

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

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3M COMPANY, :
c/o 3M Office of General Counsel :
3M Center :
St. Paul, MN 55133-3428 :

Plaintiff, :

- v - :

Civil Action No.: 1:11-cv-01527

HARVEY BOULTER, :
23 Buckingham Gate, 7th Floor :
Westminster, London SW1E 6LB :

PORTON CAPITAL TECHNOLOGY FUNDS, :
Maples and Calder Limited :
P.O. Box 309 :
Ugland House, South Church Street :
Grand Cayman, Cayman Islands :
KY1-1104 :

PORTON CAPITAL, INC., :
Maples Corporate Services Limited :
P.O. Box 309 :
Ugland House, South Church Street :
Grand Cayman, Cayman Islands, KY1-1104 :

LANNY DAVIS :
c/o Lanny J. Davis & Associates, PLLC 600 13th :
Street, N.W., Suite 600 :
Washington, D.C. 20005 :

LANNY J. DAVIS & ASSOCIATES, PLLC :
600 13th Street, N.W., Suite 600 :
Washington, D.C. 20005 :

DAVIS-BLOCK LLC :
600 13th Street, N.W., Suite 600 :
Washington, D.C. 20005 :

Defendants. :

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3M COMPANY’S FIRST AMENDED COMPLAINT AND JURY DEMAND

Plaintiff 3M Company (“3M”) files this First Amended Complaint and Jury Demand against Defendants Harvey Boulter, Porton Capital Technology Funds (“Porton Technology”),

and Porton Capital, Inc. (“Porton Capital”) (collectively, the “Boulter Defendants”), and Defendants Lanny Davis, Lanny J. Davis & Associates, PLLC, and Davis Block LLC (collectively, the “Davis Defendants”) (the Boulter Defendants and Davis Defendants are hereinafter collectively referred to as “Defendants”), upon personal knowledge as to its own actions, and on information and belief as to all other matters, as follows:

I.

PRELIMINARY STATEMENT

1. This lawsuit arises from Defendants’ conspiracy to unlawfully coerce one of the world’s largest and most successful companies, 3M, into paying tens of millions of undeserved dollars to “settle” a lawsuit (the “BacLite Litigation”) brought by Porton Technology Funds and Porton Capital, Inc. (the “Claimants”), concerning a failed medical product called “BacLite.” That product, which was intended to detect the presence of Methicillin Resistant *Staphylococcus aureus* bacteria (“MRSA”), proved not to be commercially viable. The Boulter Defendants, however, desperately needed money in order to save them from the ire of their investors after yet another unprofitable investment. Accordingly, they resorted to a scheme of extortion and other illegal and improper tactics to obtain by coercion what they could not lawfully receive by other means.

2. The fact that Defendants’ demands upon 3M to pay over \$30 million constituted a “shakedown” was confirmed by the recent decision in the BacLite Litigation, wherein the United High Court in London of Justice the United Kingdom (“U.K.”), found that the amount owed to Claimants was less than \$1.3 million, an amount below what 3M had previously offered to settle the BacLite Litigation, and very close to an amount 3M had offered *prior to all litigation*. The High Court’s decision also rejected allegations of wrongdoing that Claimants had leveled against 3M at trial. In light of those findings, 3M is now asking the High Court to order that Claimants

reimburse the company for a substantial portion of the fees and costs it incurred to defend the lawsuit—an outcome that may actually result in a net payment *to* 3M *from* Claimants.

3. Defendants' illicit conspiracy to coerce 3M to pay over \$30 million included overt threats of reprisals by holders of large blocks of 3M stock, declarations of a fabricated public health "issue," public demonstrations by paid individuals posing as "victims" of 3M's decision to discontinue selling a product no one wanted, multiple press conferences aimed at disseminating false and defamatory information, and a constant stream of media advisories that flooded the airwaves with defamatory statements about 3M and its Chairman and Chief Executive Officer, Mr. George Buckley ("Buckley").

4. The public relations component of Defendants' pressure campaign—launched in March 2011, in Washington, D.C., by their agent and self-proclaimed public relations expert, Defendant Lanny Davis ("Davis")—wound its way into a number of domestic and international media. It included multiple public relations events, an interactive website, and various written commentaries by Davis and other Defendants, many of which asserted damaging and knowingly false allegations against 3M, such as representations that 3M put the health of MRSA victims at risk when it chose to cease its multi-year attempts to market BacLite.

5. In conjunction with those efforts, beginning in early 2011, Defendants made payments of £10,000 per month to a U.K. lobbying and public relations firm, Tetra Strategy Ltd. ("Tetra Strategy"), for among other purposes, to arrange an informal, off-the-record meeting with the U.K.'s former Secretary of Defence, Dr. Liam Fox ("Fox"). Defendants then used that meeting to implement their illegal scheme of coercing and intimidating 3M into making undeserved payments to Claimants in the BacLite Litigation, or else risk harm to its existing and potential business relationships with the U.K. Government. Between June 17 and 19, 2011, Defendants conspired to communicate blackmail threats to 3M's counsel, based on assurances

that Boulter claimed to have received from Fox. Specifically, Boulter and Davis acted in concert to convince 3M's attorney that Boulter had obtained Fox's agreement to interfere with 3M's existing and prospective business with the U.K. Government if 3M did not capitulate to Defendants' demands to pay over \$30 million to settle the BacLite Litigation. Boulter and Davis also threatened that, unless the payment was made, the U.K. Cabinet would reconsider the recently announced call to knighthood of Buckley—an attempt to both publicly embarrass Buckley and tarnish 3M's most valuable assets, its brand and corporate goodwill.

6. On October 14, 2011, Fox was forced to resign as the Secretary of Defence as result of the public fallout from 3M's decision to expose Defendants' wrongdoing. Recent developments have also made clear that Davis's and Boulter's threats to directly interfere with 3M's current and future business with the U.K. Government were not just bravado. Those threats were real and they had teeth. When they conspired to make their extortionate threats, Davis and Boulter not only intended to use Fox's imprimatur to bolster their credibility, but they also knew that Boulter intended to use (and, in fact, has used) his extensive contacts within the Ministry of Defence ("MoD") and other agencies to directly interfere with 3M's business interests with the U.K. Government. As a direct result of Defendants' wrongful actions, and despite 3M's proactive efforts to mitigate the adverse effects thereof, 3M's existing business with the MoD, on an annualized basis, has declined at least 25% in 2011, as compared to 2010. Its ongoing sales to the "Central Government" sector in the U.K. also sharply declined in 2011 by 44%. In addition, because of Defendants' improper interference, at least two MoD contracts for which 3M competed in 2010-11 have not been awarded to 3M.

7. 3M brings this lawsuit to: (i) vindicate its rights; (ii) uncover the true extent of the damage done by Defendants' wrongful campaign and efforts to interfere with 3M's current and potential business interests in the U.K.; (iii) pursue those who aided, abetted, conspired, or

participated with Defendants in their defamatory media campaign, extortionate demands, and interference with 3M's business opportunities in the U.K.; and (iv) obtain appropriate judicial relief and recover all damages caused by Defendants' wrongful acts.

II.

PARTIES

8. Plaintiff 3M Company is a Delaware corporation with its principal place of business in Minnesota. Its principal mailing address is: **3M COMPANY**, c/o 3M Office of General Counsel, 3M Center, St. Paul, MN 55133-3428.

9. Defendant Harvey Boulter is a director of defendant Porton Capital Technology Funds and the Chief Executive Officer of defendant Porton Capital, Inc. He maintains residences in the U.K. and Dubai. His principal mailing address is: **HARVEY BOULTER**, 7th Floor, 23 Buckingham Gate, Westminster, London SW1E 6LB.

10. Defendant Porton Capital Technology Funds ("Porton Technology") is an entity organized under the laws of the Cayman Islands which does business in the U.K., Dubai, and other jurisdictions internationally. The company's principal mailing address is: **PORTON CAPITAL TECHNOLOGY FUNDS**, Maples and Calder Limited, P.O. Box 309, Ugland House, South Church Street, Grand Cayman, Cayman Islands KY1-1104.

11. Defendant Porton Capital, Inc. ("Porton Capital") is an entity organized under the laws of the Cayman Islands which does business in the U.K., Dubai, and other jurisdictions internationally. The company's principal mailing address is: **PORTON CAPITAL, INC.**, Maples Corporate Services Limited, P.O. Box 309, Ugland House, South Church Street, Grand Cayman, Cayman Islands KY1-1104.

12. Defendant Lanny J. Davis is an individual who works in Washington, D.C., and is the principal of at least two Washington, D.C. businesses having their principal places of

business in Washington, D.C. Davis portrays himself as a “crisis manager and public legal advocate” who uses the media to attempt to obtain positive results for his clients when those results cannot be achieved in court. His principal mailing address is: **LANNY DAVIS**, c/o Lanny J. Davis & Associates, PLLC, 600 13th Street, N.W., Suite 600, Washington, D.C. 20005.

13. Defendant Lanny J. Davis & Associates, PLLC is a professional services firm organized under the laws of the District of Columbia and having its principal place of business in Washington, D.C. It was formed by Davis upon his departure last year from the law firm McDermott Will & Emery. At that time, Davis stated that “[s]ince legal issues frequently overlap with media and legislative issues, through my new law firm and in cooperation with other non-legal entities I hope to organize or affiliate with in the future, I will use all of these three disciplines, as needed, to solve client problems.” Davis is a principal of Lanny J. Davis & Associates. Its principal mailing address is: **LANNY J. DAVIS & ASSOCIATES, PLLC**, 600 13th Street, N.W., Suite 600, Washington, D.C. 20005.

14. Defendant Davis-Block LLC is an entity organized under the laws of the District of Columbia and having its principal place of business in Washington, D.C. Lanny J. Davis is a principal of Davis-Block LLC. Its principal mailing address is: **DAVIS-BLOCK LLC**, 600 13th Street, N.W., Suite 600, Washington, D.C. 20005.

III.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1332 and 1367, because there exists complete diversity of citizenship between the parties and because the amount in controversy exceeds, exclusive of interest and costs, the sum of \$75,000.

16. This Court has personal jurisdiction over all Defendants because: (a) they are entities organized under the laws of the District of Columbia (Lanny J. Davis & Associates, PLLC, and Davis Block LLC); (b) they transact substantial business in the District of Columbia (the Davis Defendants); or (c) they are foreign entities acting in the District of Columbia by and through, and in conspiracy with, the Davis Defendants as their agents and co-conspirators (the Boulter Defendants).

17. More specifically, Davis—acting on behalf of the Boulter Defendants and for the benefit of himself as well as the other Defendants—is the “spider in the web” who orchestrated the unlawful conspiracy from Washington, D.C., and acted to unite the other Defendants’ knowing and willful wrongful participation in that plot. Davis’s offices in Washington, D.C. served as the “nerve center” of a campaign to coerce and intimidate 3M into paying the Boulter Defendants tens of millions of dollars under the guise of “settling” a lawsuit then pending in the U.K. between the Boulter Defendants and 3M. Among other things, Davis made telephone calls from his Washington, D.C. offices to 3M’s counsel to facilitate the campaign of intimidation, setting the stage for Boulter’s improper threats and assisting Boulter in doing so. Davis also used his Washington, D.C. offices as a base from which to issue multiple disparaging and false press releases about 3M and Buckley for the purpose of defaming them in the public eye and increasing pressure on 3M and its CEO to induce 3M to pay tens of millions of dollars by damaging 3M’s goodwill. To that end, Davis originated from his Washington, D.C. offices a so-called “citizen’s petition” to the FDA based on those same unsupportable allegations, and orchestrated sham public demonstrations by purported MRSA “victims,” all with the intent of cowing 3M into settling the BacLite Litigation on unfair terms that had nothing to do with the merits of the case. Davis also acted from Washington, D.C., when he enabled the extortionate

communications from Boulter to 3M's counsel, and subsequently facilitated those threats through a disparaging public relations company.

18. The Court also has personal jurisdiction over the Davis Defendants because they are individual and corporate persons domiciled, and who maintain a principal place of business, in the District of Columbia.

19. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a), (c), and (d), because: (a) a substantial part of the events giving rise to the claims stated herein occurred in the District of Columbia; (b) at least one Defendant is subject to personal jurisdiction in this District; and (c) the Boulter Defendants are aliens.

IV.

FACTUAL BACKGROUND

A. 3M And Its Business

20. 3M was founded in 1902 in Two Harbors, Minnesota, by five businessmen hoping to capitalize on a mining mineral used for grinding wheels. Their persistence paid off and they began manufacturing sandpaper in 1905. The company moved to the St. Paul area in 1910. By 1916, the company paid its first dividend of 6 cents a share.

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

22. The engine that drives 3M's long-term success is its commitment to innovation. In the early 1920s, 3M introduced the world's first waterproof sandpaper. In 1925, 3M invented

masking tape—an innovative step toward diversification and the first of many Scotch® brand pressure-sensitive tapes. 3M then invented Scotch® Cellophane Tape for box sealing and soon hundreds of practical uses were discovered. In the early 1940s, 3M dove into the production of defense materials for World War II. Thereafter, new products such as Scotchlite™ Reflective Sheeting for highway markings, magnetic sound recording tape, filament adhesive tape, and offset printing plates were started. In the 1950s, 3M introduced the Thermo-Fax™ copying process and Scotch-Brite® Cleaning Pads. In the 1960s, 3M developed photographic products, carbonless papers, overhead projection systems, and a rapidly growing health care business of medical and dental products. In the 1970s and 1980s, 3M expanded into pharmaceuticals, radiology, and energy control. In 1980, 3M introduced Post-it® Notes, which changed people's communication and organization behavior forever. In the 1990s, 3M continued to develop an array of innovative products, including immune response modifier pharmaceuticals; brightness enhancement films for electronic displays; and flexible circuits used in inkjet printers, cell phones, and other electronic devices.

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

24. 3M has traditionally enjoyed excellent relationships with governmental authorities in the U.K. Based on those relationships, 3M has done, and had expected to do even more, business with many of those governmental authorities. Unfortunately, Defendants interfered

with 3M's business relationships by depriving it of business opportunities causing injury to the goodwill of both 3M and Buckley.

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

B. George W. Buckley: 3M's Visionary Chairman And CEO

26. George Buckley is the Chairman of the Board, President, and CEO of 3M. Buckley was born and raised in Sheffield, England and is a dual citizen of the U.S. and the U.K. He has a Ph.D. in electrical engineering. He is a scientist and the inventor of several patents. Having overcome extreme poverty as a child, Buckley has become a success in both business and life. Under his leadership, 3M has thrived not only economically, but in fulfilling its mission of community involvement and civic leadership.

27. In recognition of his business accomplishments and his contributions to his alma mater, the University of Huddersfield, it was announced in June 2011 that Buckley would be invested by Her Majesty Elizabeth II with the rank of Knight Bachelor. The British Consul General, Robert Chatterton Dickson, described Buckley and his accomplishments as follows: "As Chairman of the Board, President and CEO of 3M, Dr. Buckley, now Sir George, has been a leader in the American and Midwestern business community for decades. Throughout his career he has maintained close ties to the U.K. and a commitment to educating future generations as exemplified by his involvement with the University of Huddersfield. Sir George represents excellence in business and learning. . . ."

C. The Boulter Conspirators And Their Business

28. Boulter is a Director of Porton Technology, an investment fund that, through five sub-funds, invests in a number of commercial ventures, including life science entrepreneurs. Boulter is also the Chief Executive Officer of Porton Capital, the investment manager of Boulter's funds.

29. It is reported that Boulter's funds were created around a strategy of partnering with the U.K. Government, in particular the MoD and its Defence Science & Technology Laboratory ("Dstl"). One of these investments was an ownership interest in Acolyte Biomedica Limited ("Acolyte"). Acolyte was British company partly owned by the MoD (because its only product, BacLite, was developed with MoD technology). Boulter has also partnered with the MoD on investments to commercialize other technology, including an investment in Alaska Diagnostics, which sought to market a technology to detect contamination in food products.

30. Thus, over many years, an important part of Boulter's strategy for his funds has been to invest with the MoD in an attempts to commercialize certain intellectual property developed and owned by the U.K. Government. Through those investments, Boulter has developed significant relationships with U.K. officials and civil servants, within the MoD and other government agencies.

31. Unfortunately for Boulter, he and his funds are under tremendous financial pressure from investors to dramatically improve performance. As set forth herein, that pressure caused Boulter to commit desperate and unlawful acts in an effort to salvage what had become a bad investment in Acolyte for all parties involved.

D. Ringmaster Lanny Davis: Now Champion Of Anyone Willing To Pay Top Dollar

32. Davis is the principal of Lanny J. Davis & Associates, a self-styled public relations and law firm located in Washington, D.C. that Davis formed in 2010 after departing

from his prior firm, McDermott Will & Emery LLP. According to the firm's website, Davis offers to provide to his clients a "unique combination" of legal and "crisis management" services.

33. Davis's approach to assisting clients in managing a crisis is to step outside of the facts and merits of any associated legal disputes, and concoct a media strategy aimed at giving his client an advantage in the court of public opinion. In his own online marketing materials Davis declares that "there are often no purely legal solutions to legal problems," and that "the rules of media and crisis management have no borders."

34. Indeed, one of Davis's "no borders" marketing points is that, because he is an attorney, he can shield unsavory facts and conversations behind the attorney-client privilege. As Davis says on the Lanny J. Davis & Associates website, "Davis—along with other attorneys involved in sensitive litigation and regulatory matters—will also be able to ensure the ongoing confidentiality protection afforded through attorney-client privilege." He further says, "I have learned over the years that having the protection of the attorney-client privilege . . . is essential to developing effective messages"

35. Of late, Davis has been described by *The New York Times* as "a kind of front man for the dark side, willing to take on some of the world's least noble companies and causes." One Washington, D.C. lobbyist described Davis's client list as "unseemly," "tawdry," and "an illustration of what most of the American people think of as wrong with Washington."

36. For example, beginning in December 2010, Davis accepted a \$100,000-per-month retainer to represent Laurent Gbagbo, the former president of the Ivory Coast who lost an election in late 2010 but refused to relinquish power. It was widely reported in the media that, after losing the election, Gbagbo and his supporters had begun violently suppressing opposition protests by killing or abducting scores of opposition marchers, and had instituted death squads to

deal with dissent. In response, Davis called a press conference in which he said, among other things, that “Mr. Gbagbo opposes violence.” This public relations event prompted observations that Davis’s spin “does not square with the known facts” and subjected Davis to broad criticism in the press. Ultimately, Davis was forced to abandon an earlier statement that “there is substantial documentary evidence that President Laurent Gbagbo is the duly elected president” of the Ivory Coast. Eventually, amid a firestorm of public criticism, Davis resigned from the representation—but not before pocketing a reported \$150,000.

37. Davis’s willingness to represent foreign dictators with dismal records of human rights abuses is well known. In 2010, he also accepted a \$1 million-per-year contract to represent Teodoro Obiang, the 30-year president of Equatorial Guinea. Obiang was well known in human rights circles, where Human Rights Watch had described his regime as “one of the most abusive and corrupt in the world.” According to news reports, in June 2010, Davis declared himself to be Obiang’s “reform counsel” and then shuttled off to South Africa to conduct a press conference at which he promoted Obiang’s reformed policies because, according to Davis, “the president [Obiang] wants to turn the page” to make his country “like the United States in its values, its democracy.” Only a few months later, however, in October 2010, Davis’s supposedly-reformed client, Obiang, was cited by the human rights watchdog Amnesty International for causing his regime to abduct, torture, and execute his political opponents.

38. In 2009, Davis represented supporters of the illegal coup in Honduras that installed Roberto Micheletti as *de facto* leader of the country. There, Davis’s version of “crisis management” was to publish a press release declaring that “democracy and civil liberties are flourishing in Honduras” under the Micheletti regime. Davis made this statement just days after Micheletti’s troops opened fire on protesters and just one day before the regime arrested and deported foreign journalists.

39. Davis's recent track record, therefore, reveals his willingness to take on whatever client is willing to pay him top dollar, apparently with little concern for whether his public statements are, in fact, true. It now appears that Davis's approach was precisely what the Boulter Defendants sought in their campaign against 3M.

E. Tetra Strategy: Brokering Access To The U.K. Government

40. Tetra Strategy's website professes expertise in "the process of exerting influence." Influence with the U.K. Government is precisely what it offered Boulter, Davis, and the other Defendants. As early as March 2011, Boulter began paying Tetra Strategy at least £10,000 (approximately \$16,000) per month to provide such assistance in the BacLite Litigation. As detailed below, one service that Tetra Strategy provided to Boulter in return for those payments was direct access Fox. Tetra Strategy did so through the prior relationship that it, and its principal Lee Petar, had with Adam Werritty ("Werritty"), a close friend of Fox.

41. Tetra Strategy's own public statement claims that it was retained "in 2010 to provide litigation PR assistance to the Porton Group [the Boulter Defendants] in connection with its ongoing High Court claim in England against 3M [the BacLite Litigation]. . . . Tetra Strategy introduced its client to Adam Werritty in March 2011 The purpose of the introduction was to brief the MoD on the litigation."

F. The Underlying Dispute: 3M Acquires Acolyte And An MRSA Screening Test Product In Order To Expand Into A Potential New Market.

42. As part of its plan to expand into the global *in vitro* diagnostics market, 3M caused 3M U.K. Holdings Limited—a wholly-owned subsidiary of 3M—to acquire all of the outstanding shares of Acolyte. Acolyte's only commercially available product at the time was BacLite, a device that allegedly allowed hospitals and clinics to screen patients for MRSA. While staph bacteria are ubiquitous in daily life, MRSA and related organisms, commonly known as "superbugs," are of special concern to medical professionals. Those superbugs are

resistant to treatment from conventional antibiotics and can spread quickly when introduced into hospitals. The objective of screening tests such as BacLite is to identify carriers of MRSA and quarantine them before the bacteria can spread to the general patient population.

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

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

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

45. Immediately after the acquisition, and in fulfillment of its obligations under provisions of the Sales and Purchase Agreement (“SPA”)—which granted Acolyte’s selling shareholders (the “Vendors”) an opportunity to receive conditional earn-out payments on net sales of BacLite through December 2009—3M continued to actively market BacLite in the U.K. It also began marketing the product in the rest of the European Union (“E.U.”), as well as in Canada, Australia, and the United States. In connection with those activities, 3M obtained an import license for BacLite’s distribution in Australia, and began diligent efforts to gain similar approvals from U.S. and Canadian authorities.

46. As is the case with most medical and pharmaceutical products, BacLite could not be sold in the U.S. without approval from the Food and Drug Administration (“FDA”). The key to obtaining FDA approval for BacLite was the successful completion of clinical trials demonstrating support for the product’s claims relating to clinical sensitivity, specificity, and positive and negative predictive values, as well as data demonstrating the product’s performance against an acceptable comparator/reference method.

47. Unfortunately, results from those trials, conducted at prestigious hospitals around the U.S., showed sensitivity and specificity percentages alarmingly *below* those claimed by Acolyte before 3M’s acquisition. Sensitivity percentages at times were as low as 50%, meaning that BacLite would be about as accurate as a coin flip at determining whether a patient carried MRSA. Customer trials of BacLite in other parts of the world, such as Hong Kong and France, also reported lower than expected performance.

48. 3M spent months trying to root out and rectify the cause of these problems, results but with little success. Instead, 3M came to the disappointing conclusion that BacLite, in its current form, did not meet the performance expectations that Acolyte had claimed for it prior to the acquisition. In the meantime, despite 3M’s extensive marketing efforts in the U.K. and the E.U., it became apparent that the product was becoming rapidly obsolete in the face of newer, more robust competitors.

49. In light of the foregoing, 3M ultimately determined that BacLite was not commercially viable because: (i) it was not “robust,” meaning that it was not capable of meeting its claimed performance parameters in a real world environment; (ii) it was overly complicated because it involved over a dozen manual steps, thus increasing the chances of error in busy clinical environments and requiring highly-skilled personnel to use and administer it; (iii) it was too slow to meet current market demands, even if it could be run in 5 hours, as Acolyte claimed;

(iv) the test could not actually be performed in 5 hours; (v) it was highly doubtful the test could routinely achieve the sensitivity and specificity ratings that Acolyte represented prior to the acquisition; and (vi) by early 2008, the market niche 3M expected to exploit with BacLite had unexpectedly narrowed because the cheaper chromogenic agar tests had gotten faster and the faster PCR tests had gotten cheaper. As the court presiding over the BacLite Litigation would later find, 3M was correct on all counts.

50. Accordingly, 3M came to the reasonable conclusion that BacLite did not perform as Acolyte had claimed, was obsolete, and would never be commercially viable in the U.S., Canada, or Australia in the form in which it was sold to 3M.

51. As discussed in further detail below, the London court agreed.

H. 3M Appropriately Seeks Consent To Cease The BacLite Business, But Certain Vendors Ultimately Respond By Filing Suit Against 3M.

1. 3M seeks Vendors' consent to stop selling BacLite

52. In light of the above facts, and pursuant to its contractual rights under the SPA, in July 2008, 3M sought the Vendors' consent to allow 3M to stop marketing BacLite before December 2009. In return, recognizing that the Vendors were entitled under the SPA to the reasonable value of any sales for 2009 that consequently would not be made, 3M offered to pay the Vendors \$1.07 million, which 3M calculated was the amount of net BacLite sales that it reasonably expected to actually achieve through December 31, 2009. Under the SPA, the Vendors' consent to that request was not to be unreasonably withheld.

2. Defendants' campaign of harassment and intimidation begins: threats of retaliation if 3M does not agree to Defendants' unreasonable demands.

53. The Boulter Defendants however, were determined to use whatever means necessary to wring tens of millions of dollars from 3M an amount much greater than that to which they were entitled. It was irrelevant that they did not deserve it.

54. In what 3M now knows was the beginning of Defendants' extortion campaign, Boulter contacted his friend Robert L. Hamburger ("Hamburger"), who claimed to have influence over several groups of investors that purportedly held large blocks of 3M stock. On August 30, 2008, Hamburger sent an e-mail to Buckley, in which he advised Buckley the he and Boulter "have one investor group in [Porton Capital, Inc.] who . . . control[s] a very material position of 3M stock." Hamburger and Boulter went on to say that they had "informed" those investors of 3M's position regarding Acolyte and that, as a result, they "have taken a view that 3M is a dishonest party and have threatened to sell their entire position." There is no doubt that Hamburger sent this e-mail at Boulter's bidding, because its text contained an e-mail from Boulter to Hamburger discussing the pending matters.

55. The e-mail further stated that the foreign-based investor group controlled so much 3M stock that it constituted an amount greater than "high multiples" of \$100 million, and that they were "propping up various U.S. sectors right now"—essentially implying that 3M's stock price was dependent on those investors. Hamburger and Boulter then pressed the urgency of this threat by stating that the unnamed investors could not be relied on to act "in a western rational way," and that the situation was "a recipe to get a lot worse rapidly" because "3M's actions [in discontinuing BacLite] have created one hell of a storm."

56. Later that same day, Boulter sent a second e-mail to Buckley, in which he sharpened his and Hamburger's earlier threats by declaring that it was "essential that 3M do nothing to further escalate this situation" because it had already "triggered a rather unexpected chain of events." Boulter warned that the foreign investors, whom he claimed were threatening to sell off massive quantities of 3M stock, were "understandably not very happy" and were "simple people of vast means." Boulter asserted that Buckley needed to do something to "help me buy some time" with the investors and, thus, forestall the threatened sell-off.

57. In short, by these e-mails, Boulter threatened 3M with a crippling sell-off of 3M's stock, and commensurate damage to 3M's value, if 3M did not accede to the Boulter Defendants' demands.

3. Certain Vendors sue 3M in London—many do not.

58. In the end, the Vendors refused to consider 3M's plainly reasonable request for their permission to cease the BacLite business in return for a payment of \$1.07 million. Instead of negotiating in good faith, they repeatedly demanded that 3M pay them nearly \$66 million, which was the maximum amount of earn out payments allowed under the SPA. That demand, however, ignored the fact that the earn-out payments were not guaranteed but, rather, were contingent on BacLite's actual performance in the market. That demand bore no rational relationship to the "real world" sales and performance data that 3M had provided Vendors at their request, which showed that 3M's projections of \$1.07 million in sales in 2009 were far more realistic. The recent decision in the BacLite Litigation has proven this point, with the High Court finding that total worldwide sales of BacLite in 2009 would have been \$2,152,000—or about 3% of the implied total sales of which Defendants purported to base their demand prior to litigation.

59. The Vendors' unreasonable monetary demands, and concomitant refusal to negotiate a good faith resolution of the parties' differing value opinions, destroyed any chance for the parties to reach an amicable resolution of the BacLite issue. Instead, in November 2008, the Vendors' attorneys complained that 3M was in breach of the SPA, and withdrew their request that 3M continue to perform under the contract. Certain of the Vendors—Porton Technology and Porton Capital (the "Claimants")—filed the BacLite Litigation in the U.K. High Court in London in December 2008, claiming damages against 3M for breach of contract. Specifically, the Claimants alleged that 3M failed to actively market BacLite, to diligently seek regulatory

approval for BacLite in the U.S. and Canada, and to devote resources to BacLite to a similar overall degree as were given to other products in 3M's Medical Division. In its defense of the lawsuit, 3M denied each of these contentions, and asserted that Claimants were entitled, as a result of 3M's reasonable decision to cease BacLite's sales, to less than \$2 million.

60. The bench trial of the BacLite Litigation was conducted in the High Court between mid-June 2011 and July 18, 2011, with closing arguments conducted on September 29 and October 3-4, 2011. As discussed in more detail below, on November 7, 2011, the High Court issued its reasoned judgment, which rejected Claimants' allegations of impropriety by 3M and its executives, and completely vindicated 3M by finding that Claimants' 60.4% share of BacLite's potential sales in 2009 was only \$1,299,808—almost \$38 million less than what Claimants had demanded at trial, and less than what 3M had offered before trial began to settle the lawsuit.

I. Enter Lanny Davis: Architect Of Defendants' Conspiracy To Coerce 3M Into Wrongly Paying the Boulter Defendants And Others Tens Of Millions Of Dollars.

1. Defendants form a multi-prong scheme to pressure 3M into paying them more than \$30 million.

61. In the months leading up to the trial of the BacLite Litigation, the Boulter Defendants began to realize that their monetary claims in the BacLite Litigation were unsupportable. Accordingly, they looked for ways to exert pressure on 3M, hoping that it could be induced to pay an unjustified amount to "settle" the BacLite Litigation. To do so, they enlisted the Davis Defendants in a scheme to wrongfully pressure 3M into settling the BacLite Litigation for tens of millions of dollars more than the claims were worth.

62. In masterminding Defendants' scheme against 3M, Davis improperly drew on his previous experience representing the company. Specifically in 2000, while at the law firm Patton Boggs, Davis was retained by 3M to provide media, governmental and legal "crisis

management” services in connection with issues 3M was facing. He also provided legal services in connection with a matter 3M was considering bringing before the FDA. 3M ultimately discontinued the relationship but, during his tenure as an attorney and fiduciary for the company, Davis gained access to sensitive and confidential information about 3M’s strategic approach to high-stakes litigation—its “playbook”—particularly with respect to media, government, and public relations. Davis sought to exploit this confidential information by devising a plan to put maximum public pressure on 3M and Buckley while, at the same time, creating the private spectre of business catastrophe with the MoD, in the hopes that 3M would be unwilling to vigorously defend itself.

63. Davis’ scheme consisted of two simultaneous avenues of attack: (i) a comprehensive, international, and unrelenting bombardment of sensational and false accusations against 3M in the global media; and (ii) an attempt to leverage access to the U.K. MoD. Thus, the ultimate goal of this scheme was to create a favorable environment in which to issue 3M an ultimatum—either pay more than \$30 million, or continue to sustain unfair and untrue disparagement in the media, as well as stiff losses of business with the MoD and the U.K. government.

2. **Defendants implement the first phase of their illegal campaign by spreading false and defamatory allegations about 3M and Buckley in FDA regulatory filings and through various media outlets.**

64. In Defendants’ first shot across 3M’s bow, Davis told 3M’s attorney in the spring of 2011 that embarrassing things would be made public about Buckley if 3M did not capitulate in the BacLite Litigation. Around the same period, Davis published an essay in *Forbes* magazine in which he questioned whether Buckley’s dual role as Chairman of the Board and Chief Executive Officer of 3M had led Buckley to make erroneous decisions about BacLite. Of course, Davis offered no proof to support those insinuations. None exists.

65. Davis then planned, coordinated, and implemented a smear campaign that began as a defamatory media blitz against 3M. As detailed below, Davis—acting on behalf of the Boulter Defendants and in conjunction with the other Defendants—used his Washington, D.C. offices as the “command center” for planning and executing Defendants’ unlawfully coercive scheme. Additionally, Davis launched multiple disparaging and false press releases from his Washington, D.C. offices, each of which was knowingly intended to defame 3M, damage its goodwill, and thereby exert pressure on 3M and its CEO.

66. Most of the press releases were co-published by the Davis Defendants and Tetra Strategy, each of which was listed as contact persons for the media. Those same press releases falsely, disparagingly, and maliciously claimed that 3M had dropped BacLite out of “bad faith,” had dealt dishonestly with the FDA and, as a result, put “thousands” of lives at risk. Davis even went so far as to put those fabrications into a so-called “citizen’s petition” to the FDA, after the filing of which he orchestrated public demonstrations in support of the petition attended by purported “victims”—all in the hopes that 3M could be bullied into paying the Boulter Defendants’ baseless monetary demands. That petition and its related public relations campaign, however, were never intended to advocate on an issue of public health or the public interest. Rather, they were planned and intended solely to advance the commercial interests of the Davis Defendants and their clients, the Boulter Defendants, to obtain tens of millions of dollars from 3M that they knew they were not entitled to and would never succeed in obtaining through the BacLite Litigation.

67. Among other things, Defendants publicly and falsely stated that 3M had ulterior financial motives for not pursuing BacLite, despite the fact that BacLite was shown not to be commercially viable and that Defendants already knew that those claims had no evidentiary basis. For example:

- A press release issued by Davis from his Washington, D.C. offices falsely stated that “the decision to shelve BacLite” was a result of “3M’s bad faith” and was an attempt to “evad[e]” investors.¹
- Davis stated at press conference in March 2011 that “3M sabotaged the trial because it was developing a more expensive molecular test to detect MRSA internally called the Simplexa and wanted it to be the first to reach the market.”²

68. Defendants knew that those allegations were false when made, because the Claimants in the BacLite Litigation, represented by the same law firm for which Davis was working at the time, had previously amended their claims in the BacLite Litigation to drop those contentions. Claimants did so after discovery of documents relating to the other 3M product had shown their claim to be completely without any factual support. As a result of their dismissing that claim, Claimants were ordered to pay 3M’s costs in defending it. Additionally, the London court in the BacLite Litigation has now confirmed, in its judgment dated November 7, 2011, that there were a number of “compelling reasons” why “BacLite, as it was, would never have been a commercial success”—not one of which had anything to do with 3M’s attempts to develop any other product.

69. Of course, to Defendants, the truth or falsity of their statements was irrelevant, because those statements were intended solely to advance the commercial interests of the Davis Defendants and their clients, the Boulter Defendants. The statements, therefore, were never meant to advocate legitimate points of view on issues of public health, to advance the public

¹ *As Trial to Begin This Week, Pressure Increases on 3M to Come Clean About Failure to Market Life-Saving Medical Technology*, PR NEWswire, June 13, 2011, available at http://www.bizjournals.com/prnewswire/press_releases/2011/06/13/PH18873.

² This statement was published in: Arundhati Parmar, *British firm says 3M sabotaged a superbug detecting device*, MINNPOST.COM, May 17, 2011, available at http://www.minnpost.com/medcitynews/2011/05/17/28349/british_firm_says_3m_sabotaged_a_superbug_detecting_device; Arundhati Parmar, *3M counters ‘sabotage’ charge with ‘blackmail’ lawsuit*, MEDCITY NEWS, June 21, 2011, available at <http://www.medcitynews.com/2011/06/3m-counters-sabotage-charge-with-blackmail-lawsuit/>.

interest, or to make honest comment on issues that were the subject of a judicial proceeding. Instead, they were meant to extract tens of millions of dollars from 3M that Defendants knew were unjustified and would never be obtained through lawful means.

70. Defendants also attempted to create pressure on 3M and Buckley by falsely accusing them of being responsible for the deaths of MRSA victims. Among other representations, Davis and the Boulter Defendants intentionally, falsely, and maliciously made the following public statements, which they repeated in various press releases, blogs, internet forums, and other media:

- “The U.K. Government and the taxpayers, along with Porton Group, and all those who have suffered from MRSA who could have avoided exposure but for the decision by 3M to abandon it and to refuse to seek approval from the FDA, we’re going forward on their behalf, too.”³
- “We’re talking about poor judgment and we allege that poor judgment was used when the tests, according to the 3M technical committee, were botched in the United States so that American hospitals don’t have the benefit of this product that can detect this deadly superbug that killed more people than AIDS in this last year.”⁴
- “[A] five-year leap ahead that would have occurred had 3M gotten the FDA to approve by simply redoing the tests that were done in Europe and achieve 95 percent starting in 2007, ‘8, ‘9, ’10, and ’11, thousands and thousands and thousands of people who died might be alive today had there been a BacLite before MicroPhage.”⁵

³ Robert Hopper, Esq., International Press Conference at the Ivy Hotel in Minneapolis, Minnesota, at 22 (May 11, 2011) (emphasis added) (Hopper is an employee of Lanny J. Davis & Associates, PLLC).

⁴ Lanny J. Davis, Esq., International Press Conference at the Ivy Hotel in Minneapolis, Minnesota, at 18 (May 11, 2011) (emphasis added).

⁵ Lanny J. Davis, Esq., International Press Conference at the Ivy Hotel in Minneapolis, Minnesota, at 35-36 (May 11, 2011) (emphasis added).

- “Hospital patients in Europe, the U.S., and all over the world could have been unnecessarily exposed to MRSA and possibly exposed to life-and-death risk.”⁶
- “The famous U.S. 3M Corporation today was alleged by the private equity partner of the British Ministry of Defence, the Porton Group [i.e., Davis, himself], to have exhibited ‘negligence and possible recklessness putting lives at risk’ due to 3M’s ‘botched’ 2007 clinical trials of a medical device called ‘BacLite,’ which can detect within five hours the presence of the potentially deadly MRSA/staph ‘superbug.’”⁷
- The *Guardian* newspaper quoted Davis as describing “3M’s failure to retake the FDA tests as a ‘betrayal’ of U.K. taxpayers and MRSA sufferers around the world.”⁸

71. Davis and the other Defendants made the foregoing statements solely to advance the commercial interests of the Davis Defendants and their clients, the Boulter Defendants, and not to advocate on behalf of any public health issue, to advance the public interest, or to make legitimate comment on a matter at issue in a judicial proceeding. Specifically, those statements

⁶ This statement was published in: Janet Moore, *Suit claims 3M muffed approval for superbug test*, STAR TRIBUNE, May 10, 2011, available at <http://www.startribune.com/business/121599274.html>; *Allegations Against 3M Corporation of Possible "Negligence and Recklessness" by The Porton Group, the Equity Partner of the British Ministry of Defence, for "Botched" U.S. Testing of Lifesaving Device to Detect the MRSA "Superbug"/Staph Infection*, PR NEWswire, May 11, 2011, available at <http://www.prnewswire.co.uk/cgi/news/release?id=320610>.

⁷ This statement was published in: *Allegations Against 3M Corporation of Possible "Negligence and Recklessness" by The Porton Group, the Equity Partner of the British Ministry of Defence, for "Botched" U.S. Testing of Lifesaving Device to Detect the MRSA "Superbug"/Staph Infection*, PR NEWswire, May 11, 2011, available at <http://www.prnewswire.co.uk/cgi/news/release?id=320610>. This same article was republished in: Highbeam.com, available at <http://www.highbeam.com/doc/1G1-256095516.html>; istockanalyst.com, available at <http://www.istockanalyst.com/business/news/5138527/allegation-s-against-3m-corporation-of-possible-negligence-and-recklessness-by-the-porton-group-the-equity-partner-of-the-british-ministry-of-defence-for-botched-u-s-testing-of-lifesaving-device-to-detect-the-mrsa-superbug-staph-infection>.

⁸ See Rupert Neate, *3M sued for neglecting new anti-superbug test developed in UK*, THE GUARDIAN, June 11, 2011, available at <http://www.guardian.co.uk/society/2011/jun/12/3m-sued-for-neglecting-anti-superbug-test>. This article was republished in: EXEC REVIEW, available at <http://www.execreview.com/2011/06/3m-sued-for-neglecting-new-anti-superbug-test-developed-in-uk/>.

were intended to coerce 3M into paying the Boulter Defendants tens of millions of dollars that Defendants knew was undeserved. Indeed, Davis and the other Defendants were fully aware that the foregoing statements were patently false when made because they knew that the principal reason that BacLite had proven a commercial failure was that myriad other products—already on the market and widely used by hospitals, clinics and laboratories—were far more cost effective and operationally efficient at detecting MRSA than was BacLite. Davis also knew that the notion that BacLite could be “resurrected” with more marketing effort was nonsense.

72. Indeed, the U.K. Ministries of Health and Defence had publicly confirmed these facts *weeks before* Defendants made their misrepresentation in press conferences and multiple press releases. Specifically, Defendants are aware that Tom Watson (“Watson”), a Member of Parliament (“M.P.”) in the U.K. House of Commons, had, on February 17, 2011, submitted a series of written questions to the U.K. Ministries of Health and Defence aimed at “obtaining transparency” about BacLite. That Watson had submitted these questions was no coincidence, as he has direct ties to Tetra Strategy. Not only does a link to Watson’s political blog appear on Tetra Strategy’s website, but the lobbying firm serves as the “Secretariat” to at least one political caucus that Watson chairs in the House of Commons. Watson was also frequently quoted in various press releases put out by Defendants that repeated their defamatory allegations about 3M’s handling of BacLite. On February 28 and March 2, 2011, the U.K. Ministries of Health and Defence responded to Watson’s queries as follows:

M.P. Watson: To ask the Secretary of State for Health what assessment he has made of the capacity of methods of screening against the MRSA bacterium used by NHS hospitals to detect new strains of the infection; and if he will make a statement.

Ministry of Health: Many laboratory methods are available to national health service hospitals to detect Methicillin-resistant Staphylococcus aureus (MRSA) and these meet the European Commission standards for safety, quality and performance. NHS trust laboratories use simple tests to detect MRSA. These tests

have been available for many years and are capable of detecting the emergence of a new MRSA on this basis.

M.P. Watson: To ask the Secretary of State for Defence (1) what steps he is taking to allow the Defence Science and Technology Laboratory's product BacLite, for screening against the MRSA bacterium, to be marketed in the UK; (2) what assessment he has made of the merits of the Defence Science and Technology Laboratory's product BacLite for the detection of the MRSA bacterium; and if he will make a statement.

Ministry of Defence: . . . The Ministry of Defence (MOD) has not made any assessment of the BacLite product with respect to its MRSA detection capability. Following the liquidation of Acolyte in October 2009, the original intellectual property rights underpinning the failed BacLite product reverted to the ownership of Dst. (the U.K. Defense Science Technology Laboratory). As the development of a product to detect MRSA is not part of the Department's core business, we have no intention to resurrect the BacLite product for such purposes.

73. Thus, it was knowingly false, grossly reckless, malicious, and *per se* defamatory for Defendants to repeatedly and publicly assert that 3M's decision to cease selling BacLite—which its own developer ("the U.K. MoD") had labeled a "failed . . . product"—was a "life-and-death" "betrayal" of patients.

74. Defendants also publicly and falsely accused 3M of the serious infraction of misrepresenting withholding material facts about BacLite to the FDA. For example:

- Davis accused 3M in a press release of "failing to disclose a secret internal technical committee report on testing errors" to the FDA.⁹

⁹ This statement was published in: *Allegations Against 3M Corporation of Possible "Negligence and Recklessness" by The Porton Group, the Equity Partner of the British Ministry of Defence, for "Botched" U.S. Testing of Lifesaving Device to Detect the MRSA "Superbug"/Staph Infection*, PR NEWSWIRE, May 11, 2011, available at <http://www.prnewswire.co.uk/cgi/news/release?id=320610>. This same article was republished in: Highbeam.com, available at <http://www.highbeam.com/doc/1G1-256095516.html>; istockanalyst.com, available at <http://www.istockanalyst.com/business/news/5138527/allegation-s-against-3m-corporation-of-possible-negligence-and-recklessness-by-the-porton-group-the-equity-partner-of-the-british-ministry-of-defence-for-botched-u-s-testing-of-lifesaving-device-to-detect-the-mrsa-superbug-staph-infection>.

- Davis falsely stated in a press release that “a secret report by an 11-member internal 3M technical committee . . . confirmed 3M testers had made fundamental errors that led to unacceptable 50% reliability results.”¹⁰
- Davis accused 3M at a press conference and in press releases of “hiding the technical report” and suggested that this meant 3M must have been “motivated by other things besides selling BacLite under the contract.”¹¹
- Davis falsely asserted that in a press release that 3M “failed to disclose to FDA the contents of [a] secret technical report” about BacLite.”¹²
- Davis falsely accused 3M of “fail[ing] to disclose to FDA the contents of the secret technical report on the multiple errors leading to failure of the U.S. trials” concerning BacLite, and “fail[ing] to disclose possible financial conflicts of interest that might explain such 3M decisions.”¹³ Those statements were repeated in press releases.¹⁴

¹⁰ This statement was published in: *Allegations Against 3M Corporation of Possible "Negligence and Recklessness" by The Porton Group, the Equity Partner of the British Ministry of Defence, for "Botched" U.S. Testing of Lifesaving Device to Detect the MRSA "Superbug"/Staph Infection*, PR NEWSWIRE, May 11, 2011, available at <http://www.prnewswire.co.uk/cgi/news/release?id=320610>. This same article was republished in: Highbeam.com, available at <http://www.highbeam.com/doc/1G1-256095516.html>; istockanalyst.com, available at <http://www.istockanalyst.com/business/news/5138527/allegation-s-against-3m-corporation-of-possible-negligence-and-recklessness-by-the-porton-group-the-equity-partner-of-the-british-ministry-of-defence-for-botched-u-s-testing-of-lifesaving-device-to-detect-the-mrsa-superbug-staph-infection>; see also *PE firm alleges negligence during clinical trial*, ACQ MAGAZINE, May 13, 2011, available at <http://www.acqmagazine.com/news/pe-firm-alleges-negligence-during-clinical-trial.html>.

¹¹ Lanny J. Davis, Esq., International Press Conference at the Ivy Hotel in Minneapolis, Minnesota, at 29 (May 11, 2011).

¹² See, e.g., *Allegations Against 3M Corporation of Possible "Negligence and Recklessness" by The Porton Group, the Equity Partner of the British Ministry of Defence, for "Botched" U.S. Testing of Lifesaving Device to Detect the MRSA "Superbug"/Staph Infection*, PR NEWSWIRE, May 11, 2011, available at <http://www.prnewswire.co.uk/cgi/news/release?id=320610>.

¹³ Tom Lyden, *British Company calls on FDA to Investigate 3M Over BacLite MRSA-Detecting Device*, MYFOX9, May 11, 2011, available at <http://www.myfoxtwincities.com/dpp/news/3m-baclite-mrsa-lawsuit-may-10-2011>.

¹⁴ This statement was published in: *Allegations Against 3M Corporation of Possible "Negligence and Recklessness" by The Porton Group, the Equity Partner of the British Ministry of Defence, for "Botched" U.S. Testing of Lifesaving Device to Detect the MRSA "Superbug"/Staph Infection*, PR NEWSWIRE, May 11, 2011, available at

- As just one example of how Davis’s knowingly false and intentionally disparaging allegations were republished by the media, the Minneapolis Fox News affiliate, in a report titled “British Company calls on FDA to Investigate 3M Over BacLite MRSA-Detecting Device,” said that “lawyers representing a British company [Davis] will ask the FDA to investigate 3M, saying the company deliberately sabotaged their own clinical trials because they had a more expensive product already in the pipeline.”¹⁵ Other news outlets reported on the story in a similar way.¹⁶

75. Again, Defendants’ sole purpose in making those statements was to advance their commercial interests—*i.e.*, to improperly pressure 3M into paying the Boulter Defendants over \$30 million that those Defendants were not entitled to. Indeed, when they made these statements, Defendants knew that they were false. Specifically, Defendants knew that 3M was not “hiding” any “secret” report from either the public or the FDA, because they were also aware

<http://www.prnewswire.co.uk/cgi/news/release?id=320610>. This same article was republished in: Highbeam.com, *available at* <http://www.highbeam.com/doc/1G1-256095516.html>; istockanalyst.com, *available at* <http://www.istockanalyst.com/business/news/5138527/allegation-s-against-3m-corporation-of-possible-negligence-and-recklessness-by-the-porton-group-the-equity-partner-of-the-british-ministry-of-defence-for-botched-u-s-testing-of-lifesaving-device-to-detect-the-mrsa-superbug-staph-infection>.

¹⁵ Tom Lyden, *British Company calls on FDA to Investigate 3M Over BacLite MRSA-Detecting Device*, MYFOX9, May 11, 2011, *available at* <http://www.myfoxtwincities.com/dpp/news/3m-baclite-mrsa-lawsuit-may-10-2011>.

¹⁶ *See, e.g.*, Bob Tita & Sten Sotvall, *Private Equity Firm Wants FDA to Probe 3M’s Tests on Medical Device*, DOW JONES NEWSWIRES, May 11, 2011, *available at* <http://online.wsj.com/article/BT-CO-20110511-706517.html>; *Private Equity Firm Wants FDA To Probe 3M Company’s Tests On Medical Device-DJ*, REUTERS, May 11, 2011, *available at* <http://www.reuters.com/finance/stocks/MMM.N/key-developments/article/2312376>; Allen Costantini, *3M accused of ‘botched’ Superbug Tests*, KARE 11, May 11, 2011, *available at* http://www.kare11.com/news/news_article.aspx?storyid=922811&catid=14; Arundhati Parmar, *U.K. government and a U.K. firm seek \$67M from 3M in lawsuit*, MEDCITY NEWS, June 13, 2011, *available at* <http://www.medcitynews.com/2011/06/u-k-government-and-a-u-k-firm-seek-67m-from-3m-in-lawsuit/>. Arundhati Parmar, *British government, U.K. firm seek \$67M from 3M in lawsuit*, MINNPOST.COM, June 14, 2011, *available at* http://www.minnpost.com/medcitynews/2011/06/14/29142/british_government_uk_firm_seek_6_7_million_from_3m_in_lawsuit; Bob Tita, *Court Trial to Start Over 3M’s Decision to Kill Superbug Test*, DOW JONES NEWSWIRES, June 15, 2011, *available at* <http://online.wsj.com/article/BT-CO-20110614-716834.html>; Sten Stovall, *Update: UK Court Trial Starts Over 3M’s Killing of Superbug Test*, DOW JONES NEWSWIRES, June 15, 2011, *available at* <http://online.wsj.com/article/BT-CO-20110615-707953.html>.

that the FDA had never required 3M to submit any such report to the agency in the first place. Defendants also knew that 3M had never withheld or “hidden” any material information concerning BacLite from the FDA, and had always been completely above-board with the agency with regard to all of its actions in connection with seeking FDA approval to sell BacLite in the U.S., including its decision not to continue to seek such approval with respect to the version of BacLite that it purchased from Acolyte. Defendants nevertheless repeatedly made false and defamatory statements in various media to further their wrongful scheme to disparage 3M and force it to offer the Boulter Defendants an undeserved settlement in the BacLite Litigation.

76. Later, led by Davis’s Washington, D.C. public relations machine, Defendants organized fake public demonstrations ostensibly attended by “victims” purportedly affected by 3M’s decision not to market BacLite. Defendants’ cynical and unconscionable use of those so-called MRSA “victims” to further their own financial self-interest prompted Jeanine Thomas, a MRSA survivor and founder of the legitimate Chicago-based MRSA Survivors Network, to refuse Defendants’ request that she participate in the “staged” U.K. protests because, as she insightfully told reporters:

Everybody was suspicious of what was happening there, that that was not a true protest. . . . Everyone in the U.K. and myself, we suspected that those were not true protestors. Where were they before that? Nobody had seen them. . . . They’re not legitimate, and they’re only used for certain purposes.

Thomas, who works as an MRSA patient advocate, emphasized that MRSA victims have “had to fight for our legitimacy” and pointed out that the cynical demonstrations by “pretend protestors” organized by Defendants impair the ability of groups like hers to advocate for real MRSA victims.

77. Unfortunately, Defendants did not stop there. They then republished their myriad false and defamatory allegations against 3M on a website specifically developed by them and maintained in Washington, D.C., called www.MRSA-INJUSTICE.com. All of these public relations efforts were initiated, coordinated, and directed by and through the Davis Defendants and their staff in Washington, D.C., both on behalf of, and together with, the Boulter Defendants. Moreover, they were never intended to be efforts aimed at advocating a public health issue, a matter of public interest, or as honest comment on a judicial proceeding. Rather, they were intended solely to advance the commercial interests of the Davis Defendants and their clients, the Boulter Defendants, in obtaining tens of millions of dollars in unwarranted payments from 3M.

78. On May 6, 2011, Davis, on behalf of the “Porton Group,” sent a sham citizen’s petition to the FDA requesting that the FDA “investigate the 3M corporation,” “hold an evidentiary hearing,” “undertake a specific investigation of 3M’s financial interests and arrangement regarding its product FastMan/Simplexa,” and “audit 3M’s BacLite trial data.” Defendants knowingly and maliciously made numerous false statements in that petition. For example,

- Defendants state that “Acolyte was sold to 3M for a relatively small down payment of 10 million pounds sterling—with another 41 million pounds to be paid out through the end of 2009.” This was false because Porton was only entitled, under the SPA, to receive an amount based on the actual sales of BacLite, of which 41 million pounds was the maximum possible payout under the SPA, not the minimum.
- Defendants also declare that “hospital patients in Europe, the U.S., Canada, and Australia are not able to gain the protection of BacLite’s ability to detect deadly MRSA within hours, rather than days, as a result of 3M’s inexplicable conduct in botching the U.S. clinical trials.” This was false because MRSA tests were available—specifically, genetic PCR tests and the increasingly faster chromogenic agar tests—that provided results either far more quickly than, or in some cases in about the same time frame as, BacLite could. Indeed, that is one of the reasons BacLite proved a commercial failure. Defendants were aware of these facts, and that the very hospitals that had used or investigated BacLite were using the

other tests. That did not stop them, however, from knowingly and maliciously making their false accusations in the petition.

- Defendants further state that 3M intentionally botched the BacLite clinical trials and abandoned BacLite in order to promote 3M's own MRSA detection product, FastMan. Defendants, however, knew that this allegation was false, as Claimants in the BacLite litigation had already been forced to drop a similar claim when the evidence showed that it was completely unsubstantiated.
- Defendants assert that BacLite was a state-of-the-art product that could detect MRSA within five hours, and that the only other option was a Petri-dish growth method that took 2-3 days. The Defendants further state in the citizen's petition that the abandonment of BacLite "has led to countless unnecessary infections and deaths." Defendants knew that these representations were false. PCR tests for MRSA detection were available that could detect MRSA faster than BacLite. Chromogenic agar tests were also available, many of which could provide results in the same time frame as could BacLite in "real world" clinical settings. Moreover, Defendants knew that there is absolutely no evidence that any infections or deaths have been linked to the lack of BacLite testing, or that any patient has ever gone without MRSA testing because of the unavailability of BacLite. Other tests were available for MRSA detection at every hospital or clinic that used BacLite.
- Defendants verify the allegations in the citizen's petition with the following statement: "The undersigned certifies, that, to the best knowledge and belief of the undersigned, this petition includes all information and views on which the petition relies, and that it includes representative data and information known to the petitioner which are unfavorable to the petition." Defendants knowingly omitted all facts unfavorable to their citizen's petition, including the existence and availability of MRSA screening tests that were faster, or as effective as, BacLite, as well as data showing the lack of commercial viability of BacLite.

79. Defendants filed the sham citizen's petition solely to further their scheme to advance their commercial interests by coercing 3M into making undeserved monetary payments to Defendants. Defendants had no reasonable expectation that the FDA would investigate 3M for its abandonment of BacLite. They knew that the FDA ensures that unsafe drugs and medical devices do not make it to market—and not that commercially unviable products make it to market after the manufacturer decides to cease seeking approval.

3. Defendants implement the second phase of their wrongful scheme by obtaining a private meeting between Boulter and the Secretary of Defence.

80. Defendants then sought to implement the next phase in their scheme of coercion, which was to directly interfere with 3M's existing business with the U.K. Government, as well as 3M's prospects for future business. One way they did so was to "buy" personal access to Fox through Tetra Strategy.

81. Tetra Strategy—and in particular its principal, Lee Petar—had an ongoing relationship with Werritty, who carried business cards stating that he was the "Advisor to the Rt. Hon. Dr. Fox MP." After Davis was brought on board as an attorney and public relations "guru" in the BacLite Litigation, he realized that this relationship could be used as leverage against 3M.

82. Acting on that realization, Defendants sought to have Tetra Strategy put Boulter and Werritty together. Ultimately, Tetra Strategy was successful in doing this. Boulter has claimed that "Tetra Strategy suggested a meeting with Adam Werritty because he was an adviser to Mr. Fox . . . It was: meet the adviser. If you get [to] the adviser, you get to see the boss"

83. Boulter and Werritty first exchanged e-mails, had telephone conversations, and then later met as early as April 2011, all to discuss the reasons Boulter wanted a meeting with Fox. Defendants' efforts finally bore fruit on June 16, 2011, when—at a meeting arranged by Werritty in Dubai at the luxury Shangri-Hotel—Boulter met privately with Fox. While much of what actually occurred at this meeting has subsequently been the subject of public dispute and debate, the MoD has admitted that no MoD advisers were present and that no notes were taken—a violation of MoD policy. It has also been conceded by all parties that Boulter discussed the BacLite Litigation with Fox at this meeting, which lasted over an hour.

4. Defendants use Boulter's meeting with Fox to make extortionate threats against 3M.

84. In the days before Boulter's meeting with Fox (of which 3M was unaware), 3M's attorneys were engaged in settlement talks with Davis, acting on behalf of Defendants, notwithstanding Davis's increasingly shrill media campaign. Unfortunately, the discussions were not fruitful because, as Davis informed 3M's attorney in an e-mail dated June 8, 2011, Defendants had dug in their heels and "would rather litigate for anything less than \$33 million total. . . ." Despite the wide gulf separating the parties, Davis told 3M's attorney that he was interested in continuing settlement discussions. 3M's attorney disagreed that more discussions could be helpful. In an e-mail to Davis dated June 9, 2011, he told Davis in no uncertain terms that 3M would not be responding to the offer, and that settlement discussions were terminated: "We gave it a shot. We're not inclined to respond given the distance between us."¹⁷

85. Defendants, however, wasted no time in capitalizing on Boulter's meeting with Fox. Shortly after the meeting concluded, on June 17, 2011, Davis placed an unsolicited phone call to 3M's attorney. In that call, Davis suggested that 3M's attorney speak directly with Boulter. Davis then followed-up by sending an e-mail to 3M's counsel that specifically gave him authorization to speak with Boulter without Davis's participation.¹⁸

86. The purpose of that "permission" was to allow Boulter, as a foreign citizen and non-attorney, to communicate an illegal extortionate threat. Davis's communications to 3M's counsel were carefully crafted to set the stage for, and bolster the significance of, the threat that Davis knew Boulter intended to deliver (which was undoubtedly discussed with Boulter before

¹⁷ A true and correct copy of Davis' e-mail to 3M's attorney, dated June 8, 2011, and 3M's attorney's response, attached hereto as Exhibit A.

¹⁸ A true and correct copy of Davis's e-mail to 3M's attorney and Harvey Boulter, dated June 17, 2011, is attached hereto as Exhibit B.

the call to 3M's attorney was initiated). This intention is demonstrated in Davis's e-mail to 3M's attorney, which included Boulter as an addressee, in which Davis declared—ostensibly to Boulter—that “I know your meeting with UK Minister of Defense Dr. Liam Fox has given you even stronger reason not to come down very [sic] in \$34m position.”

87. Later that same day, Boulter—acting on Davis's advice—called 3M's attorney. During the conversation, Boulter purported to recount his meeting with Fox, and stated that he was authorized to speak on behalf of all of the Claimants. He then added that he was also authorized by Fox to speak for the MoD. Boulter told 3M's counsel that, during their meeting, Fox had told him that if 3M did not resolve the BacLite Litigation satisfactorily, there would be repercussions for 3M and Buckley. The conversation then abruptly ended because Boulter traveled out of range of cell phone service before 3M's attorney was able to respond. Boulter undoubtedly discussed the specific content of his message with Davis prior to initiating the call with 3M's attorney.

88. Boulter, however, was not finished. On June 18, 2011, he sent an unsolicited e-mail to 3M's attorney that amplified his earlier threat.¹⁹ In that e-mail, Boulter conceded that Claimants' settlement demand of “\$30 mn+” had no basis in the actual merits of the case, noting that the figure had “little to do with the case in the Court” but was, instead, “about losing face.” He then added that “[f]rom my side . . . whether this is \$5mn or \$35mn it is small beer. We manage \$700mn and many of our investors call \$5mn a rounding error.” The content of that e-mail was undoubtedly discussed with and/or approved by Davis before it was sent.

89. In the e-mail, Boulter then made direct threats with respect to 3M's current and future business interests with the U.K. Government, stating that those interests would be

¹⁹ A true and correct copy of Boulter's e-mail, dated June 18, 2011, attached hereto as Exhibit C.

imperiled if 3M did not pay the \$30-plus million he demand. Noting first that he was “being asked, and [had] been given the sole authority by the [British Ministry of Defence] to settle on behalf of them,” he continued that “I had 45 minutes with Dr. Liam Fox, the British Defence Minister on our current favourite topic.” Boulter then commented that, while 3M might prevail on the merits in the BacLite Litigation, it will have won the battle, but lost the war, because the MoD would then likely react by taking steps to deprive 3M of its ability to pursue its business interests with the U.K Government. Specifically, he said that 3M’s trial victory in the BacLite Litigation “might leave [the U.K. Government] quietly seething, with ramifications for a while—they have memories like elephants.” On the other hand, if 3M were to settle the case for “\$30mn+ you will allow [the MoD] to internally save face.”

90. Both Davis and Boulter knew that 3M would have to take seriously threat that Fox, or others within the U.K. Government, would take steps to interfere with 3M’s current and future business relationships with that government. Between January 2008 and September 2011, 3M made nearly \$7.4 million in direct and indirect sales to the very agency, the MoD, that Fox was heading when he and Boulter met. At the time Boulter communicated Defendants’ threat, those sales had been over \$1 million for 2011 alone, which do not include 3M’s sales to U.K. Government agencies other than the MoD.

91. Boulter also communicated another threat from Defendants, this time aimed at Buckley’s planned investiture as a Knight Bachelor. He said that, if the BacLite Litigation was not settled in accordance with his demands, that knighthood would shortly become a subject of embarrassing public debate. Specifically, Boulter declared that “as a result of my meeting today [with Fox] you ought to understand that [U.K. Prime Minister] David Cameron’s Cabinet might very shortly be discussing the rather embarrassing situation of George’s knighthood. It was

discussed today. Governments are big and sometimes decisions in one part are not well coordinated.”

92. Boulter also imbued these threats with a sense of urgency, noting that “[f]rom next week [M]onday there are politics that will likely remove any further chance of settlement.” He underscored the urgency in a follow-up e-mail to 3M’s counsel on June 19, 2011. In that communication, Boulter pressed 3M for immediate capitulation to Defendants’ demands that very day, claiming that he needed to “tell something to Dr. Fox’s office on Sunday night.”²⁰ He also again warned 3M of the “political consequences” that would occur beginning Monday. In addition, he warned against not responding—or as he put it, giving “a ‘radio silence’ message”—because Dr. Fox “is the Secretary of Defence and will not expect that.”

93. In short, Boulter’s e-mails constituted an overt attempt by the Defendants, acting in concert, to blackmail, extort and intimidate 3M by virtue of the threat to interfere not only with 3M’s current and future business interests in the U.K., but also Buckley’s reputation and public recognition, unless 3M capitulated to Defendants’ extortionate demands to pay them tens of millions of dollars in monies that they did not deserve.

94. 3M responded to these wrongful acts by seeking to expose them to public light in the most effective way possible, which was to begin legal action against the Boulter Defendants in New York. Responding to a suggestion by the Boulter Defendants that Washington, D.C. would be a more convenient forum for all parties, 3M decided to dismiss that case and re-file its lawsuit in this Court.

²⁰ A true and correct copy of Boulter’s e-mail, dated June 19, 2011, attached hereto as Exhibit D.

J. Defendants’ “Influence Peddling” Is Exposed: The U.K. Parliament Investigates The Dubai Meeting And Fox Resigns.

95. In the days following the public disclosure of Defendants’ extortionate e-mails, the MoD disputed Boulter’s characterization of his meeting with Dr. Fox. On June 27, 2011, the MoD stated that “Dr. Fox met with Mr. Boulter to discuss an entirely different matter. At no point did they enter into any discussion about this case.”

96. Later, however, Fox admitted that the BacLite Litigation did, in fact, come up between him and Boulter during a meeting in Dubai. On August 7, 2011, a spokesman for Fox publicly retracted the Ministry of Defence’s previous denial and stated that:

During their meeting Mr. Boulter disclosed his involvement in a legal case as a matter of propriety. But Dr. Fox did not enter into a discussion about this in any respect and at no point raised or discussed the issue of a knighthood.

97. According to the MoD, “no government officials were present at the [Dubai] meeting and no minutes were taken, which is against protocol.” On October 9, 2011, Fox told the House of Commons that, “With respect to my meeting with Mr. Boulter in Dubai in June 2011, I accept that it was wrong to meet with a commercial supplier without the presence of an official.” Of course, this type of off-the record conversation was precisely what Defendants had intended to arrange when Boulter began paying Tetra Strategy £10,000 per month as part of a back-channel effort to gain access to Fox in order to pressure 3M pay tens of millions of dollars that they knew was undeserved.

98. On October 8, 2011, Fox—now under intense media scrutiny—told a BBC interviewer that his meeting with Boulter in Dubai was a chance event. According to Fox:

Actually, the defence ministry representative asked for it [the meeting] when they happened to be sitting at a nearby table at a restaurant.

The same day, however, Boulter contradicted Fox’s statement, saying:

The fact that a meeting was going to happen was pre-arranged in April. A meeting with the MoD doesn't happen by chance. I'm sure I wouldn't have just got to meet him [Fox] unless I'd been pre-briefed.

99. On October 14, 2011, Fox was forced to resign as U.K. Minister of Defence as a direct result of the "influence peddling scandal" and revelations that Boulter had met Fox in Dubai and based Defendants' extortionate demands to 3M on the discussions purportedly held at that meeting.

100. Boulter, for his part, has been forced to backpedal on the claims he made to 3M's attorney on June 18 and 19, 2011. For example, faced with the MoD's statement that Boulter and Fox did not discuss "anyone's knighthood," Boulter issued a "correction" on October 14, 2011, to the *Guardian* newspaper's original article on June 20, 2011, that had reported on 3M's lawsuit and set the wider investigation in motion. According to Boulter's new story—and contrary to his e-mails to 3M's attorney—he discussed Buckley's knighthood with another, yet unnamed, individual on or about the same day he met with Fox.

101. Fox, in turn, criticized his political critics for blindly accepting Boulter's reworked version of events, especially at a time when Boulter is facing significant liability for his scheme to coerce 3M (and, thus, would benefit from pointing the finger at others). Fox told the House of Commons on October 19, 2011:

It was particularly concerning that Harvey Boulter, present at the Dubai meeting and subsequently the defendant in a blackmail case, was treated so unquestioningly.

102. Boulter publicly responded on October 20, 2011, admitting that he had discussed the BacLite Litigation with Fox in Dubai on June 16, 2011, but attempting to deflect the blame for the ensuing controversy to Fox. According to Boulter's self-serving statement,

It is most certainly not fair or correct for Fox to again brand me as a blackmailer. He knows very well that I was trying to settle a

legal dispute between 3M and Porton/Ploughshare (part of his former ministry).

103. It remains unclear to what extent, if any, Fox himself sponsored Defendants' actions, Defendants' demands that 3M pay the Claimants over \$30 million, or Defendants' efforts to pressure 3M into an unwarranted settlement. It also remains unclear whether Fox was, as Boulter stated in his e-mail of June 19, 2011, to 3M's attorney, anxiously waiting a response to those demands. What is clear is that Boulter, in engaging in his blackmail and intimidation attempts, was acting for the Boulter Defendants, in concert with, and on the advice of, the Davis Defendants.

104. The known facts are that: (i) Boulter paid a substantial amount of money to Tetra Strategy, a firm with whom Davis was coordinating the anti-3M media attack; (ii) to obtain an unrecorded out-of-protocol meeting between Boulter and Fox; (iii) during which the 3M litigation was discussed; and which, (iv) according to Boulter's e-mails to 3M's attorney, resulted in an understanding that the U.K. Government would act to 3M's detriment if 3M did not pay more than \$30 million to "settle" the BacLite Litigation. Davis was directly involved both in orchestrating that meeting and in directing Boulter's use of that meeting to coerce 3M.

K. 3M Is Vindicated By The U.K. High Court's Judgment In The BacLite Litigation.

105. On November 7, 2011, the High Court handed down a comprehensive 71-page judgment in the BacLite Litigation (the "Judgment"). In a vindication of 3M's positions in that matter, and in this lawsuit, the High Court soundly and thoroughly rejected Claimants' outlandish demands that 3M pay them damages in excess of \$30 million. Instead, the High Court found that, as a result of 3M's decision to cease sales of BacLite in 2008, Claimants, were owed only \$1,299,808—a sum at least \$38 million less than they had demanded in the litigation, at least \$30 million less than they had demanded when making their blackmail threats, and *even less* than what 3M had offered Claimants to settle the BacLite Litigation before trial.

106. The Judgment also vindicated 3M by rejecting the primary allegations that Claimants had leveled at 3M, including: (i) 3M's alleged improprieties in seeking regulatory approval for BacLite in the U.S.; (ii) 3M's alleged failure to appropriately market BacLite from the outset; and (iii) that BacLite would have been a commercial success but for 3M's failures. Many of those false allegations, of course, had been repeated by Defendants as part of their global defamation campaign against 3M. As to 3M's conduct of the FDA clinical trials, the High Court found that "even if the obligation to seek regulatory approval 'diligently' imported an obligation to do so with reasonable care there was no failure to exercise such care in relation to the U.S. clinical trials. I further find that the clinical trials were conducted with reasonable expedition and with reasonable application, industry and perseverance." The High Court also found that "there were good reasons for 3M's decision to suspend the U.S. trials"

107. The High Court further rejected Claimants' allegations that 3M had failed to actively market BacLite after it acquired Acolyte. Specifically, it found that 3M had conducted "a considerable and impressive amount of active marketing" in the U.K. and the European Union, which were the only "Major Markets" defined in the SPA where BacLite had regulatory approval.

108. Finally, as to the critical issue of whether 3M was justified in concluding that BacLite was a commercial failure, the High Court agreed with 3M that "there were compelling reasons why BacLite as it was would never have been a commercial success and why future sales of the product would have been limited" In coming to this conclusion, the High Court noted, among other things, that "[a] very real issue for BacLite was always whether hospitals would be prepared to adapt their workflow [around it] For hospitals with lesser testing needs, it was unlikely to be cost effective. For hospitals with greater testing needs it would not be sufficient." The High Court also found that BacLite's middle-market niche "was increasingly

‘squeezed’ as the slower tests became faster and the faster tests became cheaper.” This acknowledgment, which reflects on facts well-known to Defendants throughout the BacLite Litigation, strongly belies Defendants’ repeated, knowingly false, and malicious allegations that BacLite’s removal from the market put “thousands and thousands” of lives at risk of death from MRSA.

109. The Judgment also soundly rejected Defendants’ damages calculations. The High Court “agree[d] with 3M that the estimation should be based on the . . . actual prospects [for customers] rather than the theoretical estimates of achievable market share, which was [Claimants’ expert’s] approach.” The Judgment accordingly accepted 3M’s expert and factual testimony, and rejected as “unrealistic” Defendants’ figures.

L. The Damage Done

110. As a result of Defendants’ wrongful actions, 3M has suffered harm to its national and international reputation and goodwill and has been deprived of existing and prospective business with the U.K. Government.

111. Defendants’ false, defamatory and scurrilous allegations about 3M have negatively affected 3M’s reputation. For example, their false claim that 3M was responsible for the deaths of MRSA victims because of its decision to cease marketing BacLite was not only stated at Defendants’ Spring 2011 press conference, held in the hometown of 3M’s corporate headquarters, was republished by Defendants in press releases distributed widely to global media outlets and on Defendants’ bogus “MRSA Injustice” website. As a result, those false allegations were repeated in the national and international news media, and were posted on numerous internet forums dedicated to MRSA and other public health concerns. Davis’s press release on March 9, 2011, erroneously declared that 3M’s introduction of BacLite into the U.S. market “could possibly have saved lives,” was posted on the “MRSA Superbug Forum,” with a

comment by the poster to “please spread the word around to raise awareness for fellow patients.” It was also posted on the “MRSA Products Forum,” with the comment that 3M’s “personal interests and corporate decisions negatively affected sale of [BacLite]. . . . Please send this article around, can be found on various news websites. Make awareness of BacLite, make into a success story.”

112. Defendants’ conduct has also caused 3M to suffer pecuniary harm, including lost profits, because Defendants acted on their threats to use their meeting with Fox and/or Boulter’s longstanding relationships with professional civil servants in the MoD and the U.K. Government, to cause 3M to lose current business, as well as future business opportunities, with those entities. Indeed, so entrenched was Boulter within the MoD that, after Defendants’ wrongdoing was exposed by 3M, Boulter declared that his personal contacts within the professional civil service ranks of the Ministry of Defence—who allegedly disfavored Fox—were grateful for Boulter’s role in bringing about Fox’s resignation.

113. As a natural and direct result of these wrongful actions by Defendants, 3M’s total direct and indirect sales to the MoD, standing alone, have gone from approximately £2.1 million in 2010 to an annualized £1.5 million in 2011—a reduction of 25%. Over the same period, 3M’s direct and indirect sales to the U.K. central government declined from £1.5 million to £860,000—a staggering 54% drop. As a specific example, 3M signed an “enabling contract” with the MoD in March 2011 to supply, over the next four years, filters used to protect an individual from dangerous airborne chemicals. The contract specifies that, for “Year 1” alone, the MoD will purchase an “Estimated Quantity” of 10,000 filters, and a “Minimum Order Quantity” of 1,920 units. However, as of September 30, 2011, the MoD had purchased only 406 units from 3M.

114. As the direct and proximate result of Defendants' wrongful actions, 3M has also suffered identifiable losses to its prospective business relationships and contracts with the MoD. For example, 3M has submitted a contract to supply personal protective equipment to the MoD, which has not yet been acted upon, and may be re-bid. That contract is potentially worth at least £150,000. In another instance, 3M's efforts to obtain a contract to supply the MoD with protective headgear, with a value of at least £150,000, has also gone nowhere.

115. In addition to the specific damages identified above, 3M expects that discovery in this matter will reveal additional economic harm that it has suffered as a result of Defendants' illegal actions, all of which will be proven at trial. Accordingly, 3M now brings this lawsuit to force disclosure of the full extent of Defendants' egregious and wrongful conduct, identify the participation of others in Defendants' campaign of intimidation and extortion, and recover the monetary and damages and other judicial relief to which it is legally and justly entitled for the harm it has suffered from Defendants' unlawful conduct.

V.

CLAIMS

A. Count One: Intimidation And Blackmail (United Kingdom Law)

116. 3M incorporates herein by reference the allegations set forth in the preceding paragraphs.

117. Boulter and Tetra Strategy are citizens of the United Kingdom, and all Defendants are subject to U.K. law as agents, accomplices, and co-conspirators.

118. U.K. law recognizes the common law tort of intimidation, which is committed when a defendant compels a plaintiff, by unlawful means, to do some act whereby plaintiff suffers a loss. Intimidation is committed under U.K. law when, for example, a defendant causes

loss to the plaintiff by threat to commit a libel or other tort if the plaintiff does not comply with defendant's demands.

119. Defendants committed the tort of intimidation under U.K. law by the unlawful means of blackmailing 3M in an attempt to compel 3M to pay money to Defendants to which Defendants had no legal right. 3M has been, and continues to be, injured by Defendants' conduct.

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

121. By and through Boulter's and Davis's communications with 3M's counsel, Defendants intended to cause loss to 3M by making unwarranted threats, menaces, and demands that 3M engage in conduct from which it had a legal right to abstain and that 3M give up valuable rights it was entitled to pursue.

122. Defendants made those unwarranted demands without reasonable basis and without a belief either that such grounds exist or that their use of menaces were proper. The Defendants were motivated by a desire to gain for themselves, and an intent to materially harm 3M.

123. 3M took all reasonable steps to mitigate and avoid harm caused by Defendants' threats and interference with 3M's business opportunities, including by filing this lawsuit in an expedited manner, so as to expose and deter Defendants' further improper conduct.

124. As the direct and proximate result of Defendants' wrongful conduct, 3M has sustained injury and, thus, seeks recovery of actual, compensatory, consequential, and punitive damages in an amount to be determined by the trier of fact.

B. Count Two: Tortious Interference With Existing And Prospective Business Advantage

125. 3M incorporates herein by reference the allegations set forth in the preceding paragraphs.

126. 3M currently has a number of valid and ongoing business relationships, as well as additional expected business relationships, with the U.K. Government,

127. Defendants were, at all relevant times, aware of those existing and prospective business relationships.

128. Nevertheless, as detailed above, Defendants have wrongfully, intentionally, maliciously and in bad faith taken actions to interfere with 3M's existing and prospective business relationships with the U.K. Government through unlawful means. Those acts include conducting an orchestrated public campaign of intentionally false and disparaging public statements about 3M's conduct in relation to BacLite. They also include acts aimed at leveraging Boulter's meeting with Fox, as well as Boulter's longstanding personal and commercial relationships with officials and civil servants in the U.K. Government, to cause them to terminate or diminish 3M's current business relationships with the U.K. Government, and cause 3M to lose business opportunities with U.K. Governmental entities. The unlawful purpose of Defendants' actions was to pressure 3M into making unreasonable and unwarranted payments to Defendants by intentionally and improperly interfering with 3M's existing and anticipated business relationships with the U.K. Government.

129. Defendants' actions in this regard constitute tortious interference with 3M's existing and prospective business advantages.

130. Defendants have interfered and continue to interfere, without justification or excuse, with 3M's existing and prospective business relationships, and Defendants have no interest of their own in 3M's relationships and opportunities with which Defendants interfered.

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

132. Defendants' interference with 3M's existing and prospective business relationships has resulted in actual and pecuniary harm to 3M. 3M has suffered diminished business and a loss of the benefits from its current relationships with the U.K. Government and lost future opportunities for business with the U.K. Government that it reasonably commercially anticipated. 3M has also lost opportunities to obtain new business with U.K. Government entities in the future.

133. While the full amount of damages that 3M has suffered as a direct and proximate result of Defendants' tortious interference will be proved at trial, they include, at a minimum, the losses of existing sales and prospective business detailed herein.

134. As the direct and proximate result of Defendants' wrongful conduct, 3M has sustained injury, for which it seeks recovery of actual, compensatory, consequential, and punitive damages in an amount to be determined by the trier of fact.

C. Count Three: Tortious Interference With Contract

135. 3M incorporates herein by reference the allegations set forth in the preceding paragraphs.

136. 3M currently has one or more contracts with the MoD and other agencies or elements of the U.K. Government.

137. Defendants were, at all relevant times, aware of those existing contracts.

138. Defendants intentionally caused a breach of those contracts by, among other things, persuading officials and/or civil servants within the MoD and the U.K. Government to harm 3M's business by reducing or ceasing purchases under those existing contracts or by terminating those contracts in whole or in part.

139. Defendants procured those breaches of contract without justification.

140. Defendants' interference with 3M's contracts has resulted in actual and pecuniary harm to 3M because 3M has suffered, among other things, diminished sales and a loss of the benefits of its contracts with the U.K. Government.

141. While the full amount of damages that 3M has suffered as a direct and proximate result of Defendants' tortious interference will be proved at trial, they include, at a minimum, the losses of existing sales and prospective business identified herein.

142. As the direct and proximate result of the Defendants' wrongful conduct, 3M has sustained injury, for which it seeks recovery of actual, compensatory, consequential, and punitive damages in an amount to be determined by the trier of fact.

D. Count Four: Commercial Defamation

143. 3M incorporates herein by reference the allegations set forth in the preceding paragraphs.

144. 3M is a corporation for profit, and the defamatory statements against 3M made by Defendants, acting for themselves and by and through Davis, have directly impugned the basic integrity and international commercial reputation of 3M's business, and has prejudiced 3M in the conduct of its business.

145. Defendants' false statements have proximately caused damage to 3M's reputation and goodwill by, among other things, calling into question the legality and ethics of 3M's business practices, falsely accusing 3M of having defrauded and deceived the FDA, and falsely

accusing 3M of endangering lives and the public health. 3M's reputation and goodwill, which for 2010 was reported by 3M to exceed \$6.8 billion, has been substantially damaged as a result in an amount to be proved at trial.

146. All of Defendants' wrongful statements are and were defamatory *per se* and, thus, actionable as a matter of law, because they directly imply that 3M is poorly run, used shameful, dishonest, and unethical business practices and/or engaged in deception and illegal conduct. Defendants' wrongful statements that 3M defrauded and deceived the FDA were also defamatory *per se* because they accused 3M of a crime.

147. Defendants' statements concern the existing business practices, property, credit, and/or products of 3M, including BacLite, and were published and republished to the public through press releases, website publications, and public statements.

148. The statements against 3M described herein were published and disseminated by Defendants with actual malice. Defendants acted with knowledge that the statements were false, with reckless disregard as to whether they were false and/or with serious doubt as to their truth. Defendants did not simply fail to conduct an investigation as to the falsity of their statements; they published the statements with ill will and with actual and reckless knowledge of their falsity in an intentional effort to harm 3M's business reputation and to pressure 3M into making an unwarranted payment to them of tens of millions of dollars.

149. At a minimum, Defendants' publication of those defamatory statements against 3M constituted negligence. Defendants knew, or should have known, that the defamatory statements described herein were false when made, and that Defendants were not privileged to make them. Defendants knew, or should have known that 3M had not withheld any BacLite technical report from the FDA, that there was no "secret report," that 3M had not failed to

disclose any conflicts of interest to the FDA, that 3M was not the cause of any deaths by MRSA victims, and that Buckley had not unilaterally intervened in 3M's decision not to market BacLite.

150. 3M has also been prejudiced in the conduct of its business by Defendant's unlawful actions, and as a direct and proximate result suffered special damages, as identified herein, the full amount which will be proved at trial.

151. 3M is also entitled to an award of exemplary or punitive damages in an amount to be determined by the trier of fact because Defendants' actions—including, among other things, the intentional publication of knowingly false allegations that 3M's actions had cost "thousands" of lives of MRSA victims and had hidden information from the FDA—were outrageous, reckless, wanton, taken with ill will, and committed with a willful disregard of 3M's rights.

152. As the direct and proximate result of the Defendants' wrongful conduct, 3M has sustained injury, for which it seeks actual, compensatory, consequential, and punitive damages in an amount to be determined by the trier of fact.

E. Count Five: Injurious Falsehood And Business Disparagement

153. 3M incorporates herein by reference the allegations set forth in the preceding paragraphs.

154. The defamatory statements against 3M made by Defendants, acting for themselves and by and through Davis, have directly impugned the integrity and international commercial reputation of 3M's business, caused 3M to be brought into contempt before its customers, investors, business partners and the general public, and caused damage to 3M's reputation and goodwill by, among other things, calling into question the legality and ethics of 3M's business practices and falsely accusing 3M of having defrauded and deceived the FDA and endangering lives and the public health.

155. Defendants' statements concerning the existing business practices, property, and products of 3M, including BacLite, are and were published and republished without privilege to the public through press releases, website publications, and public statements.

156. The statements against 3M described herein were published and disseminated by Defendants with knowledge that the statements were false, or with reckless disregard as to whether they were false. Defendants knew or recklessly disregarded the truth that 3M had not withheld any BacLite technical report from the FDA, that there was no "secret report," that 3M had not failed to disclose any conflicts of interest to the FDA, and that 3M was not the cause of any deaths by MRSA victims.

157. Defendants did not simply fail to conduct an investigation as to the falsity of their statements; they published the statements with ill will and with actual and reckless knowledge of their falsity in an intentional effort to damage 3M's business reputation and to pressure 3M into paying them tens of millions of dollars.

158. As a natural, direct, and proximate result of Defendants' wrongful actions, 3M has suffered special damages, as identified herein, the full amount which will be proved at trial.

159. 3M is also entitled to an award of exemplary or punitive damages in an amount to be determined by the trier of fact because Defendants' actions—including, among other things, the intentional publication of knowingly false allegations that 3M's actions had cost "thousands" of lives of MRSA victims and had hidden information from the FDA—were outrageous, reckless, wanton, taken with ill will, and committed with a willful disregard of 3M's rights.

160. As the direct and proximate result of the Defendants' wrongful conduct, 3M has sustained injury, for which it seeks actual, compensatory, consequential, and punitive damages in an amount to be determined by the trier of fact.

F. Count Six: Breach Of Fiduciary Duty

161. 3M incorporates herein by reference the allegations set forth in the preceding paragraphs.

162. Lanny Davis, specifically, and the Davis Defendants, generally, continue to owe Davis's former client 3M fiduciary duties as a result of Davis's prior legal representation of 3M—including the duty to preserve client confidences and not to use confidential information gained through their representation of 3M against it.

163. During the time that Davis provided confidential legal services for 3M, Davis was given access to, and learned of 3M's confidential information, including information about 3M's litigation strategies, crisis management approach, and media strategies.

164. Davis breached the fiduciary duties he owes to 3M by, among other acts, using the confidential information he gained by virtue of his former legal representation of 3M to assist Defendants in developing and conducting a false and defamatory media campaign against 3M—which included the dissemination of knowingly false and disparaging statements about 3M—assisting Claimants' litigation strategy against 3M, and assisting the Boulter Defendants in their attempts to extort, blackmail, coerce and intimidate 3M into paying an unreasonable amount to settle the BacLite Litigation.

165. As the direct and proximate result of the Defendants' wrongful conduct, 3M has sustained injury, for which it seeks actual, compensatory, consequential, and punitive damages in an amount to be determined by the trier of fact.

G. Count Seven: Aiding And Abetting

166. 3M incorporates herein by reference the allegations set forth in the preceding paragraphs.

167. Defendants are liable to 3M for their wrongful acts described in each and every one of the counts enumerated above.

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

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

170. As the direct and proximate result of the Defendants' wrongful conduct, 3M has sustained injury, for which it seeks recovery of actual, compensatory, consequential, and punitive damages in an amount to be determined by the trier of fact.

H. Count Eight: Civil Conspiracy

171. 3M incorporates herein by reference the allegations set forth in the preceding paragraphs.

172. Defendants and others acted together to accomplish an unlawful object or a lawful object by unlawful means, including each and every one of the counts enumerated above.

173. Defendants had a meeting of the minds whereby they decided to take steps to accomplish their unlawful acts and omissions. Defendants, acting in concert and pursuant to their agreement, committed one or more unlawful, overt acts in furtherance of this conspiracy. Those acts included, but were not limited to, conducting a coordinated media and public relations campaign aimed at spreading knowingly false and defamatory allegations about 3M's conduct with regard to BacLite, communicating extortionate threats to 3M via telephone and e-mail, and breaching the fiduciary duty owed by Davis to 3M.

174. The purpose of the conspiracy was to injure 3M for the financial gain of Defendants. Specifically, the conspiracy was designed to intimidate, blackmail, pressure, and

coerce 3M into paying tens of millions of dollars to settle the BacLite Litigation, when the case was actually worth a fraction of that amount.

175. As a direct and proximate result of Defendants' civil conspiracy, 3M has sustained injury, for which it seeks recovery of actual, compensatory, consequential, and punitive damages in an amount to be determined by the trier of fact.

VI.

REQUEST FOR RELIEF

WHEREFORE Plaintiff 3M requests that the Court enter judgment in Plaintiff's favor and against Defendants, jointly and severally, awarding Plaintiff 3M the following relief:

- a. Actual damages, including compensatory and consequential damages, in an amount to be determined at trial, but not less than \$75,000;
- b. Special damages in an amount to be determined at trial;
- c. Exemplary or punitive damages;
- d. Prejudgment and post-judgment interest at the highest lawful rates;
- e. Costs and disbursement incurred in prosecuting this action, including reasonable attorneys' and experts' fees;
- f. Permanent injunctive relief prohibiting Defendants from interfering with 3M's contracts and prospective business relations with the Government of the United Kingdom and its various Ministries, and further prohibiting Defendants from interfering with the award of knighthood to Buckley or with his status as a knight bachelor; and
- g. Such other and further relief as this Court deems just and proper.

VII.

DEMAND FOR JURY TRIAL

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

Dated: December 9, 2011

Respectfully submitted,

By: /s/ Kenneth J. Pfaehler

Kenneth J. Pfaehler

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of December, 2011, I caused a true and correct copy of the foregoing 3M COMPANY'S FIRST AMENDED COMPLAINT AND JURY DEMAND on all counsel of record by emailing a copy of same, and by U.S. Mail, first class, postage prepaid.

/s/ David I. Ackerman