

Company As Beneficial Plaintiffs Slander Litigation Update Investors Hub
Court Filed Factum and Motion For Final Judgment and Export of Judgment To USA

TORONTO, January 18 - Mina Mar Group Inc www.minamargroup.com (MMG) the issuers' mergers and acquisitions firm and Mina Mar Marketing Group www.minamargroup.net (MMMGM) the issuers' investor relations firm is providing the following updates on behalf of its clients, ahead of the January 20, 2010 scheduled court date.

Mina Mar Group has a large following and is providing this general update on its clients' activities, which may or may not be newsworthy. To that end, MMG reminds its followers and readers to never invest in any stock featured on our site, emails or press releases unless you can afford to lose your entire investment. MMG and MMMGM its employees are NOT registered as investment advisors in any jurisdiction whatsoever.

On December 2, 2009 the Plaintiff(s) swore an affidavit for the motion for judgment which is scheduled for this Wednesday the 20th of January 2010. As this is not a liquidated claim for a certain sum of money (such as a debt or a promissory note) the court/judge will require detailed submissions and legal argument before rendering a decision.

The attached factum are in support of the same.

Although the motion for judgment is undefended, the judge will scrutinize the legal and factual basis of all of the relief Mina Mar Group and its clients have requested. Depending on the judge, he or she will apply a careful review of the law before making any decision. The decision will be a decision of record and as such it does become part of our body of law. In fact the leading case in Canada, in this area, Barrick Gold v. Lophandia was not defended on appeal and a key legal ruling was made nevertheless. Mina Mar Group lawyers have also supported at least twelve other legal issues which a judge will scrutinize before he hands down a judgment.

We provide this as a backdrop for the Factum. We have prepared and have filed these documents. The Plaintiffs taunt and challenge the stock bashers and Investors Hub to come to court and defend their actions, their authors postings, including market makers we believe are behind these activities. Mina Mar Group and its clients are eager to cross examine under oath these posters why they disseminate false and misleading information, exploit the novice and unsuspecting shareholders and of course Mina Mar Group and its clients would answer any legitimate question about any business activities. Investors Hub when presented with this opportunity simply walked away from the challenge and the opportunity.

There are supporting cases and law for the contents of the Factum. We have addressed every legal aspect of the case, as a judge will want to satisfy himself on every question. The Factum starts with a 6-7 page summary of the facts of the case and then a detailed analysis of the law which the judge will be looking for. We have also included the Index for a list of all the issues in the Factum.

Mina Mar Group does not want to go no further with this, with respect to damages. A special damages for loss of business and business value, will require much more evidence and a short trial. Mina Mar Group has declined to go through that evaluation of your losses and are content with the current motion for a restraining order, for general damages and perhaps some punitive damages.

The reason for this is that Investors Hub has organized itself in an array of off shore companies cross ownerships and structured itself to be “judgement proof” and set up in such a way to out of the reach of creditors and authorities. Our investigation concluded that there is no real office, no real “business” in “Investors Hub”. There is no “real operation” or a “business” other than a web site a PO box forwarded mail that is re forwarded from the litigants parents house to shady individuals with a chequered past. It is organized similar to a cell operating a terrorist type activity. The revenues generated by this Investors Hub entity are slim and whatever is generated the principals “live off of”. It appears to the Plaintiff that the majority of revenues of Investors Hub is made from stock manipulation(s) posting false and misleading information which uses trickery on novice new and unsuspecting shareholders. The USA authorities seem to share the same view as Mina Mar Group and have began their investigation(s) Some of the damages caused to other issuers have been massive. It appears that the only significant benefactor in these stock bashings have been the Defendants. .

<http://blogs.money.aol.ca/2009/05/21/felony-criminal-charges-for-investorshubcom-operator-matthew-brown-in-penny-stock-scheme>

<http://www.sec.gov/litigation/litreleases/2009/lr21053.htm>

<http://www.sec.gov/litigation/complaints/2009/comp21053.pdf>

<http://www.sec.gov/news/press/2009/2009-117.htm>

http://www.marketrap.com/article/view_article/9183/sec-accuses-matthew-brown-from-advfns-investor-hub-of-penny-stock-manipulation

<http://pennystocker.com/sec-charges-8-people-including-matthew-brown-from-investors-hub-bill-panetta-of-breakouttrading-in-a-penny-stock-manipulation-scam>

<http://www.thewallstreetwolves.com/2009/05/matt-brown-founder-of-stock-scam-site.html>

<http://www.ripoffreport.com/Con-Artists/Investorshub-com-Inv/investorshub-com-investors-hub-ds4ce.htm>

We will advise the issuers followers of the result or interested parties may attend the court in Toronto Canada for the motion hearing on the 20th of January.

Mina Mar Group will disperse any proceeds received to its clients. Some of the clients (issuers) have indicated that some of these proceeds may be paid out to their followers on a cash basis. Once the judgement is exported to USA followers of Investors Hub may experience outages and temporary disruption in service as the creditor(s) move in to cease those assets.

As this is worth repeating Mina Mar Group has a large following and is providing this general update on its clients' activities, which may or may not be newsworthy. To that end, MMG reminds its followers and readers to never invest in any stock featured on our site, emails or press releases unless you can afford to lose your entire investment. MMG and MMMG its employees are NOT registered as investment advisors in any jurisdiction whatsoever. Mina Mar Group and its clients remind the followers of any client or any other for that matter not to rely upon information obtained from chat boards for their investment advice. Web sites such as Investors Hub are considered dangerous for the aforementioned reasons and reasons that are apparent on their face. Although the majority of new and novice shareholders have acknowledged our efforts the posters or bashers on this Investors Hub are being ignored and by many their posts are treated as raging lunatics locked up in an asylum. Many shareholders have simply stopped visiting that web site altogether. These posters are now looking for new victims and new fertile ground by starting to post under different pseudo names on Yahoo Google and other chat boards. Mina Mar Group acknowledges Yahoo chat board efforts of deleting these self serving malicious posts and applauds other chat boards which have began taking the same stance.

Mina Mar Group again challenges Investors Hub and its posters –stock bashers- to simply come to court and tell their “case” to a judge.

A similar action is planned and being organized against certain market makers and those Mina Mar Group compliance and investigative research department believes are behind naked shorting of some of its clients.

Similarly Mina Mar Group is contacting other non client issuers to join it and its clients in a separate class action law suit.

ORDER REQUESTED

- a. AN ORDER that the Defendants Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. jointly and severally pay to the Plaintiffs Mina Mar Group Inc. and Miro Zecevic \$2,000,000.00 for general damages for libel and defamation;
- b. AN ORDER that the Defendants Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. jointly and severally pay to the Plaintiffs Mina Mar Group Inc. and Miro Zecevic \$1,000,000.00 for aggravated and punitive damages;
- c. AN ORDER that the Defendants Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. jointly and severally pay to the Plaintiffs Mina Mar Group Inc. and Miro Zecevic \$1,000,000.00 for special damages;
- d. AN ORDER that the Defendants Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. jointly and severally pay to the Plaintiffs Mina Mar Group Inc. and Miro Zecevic post judgment interest pursuant to S. 129 of the Courts of Justice Act.

- e. A MANDATORY order that the Defendants, Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. apologize and publicly retract the slanderous statements made against the Plaintiffs in any manner this Honourable Court deems fit;
- f. AN ORDER that Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. provide the names and addresses of the its following members and posters:

 Stratey, itlogic, Jim Bishop, Janice Shell, Universal Trader, Ratso, Livingstyle, Soyelpato, AccipiterO, strongtower, snow, peraire, and Fast Flyer 03, Strongtower, 1summer, AccipiterQ, bob41, Buckley, soyelpato, greedy malone, rolltide, marine-1, firelane, anonymously named John Doe (the foregoing collectively known as “The Posters”).
- g. A permanent injunction restraining the Defendants, Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. from making or allowing to be made and from disseminating, posting on the **Internet** or on any web site or from publishing further defamatory statements concerning the Plaintiffs, Miro Zeceivc and Mina Mar Group Inc. or its officers, directors or employees, any statements or broadcast, whether orally or in writing in any newspaper, broadcast or electronic publication or on theirs web site(s), about the Plaintiffs.
- h. An Order that the Defendants, Matt Brown, Robert Zumbrunnen by themselves, their agents, servants or otherwise be restrained from publishing, or causing to be published, on the internet or by any other method or medium, any defamatory statement referring in any way to the Plaintiffs, Miro Zeceivic or Mina Mar Group Inc. whether by name, pseudonym, address, photograph or other means of identity. The order will prohibit these Defendants from publishing or causing to be published any such statement in their own name, in the name of any nick names, pseudonyms, or aliases that they now use, have used, or may use in the future. The Defendants, Matt Brown, Robert Zumbrunnen are further prohibited from publishing or causing to be published any such statement about the Plaintiff, anonymously, or in the name of another person.
- i. An Order that the Defendants, Investors Hub, Matt Brown and Robert Zumbrunnen take any and all steps and make best efforts to remove and filter all past and any future negative and defamatory references about the Plaintiffs which appear on any web site, blog or broadcast;
- j. An Order that the Defendants, Matt Brown, Robert Zumbrunnen pay to the Plaintiffs
 - i. For general damages the amount of \$200,000.00
 - ii. For aggravated and punitive Damages the amount of \$100,000.00

- k. An Order that the Defendants pay to the Plaintiffs costs of this motion and the entire action on a substantial indemnity basis in the amount of \$25,000;

Such further and other relief as this Honourable Court deems just.

Get the Facts Right. The issuer works hard to continue to keep our shareholders informed, and news is updated frequently via Press Releases, Pink Sheet <http://www.pinksheets.com/> filings, and updates to our websites. Other websites not sponsored, or recognized by the Company may provide misleading or disinformation to investors in order to manipulate trading patterns for a given stock. Always look for original content from trusted sources, rather than relying on 'excerpts' or discussion boards that may not give you the whole story. The Securities and Exchange Commission requires financial institutions or brokerage firms to provide their clients with documentation, describing the risks of investing in penny stocks.

ABOUT Mina Mar Group

Mina Mar Group (MMG) is a corporate consultancy firm that specializes in small cap or OTC market business services, including public markets in Frankfurt, Germany, and UK. Our focus is on growth companies or emerging markets such as those in South America, Eastern Europe, and Mainland China. We provide our clients with comprehensive advisory, and consulting services regarding mergers and acquisitions, including reverse mergers of private companies into publicly traded entities, and special purpose companies (SPC) offshore. MMG also offers a full suite of related ancillary services subsequent to the successful completion of a reverse merger, including private placements, PIPE offerings and Pink Sheets Adequate Disclosure documentation, various SEC regulatory filings and a broad range of other corporate governance matters. We license our brand name and back office as a white label solution which allows professionals in the industry to tap into the MMG back office to deliver high quality solutions on a private label basis. We also operate a small shareholders' advocacy division which seeks out publicly traded companies in distress or where the minority shareholders' positions are in peril, and assists as a guardian with interim and or turn-around management. Through its wholly owned subsidiary, Mina Mar marketing Group MMMG (www.minamargroup.net), we offer publicly traded companies services such as investor Relations, and investor awareness.

The information contained herein is based on sources which we believe to be reliable but is not guaranteed by us as being accurate and does not purport to be a complete statement or summary of the available data. The owner, publisher, editor and their associates are not responsible for errors and omissions. They may from time to time have a position in the securities mentioned herein and may increase or decrease such positions without notice. Any opinions expressed are subject to change without notice. MMG encourages readers and investors to supplement the information in these reports with independent research and other professional advice. All information on featured companies is provided by the companies profiled, or is available from public sources and MMG makes no representations, warranties or guarantees as to the accuracy or completeness of the disclosure by the profiled companies or the information contained herein. MMG and its affiliates are not registered investment advisors or broker-dealers. MMG has been advised that the investments in companies profiled are considered to be high risk and use of the information provided is at the investor's sole risk. MMG also advises that the purchase of such

high risk securities may result in the loss of some or all of the investment. Investors should not rely solely on the information presented. Rather, investors should use the information provided by the profiled companies as a starting point for doing additional independent research on the profiled companies in order to allow the investor to form his or her own opinion regarding investing in the profiled companies. Factual statements made by the profiled companies are made as of the date stated and are subject to change without notice. Investing in micro-cap securities is highly speculative and carries an extremely high degree of risk. It is possible that an investor's entire investment may be lost or impaired due to the speculative nature of the companies profiled. MMG makes no recommendation that the securities of the companies profiled should be purchased, sold or held by individuals or entities that learn of the profiled companies through MMG. MMG owners may or may not hold positions in the companies that are profiled. The information contained herein contains forward-looking information within the meaning of Section 27A of the Securities Act of 1993 and Section 21E of the Securities Exchange Act of 1934 including statements regarding expected continual growth of the company and the value of its securities. In accordance with the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 it is hereby noted that statements contained herein that look forward in time which include everything other than historical information, involve risk and uncertainties that may affect the company's actual results of operation. Factors that could cause actual results to differ include the size and growth of the market for the company's products, the company's ability to fund its capital requirements in the near term and in the long term, pricing pressures, unforeseen and/or unexpected circumstances in happenings, pricing pressures, etc. Investing in securities is speculative and carries risk. Past performance does not guarantee future results.

CONTACT: www.minamargroup.net/helpdesk

Court File No. CV-08-364413-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

**MINA MAR GROUP INC. and MINA MAR GROUP INC. (of the USA)
and MIRO ZECEVIC**

Plaintiffs

and

**INVESTORSHUB.COM INC. MATT BROWN,
ROBERT ZUMBRUNNEN, and ADVFN PLC**

and Stratey, itlogic, Jim Bishop, Janice Shell, Universal Trader, Ratso, Livingstyle, Sovelpato, AccipiterO, strongtower, snow, peraire, and Fast Flyer 03, Strongtower, 1summer, AccipiterQ, bob41, Buckley, sovelpato, greedy malone, rolltide and John Doe (collectively known as the Posters).

Defendants

FACTUM

I - THE FACTS

1. Miro Zecevic (“Miro”) and Mina Mar Group Inc. (“Mina Mar”) are the Plaintiffs and the Moving Parties; both are resident in Ontario.

- Paragraphs 1 and 2 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

2. Mina Mar carries on business as an investors’ relations firm for a roster of publicly traded companies. It deals with the questions and inquiries from thousands of shareholders.

- Paragraph 2 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

3. The Plaintiff, Mina Mar Group Inc. (of the USA, hereinafter also called Mina Mar) is a Texas, USA incorporated company. Its claims have been wholly discontinued against all of the Defendants.

- Paragraphs 3 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

4. Miro Zecevic is an officer and director of Mina Mar.

- Paragraphs 4 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

5. The Defendant/Respondent, InvestorsHub.com Inc. (“InvestorsHub”) is an internet business information web site which disseminates information to the public about a variety of publicly traded companies. InvestorsHub is an American company. Its principal place of business is in the states of Missouri and Florida.

- Paragraph 5 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

6. The Defendant, ADVFN PLC. (“ADVFN”) is also an internet business information web site which disseminates information to the public about a variety of publicly traded companies. ADVFN is the parent corporation of InvestorsHub and has its principal place of business in Essex, United Kingdom. ADVFN owns, operates and controls InvestorsHub.

- Paragraph 6 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

7. The other Defendants/Respondents, Matt Brown (“Brown”) and Robert Zumbrunnen (“Zumbrunnen”) are officers and directors of InvestorsHub.com Inc. and along with ADVFN are the controlling minds of InvestorsHub. They control, edit and publish the content of the web site, the membership and the postings made by its membership.

- Paragraph 7 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2010.

8. The roster of Mina Mar’s clients includes publicly traded companies who rely on Mina Mar in order provide information with respect to their investments, company news, financing and stock values.

- Paragraph 9 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

9. Among Mina Mar’s many clients are companies with names such as Hat Trick Beverages (trading symbol HKBV), Good Life China (GLCC), Monarch Corporation (MONA) and many others.

- Paragraph 10 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

10. Zumbrunnen, InvestorsHub and Brown, have edited, published, controlled, disseminated, broadcast, have made numerous libellous attacks and have allowed and encouraged such libellous attacks against the Plaintiffs using the web site of InvestorsHub.com. The postings on InvestorsHub’s web site by its members are malicious, scurrilous, libellous and defamatory attacks against the Plaintiffs. They have refused to refrain from such attacks despite the Plaintiffs’ requests that they do so.

- Paragraph 11 and 12 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

11. The widely read defamatory statements have damaged Zecevic's reputation and that of Mina Mar's. With the approval and knowledge of Zumbrunnen, Brown and InvestorsHub a number of members (the Posters) of the InvestorsHub web site continuously place criticism of Mina Mar and Zecevic on the internet, in full view of the investing public. In so doing they have demonstrated a pre disposition to impose irreversible harm to Mina Mar and Zecevic. None of the defamatory statements are true and nor is there any justification or privilege which would allow the publication and dissemination of the defamatory statements.

- Paragraph 13 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

12. Some of the members of InvestorsHub use the following names in order to defame Mina Mar and Zecevic:

Strategy, itlogic, Jim Bishop, Janice Shell, Universal Trader, Ratso, Livingstyle, Soyelpato, AccipiterO, strongtower, snow, peraire, and Fast Flyer 03, 1summer, AccipiterQ, bob41, Buckley, soyelpato, greedy malone, rolltide, Marine-1, Firelane, among others.

Each of these is a registered member whose postings are reviewed and approved by the moderators of InvestorsHub. Alternatively the postings which are made by these members can be prevented or removed by Zumbrunnen, Brown and InvestorsHub however, these Defendants have refused to do so. Through its members' contract InvestorsHub has control over the content of the postings however it has refused to use its own membership agreement in order to eliminate the defamatory content which has so damaged Mina Mar and Zecevic.

- Paragraph 15 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

13. Since 2006 to date, Brown, Zumbrunnen and InvestorsHub and its members have been on a unilateral, unrelenting and malicious campaign of slander and libel against Mina Mar and Zecevic. Zumbrunnen, Brown and InvestorsHub and its members have written and have posted and have acquiesced to the publication and broadcast of libellous content in a campaign of misleading and damaging untruths against Mina Mar and Zecevic. Thousands of such statements have been posted for the public to see.

- Paragraph 17 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

15. On July 4 and July 24, 2008 Mina Mar and Zecevic delivered notice to Brown, Zumbrunnen and InvestorsHub, for an apology and a retraction of the defamatory posts. Mina Mar also requested that the Defendants provide the names and addresses of members who had posted the defamatory statements. All of the Defendants have refused to do so and have continued with malice, to defame the Mina Mar and Zecevic.

- Paragraph 21 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

16. InvestorsHub commenced similar and parallel proceedings in Florida. It also brought a motion in Ontario for an order for the stay of this action on the basis of a lack of jurisdiction. However the court in Florida ruled that it did not have jurisdiction over the matter of InvestorsHub's action and the court in Ontario has dismissed InvestorsHub's motion and awarded costs in excess of \$13,000.00.

- Paragraph 16 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

17. Mina Mar and Zecevic have lost an Ontario candy company and an Ontario travel wholesale company, as well as a China biochem company and a Cost Rica developer; most recently Mina Mar has lost a significant deal with two travel wholesale companies who had intended to be listed on the OTCBB and the Frankfurt Exchanges. Mina Mar stood to earn fees in excess of \$2.50 million dollars however on the basis of the internet defamation, the officers and shareholders of the travel wholesale companies have declined to deal with the Mina Mar and Zecevic.

- Paragraph 24 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

18. Zecevic and Mina Mar's lawyer, Frederick Simon Hawa has advised that he has been informed by a significant tour and charter aircraft operator in Ontario that they have, after extensive consultations and interest in Mina Mar's services decided not to deal with Mina Mar because of the online defamation. Mina Mar stood to earn at least \$2.50 million for fees for the planned reverse merger to make these companies public traded entities.

- Paragraph 25 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

19. Emails from a certain Costa Developers, a luxury home developer, dated March 24, 2009 demonstrate that they have declined Mina Mar's services because of the negative publicity and defamatory content so widely disseminated by the Defendants. Mina Mar stood to earn at least two million dollars from this reverse merger transaction.

- Paragraph 27, 28 and 29 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

20. Besides providing the shell company as a vehicle for the purpose of a reverse merger into a publicly traded company, Mina Mar provides ongoing legal, SEC and Exchanges filings, and accounting services for the companies; it also conducts Investor Relations and awareness services as the client develops its business on a new scale. It is not untypical for Mina Mar to generate \$500,000 to \$5,000,000 in equity financing for the newly merged public entity. All activities are regulated by the Securities Exchange Commission.

- Paragraph 30 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

21. Mina Mar and Zecevic's reputations in the industry and the public at large have to remain impeccable otherwise they could not generate the trust and confidence which clients demand.

- Paragraph 31 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

22. On the junior public exchanges such as the Pink Sheets and the OTCBB where all of Mina Mar's clients are listed and traded, InvestorsHub serves as the premier web portal for the dissemination of information. Defamatory content ruins reputations and diminishes clients' willingness to deal with Mina Mar and Zecevic.

- Paragraph 33 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

II - LEGAL ISSUES

1. Does the Ontario court have jurisdiction over the subject matter of the claim?

- The Florida Courts have denied the Defendants jurisdiction over similar and parallel proceedings.
 - The Ontario courts have dismissed the motion of the Defendants to stay these proceedings on the basis of a lack of jurisdiction
 - There is a substantial connection between the Plaintiffs, the cause of action, the damages and the Province of Ontario
 - The Ontario Superior Court of Justice is the forum non conveniens for these proceedings.
2. Does the Ontario court have the jurisdiction to grant injunctive over a foreign party?
- See below for the law with respect to injunctive relief
3. Can the Ontario court issue a restraining order against Matt Brown, Robert Zumbrennen and InvestorsHub.com Inc.
- See Below
4. What is the nature and the quantum of the damages which may awarded to Miro Zecevic and Mina Mar Group Inc.
- See below
5. Can the Court compel the disclosure of the names of the individual posters
- See below
6. For the purpose of liability are the Defendants publishers or intermediaries
- See below

III - THE LAW

1. LIBEL AND SLANDER ACT, R.S.O. 1990, C. L.12

Definitions

1.--(1) In this Act,
 "broadcasting" means the dissemination of writing, signs, signals, pictures and sounds of all kinds, intended to be received by the public either directly or through the medium of relay stations, by means of,

(a) any form of wireless radioelectric communication utilizing Hertzian waves, including radiotelegraph and radiotelephone, or

(b) cables, wires, fibre-optic linkages or laser beams,
 and "broadcast" has a corresponding meaning; ("radiodiffusion ou télédiffusion",
 "radiodiffuser ou télédiffuser")

2. Defamatory words in a newspaper or in a broadcast shall be deemed to be published and to constitute libel.

2. RULE 17.02 OF THE RULES OF CIVIL PROCEDURE :

A party to a proceeding may, without a court order, be served outside Ontario with an originating process or notice of a reference where the proceeding against the party consists of a claim or claims,

.....

(g) in respect of a tort committed in Ontario;

(h) in respect of damage sustained in Ontario arising from a tort, . . . wherever committed; or

(i) for an injunction ordering a party to do, or refrain from doing, anything in Ontario or affecting real or personal property in Ontario.

3. FACTORS TO CONSIDER IN THE ASSESSMENT OF DAMAGES

[29] **The standard factors to consider in determining damages for defamation are summarized by Cory J. in Hill, at p. 1203 S.C.R. They include the plaintiff's position and standing, the nature and seriousness of the defamatory statements, the mode and extent of publication, the absence or refusal of any retraction or apology, the whole conduct and motive of the defendant from publication through judgment, and any evidence of aggravating or mitigating circumstances.**

[30] In the Internet context, these factors must be examined in the light of what one judge has characterized as the "ubiquity, universality and utility" of that medium. **In Dow Jones & Company Inc. v. Gutnick, [2002] HCA 56 (10 December 2002), that same judge -- Kirby J., of the High Court of Australia -- portrayed the Internet in these terms, at para. 80:**

- **The Internet is essentially a decentralized, self-maintained telecommunications network. It is made up of inter-linking small networks from all parts of the world.** It is ubiquitous, borderless, global and ambient in its nature. Hence the term "cyberspace".⁴ [at the end of the document] This is a word that recognizes that the interrelationships created by the Internet exist outside conventional geographic boundaries and comprise a single interconnected body of data, potentially amounting to a single body of knowledge. The Internet is [page432] accessible in virtually all places on Earth where access can be obtained either by wire connection or by wireless (including satellite) links. Effectively, the only constraint on access to the Internet is possession of the means of securing connection to a telecommunications system and possession of the basic hardware.

(Emphasis added).

[31] Thus, of the criteria mentioned above, the mode and extent of publication is particularly relevant in the Internet context, and must be considered carefully.

Communication via the Internet is instantaneous, seamless, interactive, blunt, borderless and far-reaching. It is also impersonal, and the anonymous nature of such communications may itself create a greater risk that the defamatory remarks are believed: see *Vaquero Energy Ltd. v. Weir*, [\[2004\] A.J. No. 84](#), [2004 ABQB 68](#), at para. 17.

Barrick Gold Corporation v. Lopehandia et al. 71 O.R. (3d) 416; Court of Appeal for Ontario, Doherty, Laskin and Blair JJ.A. June 4, 2004

4. THE JUDGMENT AS VINDICATION

[52] Finally, the appellant submits the motions judge erred in reducing the damages Barrick would otherwise have been entitled to in the circumstances on the basis that her decision would play a significant role in vindicating Barrick's reputation. To the extent the motions judge may have done so, I agree. While Robins J.A. acknowledged in Walker, at p. 115 O.R., that a "judgment enables the plaintiff publicly to brand the defamatory publication as false or groundless, and, when there is no actual damage, can perform the vindicatory function of this cause of action", he was not directing his mind to a reduction in damages that might otherwise be appropriate, as I read his reasons. **It is readily apparent that a successful judgment in a defamation case will be of assistance to the plaintiff in vindicating the plaintiff's reputation. However, there is authority for the proposition that such a consideration should not form the basis for decreasing the amount of damages that are reasonably required to vindicate the reputation of a person or corporation:** see *Safeway Stores Ltd. v. Harris*, supra, at pp. 202-20 D.L.R.; *Associated Newspapers Ltd. v. Dingle*, [1964] A.C. 371,

Barrick Gold Corporation v. Lopehandia et al. 71 O.R. (3d) 416; Court of Appeal for Ontario, Doherty, Laskin and Blair JJ.A. June 4, 2004

5. PUNITIVE DAMAGES

[56] Appellate courts have greater scope and discretion in reviewing awards for punitive damages than is the case for awards of general or compensatory damages. Appellate review is based upon the court's estimation as to whether the punitive damages serve a rational purpose. See *Hill v. Church of Scientology of Toronto*, supra, at pp. 1208-09 S.C.R.; **Whiten v. Pilot Insurance Co.**, [\[2002\] 1 S.C.R. 595](#), [209 D.L.R. \(4th\) 257](#), at pp. 635-37 S.C.R., pp. 288-89 D.L.R.

[57] Cory J. described punitive damages in the following fashion in *Hill*, at p. 1208 S.C.R.:

- **Punitive damages may be awarded in situations where the defendant's misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency.** Punitive damages bear no relation to what the [page440] plaintiff should receive by way of compensation. Their aim is not to compensate the plaintiff, but rather to punish the defendant. It is the means by which the jury or judge expresses its outrage at the egregious conduct of the defendant. They are in the nature of a fine which is meant to act as a deterrent to the defendant and to others from acting in this manner. It is important to emphasize that punitive damages should only be awarded in those circumstances where the combined award of general and aggravated damages would be insufficient to achieve the goal of punishment and deterrence.

[64] Finally, punitive damages are simply required in a case such as this, in my view. Mr. Lopehandia's conduct is malicious and high-handed. It is unremitting and tenacious. It involves defamatory publications that are vicious, spiteful, wide-ranging in substance, and world-wide in scope. They involve the very type of misconduct that -- in the words of Cory J. in Hill, at p. 1208 S.C.R. -- is "so malicious, oppressive and high-handed that it offends the court's sense of decency", calling for an award of punitive damages as a "means by which the jury or judge expresses its outrage at the egregious conduct of the defendant".

[67] Having regard to all of the factors referred to above, and the principles to be assessed in determining damages, as outlined in Hill and set out earlier in these reasons, I would set aside the award of the motions judge and substitute for it the following award:

For general damages: \$75,000

For punitive damages: \$50,000

Barrick Gold Corporation v. Lopehandia et al. 71 O.R. (3d) 416; Court of Appeal for Ontario, Doherty, Laskin and Blair JJ.A. June 4, 2004

6. INJUNCTIVE RELIEF

[73] **The more troubling point respecting the claim for injunctive relief is the in personam nature of the remedy, the marginal presence of the defendant in the jurisdiction, and the concerns about enforceability of such an order.** The motions judge was correct to be worried about this. Courts have traditionally been reluctant to grant injunctive relief against defendants who are outside the jurisdiction. The reason for this is explained by Robert J. Sharpe in his text, *Injunctions and Specific Performance*, looseleaf edition (Toronto: Canada Law Book, November 2002), at 1-54 to 1-55:

- **Claims for injunctions against foreign parties present jurisdictional constraints which are not encountered in the case of claims for money judgments.** In the case of a money claim, the courts need not limit assumed jurisdiction to cases where enforceability is ensured. Equity, however, acts in personam and the effectiveness of an equitable decree depends upon the control which may be exercised over the person of the defendant. If the defendant is physically present, it will be possible to require him or her to do, or permit, acts outside the jurisdiction. The courts have, however, conscientiously avoided making orders which cannot be enforced. **The result is that the courts are reluctant to grant injunctions against parties not within the jurisdiction and the practical import of rules permitting service ex juris in respect of injunction claims is necessarily limited.** Rules of court are typically limited to cases where it is sought to restrain the defendant from doing anything within the jurisdiction. As a practical matter the defendant "who is doing anything within the jurisdiction" will usually be physically present within the jurisdiction to allow ordinary service.

[75]..... **The highly transmissible nature of the tortious misconduct at issue here is a factor to be addressed in considering whether a permanent injunction should be granted. The courts are faced with a dilemma. On the one hand, they can throw up**

their collective hands in despair, taking the view that enforcement against such ephemeral transmissions around the world is ineffective, and concluding therefore that the only the jurisdiction is where the originator of the communication may happen to be found can enjoin the offending conduct. On the other hand, they can at least protect against the impugned conduct re-occurring in their own jurisdiction. In this respect, I agree with the following observation of Kirby J. in Dow Jones, at para. 115:

- **Any suggestion that there can be no effective remedy for the tort of defamation (or other civil wrongs) committed by the use of the Internet (or that such wrongs must simply be tolerated as the price to be paid for the advantages of the medium) is self-evidently unacceptable.**

[78] I would set aside the decision of the motions judge in this regard and grant a permanent injunction as requested, restraining the defendants from disseminating, posting on the Internet or publishing further defamatory statements concerning Barrick or its officers, directors or employees.

Barrick Gold Corporation v. Lopehandia et al. 71 O.R. (3d) 416; Court of Appeal for Ontario, Doherty, Laskin and Blair JJ.A. June 4, 2004

6. NO CORPORATE VEIL

- *Lasik Vision Canada Inc. v. TLC Vancouver Optometric Group Inc.* [\(1999\), 37 C.P.C. \(4th\) 380](#)

Individuals who publish defamatory expression are not protected by a corporate veil.

Decock v. Alberta [\(2000\), 186 D.L.R. \(4th\) 265](#) (Alta. C.A.) per Russell J.A.

The principle that a corporate employer may be held vicariously liable for defamatory expression published by an officer, director or employee does not relieve the individual tortfeasor of liability.

7. DISCLOSURE OF POSTERS BY THE ISP

- *Irwin Toy Ltd. v. Doe* [2000] C.C.S. No. 23858; [\[2000\] O.J. No. 3318](#); Ontario Superior Court of Justice; Wilkins J.

Libel and slander — Practice — Discovery — Disclosure of sources — Parties — Persons unknown or not known — John Doe, use of — Anonymous sender of *internet* e-mail message.

Motion by the plaintiffs George Irwin and his company Irwin Toy Limited, pursuant to Ontario Civil Procedure Rules 30.10 and 31.10, to require an *internet* service provider to identify the sender of an e-mail message. The plaintiffs had commenced an action against an anonymous e-mail user who had sent a defamatory message to approximately 75 employees of Irwin Toy. The plaintiffs knew the e-mail address and thus the *internet* service provider of the sender of

the message. However, the *internet* service provider would not disclose the identity of the sender without a court order.

HELD: Motion allowed. The internet service provider was ordered to disclose the identity of the sender of the message. Implicit in the anonymous transmission of internet messages was an understanding that a person's identity would not be disclosed. Ensuring some degree of anonymity was good public policy. Hence, the mere issuance of a potentially spurious statement of claim did not warrant automatic disclosure of a user's identity. However, where, as in this case, a prima facie case against an anonymous user had been established, disclosure of the user's identity was appropriate.

Statutes, Regulations and Rules Cited:

Ontario Rules of Civil Procedure, Rules 30.10, 31.10.

8. DAMAGES

- [*Alleslev-Krofchak v Valcom Ltd.*](#) [2009] O.J. No. 2469.

The Ontario Superior Court of Justice awarded the plaintiff, a senior project manager, \$100,000 general damages for defamation over libels contained in emails which falsely reflected on her reputation for honesty, integrity and trustworthiness. Although the defamatory emails had a limited initial circulation, the court noted they were seen by a wider audience and the plaintiff worked in a "small, closely-knit network where news travels fast and reaches most individuals." The plaintiff was also awarded \$100,000 damages at large in relation to a claim for intentional interference with economic relations plus further damages to be calculated for economic loss.

- [*Fuda v Conn*](#), [2009] O.J. No. 188.

The Ontario Superior Court of Justice awarded the plaintiff 72-year old businessman \$50,000 general damages and \$20,000 aggravated damages over defamatory statements contained in a Management Information Circular that was disseminated by the defendants in the context of a proxy battle for control of the board of a limited company. The Circular was posted on a web-site for all public corporations.

- *Ross v Holley*, [2004] O.J. No. 4643

The Ontario Supreme Court awarded the plaintiff \$75,000 Cdn general damages and \$50,000 Cdn aggravated damages over emails which the court held were false and defamatory.

- [*Barrick Gold Corp. v Lopehandia*](#), (2004) 239 D.L.R. (4th) 577

The Ontario Court of Appeal held that the corporate plaintiff, a gold mining company, was entitled to \$75,000 Cdn general damages and \$50,000 Cdn punitive damages for libels published in postings on various websites. The lower court judge had awarded only \$15,000 Cdn general damages and nothing for punitive damages.

9. VICARIOUS LIABILITY

- *Lysko v. Braley et al.* 79 O.R. (3d) 721; Court of Appeal for Ontario, Laskin, Rosenberg and LaForme JJ.A.

[52] To conclude, the corporate defendants would be liable for the misrepresentations allegedly made by their agents, the individual members of the Search Committee and by Tory.

[124] Pleading that the CFL, as employer, is liable for the defamation is not sufficient. A principal can be liable for defamatory comments by its agent if the agent was acting within the scope of the agency at the time of the publication. Similarly, an employer can be vicariously liable for the defamatory expression of an employee acting within the scope of his employment.

[125] Alternatively, a corporation may be liable for publication by its operating mind. Paragraph 150 is not sufficient to plead any of these bases for liability. This paragraph, and para. 3 insofar as they relate to the CFL corporate defendants, were properly struck out. I agree with the reasons of the motions judge at para. 42 with respect to vicariously liability of the corporate defendants:

10. ISP AND WEB SITES AS PUBLISHERS

- George S. Takach, Computer Law, Second Edition (2003)

For example, in *Byrne v. Deane*, a golf club was held to be liable for participating in the publication of a defamatory statement when it did not remove from its interior walls such a statement about the plaintiff after the club acquired knowledge of the statement.²⁷ Similarly, in *Hellar v. Bianco*, a court in a preliminary proceeding held that an owner of a bar could be held to participate in a republication of an offending message about the plaintiff in the men's room if it failed to remove it promptly enough after being notified of it; the court decided to leave up to the jury whether the plaintiff gave sufficient time to the defendant (in this case, about thirty minutes), given all the surrounding circumstances (i.e., the bartender was busy when the plaintiff initially called to complain).²⁸

In an earlier U.S. case, the proprietor of an office was held to have ratified the libel in a newspaper article when he posted the article on a bulletin board in his office for a period of forty days and declined to remove it even after notified of its libellous nature.²⁹ In *Scott v. Hull* a proprietor of a building was not found responsible for offensive graffiti on an exterior wall, based on the rationale (and the distinguishing fact from the preceding cases) that the defendant did not invite the public onto the premises where the offending material was situated;³⁰ that is, in the other cases, the libellous material was posted by invitees (or the proprietor in the *Fogg* case) and viewed by invitees. **If these cases are cited as analogous in an Internet case, it will be necessary to understand, for example, whether the forum where the libel took place online was a "public place," such as an open-to-all-the-public usegroup, or whether it was a "private" gathering of selected e-mailers.** In determining such questions involving the third dynamic of computer law, see the discussion of the cases regarding to the public, "public place," and "exposure to the public" in chapter 3, sections B.5(c), "Internet Distribution," and B.6, "Illegal Speech."

CHAPTER 7, INTERNET LIBEL AND JURISDICTION ISSUES

The other important American Internet libel case, *Stratton Oakmount, Inc. v. Prodigy Services Company*,⁶³ declined to follow the *Cubby* case as a result of the very different facts found by the court in the *Prodigy* case. **Prodigy, an online service provider like CompuServe, distinguished itself from other service providers by presenting itself as a family-oriented service that screened its public message areas for offensive messages. One such area was "Money Talk," where subscribers could post messages regarding financial matters, investment views, and the like. **One such message was a defamatory one, and the plaintiff, after being unable to find the message's originator, sued Prodigy. The court reviewed whether Prodigy was a publisher or a distributor, and found it to be the former on the strength of Prodigy's own statements that it exercised content guidelines, had employed board leaders to moderate the online discussions, and implemented a software-based screening program.** On appeal, Prodigy argued that while it did exercise screening techniques, these were only to exclude certain key offensive words and could not possibly screen for libellous statements. The case was never heard on appeal as the parties settled in the meantime.**

e) Intermediary Liability in Canada

It is too early to tell what influence the *Cubby* and *Prodigy* cases will have in Canada. In the United States a number of commentators view these two cases as standing for the proposition that an online service provider improves its chances of avoiding liability by not screening content or otherwise exercising any editorial control over the public message space on its network. Whatever the merits of this position in the United States, it would appear to be a dangerous approach in Canada given that if a network operator does nothing in this country it could still be found liable, even if it did not have actual knowledge of the libel.

In order for a participant on the Internet in Canada to argue successfully the innocent disseminator defence it must show it did not have knowledge of the libel and that there are no conditions that would lead it to suspect libel, and the entity was not negligent in failing to know about the libel. Therefore, the first step in analysing an intermediary's liability for libel publication over the Internet should begin with a detailed assessment of the defendant's role and activities on the Internet as they specifically and actually pertain to the alleged libel. This requires going beyond labelling the defendant an Internet service provider, or an online content supplier, or a bulletin board service operator, or a common carrier, or a discussion forum or usegroup moderator, or one of any number of other labels. Similarly, the urge to label the defendant by analogy to a newsvendor, library, newspaper, broadcaster, or one of any number of other pre-Internet categories should be avoided. Rather, a functional assessment of the defendant's specific activities related to the alleged libel should be undertaken, focusing on the degree of knowledge and control (if any of either) that the defendant had of the libel.

In the summer of 1998, Philip Services Corporation (PSC), a Canadian public company, believed that a number of messages posted to a Yahoo! discussion group by anonymous

participants were defamatory. PSC obtained an order, on an ex parte basis, against a number of ISPs, requiring them to provide PSC with the names of these participants, as well as their addresses (both physical, as well as the IP address where PSC had no name for the subscriber).⁷⁹ In a similar recent decision,⁸⁰ a company claimed that an individual had committed defamation as well as breach of confidence and conversion by attaching the company's internal files to allegedly defamatory e-mails sent to seventy-five recipients. The company did not know the identity of the sender of these messages, and therefore brought a legal proceeding to compel the ISP to disclose the relevant coordinates of the potential perpetrator. The court concluded that the ISP did not have to voluntarily disclose such information, and that ISPs may indeed be under contractual duties of confidence not to do so without being ordered to do so by a court. Similarly, it would not be enough that the plaintiff merely started a lawsuit and then demanded disclosure by the ISP. **At the same time, however, the court held that where the plaintiff, before a judge, can make out a prima facie case against the poster of the messages (as it did in this case), the ISP would be required to turn over the identification information to the plaintiff. This is a sensible compromise on this difficult issue, and finds a good balance between protecting freedom of speech and freedom from libel.**⁸¹

⁸⁰ Irwin Toy Limited v. Joe Doe, [2000] O.J. No. 3318 (Sup. Ct.). For a similar U.S. case, see America Online, Inc. v. Anonymous Publicly Traded Company, 542 S.E.2d 377 (Sup. Ct. Va. 2001). This case is interesting because the plaintiff did not reveal its identity. ⁸¹ An American case, Dendrite International, Inc. v. John Doe No. 3 et al, A-2774-00T3 (N.J. Sup. Ct. App. DIV. 2001), arguably animated by strong First Amendment freedom of speech traditions, provides the anonymous poster with greater protection by requiring, in addition to the showing of a prima facie case, that the ISP first attempt to inform the poster that a claim has been brought against them; the ISP indicate the exact statements complained of; the ISP produce its specific evidence supporting the prima facie case; and the court balance First Amendment freedom of (anonymous) speech rights against the strength of the prima facie case and the necessity for this particular disclosure in order for the case to proceed.

11. JURISDICTION

- The Supreme Court of Canada developed the "real and *substantial connection* test" in *Morguard Investments Ltd. v. De Savoye* (1990) 76 D.L.R. (4th) 256, [1990] 3 S.C.R. 1077. This test consists of a non-exhaustive list of eight factors:

- 1. the connection between the forum and the Plaintiff's claim;
- 2. the connection between the forum and the Defendant;
- 3. Unfairness to the Defendant in assuming jurisdiction;
- 4. Unfairness to the Plaintiff in not assuming jurisdiction;
- 5. the involvement of other parties to the suit;
- 6. the court's willingness to recognize and enforce an extra-provincial judgment rendered on the same jurisdictional basis;
- 7. whether the case is inter-provincial or international in nature; and
- 8. comity and the standards of jurisdiction, recognition and enforcement prevailing elsewhere.

12. WHERE THE TORT IS COMMITTED

- *Barrick Gold Corporation v. Blanchard and Co. Inc et al.* [2003] O.J. No. 5817; Ontario Superior Court of Justice; Nordheimer J.

51 Principal among those is the recent decision of the High Court of Australia in **Dow Jones & Co. Inc. v. Gutnick (2002), 77 A.L.J.R. 255**. In that case, the High Court considered a defamation claim brought by the plaintiff, who was a resident of the State of Victoria in Australia, against Dow Jones, a U.S. corporation, for allegedly defamatory statements made in articles published by Dow Jones on its website which was maintained on servers located in the State of New Jersey, U.S.A. Dow Jones moved to have service of the claim set aside or the action permanently stayed on the basis that the courts in Australia did not have jurisdiction. The High Court of Australia rejected that submission and permitted the action to proceed. The majority said, at para. 44:

- "In defamation, the same considerations that require rejection of locating the tort by reference only to the publisher's conduct, lead to the conclusion that, ordinarily, defamation is to be located at the place where the damage to reputation occurs. Ordinarily that will be where the material which is alleged to be defamatory is available in comprehensible form assuming, of course, that the person defamed has in that place a reputation which is thereby damaged. It is only when the material is in comprehensible form that the damage to reputation is done and it is damage to reputation which is the principal focus of defamation, not any quality of the defendant's conduct. **In the case of material on the World Wide Web, it is not available in comprehensible form until downloaded on to the computer of a person who has used a web browser to pull the material from the web server. It is where that person downloads the material that the damage to reputation may be done. Ordinarily then, that will be the place where the tort of defamation is committed.**"

52 **I will say that I prefer the reasoning of the High Court of Australia to that of the U.S. decisions. I say so for two reasons.** First, the approach reflected in the Dow Jones decision, while admittedly exposing people who post material on the Internet to a wide expanse of liability, establishes a rule that would have has its effect a strong incentive for people who do post such material to ensure that it is fair and accurate and responsible in its content. The U.S. approach, on the other hand, has the very real risk of becoming a licence for people to post whatever outrageous and malicious material they wish without any real fear of being called to account.

ORDER REQUESTED

- l. AN ORDER that the Defendants Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. jointly and severally pay to the Plaintiffs Mina Mar Group Inc. and Miro Zecevic \$2,000,000.00 for general damages for libel and defamation;
- m. AN ORDER that the Defendants Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. jointly and severally pay to the Plaintiffs Mina Mar Group Inc. and Miro Zecevic \$1,000,000.00 for aggravated and punitive damages;

- n. AN ORDER that the Defendants Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. jointly and severally pay to the Plaintiffs Mina Mar Group Inc. and Miro Zecevic \$1,000,000.00 for special damages;
- o. AN ORDER that the Defendants Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. jointly and severally pay to the Plaintiffs Mina Mar Group Inc. and Miro Zecevic post judgment interest pursuant to S. 129 of the Courts of Justice Act.
- p. A MANDATORY order that the Defendants, Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. apologize and publicly retract the slanderous statements made against the Plaintiffs in any manner this Honourable Court deems fit;
- q. AN ORDER that Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. provide the names and addresses of the its following members and posters:

Strategy, itlogic, Jim Bishop, Janice Shell, Universal Trader, Ratso, Livingstyle, Soyelpato, AccipiterO, strongtower, snow, peraire, and Fast Flyer 03, Strongtower, Isummer, AccipiterQ, bob41, Buckley, soyelpato, greedy malone, rolltide, marine-1, firelane, anonymously named John Doe (the foregoing collectively known as “The Posters”).
- r. A permanent injunction restraining the Defendants, Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. from making or allowing to be made and from disseminating, posting on the **Internet** or on any web site or from publishing further defamatory statements concerning the Plaintiffs, Miro Zecevic and Mina Mar Group Inc. or its officers, directors or employees, any statements or broadcast, whether orally or in writing in any newspaper, broadcast or electronic publication or on their web site(s), about the Plaintiffs.
- s. An Order that the Defendants, Matt Brown, Robert Zumbrunnen by themselves, their agents, servants or otherwise be restrained from publishing, or causing to be published, on the internet or by any other method or medium, any defamatory statement referring in any way to the Plaintiffs, Miro Zecevic or Mina Mar Group Inc. whether by name, pseudonym, address, photograph or other means of identity. The order will prohibit these Defendants from publishing or causing to be published any such statement in their own name, in the name of any nick names, pseudonyms, or aliases that they now use, have used, or may use in the future. The Defendants, Matt Brown, Robert Zumbrunnen are further prohibited from publishing or causing to be published any such statement about the Plaintiff, anonymously, or in the name of another person.
- t. An Order that the Defendants, Investors Hub, Matt Brown and Robert Zumbrunnen take any and all steps and make best efforts to remove and filter all

past and any future negative and defamatory references about the Plaintiffs which appear on any web site, blog or broadcast;

- u. An Order that the Defendants, Matt Brown, Robert Zumbrennen pay to the Plaintiffs
 - i. For general damages the amount of \$200,000.00
 - ii. For aggravated and punitive Damages the amount of \$100,000.00
- v. An Order that the Defendants pay to the Plaintiffs costs of this motion and the entire action on a substantial indemnity basis in the amount of \$25,000;
- w. Such further and other relief as this Honourable Court deems just.

Dated at Toronto this day of January 2010.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Frederick Simon Hawa
Lawyer for Miro Zecevic and Mina Mar Group Inc.

Court File No. CV-08-364413-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

**MINA MAR GROUP INC. and MINA MAR GROUP INC. (of the USA)
and MIRO ZECEVIC**

Plaintiffs

and

**INVESTORSHUB.COM INC. MATT BROWN,
ROBERT ZUMBRUNNEN, and ADVFN PLC**

and Stratey, itlogic, Jim Bishop, Janice Shell, Universal Trader, Ratso, Livingstyle, Sovelpato, AccipiterO, strongtower, snow, peraire, and Fast Flyer 03, Strongtower, 1summer, AccipiterQ, bob41, Buckley, sovelpato, greedy malone, rolltide and John Doe (collectively known as the Posters).

Defendants

FACTUM

I - THE FACTS

1. Miro Zecevic (“Miro”) and Mina Mar Group Inc. (“Mina Mar”) are the Plaintiffs and the Moving Parties; both are resident in Ontario.

- Paragraphs 1 and 2 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

2. Mina Mar carries on business as an investors’ relations firm for a roster of publicly traded companies. It deals with the questions and inquiries from thousands of shareholders.

- Paragraph 2 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

3. The Plaintiff, Mina Mar Group Inc. (of the USA, hereinafter also called Mina Mar) is a Texas, USA incorporated company. Its claims have been wholly discontinued against all of the Defendants.

- Paragraphs 3 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

4. Miro Zecevic is an officer and director of Mina Mar.

- Paragraphs 4 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

5. The Defendant/Respondent, InvestorsHub.com Inc. (“InvestorsHub”) is an internet business information web site which disseminates information to the public about a variety of publicly traded companies. InvestorsHub is an American company. Its principal place of business is in the states of Missouri and Florida.

- Paragraph 5 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

6. The Defendant, ADVFN PLC. (“ADVFN”) is also an internet business information web site which disseminates information to the public about a variety of publicly traded companies. ADVFN is the parent corporation of InvestorsHub and has its principal place of business in Essex, United Kingdom. ADVFN owns, operates and controls InvestorsHub.

- Paragraph 6 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

7. The other Defendants/Respondents, Matt Brown (“Brown”) and Robert Zumbrunnen (“Zumbrunnen”) are officers and directors of InvestorsHub.com Inc. and along with ADVFN are the controlling minds of InvestorsHub. They control, edit and publish the content of the web site, the membership and the postings made by its membership.

- Paragraph 7 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2010.

8. The roster of Mina Mar’s clients includes publicly traded companies who rely on Mina Mar in order provide information with respect to their investments, company news, financing and stock values.

- Paragraph 9 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

9. Among Mina Mar’s many clients are companies with names such as Hat Trick Beverages (trading symbol HKBV), Good Life China (GLCC), Monarch Corporation (MONA) and many others.

- Paragraph 10 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

10. Zumbrunnen, InvestorsHub and Brown, have edited, published, controlled, disseminated, broadcast, have made numerous libellous attacks and have allowed and encouraged such libellous attacks against the Plaintiffs using the web site of InvestorsHub.com. The postings on InvestorsHub’s web site by its members are malicious, scurrilous, libellous and defamatory attacks against the Plaintiffs. They have refused to refrain from such attacks despite the Plaintiffs’ requests that they do so.

- Paragraph 11 and 12 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

11. The widely read defamatory statements have damaged Zecevic's reputation and that of Mina Mar's. With the approval and knowledge of Zumbrunnen, Brown and InvestorsHub a number of members (the Posters) of the InvestorsHub web site continuously place criticism of Mina Mar and Zecevic on the internet, in full view of the investing public. In so doing they have demonstrated a pre disposition to impose irreversible harm to Mina Mar and Zecevic. None of the defamatory statements are true and nor is there any justification or privilege which would allow the publication and dissemination of the defamatory statements.

- Paragraph 13 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

12. Some of the members of InvestorsHub use the following names in order to defame Mina Mar and Zecevic:

Strategy, itlogic, Jim Bishop, Janice Shell, Universal Trader, Ratso, Livingstyle, Soyelpato, AccipiterO, strongtower, snow, peraire, and Fast Flyer 03, 1summer, AccipiterQ, bob41, Buckley, soyelpato, greedy malone, rolltide, Marine-1, Firelane, among others.

Each of these is a registered member whose postings are reviewed and approved by the moderators of InvestorsHub. Alternatively the postings which are made by these members can be prevented or removed by Zumbrunnen, Brown and InvestorsHub however, these Defendants have refused to do so. Through its members' contract InvestorsHub has control over the content of the postings however it has refused to use its own membership agreement in order to eliminate the defamatory content which has so damaged Mina Mar and Zecevic.

- Paragraph 15 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

13. Since 2006 to date, Brown, Zumbrunnen and InvestorsHub and its members have been on a unilateral, unrelenting and malicious campaign of slander and libel against Mina Mar and Zecevic. Zumbrunnen, Brown and InvestorsHub and its members have written and have posted and have acquiesced to the publication and broadcast of libellous content in a campaign of misleading and damaging untruths against Mina Mar and Zecevic. Thousands of such statements have been posted for the public to see.

- Paragraph 17 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

15. On July 4 and July 24, 2008 Mina Mar and Zecevic delivered notice to Brown, Zumbrunnen and InvestorsHub, for an apology and a retraction of the defamatory posts. Mina Mar also requested that the Defendants provide the names and addresses of members who had posted the defamatory statements. All of the Defendants have refused to do so and have continued with malice, to defame the Mina Mar and Zecevic.

- Paragraph 21 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

16. InvestorsHub commenced similar and parallel proceedings in Florida. It also brought a motion in Ontario for an order for the stay of this action on the basis of a lack of jurisdiction. However the court in Florida ruled that it did not have jurisdiction over the matter of InvestorsHub's action and the court in Ontario has dismissed InvestorsHub's motion and awarded costs in excess of \$13,000.00.

- Paragraph 16 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

17. Mina Mar and Zecevic have lost an Ontario candy company and an Ontario travel wholesale company, as well as a China biochem company and a Cost Rica developer; most recently Mina Mar has lost a significant deal with two travel wholesale companies who had intended to be listed on the OTCBB and the Frankfurt Exchanges. Mina Mar stood to earn fees in excess of \$2.50 million dollars however on the basis of the internet defamation, the officers and shareholders of the travel wholesale companies have declined to deal with the Mina Mar and Zecevic.

- Paragraph 24 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

18. Zecevic and Mina Mar's lawyer, Frederick Simon Hawa has advised that he has been informed by a significant tour and charter aircraft operator in Ontario that they have, after extensive consultations and interest in Mina Mar's services decided not to deal with Mina Mar because of the online defamation. Mina Mar stood to earn at least \$2.50 million for fees for the planned reverse merger to make these companies public traded entities.

- Paragraph 25 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

19. Emails from a certain Costa Developers, a luxury home developer, dated March 24, 2009 demonstrate that they have declined Mina Mar's services because of the negative publicity and defamatory content so widely disseminated by the Defendants. Mina Mar stood to earn at least two million dollars from this reverse merger transaction.

- Paragraph 27, 28 and 29 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

20. Besides providing the shell company as a vehicle for the purpose of a reverse merger into a publicly traded company, Mina Mar provides ongoing legal, SEC and Exchanges filings, and accounting services for the companies; it also conducts Investor Relations and awareness services as the client develops its business on a new scale. It is not untypical for Mina Mar to generate \$500,000 to \$5,000,000 in equity financing for the newly merged public entity. All activities are regulated by the Securities Exchange Commission.

- Paragraph 30 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

21. Mina Mar and Zecevic's reputations in the industry and the public at large have to remain impeccable otherwise they could not generate the trust and confidence which clients demand.

- Paragraph 31 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

22. On the junior public exchanges such as the Pink Sheets and the OTCBB where all of Mina Mar's clients are listed and traded, InvestorsHub serves as the premier web portal for the dissemination of information. Defamatory content ruins reputations and diminishes clients' willingness to deal with Mina Mar and Zecevic.

- Paragraph 33 of the Affidavit of Miro Zecevic sworn the 2nd day of December, 2009.

II - LEGAL ISSUES

1. Does the Ontario court have jurisdiction over the subject matter of the claim?

- The Florida Courts have denied the Defendants jurisdiction over similar and parallel proceedings.
 - The Ontario courts have dismissed the motion of the Defendants to stay these proceedings on the basis of a lack of jurisdiction
 - There is a substantial connection between the Plaintiffs, the cause of action, the damages and the Province of Ontario
 - The Ontario Superior Court of Justice is the forum non conveniens for these proceedings.
2. Does the Ontario court have the jurisdiction to grant injunctive over a foreign party?
- See below for the law with respect to injunctive relief
3. Can the Ontario court issue a restraining order against Matt Brown, Robert Zumbrennen and InvestorsHub.com Inc.
- See Below
4. What is the nature and the quantum of the damages which may awarded to Miro Zecevic and Mina Mar Group Inc.
- See below
5. Can the Court compel the disclosure of the names of the individual posters
- See below
6. For the purpose of liability are the Defendants publishers or intermediaries
- See below

III - THE LAW

1. LIBEL AND SLANDER ACT, R.S.O. 1990, C. L.12

Definitions

1.--(1) In this Act,
 "broadcasting" means the dissemination of writing, signs, signals, pictures and sounds of all kinds, intended to be received by the public either directly or through the medium of relay stations, by means of,

(a) any form of wireless radioelectric communication utilizing Hertzian waves, including radiotelegraph and radiotelephone, or

(b) cables, wires, fibre-optic linkages or laser beams,
 and "broadcast" has a corresponding meaning; ("radiodiffusion ou télédiffusion",
 "radiodiffuser ou télédiffuser")

2. Defamatory words in a newspaper or in a broadcast shall be deemed to be published and to constitute libel.

2. RULE 17.02 OF THE RULES OF CIVIL PROCEDURE :

A party to a proceeding may, without a court order, be served outside Ontario with an originating process or notice of a reference where the proceeding against the party consists of a claim or claims,

.....

(g) in respect of a tort committed in Ontario;

(h) in respect of damage sustained in Ontario arising from a tort, . . . wherever committed; or

(i) for an injunction ordering a party to do, or refrain from doing, anything in Ontario or affecting real or personal property in Ontario.

3. FACTORS TO CONSIDER IN THE ASSESSMENT OF DAMAGES

[29] **The standard factors to consider in determining damages for defamation are summarized by Cory J. in Hill, at p. 1203 S.C.R. They include the plaintiff's position and standing, the nature and seriousness of the defamatory statements, the mode and extent of publication, the absence or refusal of any retraction or apology, the whole conduct and motive of the defendant from publication through judgment, and any evidence of aggravating or mitigating circumstances.**

[30] In the Internet context, these factors must be examined in the light of what one judge has characterized as the "ubiquity, universality and utility" of that medium. **In Dow Jones & Company Inc. v. Gutnick, [2002] HCA 56 (10 December 2002), that same judge -- Kirby J., of the High Court of Australia -- portrayed the Internet in these terms, at para. 80:**

- **The Internet is essentially a decentralized, self-maintained telecommunications network. It is made up of inter-linking small networks from all parts of the world.** It is ubiquitous, borderless, global and ambient in its nature. Hence the term "cyberspace".⁴ [at the end of the document] This is a word that recognizes that the interrelationships created by the Internet exist outside conventional geographic boundaries and comprise a single interconnected body of data, potentially amounting to a single body of knowledge. The Internet is [page432] accessible in virtually all places on Earth where access can be obtained either by wire connection or by wireless (including satellite) links. Effectively, the only constraint on access to the Internet is possession of the means of securing connection to a telecommunications system and possession of the basic hardware.

(Emphasis added).

[31] Thus, of the criteria mentioned above, the mode and extent of publication is particularly relevant in the Internet context, and must be considered carefully.

Communication via the Internet is instantaneous, seamless, interactive, blunt, borderless and far-reaching. It is also impersonal, and the anonymous nature of such communications may itself create a greater risk that the defamatory remarks are believed: see *Vaquero Energy Ltd. v. Weir*, [\[2004\] A.J. No. 84](#), [2004 ABQB 68](#), at para. 17.

Barrick Gold Corporation v. Lopehandia et al. 71 O.R. (3d) 416; Court of Appeal for Ontario, Doherty, Laskin and Blair JJ.A. June 4, 2004

4. THE JUDGMENT AS VINDICATION

[52] Finally, the appellant submits the motions judge erred in reducing the damages Barrick would otherwise have been entitled to in the circumstances on the basis that her decision would play a significant role in vindicating Barrick's reputation. To the extent the motions judge may have done so, I agree. While Robins J.A. acknowledged in Walker, at p. 115 O.R., that a "judgment enables the plaintiff publicly to brand the defamatory publication as false or groundless, and, when there is no actual damage, can perform the vindicatory function of this cause of action", he was not directing his mind to a reduction in damages that might otherwise be appropriate, as I read his reasons. **It is readily apparent that a successful judgment in a defamation case will be of assistance to the plaintiff in vindicating the plaintiff's reputation. However, there is authority for the proposition that such a consideration should not form the basis for decreasing the amount of damages that are reasonably required to vindicate the reputation of a person or corporation:** see *Safeway Stores Ltd. v. Harris*, supra, at pp. 202-20 D.L.R.; *Associated Newspapers Ltd. v. Dingle*, [1964] A.C. 371,

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5. PUNITIVE DAMAGES

[56] Appellate courts have greater scope and discretion in reviewing awards for punitive damages than is the case for awards of general or compensatory damages. Appellate review is based upon the court's estimation as to whether the punitive damages serve a rational purpose. See *Hill v. Church of Scientology of Toronto*, supra, at pp. 1208-09 S.C.R.; **Whiten v. Pilot Insurance Co.**, [\[2002\] 1 S.C.R. 595](#), [209 D.L.R. \(4th\) 257](#), at pp. 635-37 S.C.R., pp. 288-89 D.L.R.

[57] Cory J. described punitive damages in the following fashion in *Hill*, at p. 1208 S.C.R.:

- **Punitive damages may be awarded in situations where the defendant's misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency.** Punitive damages bear no relation to what the [page440] plaintiff should receive by way of compensation. Their aim is not to compensate the plaintiff, but rather to punish the defendant. It is the means by which the jury or judge expresses its outrage at the egregious conduct of the defendant. They are in the nature of a fine which is meant to act as a deterrent to the defendant and to others from acting in this manner. It is important to emphasize that punitive damages should only be awarded in those circumstances where the combined award of general and aggravated damages would be insufficient to achieve the goal of punishment and deterrence.

[64] Finally, punitive damages are simply required in a case such as this, in my view. Mr. Lopehandia's conduct is malicious and high-handed. It is unremitting and tenacious. It involves defamatory publications that are vicious, spiteful, wide-ranging in substance, and world-wide in scope. They involve the very type of misconduct that -- in the words of Cory J. in Hill, at p. 1208 S.C.R. -- is "so malicious, oppressive and high-handed that it offends the court's sense of decency", calling for an award of punitive damages as a "means by which the jury or judge expresses its outrage at the egregious conduct of the defendant".

[67] Having regard to all of the factors referred to above, and the principles to be assessed in determining damages, as outlined in Hill and set out earlier in these reasons, I would set aside the award of the motions judge and substitute for it the following award:

For general damages: \$75,000

For punitive damages: \$50,000

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6. INJUNCTIVE RELIEF

[73] **The more troubling point respecting the claim for injunctive relief is the in personam nature of the remedy, the marginal presence of the defendant in the jurisdiction, and the concerns about enforceability of such an order.** The motions judge was correct to be worried about this. Courts have traditionally been reluctant to grant injunctive relief against defendants who are outside the jurisdiction. The reason for this is explained by Robert J. Sharpe in his text, *Injunctions and Specific Performance*, looseleaf edition (Toronto: Canada Law Book, November 2002), at 1-54 to 1-55:

- **Claims for injunctions against foreign parties present jurisdictional constraints which are not encountered in the case of claims for money judgments.** In the case of a money claim, the courts need not limit assumed jurisdiction to cases where enforceability is ensured. Equity, however, acts in personam and the effectiveness of an equitable decree depends upon the control which may be exercised over the person of the defendant. If the defendant is physically present, it will be possible to require him or her to do, or permit, acts outside the jurisdiction. The courts have, however, conscientiously avoided making orders which cannot be enforced. **The result is that the courts are reluctant to grant injunctions against parties not within the jurisdiction and the practical import of rules permitting service ex juris in respect of injunction claims is necessarily limited.** Rules of court are typically limited to cases where it is sought to restrain the defendant from doing anything within the jurisdiction. As a practical matter the defendant "who is doing anything within the jurisdiction" will usually be physically present within the jurisdiction to allow ordinary service.

[75]..... **The highly transmissible nature of the tortious misconduct at issue here is a factor to be addressed in considering whether a permanent injunction should be granted. The courts are faced with a dilemma. On the one hand, they can throw up**

their collective hands in despair, taking the view that enforcement against such ephemeral transmissions around the world is ineffective, and concluding therefore that the only the jurisdiction is where the originator of the communication may happen to be found can enjoin the offending conduct. On the other hand, they can at least protect against the impugned conduct re-occurring in their own jurisdiction. In this respect, I agree with the following observation of Kirby J. in *Dow Jones*, at para. 115:

- Any suggestion that there can be no effective remedy for the tort of defamation (or other civil wrongs) committed by the use of the Internet (or that such wrongs must simply be tolerated as the price to be paid for the advantages of the medium) is self-evidently unacceptable.

[78] I would set aside the decision of the motions judge in this regard and grant a permanent injunction as requested, restraining the defendants from disseminating, posting on the Internet or publishing further defamatory statements concerning Barrick or its officers, directors or employees.

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7. NO CORPORATE VEIL

- *Lasik Vision Canada Inc. v. TLC Vancouver Optometric Group Inc.* (1999), 37 C.P.C. (4th) 380

Individuals who publish defamatory expression are not protected by a corporate veil.

Decock v. Alberta (2000), 186 D.L.R. (4th) 265 (Alta. C.A.) per Russell J.A.

The principle that a corporate employer may be held vicariously liable for defamatory expression published by an officer, director or employee does not relieve the individual tortfeasor of liability.

8. DISCLOSURE OF POSTERS BY THE ISP

- *Irwin Toy Ltd. v. Doe* [2000] C.C.S. No. 23858; [2000] O.J. No. 3318; Ontario Superior Court of Justice; Wilkins J.

Libel and slander — Practice — Discovery — Disclosure of sources — Parties — Persons unknown or not known — John Doe, use of — Anonymous sender of internet e-mail message.

Motion by the plaintiffs George Irwin and his company Irwin Toy Limited, pursuant to Ontario Civil Procedure Rules 30.10 and 31.10, to require an *internet* service provider to identify the sender of an e-mail message. The plaintiffs had commenced an action against an anonymous e-mail user who had sent a defamatory message to approximately 75 employees of Irwin Toy. The plaintiffs knew the e-mail address and thus the *internet* service provider of the sender of

the message. However, the *internet* service provider would not disclose the identity of the sender without a court order.

HELD: Motion allowed. The internet service provider was ordered to disclose the identity of the sender of the message. Implicit in the anonymous transmission of internet messages was an understanding that a person's identity would not be disclosed. Ensuring some degree of anonymity was good public policy. Hence, the mere issuance of a potentially spurious statement of claim did not warrant automatic disclosure of a user's identity. However, where, as in this case, a prima facie case against an anonymous user had been established, disclosure of the user's identity was appropriate.

Statutes, Regulations and Rules Cited:

Ontario Rules of Civil Procedure, Rules 30.10, 31.10.

9. DAMAGES

- [*Alleslev-Krofchak v Valcom Ltd.*](#) [2009] O.J. No. 2469.

The Ontario Superior Court of Justice awarded the plaintiff, a senior project manager, \$100,000 general damages for defamation over libels contained in emails which falsely reflected on her reputation for honesty, integrity and trustworthiness. Although the defamatory emails had a limited initial circulation, the court noted they were seen by a wider audience and the plaintiff worked in a "small, closely-knit network where news travels fast and reaches most individuals." The plaintiff was also awarded \$100,000 damages at large in relation to a claim for intentional interference with economic relations plus further damages to be calculated for economic loss.

- [*Fuda v Conn*](#), [2009] O.J. No. 188.

The Ontario Superior Court of Justice awarded the plaintiff 72-year old businessman \$50,000 general damages and \$20,000 aggravated damages over defamatory statements contained in a Management Information Circular that was disseminated by the defendants in the context of a proxy battle for control of the board of a limited company. The Circular was posted on a web-site for all public corporations.

- *Ross v Holley*, [2004] O.J. No. 4643

The Ontario Supreme Court awarded the plaintiff \$75,000 Cdn general damages and \$50,000 Cdn aggravated damages over emails which the court held were false and defamatory.

- [*Barrick Gold Corp. v Lopehandia*](#), (2004) 239 D.L.R. (4th) 577

The Ontario Court of Appeal held that the corporate plaintiff, a gold mining company, was entitled to \$75,000 Cdn general damages and \$50,000 Cdn punitive damages for libels published in postings on various websites. The lower court judge had awarded only \$15,000 Cdn general damages and nothing for punitive damages.

10. VICARIOUS LIABILITY

- *Lysko v. Braley et al.* 79 O.R. (3d) 721; Court of Appeal for Ontario, Laskin, Rosenberg and LaForme JJ.A.

[52] To conclude, the corporate defendants would be liable for the misrepresentations allegedly made by their agents, the individual members of the Search Committee and by Tory.

[124] Pleading that the CFL, as employer, is liable for the defamation is not sufficient. A principal can be liable for defamatory comments by its agent if the agent was acting within the scope of the agency at the time of the publication. Similarly, an employer can be vicariously liable for the defamatory expression of an employee acting within the scope of his employment.

[125] Alternatively, a corporation may be liable for publication by its operating mind. Paragraph 150 is not sufficient to plead any of these bases for liability. This paragraph, and para. 3 insofar as they relate to the CFL corporate defendants, were properly struck out. I agree with the reasons of the motions judge at para. 42 with respect to vicariously liability of the corporate defendants:

11. ISP AND WEB SITES AS PUBLISHERS

- George S. Takach, Computer Law, Second Edition (2003)

For example, in *Byrne v. Deane*, a golf club was held to be liable for participating in the publication of a defamatory statement when it did not remove from its interior walls such a statement about the plaintiff after the club acquired knowledge of the statement.²⁷ Similarly, in *Hellar v. Bianco*, a court in a preliminary proceeding held that an owner of a bar could be held to participate in a republication of an offending message about the plaintiff in the men's room if it failed to remove it promptly enough after being notified of it; the court decided to leave up to the jury whether the plaintiff gave sufficient time to the defendant (in this case, about thirty minutes), given all the surrounding circumstances (i.e., the bartender was busy when the plaintiff initially called to complain).²⁸

In an earlier U.S. case, the proprietor of an office was held to have ratified the libel in a newspaper article when he posted the article on a bulletin board in his office for a period of forty days and declined to remove it even after notified of its libellous nature.²⁹ In *Scott v. Hull* a proprietor of a building was not found responsible for offensive graffiti on an exterior wall, based on the rationale (and the distinguishing fact from the preceding cases) that the defendant did not invite the public onto the premises where the offending material was situated;³⁰ that is, in the other cases, the libellous material was posted by invitees (or the proprietor in the *Fogg* case) and viewed by invitees. **If these cases are cited as analogous in an Internet case, it will be necessary to understand, for example, whether the forum where the libel took place online was a "public place," such as an open-to-all-the-public usegroup, or whether it was a "private" gathering of selected e-mailers.** In determining such questions involving the third dynamic of computer law, see the discussion of the cases regarding to the public, "public place," and "exposure to the public" in chapter 3, sections B.5(c), "Internet Distribution," and B.6, "Illegal Speech."

CHAPTER 7, INTERNET LIBEL AND JURISDICTION ISSUES

The other important American Internet libel case, Stratton Oakmount, Inc. v. Prodigy Services Company,⁶³ declined to follow the Cubby case as a result of the very different facts found by the court in the Prodigy case. **Prodigy, an online service provider like CompuServe, distinguished itself from other service providers by presenting itself as a family-oriented service that screened its public message areas for offensive messages.** One such area was "Money Talk," where subscribers could post messages regarding financial matters, investment views, and the like. **One such message was a defamatory one, and the plaintiff, after being unable to find the message's originator, sued Prodigy. The court reviewed whether Prodigy was a publisher or a distributor, and found it to be the former on the strength of Prodigy's own statements that it exercised content guidelines, had employed board leaders to moderate the online discussions, and implemented a software-based screening program.** On appeal, Prodigy argued that while it did exercise screening techniques, these were only to exclude certain key offensive words and could not possibly screen for libellous statements. The case was never heard on appeal as the parties settled in the meantime.

e) Intermediary Liability in Canada

It is too early to tell what influence the Cubby and Prodigy cases will have in Canada. In the United States a number of commentators view these two cases as standing for the proposition that an online service provider improves its chances of avoiding liability by not screening content or otherwise exercising any editorial control over the public message space on its network. Whatever the merits of this position in the United States, it would appear to be a dangerous approach in Canada given that if a network operator does nothing in this country it could still be found liable, even if it did not have actual knowledge of the libel.

In order for a participant on the Internet in Canada to argue successfully the innocent disseminator defence it must show it did not have knowledge of the libel and that there are no conditions that would lead it to suspect libel, and the entity was not negligent in failing to know about the libel. Therefore, the first step in analysing an intermediary's liability for libel publication over the Internet should begin with a detailed assessment of the defendant's role and activities on the Internet as they specifically and actually pertain to the alleged libel. This requires going beyond labelling the defendant an Internet service provider, or an online content supplier, or a bulletin board service operator, or a common carrier, or a discussion forum or usegroup moderator, or one of any number of other labels. Similarly, the urge to label the defendant by analogy to a newsvendor, library, newspaper, broadcaster, or one of any number of other pre-Internet categories should be avoided. Rather, a functional assessment of the defendant's specific activities related to the alleged libel should be undertaken, focusing on the degree of knowledge and control (if any of either) that the defendant had of the libel.

In the summer of 1998, Philip Services Corporation (PSC), a Canadian public company, believed that a number of messages posted to a Yahoo! discussion group by anonymous

participants were defamatory. PSC obtained an order, on an ex parte basis, against a number of ISPs, requiring them to provide PSC with the names of these participants, as well as their addresses (both physical, as well as the IP address where PSC had no name for the subscriber).⁷⁹ In a similar recent decision,⁸⁰ a company claimed that an individual had committed defamation as well as breach of confidence and conversion by attaching the company's internal files to allegedly defamatory e-mails sent to seventy-five recipients. The company did not know the identity of the sender of these messages, and therefore brought a legal proceeding to compel the ISP to disclose the relevant coordinates of the potential perpetrator. The court concluded that the ISP did not have to voluntarily disclose such information, and that ISPs may indeed be under contractual duties of confidence not to do so without being ordered to do so by a court. Similarly, it would not be enough that the plaintiff merely started a lawsuit and then demanded disclosure by the ISP. **At the same time, however, the court held that where the plaintiff, before a judge, can make out a prima facie case against the poster of the messages (as it did in this case), the ISP would be required to turn over the identification information to the plaintiff. This is a sensible compromise on this difficult issue, and finds a good balance between protecting freedom of speech and freedom from libel.**⁸¹

⁸⁰ Irwin Toy Limited v. Joe Doe, [2000] O.J. No. 3318 (Sup. Ct.). For a similar U.S. case, see America Online, Inc. v. Anonymous Publicly Traded Company, 542 S.E.2d 377 (Sup. Ct. Va. 2001). This case is interesting because the plaintiff did not reveal its identity. ⁸¹ An American case, Dendrite International, Inc. v. John Doe No. 3 et al, A-2774-00T3 (N.J. Sup. Ct. App. DIV. 2001), arguably animated by strong First Amendment freedom of speech traditions, provides the anonymous poster with greater protection by requiring, in addition to the showing of a prima facie case, that the ISP first attempt to inform the poster that a claim has been brought against them; the ISP indicate the exact statements complained of; the ISP produce its specific evidence supporting the prima facie case; and the court balance First Amendment freedom of (anonymous) speech rights against the strength of the prima facie case and the necessity for this particular disclosure in order for the case to proceed.

12. JURISDICTION

- The Supreme Court of Canada developed the "real and *substantial connection* test" in *Morguard Investments Ltd. v. De Savoye* (1990) 76 D.L.R. (4th) 256, [1990] 3 S.C.R. 1077. This test consists of a non-exhaustive list of eight factors:

- 1. the connection between the forum and the Plaintiff's claim;
- 2. the connection between the forum and the Defendant;
- 3. Unfairness to the Defendant in assuming jurisdiction;
- 4. Unfairness to the Plaintiff in not assuming jurisdiction;
- 5. the involvement of other parties to the suit;
- 6. the court's willingness to recognize and enforce an extra-provincial judgment rendered on the same jurisdictional basis;
- 7. whether the case is inter-provincial or international in nature; and
- 8. comity and the standards of jurisdiction, recognition and enforcement prevailing elsewhere.

13. WHERE THE TORT IS COMMITTED

- *Barrick Gold Corporation v. Blanchard and Co. Inc et al.* [2003] O.J. No. 5817; Ontario Superior Court of Justice; Nordheimer J.

51 Principal among those is the recent decision of the High Court of Australia in **Dow Jones & Co. Inc. v. Gutnick (2002), 77 A.L.J.R. 255**. In that case, the High Court considered a defamation claim brought by the plaintiff, who was a resident of the State of Victoria in Australia, against Dow Jones, a U.S. corporation, for allegedly defamatory statements made in articles published by Dow Jones on its website which was maintained on servers located in the State of New Jersey, U.S.A. Dow Jones moved to have service of the claim set aside or the action permanently stayed on the basis that the courts in Australia did not have jurisdiction. The High Court of Australia rejected that submission and permitted the action to proceed. The majority said, at para. 44:

- "In defamation, the same considerations that require rejection of locating the tort by reference only to the publisher's conduct, lead to the conclusion that, ordinarily, defamation is to be located at the place where the damage to reputation occurs. Ordinarily that will be where the material which is alleged to be defamatory is available in comprehensible form assuming, of course, that the person defamed has in that place a reputation which is thereby damaged. It is only when the material is in comprehensible form that the damage to reputation is done and it is damage to reputation which is the principal focus of defamation, not any quality of the defendant's conduct. **In the case of material on the World Wide Web, it is not available in comprehensible form until downloaded on to the computer of a person who has used a web browser to pull the material from the web server. It is where that person downloads the material that the damage to reputation may be done. Ordinarily then, that will be the place where the tort of defamation is committed.**"

52 **I will say that I prefer the reasoning of the High Court of Australia to that of the U.S. decisions. I say so for two reasons.** First, the approach reflected in the Dow Jones decision, while admittedly exposing people who post material on the Internet to a wide expanse of liability, establishes a rule that would have has its effect a strong incentive for people who do post such material to ensure that it is fair and accurate and responsible in its content. The U.S. approach, on the other hand, has the very real risk of becoming a licence for people to post whatever outrageous and malicious material they wish without any real fear of being called to account.

ORDER REQUESTED

- x. AN ORDER that the Defendants Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. jointly and severally pay to the Plaintiffs Mina Mar Group Inc. and Miro Zecevic \$2,000,000.00 for general damages for libel and defamation;
- y. AN ORDER that the Defendants Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. jointly and severally pay to the Plaintiffs Mina Mar Group Inc. and Miro Zecevic \$1,000,000.00 for aggravated and punitive damages;

- z. AN ORDER that the Defendants Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. jointly and severally pay to the Plaintiffs Mina Mar Group Inc. and Miro Zecevic \$1,000,000.00 for special damages;
- aa. AN ORDER that the Defendants Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. jointly and severally pay to the Plaintiffs Mina Mar Group Inc. and Miro Zecevic post judgment interest pursuant to S. 129 of the Courts of Justice Act.
- bb. A MANDATORY order that the Defendants, Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. apologize and publicly retract the slanderous statements made against the Plaintiffs in any manner this Honourable Court deems fit;
- cc. AN ORDER that Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. provide the names and addresses of the its following members and posters:
- Strategy, itlogic, Jim Bishop, Janice Shell, Universal Trader, Ratso, Livingstyle, Soyelpato, AccipiterO, strongtower, snow, peraire, and Fast Flyer 03, Strongtower, Isummer, AccipiterQ, bob41, Buckley, soyelpato, greedy malone, rolltide, marine-1, firelane, anonymously named John Doe (the foregoing collectively known as “The Posters”).
- dd. A permanent injunction restraining the Defendants, Robert Zumbrunnen, Matt Brown and InvestorsHub.com Inc. from making or allowing to be made and from disseminating, posting on the **Internet** or on any web site or from publishing further defamatory statements concerning the Plaintiffs, Miro Zecevic and Mina Mar Group Inc. or its officers, directors or employees, any statements or broadcast, whether orally or in writing in any newspaper, broadcast or electronic publication or on their web site(s), about the Plaintiffs.
- ee. An Order that the Defendants, Matt Brown, Robert Zumbrunnen by themselves, their agents, servants or otherwise be restrained from publishing, or causing to be published, on the internet or by any other method or medium, any defamatory statement referring in any way to the Plaintiffs, Miro Zecevic or Mina Mar Group Inc. whether by name, pseudonym, address, photograph or other means of identity. The order will prohibit these Defendants from publishing or causing to be published any such statement in their own name, in the name of any nick names, pseudonyms, or aliases that they now use, have used, or may use in the future. The Defendants, Matt Brown, Robert Zumbrunnen are further prohibited from publishing or causing to be published any such statement about the Plaintiff, anonymously, or in the name of another person.
- ff. An Order that the Defendants, Investors Hub, Matt Brown and Robert Zumbrunnen take any and all steps and make best efforts to remove and filter all

past and any future negative and defamatory references about the Plaintiffs which appear on any web site, blog or broadcast;

gg. An Order that the Defendants, Matt Brown, Robert Zumbrunnen pay to the Plaintiffs

i. For general damages the amount of \$200,000.00

ii. For aggravated and punitive Damages the amount of \$100,000.00

hh. An Order that the Defendants pay to the Plaintiffs costs of this motion and the entire action on a substantial indemnity basis in the amount of \$25,000;

ii. Such further and other relief as this Honourable Court deems just.

Dated at Toronto this day of January 2010.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Frederick Simon Hawa
Lawyer for Miro Zecevic and Mina Mar Group Inc.