov with respect to matters related to Mr Igor Gorin and matters of Lehram Capital connected with or discussed with Mr Gorin (including settlements) were with Alexander Gomonov personally (as a friend of Maria Sokolova) rather than with Baker & McKenzie or Mr Alexander Gomonov as a partner of Baker & McKenzie and recommendations and advice provided by Alexander Gomonov on such matters were personal recommendations and advice of Mr Gomonov rather than advice by Baker & McKenzie of Mr Gomonov as a partner of Baker & McKenzie (irrespective of whether provided from personal mobile, business mobile, business e-mail address or otherwise);
 - 2.1.2. none of them is (or shall be deemed to be) a client of Baker & McKenzie for the purposes of any matter related to such advice, recommendation or opinion provided by Mr Alexander Gomonov.
- 2.2. Accordingly, Lehram Capital, Mr Daniel Rodriguez and Mrs Maria Sokolova hereby irrevocably and unconditionally waive any right of claims which any of them has or may have against Baker & McKenzie and/or any of its successors, assigns or partners in respect of any such advice, recommendation or opinion provided by Mr Alexander Gomonov.
- 2.3. Lehram Capital, Mr Daniel Rodriguez and Mrs Maria Sokolova hereby irrevocably and unconditionally fully release and discharge Baker & McKenzie and/or any of its successors, assigns or partners from any liability, of any kind, whether direct or indirect, foreseen or unforeseen, contingent or actual, present or future, arising or capable of arising out of, or in any way connected with or related to any such advice, recommendation or opinion provided by Mr Alexander Gomonov.

3. SEVERABILITY

If any provision of this letter is held to be illegal, invalid or unenforceable in any respect under the law of any jurisdiction, then such provision shall (so far as it is invalid or unenforceable) be given no effect and shall be deemed not to be included in this letter but without invalidating any of the remaining provisions of this letter.

4. GOVERNING LAW AND JURISDICTION

All disputes arising out of or in connection with the present letter (deed) shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by 3 arbitrators appointed in accordance with the said Rules. The seat, or legal place, of arbitration shall be London, United Kingdom. The language to be used in the arbitral proceedings shall be English. The governing law of this letter (this deed) shall be the substantive law of England and Wales.

Signed as a deed for and on behalf of:

EXECUTED AND DELIVERED AS A DEED

by affixing the common seal of)
Lehram Capital)
Witnessed by)
Mr.)
Title, address:)

EXECUTED AND DELIVERED AS A DEED

By)
Mr Daniel Rodriquez)
Witnessed by)
Mr.)
Title, address:)

EXECUTED AND DELIVERED AS A DEED

By)
Mrs Maria Sokolova)
Witnessed by)
Mr.)
Title, address)

THE WALL STREET JOURNAL.

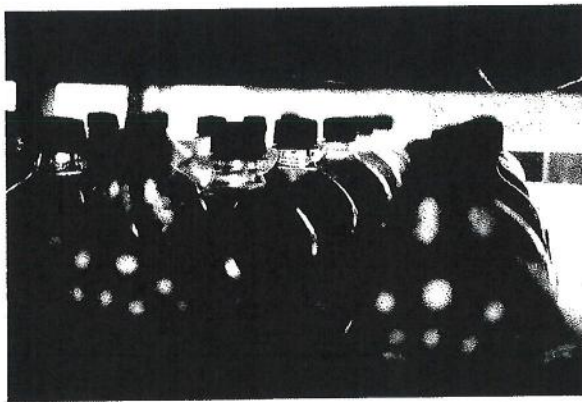
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<https://www.wsj.com/articles/departure-of-pepsico-lawyer-is-focus-of-sec-probe-1506504603>

BUSINESS

SEC Probes Departure of PepsiCo's Former Top Lawyer

Agency investigates allegation the company retaliated against general counsel for her handling of a Russia probe



The SEC is investigating an allegation by PepsiCo's general counsel that she was fired in retaliation for the way she handled a probe into practices at Wimm-Bill-Dann, a Russian company that PepsiCo acquired in 2011. PHOTO: LUKE SHARRETT/BLOOMBERG NEWS

By Andrew Ackerman, Joe Palazzolo and Jennifer Maloney

Updated Sept. 27, 2017 10:29 a.m. ET

Federal securities regulators are investigating an allegation by PepsiCo Inc.'s [PEP -0.54% ▼](#) former top lawyer that the company fired her in retaliation for the way she handled an internal probe into potential wrongdoing in Russia, according to people familiar with the matter and internal documents.

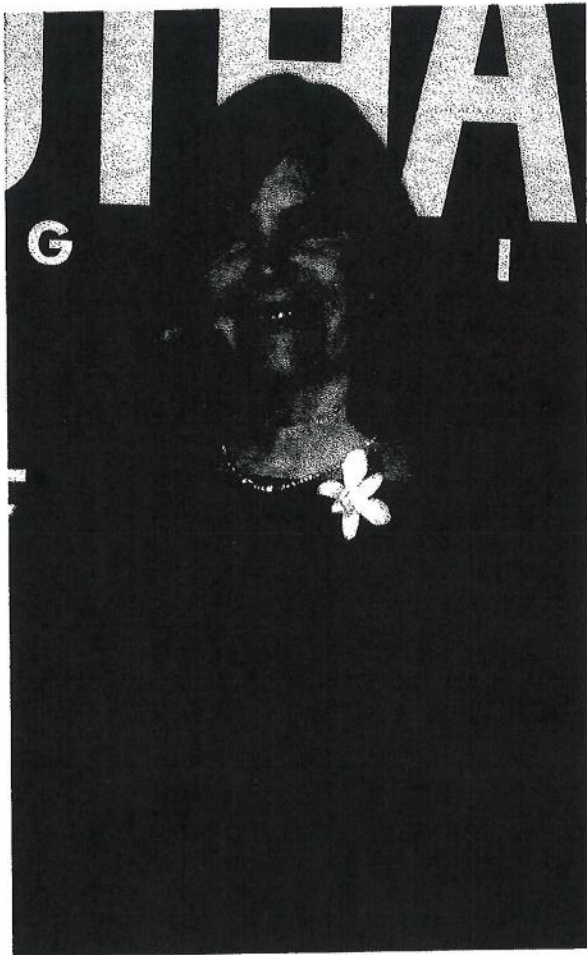
Maura Smith, who was PepsiCo's general counsel from May 2011 to June 2012, oversaw outside lawyers hired by the company to dig into business practices at Wimm-Bill-Dann, a big Russian maker of dairy products and juices that PepsiCo spent about \$5 billion to acquire in 2011, the documents show.

The Securities and Exchange Commission is looking at allegations that Ms. Smith was ousted because her work on the probe rankled others at PepsiCo, people familiar with the matter said. The inquiry is at an early stage and is focused on the circumstances of Ms. Smith's dismissal, the people said, and may not lead to any enforcement action.

"PepsiCo did not engage in any retaliatory conduct and any allegations to the contrary are untrue," the company said in a statement. "The company is cooperating with the SEC investigation." PepsiCo said Ms. Smith's departure was not related to "any dispute or disagreement" over the internal investigation.

PepsiCo said it looked into allegations of misconduct at the Russian company believed to have taken place before it bought the firm. "As soon as PepsiCo became aware of the conduct, it fully

investigated and remediated the issues, none of which were material to PepsiCo's financial statements," PepsiCo said.



Maura Smith, PepsiCo's former general counsel, in 2015. PHOTO: GETTY IMAGES FOR GOTHAM MAGAZINE

When PepsiCo announced Ms. Smith's departure in 2012, the company said she was resigning to pursue other opportunities. Her separation agreement, signed four months after her exit, entitled her to nearly \$6 million in cash payments, regulatory filings show. The agreement prevents the company and Ms. Smith from

disparaging one another.

Some people familiar with Ms. Smith's tenure at PepsiCo described it as stormy and marked by conflicts with other executives. They said that Ms. Smith's employment had been in question for months leading up to her exit.

Others familiar with Ms. Smith's time at the firm said she was an experienced general counsel who quickly endeared herself to PepsiCo Chief Executive Indra Nooyi. But executives turned on her as the Russia investigation wore on, they said. Before joining the Purchase, N.Y., company, Ms. Smith served as general counsel for eight years at International Paper Co. and for five years at Owens Corning.

PepsiCo has assembled a team of high-profile lawyers to represent the company in the SEC investigation. The team includes Mary Jo White, who stepped down as the chairman of the SEC in January and is now a partner at Debevoise & Plimpton LLP. It also includes partners at Wilmer Cutler Pickering Hale and Dorr LLP, known as WilmerHale.

Ms. Smith, 61, now in private practice, was subpoenaed this year by the SEC and met with government lawyers as part of an agency investigation of whether employment contracts at major U.S. firms discouraged employees from reporting wrongdoing, according to a memo prepared by WilmerHale and the people familiar with the matter.

The memo, which was dated Aug. 31, and other documents were mistakenly sent by a WilmerHale attorney to a Wall Street Journal reporter as part of communication to other attorneys working on the matter. The memo said the SEC "now appears to be focused on allegations by Ms. Smith that she was retaliated against in violation of the SEC's whistleblower rules."



Wimm-Bill-Dann juice cartons in 2010. PepsiCo bought the Russian firm in 2011 and later uncovered potential violations there during an internal investigation. PHOTO: ALEXANDER ZEMLIANICHENKO JR./BLOOMBERG NEWS

After publication of this article, WilmerHale said it was disappointed that the Journal used material from the email. "We are taking additional measures designed to ensure that emails are not misaddressed to unintended recipients," the firm said in a prepared statement.

PepsiCo bought a majority stake in Wimm-Bill-Dann in February 2011 and took full control in September of that year.

In August 2011, a Wimm-Bill-Dann employee used a PepsiCo tip line to report an allegation that senior managers at the Russian company concealed a \$3 million shortfall in forecast quarterly financial results by shifting expenses and improperly capitalizing about 1,700 tons of skim milk, the documents show.

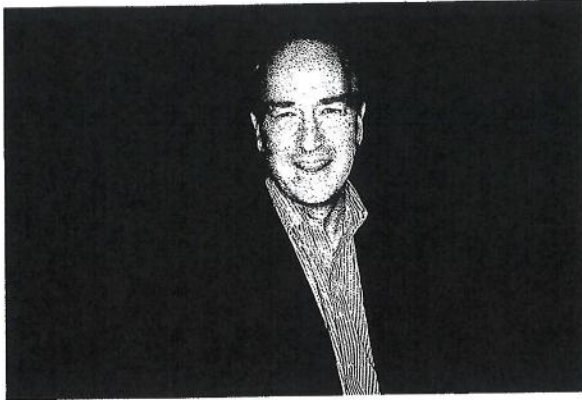
PepsiCo's regional staff began investigating, but the company's headquarters didn't learn of the matter for months, people familiar with the matter said. The tip raised concerns among PepsiCo's auditors about whether Wimm-Bill-Dann results before the takeover needed to be restated, internal documents show. The auditors concluded no restatement was necessary, one person familiar with the matter said.

Following the episode, PepsiCo engaged law firm Gibson, Dunn & Crutcher LLP to "tip over every rock" at Wimm-Bill-Dann, one of the people said. The investigation unearthed evidence of theft, improper land deals and millions of dollars in questionable consulting contracts and gratuities, including a company-owned Audi A8 sedan that was provided to a regional governor of Russia to use for free, according to internal documents. These practices had started when Wimm-Bill-Dann was an independent company, and some had continued after the PepsiCo takeover.

Gibson Dunn concluded that the car and the consulting contracts "likely constitute potential violations" of accounting provisions of the Foreign Corrupt Practices Act, a law that bars U.S.-listed companies from paying bribes to foreign officials and requires firms to maintain strong internal controls. The investigation found no conclusive evidence of more serious violations of the law's antibribery provisions, according to the documents.

PepsiCo took measures to address the findings, including removing employees involved in alleged wrongdoing and updating Wimm-Bill-Dann's financial controls and business practices

to conform with PepsiCo's compliance program, the documents show.



PepsiCo Chief Financial Officer Hugh Johnston. PHOTO: PEPSI

While the investigation was ongoing, Ms. Smith asked lawyers at Gibson Dunn to help her prepare a detailed memo for the PepsiCo board that would present the major findings, according to internal documents. One of those lawyers felt uncomfortable with the request, according to one of the documents mistakenly sent to the Journal that summarized a recent conversation with her. To the lawyer, it appeared that Ms.

Smith wanted to "call out names of former and current employees and place blame," while protecting her own position at the company, according to the document.

Ms. Smith had prepared a memo with the help of Gibson Dunn, and a 33-page draft dated June 7, 2012, was among the documents mistakenly sent to the Journal. Among its assertions: PepsiCo executives in Europe didn't do enough due diligence after the Wimm-Bill-Dann deal, and the company's system for escalating potential problems to headquarters had malfunctioned at times.

After the Gibson Dunn attorney reached out around that time to Hugh Johnston, PepsiCo's chief financial officer, about her concerns, Mr. Johnston told Ms. Smith to stop work on the memo, according to the people familiar with the matter and internal documents. It was never sent to the board, according to others familiar with the matter, and Ms. Smith's employment ended June 15, 2012.

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