BARRON'S

Let's Make a Deal: Who are the real winners when ailing U.S. companies merge with Israeli tech start-ups?

By Bill **Alpert** and Jacqueline Doherty
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How does a tiny company on the verge of being delisted from Nasdaq suddenly boast a market capitalization of almost $1 billion? A group of U.S. investors and Israeli companies have discovered a cookie-cutter formula for such financial success, and they've used it three times. Involved in each deal are David Bodner and Murray Huberfeld, investors with checkered pasts. Also figuring in each transaction, directly or indirectly, are David Rubner, the former head of ECI Telecom, one of Israel's largest telecom companies, and Rabbi Irwin Katsof, executive vice president of the Jerusalem Fund of Aish HaTorah, a prominent Jewish charity.

Here's how it works: A struggling publicly traded U.S. company with few shares outstanding issues millions of new shares to acquire a foreign company with little operating history and no reported profits. The U.S. company's shares rise as press releases promote the acquired company's technological prowess. If the technology companies succeed, all will make money. But even if the shares subsequently fall to $2 or $3, company insiders could reap millions because of the huge blocks of cheap shares they own.

Broad Capital, Bodner and Huberfeld's New York City-based investment firm, appears to have been instrumental in these deals, commonly called "reverse mergers" or "reverse acquisitions." (Neither Bodner nor Huberfeld returned our calls for comment, nor were they in when we visited their plush West 57th Street offices last week.) True or not, one thing is certain: Their wives, Naomi Bodner and Laura Huberfeld, own large blocks of stock in the one deal that has progressed far enough to require disclosure of shareholders. Indeed, their holdings of Multimedia KID are worth $7 million each, despite the recent collapse in the value of its shares, to 2 1/16 from a high of 7 7/8 in February.

The three U.S. companies involved in these reverse mergers with Israeli tech firms are Western Power & Equipment, a distributor of heavy equipment, Sensar, known as a maker of measuring devices, and Jenkon International, which once made software for marketing and direct-sales companies. Last year, the shares in all three companies traded as low as 1 1/2. In April, Western Power & Equipment had a $14.9 million market cap. In October 1999, Sensar was valued at $18 million, and in August 1999, Jenkon was worth $9.8 million.

Each has now completed, or is completing, a reverse acquisition. In April, for example, Western Power struck a deal with e-Mobile, which hopes to produce handheld devices to access the Internet. Western's shares rose to a high of $10 on May 1, ballooning its market cap to $553 million. Recent price: 6 11/16.

In October, Sensar struck a deal to merge with Net2Wireless, a company that plans to compress data so that cellular operators can offer high-speed data transmission and access to the Internet on existing phones and other communications devices. Sensar shares rose as high as 89 7/8 in March, giving it a $3.9 billion market cap at the time. Recent price: 22 1/8.

In December, Jenkon completed its reverse acquisition with Multimedia KID, which develops interactive learning software for children and adults, and its shares rose to 4 9/16. They continued to climb to a high of 7 7/8 in February, for a $269 million market cap. Recent price: 2 1/16.

For years, private companies have done reverse acquisitions with public companies, to gain access to the public market. But the method sometimes raises warning flags because it allows the private companies to circumvent the scrutiny linked to an initial public offering.

But Nechemia Davidson, chief executive of Net2Wireless and the founder and chairman of e-Mobile, insists that this isn't the case with any transaction he's involved with. He says the reverse merger will allow the participants to access the public market quickly. "We have a very strong window right now because we have a very strong technology," he says. Being public, he adds, will allow his company to offer employees stock options and thus attract the best people.

Perhaps. But the bona fides of financiers Huberfeld, 39, and Bodner, 43, don't exactly inspire confidence. Two years ago, the Securities and Exchange Commission alleged that the pair had covertly received over 513,000 shares of restricted stock as collateral for a loan to a director of a company called Incomnet. The two immediately sold the shares in the now-bankrupt longdistance reseller for a profit of about $3.7 million, in violation of securities laws, according to the SEC complaint.

Broad Capital also was cited for failing to disclose, as required by law, that it held over 5% of Incomnet's outstanding securities. Broad, Huberfeld and Bodner settled the case without admitting or denying the SEC's allegations and were ordered to disgorge their profits, plus interest, which together totaled $4,649,125. Civil penalties also were imposed: Broad was ordered to pay $50,000; Huberfeld and Bodner, $15,000 each.

As a result, the pair were automatically "statutorily disqualified" from working for a broker licensed by the National Association of Securities Dealers.

Huberfeld and Broad Capital had another brush with the law in 1996, when they were targets of an SEC administrative complaint related to Wye Resources, a heavily promoted Canadian firm that claimed interests in various gold- and diamond-mining properties. "Broad Capital was aware of, and participated in, Wye's promotional efforts in the United States," the SEC alleged. The firm was also charged with buying unregistered shares of Wye at a discount and mischaracterizing the purchase as a loan. Without admitting or denying the commission's findings, Broad Capital and Huberfeld consented to the issuance of an order finding that they violated Section 5 of the Securities Act and they agreed to disgorge $426,790, representing profits made as a result of the transactions in Wye stock plus interest.

And in 1992, Bodner and Huberfeld pled guilty in Federal court in Brooklyn, New York, to possession of false identification with the intent to defraud. The duo got snagged having imposters take the Series 7 securities brokers' examination in their stead. Each was sentenced to a minimum of one year's probation and fined $50,000.

That doesn't seem to have slowed them, however. Consider the Jenkon International deal, which the Jerusalem Fund's Katsof recalls was "made available" to him by Huberfeld and Bodner. A little over a year ago, Jenkon shares were trading at 1 1/2. Then, on August 26, the reverse acquisition with Multimedia KID was announced. A Jenkon press release issued at the time noted that Multimedia KID was "awarded the prestigious Computer Software Award from the Office of the Prime Minister of Israel for the category of Special Innovation and Invention in Education."

As part of the deal, Jenkon issued 840,000 common shares to Multimedia KID shareholders, along with preferred stock that converts into an additional 24 million Jenkon shares. If the preferred stock were converted, Multimedia KID shareholders would own 83% of Jenkon. The deal later included a $4.5 million private placement of notes that convert into 4.5 million Jenkon shares.

According to SEC filings, former ECI Telecom chief David Rubner consented to become non-executive chairman of the newly combined company at the conclusion of the deal. Rubner, who stepped down from his post at ECI in February, had been with that Nasdaq-traded company since 1970 and was named chief executive in 1991. During his tenure as CEO, he is credited with expanding ECI's revenues from $74 million to $1.2 billion.

Rubner also serves as chairman of Net2Wireless and, if the reverse acquisition with Sensar is completed, he's slated to chair that combined entity, as well. Rubner says he was introduced to Huberfeld and Bodner through a friend, whose name he declines to reveal. He says he was unaware of the duo's history with the SEC. "As far as shareholders are concerned, we cannot check their history," he told **Barron's**.

Jenkon completed the reverse acquisition and the $4.5 million private placement in December, and the Jenkon software business was sold to executives in the predecessor firm. Shares of Multimedia KID hit a high of 7 7/8 February 14.

Press releases about the deal fail to reveal much about the business or its finances. But according to SEC filings, for the six months ending June 30, 1999, about 44% of Multimedia KID's $747,743 in revenues came from Romania, 33.6% from the U.S. and 19.8% from Israel; and 97.7% of the company's sales during that period came from just three unidentified customers. A more recent SEC filing shows that the company had a loss before discontinued operations of $5.75 million and "generated only limited revenues from the sale of products, services and marketing rights" in the nine months ended March 31, 2000.

Earlier this month, Multimedia KID filed with the SEC to register 13,283,239 shares for sale. The shares result from the conversion of the preferred stock and the private placement. The registration, which isn't yet effective, makes for interesting reading. Listed as the largest shareholder is Zehava Rubner, David's wife, who owns 6,818,606 shares, a 19.9% stake, valued at $14.1 million by today's market. Of her total holdings, 2,650,000 shares will be registered.

Also on the shareholder list are Naomi Bodner and Laura Huberfeld, who each own 3,409,302 shares, with a combined value of $14.1 million. Each will register 1,325,000 shares.

Another name on the shareholder list is Robert DePalo, who owns 829,848 shares, all of which will be registered. DePalo is chairman of Equilink, a New York City investment firm, which was an adviser on the Multimedia KID deal.

Says he: "By all predictions, the company should be profitable by the fourth quarter of this year, based on information given to me by the CFO."

The highest profile name on the shareholder list, however, belongs to Irwin Katsof, 45, who is shown as owning 200,000 shares, half of which will be registered for sale. Rabbi Katsof says some of those shares are owned by the Jerusalem Fund, which he heads, and says the charity is also invested in the Net2Wireless and e-Mobile deals.

Katsof prominently displays photos of himself with the likes of comedian Jerry Seinfeld, former British Prime Minister Margaret Thatcher, boxer Muhammed **Ali** and talk-show host Larry King in his midtown Manhattan office, across the street from the Broad Capital offices. Indeed, Katsof is the co-author, with King, of the popular book Powerful Prayers, which details the prayers of the rich and powerful.

Katsof says that Bodner and Huberfeld "are among the top philanthropists in the Jewish world." He adds: "David and Murray are known as upstanding individuals. They're friends. I trust their judgment."

The second deal, between Sensar and Net2Wireless, was announced on October 7, 1999. Sensar, formerly known as Larson-Davis, had been involved in the design, development, manufacturing and marketing of analytical scientific instruments. Six months earlier, Sensar had executed a 1-for-5 reverse split and its board of directors resigned. Taking over as chief executive was Howard Landa, a partner at Sensar's outside law firm. Sensar then began selling off its various operations and looking for other acquisitions or investments. During the September 1999 quarter it had no sales from continuing operations, but held cash and cash equivalents of $3.17 million.

Then came the announcement that Sensar would buy all the outstanding shares of ITES, now known as Net2Wireless. As part of the deal, Sensar would issue 17 million shares (adjusted for a subsequent split) to ITES stockholders. Another million shares would be given to unnamed parties who helped structure the deal.

"Net2Wireless was introduced to us by Broad Capital," says Sensar's Landa. Broad, he says, had invested in Sensar's predecessor and had approached him with a number of Israeli reverse-acquisition candidates. Landa says he liked the technology offered by Net2Wireless and met with Net2Wireless CEO Nechemia Davidson and Broad Capital in New York City. "My first attraction to the company was [David] Rubner because of his experience with ECI Telecom," says Landa.

Upon closing, Net2Wireless' officers, including Davidson, will take control of Sensar. Davidson, who told **Barron's** he worked for Israel's Ministry of Defense from 1987 into the mid-1990s and was involved with communications, data compression and encryption, says. "I searched for capital, and I met David Rubner, who was head of ECI." He adds that Rubner knew the U.S. investors and introduced him to Sensar. Davidson insists he knows nothing about Huberfeld's and Bodner's past run-ins with the SEC. "They're not active shareholders," he says. "It's David Rubner who's important."

Net2Wireless is developing a technology to compress data and transmit it wirelessly. Its hope is that cellular phone companies will buy its equipment to transmit video and the Internet over today's existing second generation, or 2G, devices. Most analysts don't expect wireless systems to be able to offer such services until 3G equipment is deployed, sometime in the next two to three years.

Sensar's shares started moving north after it announced that ITES had entered into a development agreement with Partner Communications, the Israeli affiliate of Orange, the British wireless operator. Net2Wireless will test, at its own expense, its streaming multimedia platform on Partner's system. In return, Partner received an option to purchase 7% of the company's outstanding stock at an exercise price of $5.5 million. At today's price, those shares would be worth about $67 million.

"It is in the first stages of testing, but we have not been disappointed," says Dan Eldar, vice president of carrier and international relations at Partner. One Partner unit is currently helping 12 startup companies to develop technology. And on Thursday PelePhone Communications, an Israeli cellular carrier, said it had installed Net2Wireless' technology and would begin pilot testing.

In late March, Net2Wireless completed a $29 million private placement of preferred stock, which is convertible into 1,041,140 Sensar's shares. At that point, Sensar decided to exercise its option to acquire Net2Wireless and slightly increased the shares involved. Sensar will issue 18,295,060 shares and options for 14,766,649 shares in addition to the splitadjusted one million shares used to pay an introduction fee. When all is said and done, the combined company will have just over 43 million shares outstanding on a diluted basis. Net2Wireless investors will own 65% of the new company. Those investors, along with Partner, have options to boost their ownership to 77%.

Shareholders were slated to consider the merger on June 16, but the company hasn't released any news to that effect. The combined entity will be dubbed Net2Wireless, and Davidson will take over.

Net2Wireless lost $493,178 between April and December 31, 1999, according to its most recent SEC filing. Yet at Sensar's current share price, the merged entity would boast a market value of $953 million. Is it worth it? "It's worth much more than that," effuses Davidson. "Content is the future." David Rubner sounds equally confident. "Net2Wireless is a company that's worth a lot of money," he explains. "It will revolutionize the cellular industry."

The most recently announced deal we found with a Bodner/Huberfeld connection involves Western Power & Equipment, a struggling heavy-equipment distributor. Results for the quarter ended April 30 show revenues of $35.3 million, down 13% and a loss of $947,000, or 29 cents per share, compared with the prior year's loss of two cents.

At the company's annual meeting in February, two of Western's incumbent directors resigned and two new directors were elected. Two months later, on April 18, Western announced plans to merge with e-Mobile, a startup developing a small, expensive wireless device, like a Palm organizer, that enables users to retrieve and display voice and data. On that day, Western's three million shares closed at 4 1/2.

Western Chief Executive Dean McLain explains that the company didn't have the money to expand its existing business, so it started looking for ways to merge, do a buyout or sell the company's shell. He adds that Robert M. Rubin, a Western director and the company's largest shareholder, knew the folks at Equilink, which was trying to bring e-Mobile public; Broad Capital, McLain says, is involved in raising $7-$8 million in a private placement, which is part of the deal.

McLain says he's never met with anyone from e-Mobile and Rubin has met only with Nechimiah Davidson. "We're relying on our board and Equilink to keep us updated," said McLain. **Barron's** was unable to reach Rubin for comment.

Davidson, for his part, says: "I'm not involved with the details [of e-Mobile]. I'm very busy with Net2Wireless."

He suggests speaking with Eytan Ramon. Ramon, in turn, told **Barron's** he was still on the job at Motorola, where he says he has worked for 17 years. He assured us, however, that two people now labor full time at eMobile, identifying market needs and working on the technology. "We think we have a big thing on our hands," he maintains. On Thursday, the company announced that Ramon had been named chief executive of e-Mobile.

On such hopes now rest a potential market cap of $380 million, based on the current price and the 52 million new shares that Western will issue to purchase e-

Mobile, plus the three million shares now outstanding. (Western's management and directors will buy Western's heavy equipment business for $4.7 million.)

So far, Western hasn't disclosed any financial information about e-Mobile in press releases or in the SEC filings. Nor has it submitted the letter of intent for the reverse acquisition to the SEC. So, the investors in e-Mobile haven't been publicly disclosed yet. That said, Katsof observes that the Jerusalem Fund is in the deal. And Rubner tells **Barron's** that he, his wife or his children are invested in all three of these transactions.

Nice work, if you can get it.

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Urge To Merge
A year ago, the three companies at right had nothing in common but struggling stock prices. Then along came a trio of suitors, in the form of Israeli high-tech startups. Investors who bought in on the merger news likely got burned. But because of the large number of new shares that have been or will be issued, insiders will make out even if shares in the merged companies trade at $2 or $3.
U.S. Company: Western Power & Equip
 Heavy equipment distributor
Israeli Company: eMobile
 Developing wireless handheld devices
Pre-Deal Shares Outstanding: 3.30 million
Post-Deal Shares Outstanding: 55.30 million
Stock Price Pre-Deal: 4 1/2
Market Value Pre-Deal: $14.9 million
Recent Stock Price: 6 11/16
Recent Market Value*: $380.2 million
U.S. Company: Sensar
 Manufacturer of measuring equipment
Israeli Company: Net2Wireless
 Technology for high-speed wireless Internet access
Pre-Deal Shares Outstanding: 5.99 million
Post-Deal Shares Outstanding: 43.1 million
Stock Price Pre-Deal: 3
Market Value Pre-Deal: $18.0 million
Recent Stock Price: 22 1/8
Recent Market Value*: $952.7 million
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U.S. Company: Jenkon International
 Software for marketing and direct sales
Israeli Company: Multimedia K.I.D.
 Interactive learning centers
Pre-Deal Shares Outstanding: 5.4 million
Post-Deal Shares Outstanding: 34.2 million
Stock Price Pre-Deal: 1 13/16
Market Value Pre-Deal: $9.8 million
Recent Stock Price: 2 1/16
Recent Market Value*: $70.6 million
*Based on fully dilutedpost-deal shares

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Money Machine
By Bill **Alpert**
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When it comes to cultivating religious charities, and drawing them into stock deals involving tiny companies, Murray A. Huberfeld and David B. Bodner seem to be without peer. "Mssrs. Huberfeld and Bodner are among the top philanthropists in the Jewish world," says Rabbi Irwin G. Katsof, executive vice president of the Jerusalem Fund of **Aish** HaTorah in New York City. "There are organizations waiting in line to see them."

Bodner and Huberfeld run Broad Capital, one of the leading outfits for funneling investments into small publicly-traded companies with scant operating histories ("Let's Make a Deal," **Barron**'s, June 26). With green marble floors and lush cherry paneling, their offices high above Carnegie Hall project an image of
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prosperity and propriety. But appearances can be deceptive. In fact, this pair, both former stockbrokers at Datek Securities, got booted from the brokerage industry after their 1990 arrest for sending imposters to take the broker's license exam on their behalf. In 1992, each pleaded guilty to a misdemeanor charge.

Broad Capital is not a brokerage firm, but rather does its investment banking business on the unregulated fringes of the securities industry. And Bodner and Huberfeld's regulatory history doesn't suggest loving kindness. In 1996, Huberfeld settled administrative charges with the Securities and Exchange Commission, without admitting or denying guilt, that he had fraudulently promoted a mining stock. Then, in 1998, the pair disgorged $4.6 million to settle SEC charges, again without admitting or denying guilt, that they'd gotten shares of another stock illegally from a company director.

Among the investors in stocks promoted by Broad Capital in the past six years are some three dozen religious charities, accounting for 18 million shares valued at $66 million when they were registered with the SEC for sale to the public. One charity that's been enriched by these deals is the Jerusalem Fund of **Aish** HaTorah, a religious education charity that has been popular with showbiz celebrities, including Larry King and Kirk Douglas. Rabbi Katsof says his organization lacks the resources to hire professional money managers, so it relies instead on a board member to review its investments. But when it comes to investing in small stock deals, Bodner and Huberfeld seem to call the shots.

"We trust David Bodner and Murray Huberfeld," he said when asked how the charity came to invest in Multimedia KID, a Broad Capital deal. He added that he knew nothing of the duo's past problems with regulators. Questioned about another Broad stock called Sensar, he said, "Mssrs. Huberfeld and Bodner gave us the opportunity to invest in this company. . . . Their deals have worked, as far as I know."

He should know. As it turns out, Rabbi Katsof has personally invested in at least seven Broad Capital stocks, several of which stocks turn up in the coffers of the Jerusalem Fund as well. In two Broad Capital stocks, Emerging Vision and Jenkon International, Katsof personally held shares worth more than $1.2 million at the time they were registered for sale to the public. Indeed, he received $630,000 worth of those shares as a finder's fee for helping to put Multimedia KID, an Israeli company, in touch with Jenkon International, the U.S. shell company it subsequently merged into. Through such a merger, a company can become publicly traded without disclosing as much about itself as it would have to if it chose the more typical route, an initial public offering.

After our interview with Rabbi Katsof, he did not respond to e-mails, faxes and other messages asking about his personal investments in stocks promoted by Broad Capital. Bodner and Huberfeld, through their attorney, reject any suggestion of impropriety.

Large pieces of Bodner and Huberfeld deals also turn up in the hands of obscure non-profit entities, like the Ezer M'Zion Organization and the Ace Foundation. Ezer M'Zion is an Israeli charity with its New York location in David Bodner's home. The Ace Foundation is a private philanthropic foundation with the Brooklyn address -- and initials -- of Aaron Elbogen and his wife Chaya. As it happens, Elbogen was the Datek Securities principal who prosecutors claimed set up the exam scam that got Bodner and Huberfeld in trouble. The charges against Elbogen were later dropped. He did not respond to requests for comment.

Datek Securities, it should be noted, is the former parent of Datek Online Holdings, the well-known online broker. Two years ago the two firms split, allowing Datek Online to shed the parent company's lengthy disciplinary record.

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BARRON'S

Mystery in Brooklyn
By Bill **Alpert**
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English

By his own account, Joseph **Gutnick** in the 1980s had many levers to pull when it came to promoting his stocks, including three mutual funds he ran and a maze of companies he controlled. In the 1990s, **Gutnick**'s stocks found different champions. In addition to institutional investors, key support for **Gutnick**'s stocks began flowing from the U.S. Specifically, according to **Gutnick**'s authorized biography, the money came from the Hasidic communities in Brooklyn.

Consider the Jacobs family. For the past 15 years, the Jacobses, members of the ultra-orthodox Satmar Hasidic sect, have run Allou Health & Beauty Care out of a
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warehouse in Brentwood, on New York's Long Island. Traded on the American Stock Exchange, this distributor of personal-care products last year had revenues of $421 million and a profit of $15 million.

Another Jacobs enterprise, Ever Ready First Aid & Medical Supply, makes first-aid kits in a graffiti-scarred industrial building at 385 Union Avenue in the Williamsburg section of Brooklyn.

Investing in Australian stocks also appears to be a family sideline. Asked about this, Herman Jacobs, the 42-year-old president of Allou, was dismissive: "I've traded Joe **Gutnick**'s shares. I lost money on them."

Jacobs, who sometimes uses his family's original name, Jacobowitz, grew frustrated when we asked about Whiting Inc., a Bahamas-registered corporation that listed the 385 Union Avenue address as its headquarters in Australian legal documents. He insisted he has no connection to Whiting: "I've made some investments. What's the difference what investments I make? I can assure you one billion percent, Whiting has nothing to do with Herman Jacobowitz. Zero!"

Before the 1997 slump in gold prices, Whiting controlled more than $40 million worth of **Gutnick** stocks, including shares in Johnson's Well Mining, Mt. Kersey Mining and Quantum Resources. Australian securities regulators say they suspect that Whiting was actually a vehicle for manipulating the shares of **Gutnick** stocks. **Gutnick** didn't respond to written questions from Barron's about Whiting.

Two years ago, when Whiting faced a $10 million margin call on stocks it held in an Australian account at PrudentialBache, none other than Herman Jacobs injected additional shares of **Gutnick** stocks into Whiting's account in an attempt to stave off liquidation. So says an affidavit notarized by an Allou employee and filed as part of Whiting's lawsuit in Melbourne against Prudential-Bache seeking to block the margin call. Also injecting equity into Whiting was another Bahamas corporation, Zarf Inc. Judging from the fax transmission stamps visible on documents in the lawsuit, Zarf and Whiting share a fax number. Barron's traced the location of that fax number to Herman Jacobs' Brooklyn home.

Presented with these connections, Herman Jacobs fumed, "You're making what's called in Yiddish, it's called a chawlent. You're mixing in everything in one pot. Apples and oranges and nectarines and potatoes together."

After being sent copies of the Whiting affidavit and related brokers' statements by overnight mail, Jacobs said that a man named Jacob Schwartz, who is identified as Whiting's corporate secretary in the affidavit, once rented office space from him at 385 Union Avenue. Jacobs added that Schwartz called on him for favors, asking Jacobs if he could receive faxes for him and prevailing on an Allou employee to notarize documents. Jacobs says he no longer knows Schwartz's whereabouts. Jacobs does not deny that he himself transferred shares of **Gutnick** stocks into the Whiting account, though he says he sold them to Whiting. As for Schwartz, Jacobs says, "I would like to find this guy today."

So would we.

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BARRON'S

Unholy Gains: When stock promoters cross paths with religious charities, investors had best be on guard [AMENDED]
By Bill **Alpert**
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English

Corrections & Amplifications

Statement

Joseph **Gutnick**

In the edition of Barron's dated 28 October 2000 Barron's published an article entitled "Unholy Gains".

In November 2000 Joseph **Gutnick** commenced proceedings against Dow Jones and Company Inc., the publisher of Barron's, in the Supreme Court of Victoria in Australia, seeking damages in consequence of the publication of the article. Mr. **Gutnick** alleged that parts of the article imputed that he was a customer of Nachum Goldberg, who had recently been imprisoned for tax evasion and money laundering.

Barron's has no reason to believe that Mr. **Gutnick** was ever a customer of Mr. Goldberg, and has no reason to believe that Mr. **Gutnick** was a money
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laundering customer of, or had any criminal or other improper relationship with, Mr. Goldberg. It was not Barron's intention to publish any such allegations. [CORRECTED 25-OCT-04]

Unholy Gains: When stock promoters cross paths with religious charities, investors had best be on guard [AMENDED]
By Bill **Alpert**
3228 words
30 October 2000

Australia is famous for its audacious entrepreneurs. And one of the boldest these days is Joseph I. **Gutnick**. As a promoter of some of the largest gold mines in the outback, **Gutnick**, 48, has amassed a fortune once estimated to be as high as $450 million. With the help of Chase Manhattan, **Gutnick** is now trying to get investors to put $500 million in to a hedge fund he plans to run. And only weeks ago, he told the Sydney Morning Herald that he intends to move as much as half his business interests to the United States.

Gutnick's fame is not limited to the financial pages. As president of the Melbourne Demons, the oldest team in the Australian Football League, he has contributed millions to keep the team solvent. He's also a heavy political donor, not just in his home country but also in the political tinderbox of Israel. It was there that **Gutnick** earned worldwide notice in 1996, when he helped secure the election of hawkish Prime Minister Benjamin Netanyahu.

Gutnick may be most revered for his charitable work. An ordained rabbi, he has supported religious projects worldwide -- particularly those of the ultra-orthodox Lubavitch Hasidic movement, whose Yiddish-speaking members gratefully call him the goldener rebbe, or the golden rabbi. Once asked his formula for getting rich, **Gutnick** replied: "According to Jewish law, if you give to charity, that is a formula for receiving God's blessing."

But some of **Gutnick**'s business dealings with religious charities raise uncomfortable questions. A Barron's investigation found that several charities traded heavily in stocks promoted by **Gutnick**. Although the charities profited, other investors were left with heavy losses.

In addition, **Gutnick** has had dealings with Nachum Goldberg, who is currently serving five years in an Australian prison for tax evasion that involved charities. Another individual with ties to **Gutnick** is Judah Wernick, who is now awaiting trial for stock manipulation in New York. Barron's has found that Wernick used religious charities to finance his ventures and manipulate stocks.

In some of the cases Barron's reviewed for this story, stocks were bid up to dizzying heights before the charitable organizations got out, leaving other investors with millions of dollars in losses when the stocks dropped sharply. Several charities contacted by Barron's said they have done quite well investing in penny-stock deals, but they profess no knowledge of manipulation or of how much their so-called benefactors may have made on the deals.

Although Australian securities regulators have investigated Joe **Gutnick** for half his career, **Gutnick** has never been charged with any crime. Last year, however, an Australian federal judge did slap Edensor, **Gutnick**'s family holding company, with a $19 million penalty for what the judge deemed "deceptive and misleading" treatment of public shareholders of a company **Gutnick** controlled. The case is on appeal. Over the course of two and a half months, Barron's repeatedly asked **Gutnick** for help in understanding his involvement with the deals uncovered in our reporting. But despite his proven appetite for publicity in other areas, **Gutnick** did not answer us. Mining the stock market The son of one of Australia's leading rabbis, **Gutnick** began his career studying at the Brooklyn rabbinical seminary of the Lubavitchers before returning to Melbourne in 1976 to work in a textile business owned by his wealthy father-inlaw, Max New. By 1979, with gold prices perking up and Australia's stock market rising, **Gutnick** began trading with $22,000 in borrowed money. **Gutnick** proved an adept investor and promoter, turning his small grubstake into $45 million, according to Diamonds and Demons, a recently published authorized biography of **Gutnick** by Australian journalist David Bernstein. (All dollar figures in this story are U.S.)

By his own account, **Gutnick** made more money mining the stock market in the 1980s than by mining the earth. He dealt mainly in thinly traded mining stocks, and at one point he managed three mutual funds that traded in the very stocks he was promoting to other investors.

The stock market crash of 1987 brought **Gutnick**'s self-described paper shuffling to a halt and nearly broke him. He was rescued by $54 million in loans from a bank owned by the Australian state of Victoria. Some years later, the bank wrote off a substantial portion of those loans as losses.

But **Gutnick** had even grander backers than the government. In the motif of a Hasidic miracle tale, the leader of the Lubavitchers, the late Rebbe Menachem Mendel Schneerson, predicted several times that **Gutnick** would discover gold and diamonds in Australia's desert. Indeed, those predictions were mentioned in a video shown at New York brokerage houses such as Datek Securities and Bishop Rosen as part of the 1993 U.S. road show promoting the shares of **Gutnick**'s Great Central Mines. On the video, **Gutnick** said the rebbe foresaw a discovery "worth billions of dollars." With this blessing from the rebbe, the shares, trading in the U.S. as American depository receipts, surged from 5 to 14.

One beneficiary of this rise was Colel Chabad, a charity promoting religious education, which owned 1.5 million shares in Great Central before the offering of ADRs to U.S. investors. A month after the U.S. offering, by which time the shares had fallen back below 10, Colel Chabad had vanished from the shareholder rolls. This indicates that the charity sold some or all of its shares at or near the peak. "They were one of the lucky ones," **Gutnick** told his biographer with a smile.

Gutnick's mine never did produce diamonds, but it did prove one of Australia's richest gold producers. After the initial run-up, shares of Great Central Mines bounced between 4 and 10 until the price of gold began to slip in 1997. Last year, **Gutnick** teamed up with another mining company to buy out Great Central's public shareholders at 95 cents a share. **Gutnick**'s family holding company, Edensor, was promptly sued by the Australian Companies and Securities Investments Commission for misleading public investors. An Australian federal judge socked Edensor with a $19 million penalty. **Gutnick** is appealing the ruling.

Among the other **Gutnick** stocks whose prices rose on heavy trading in their U.S. ADRs were Astro Mining, Centaur Mining & Exploration and Johnson's Well Mining. But **Gutnick**'s two biggest successes were Quantum Resources and Mount Kersey Mining, which between 1991 and 1997 rose 64,900% and 28,640%, respectively. These and other companiesa few of which actually showed operating profits-made **Gutnick** one of Australia's wealthiest men.

Gutnick has enjoyed his wealth, too, owning a yacht, flying in a private jet and chauffeuring his wife and 11 children in a fleet of Rolls Royces and Bentleys.

Not surprisingly, **Gutnick** wields political influence in his home country. A generous supporter of Australia's two leading political parties, he is on a list of business leaders who are briefed on government economic policy. Australia's former prime minister, Bob Hawke, sits on the board of **Gutnick**'s Quantum Resources and has helped promote **Gutnick**'s hedge fund. Politics and religion Like many Jews worldwide, **Gutnick** has taken a keen interest in Israeli politics as well. In 1990, he became the emissary to Israel on behalf of Rebbe Schneerson, reminding politicians of the rebbe's admonition against surrendering land for peace with Arab neighbors. **Gutnick** has subsidized Jewish residents in West Bank towns, such as Hebron. In 1996, **Gutnick** sponsored ads that praised Benjamin Netanyahu as "Good for the Jews," and by all accounts, helped Netanyahu clinch the election.

But Diamond Joe, as he's known at home, is most admired for his donations that promote religious aims. For years, **Gutnick** has sponsored tiny ads on the front page of the New York Times on Fridays, urging Jewish women to light Sabbath candles. Near Rebbe Schneerson's grave in Queens, pilgrims can study and pray in **Gutnick**-financed hostels. Tithing more than 10% of his earnings, **Gutnick** is probably the largest underwriter of the Lubavitcher mission, which encourages assimilated Jews to return to Orthodoxy through some 1,200 outreach centers that gird the globe from Marina del Rey to Moscow.

Lubavitcher organizations such as Colel Chabad and Chabad of the Marina, meanwhile, have turned up as significant traders in **Gutnick** stocks, say Australian securities regulators. Indeed, according to trading records obtained by these regulators, Colel Chabad one year traded upwards of $8 million in shares of Gutnickpromoted stocks, while Chabad of the Marina traded about $4 million in **Gutnick** shares. The Australian authorities wonder if that trading was intended to push up the price of **Gutnick** shares in a classic stock scam, where outsiders are lured into a stock at rising prices, allowing those in the know to cash out before the price collapses.

Rabbi Shalom Duchman, the leader of Colel Chabad, did not respond to Barron's questions about his organization's stock trading.

Rabbi Shmulik Napartstek, who heads Chabad of the Marina, in Marina Del Rey, California, told Barron's that his organization has held "one or two" **Gutnick** stocks. "We got them donated to us. They set up an account for us," Napartstek explains. "We don't really trade it. We're just waiting for the right time that we're going to be told to sell it."

And who will tell them when to sell? "Hopefully, Mr. **Gutnick** will tell us," Napartstek said. And was **Gutnick** the original donor? "I can't really give you all of the information," said the rabbi, "because I don't know if he wants the world to know."

After that interview, Barron's learned from Australian authorities about the extent of the stock trading being done by Chabad of the Marina. We called Rabbi Napartstek back several times for further comment. He did not return our calls.

Why are so many religious charities making appearances in questionable stock deals? U.S. and Australian money laundering investigators, without citing any particular charities, say that religious organizations are among the most opaque places to hide financial transactions, in part because they have virtually no legal disclosure requirements. John Moscow, a prosecutor at the Manhattan District Attorney's office and an expert on money laundering, says that Judaism's high regard for anonymous charity sometimes means that the business records of Jewish charities sought by investigators simply don't exist. Other centuries-old ethnic and religious organizations that have been exploited by money launderers include Chinese goldtrading networks and Islamic Halal loan funds, he notes.

Nor are Jewish charities the only religious charities that turn up as investors in tiny companies with little or no operating history. Barron's performed a computer search for all the religious charities that appeared in the registrations to sell shares of tiny companies to the public in the past five years. Churches and organizations ranging from the Emmanuel Pentecostal Church of Dallas to the Baptist Foundation of Arizona to the Marin Catholic High School in Kentfield, California, registered small amounts of stock in tiny companies in those years. But only about 600,000 shares, valued at $3 million at the time they were registered, appear in the name of non-Jewish groups, while 32 million shares, worth $98 million, show up in the names of Jewish organizations.

Among these stock-owning organizations is the Jerusalem Fund of Aish HaTorah. While this group has no ties to Joseph **Gutnick**, the Jerusalem Fund has been an active investor in the stock promotions of Broad Capital, a New York City investment banking firm that specializes in finding investors for tiny firms. About three dozen other charities also turn up as investors in Broad Capital stocks.

Another firm that has repeatedly involved Jewish charities in its penny-stock dealings is Patterson Travis, a New York-based outfit run by Judah Wernick. In most cases, Wernick's stocks ran up in price and then collapsed. Indeed, in 1999, federal prosecutors charged Wernick with stock manipulation in connection with one of these stocks, ML Direct, a marketing firm whose shares showed just such a rise and fall. The trial is scheduled for November. Wernick has denied any wrongdoing. Letters to the court from Wernick's lawyers indicate that he has tried to strike a deal with prosecutors.

Among the dozen or so stock deals underwritten by Wernick was a fledgling alternative energy company called SCNV Acquisition -- a firm that was backed and controlled by **Gutnick**. This 1998 deal, which collapsed in price almost immediately, has been the only U.S. offering to date of a **Gutnick**-controlled company. Most of his other stocks were issued in Australia and then traded in the U.S. in the form of ADRs.

Among the investors in other Wernick deals was a Lubavitch seminary called Yeshiva Tomchei Tmimim, which paid $145,000 for 45% of a preferred stock offering by Medjet, a fledgling medicalequipment company. Yeshiva Tomchei also made $208,000 in bridge loans to another company Wernick was promoting, a rickety chain of pancake houses called Royal Canadian Foods. Then there is Mosdos Chinuch, a Brooklyn religious organization that bought the second-largest portion of a preferred-stock offering from Red Hot Concepts -- a Wernick stock at the heart of a manipulation case that New Jersey regulators brought against another broker. Mosdos Chinuch also paid $30,000 for 9% of the Medjet preferred offering mentioned above.

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Letter from the Managing Editor: Kafka Lives, Down Under

25 October 2004

To Our Readers

A court in the Australian State of Victoria is expected to finalize a settlement in a few days of a defamation action filed by the businessman, Joseph **Gutnick**, in response to an Oct. 30, 2000, Barron's article entitled "Unholy Gains." The piece, by senior editor Bill **Alpert**, focused on stock transactions, some involving securities in companies controlled by **Gutnick** or his family, that exploited U.S. religious charities and hurt other investors.

While the bulk of the story was about stock transactions, **Gutnick** interpreted one brief section as accusing him of money-laundering or tax avoidance in Victoria, even though we didn't intend to make such allegations. Indeed, we stated in the article that **Gutnick** hadn't been charged with or convicted of any crime. His lawsuit never challenged or even mentioned the remainder of the article, including the portions about the securities transactions involving U.S.-based charities.

The 53 nations of the British Commonwealth have libel laws that, by U.S. standards, are archaic and onerous. In a defamation suit in those lands, the publisher is considered guilty until proven innocent and the evidence that it can present is severely circumscribed. Victoria, however, goes a step farther. Its laws retain a pernicious 19th-century twist: The plaintiff can select an inference that he contends arises from a small passage in the story and sue on that, even if the writer didn't intend to make any such inference. The publisher cannot defend the story on the ground that whatever the reporter did intend to say was true, or that every other criticism of the plaintiff in the story was true, or that the passage meant something else and that was true.

Simply put, because we believed the article didn't carry the meaning **Gutnick** alleged, the law didn't allow us to defend ourselves meaningfully in court. The verdict, had we gone to trial, would have been foregone. Result: a settlement.

Kafka and Pirandello are alive and well and chuckling in Victoria.

The case also dealt with another issue: Just where should defamation suits involving an Internet publication be tried? **Gutnick** maintained that it should be where the plaintiff resides, because that's where his reputation could be most harmed. We argued that it should be where we intended the article to be published and where most of our readers are, the U.S. (If an Australian were murdered in Chicago, the accused would be tried there, not in Australia, even though the effect of the crime presumably would be felt most severely by his friends and family in his homeland.)

Australia's highest court agreed with **Gutnick**. In December 2002, it ruled that when an article is published on the Internet, as stories from our print edition routinely are, the piece is deemed to have been published globally, making the publisher subject to libel claims in any locality in which it's read and where a subject's reputation is alleged to be susceptible to harm. This gave full jurisdiction to the Victoria court even though 95% of our readers are Americans and we wrote about **Gutnick** only because he was moving his business to the States and his shares were ending up in the hands of U.S. investors.

This ruling's potential chilling effect on anyone engaged in investigative journalism -- be it of stock scams, government misdeeds or even terrorism -- is clear. Already, a judge in Canada, another British Commonwealth nation, has cited the **Gutnick** decision in allowing a plaintiff to sue the Washington Post for defamation, even though the article at issue was published years before that person resided in Canada.

In its eight-decade history, Barron's has exposed dozens of investment schemes and frauds. We will continue to do so. But unless a rational international accord is reached on the jurisdiction issue, our job will be more difficult, especially when we examine foreigners who have designs on the U.S. market or when we analyze foreign stocks -- an investment category becoming increasingly important to Americans.

As for the **Gutnick** settlement, we came out of it paying no damages and offering no apologies, although we are contributing about $150,000, a fraction of his legal costs. We are also printing a statement that appears on page MW9. While we don't have any problem confirming what our article did or didn't report, the wording of the statement could very well have been lifted from Dickens' Bleak House, a Victorian novel whose focal point is an endless lawsuit. Perfectly fitting, in our view, for something crafted by modern-day lawyers to satisfy an outdated and unfair Victorian law and to settle a case based on something we don't think we said.

Richard Rescigno

[END AMENDMENT]

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BARRON'S

Review & Preview Follow-Up
A Return Visit to Earlier Stories -- Mining Trouble: Gutnick firm stumbles
By Bill **Alpert**
447 words
16 April 2001
Barron's
14
English

After falling behind on junk-bond interest payments, the flagship mining company of Australian investor Joseph **Gutnick** was placed into receivership last month. The receivers, who plan to sell the company's assets, stepped in to protect U.S. holders of $225 million in high-yield debt issued by Centaur Mining & Exploration, of Melbourne, Australia. Last year Barron's described the financial involvement of certain religious charities in a variety of volatile stocks ("Unholy Gains," October 30, 2000), including some stocks promoted by **Gutnick**, who owns 15% of Centaur.

As recently as 1999, Centaur's American depository receipts traded above $70 per ADR. **Gutnick**, a 48-year-old financier with some major gold strikes to his credit, vowed to extend his financial activities to North America, and even planned a global hedge fund. **Gutnick** also is a generous supporter of international religious projects and an influential political patron in Israel.

But Centaur's development of the Cawse nickel mine in western Australia proved costlier than expected. Last August, **Gutnick** seemed to have found the deep pockets to further fund the nickel mine, by agreeing to sell his own stake in Centaur for $10.8 million (Australian) to the Australian mining firm Anaconda Nickel. Anaconda backed out, however, complaining of gold-hedging losses it discovered upon inspecting Centaur's books.
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After Anaconda's departure, Centaur's Nasdaq-listed ADRs fell as low as $3.28, before rising to around $9 when trading was stopped on March 13. It is unclear whether Centaur's troubles will crimp **Gutnick**'s financial and charitable activities. Among the other public firms **Gutnick** runs, the most noteworthy are Baynet, a Nasdaq-listed firm that's trying to build an Internet-commerce exchange for the mining industry, and Autogen, a biotech firm hoping to develop a treatment for obesity.

Apart from Centaur, debt might also become a burden to the **Gutnick** family's private holding company, Edensor. After Centaur's failed deal with Anaconda Nickel, Anaconda wanted repayment of its A$10.8 million advance to Edensor. Additionally, Normandy Mining's chief executive, Robert Champion de Crespigny, last week told an Australian paper that **Gutnick**-related entities still owed A$100 million (equivalent to US$49 million), plus interest, to de Crespigny's Australian firm.

Gutnick refused to discuss the status of Centaur with Barron's. His Australian attorneys said a list of written questions submitted by Barron's was "inappropriate," given that **Gutnick** is suing Barron's publisher Dow Jones in an Australian court, alleging he was libeled by our October 2000 story.

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BARRON'S

Review & Preview Follow-Up
A Return Visit to Earlier Stories -- Lawsuit's End: Broker agrees to settle SEC civil complaint
By Bill **Alpert**
273 words
25 June 2001
Barron's
15
English

Judah L. Wernick, a Woodmere, New York, stockbroker whose work brought him in contact with celebrated and controversial stock promoters, settled claims of stock manipulation brought by the Securities and Exchange Commission. On June 5, Wernick agreed to disgorge gains and be enjoined from future stock fraud in exchange for an end to the civil lawsuit which had alleged that Wernick and co-defendent Leonard B. Greer rigged stock trades. As part of the settlement, neither Wernick nor Greer admitted or denied the allegations.

Wernick played roles in the stock promotions of the infamous Robert Brennan ("Dead Men Do Talk," November 8, 1999), and underwrote the only U.S. offering of Australian stock promoter Joseph **Gutnick** ("Unholy Gains," October 30, 2000). A federal grand jury in Manhattan indicted Wernick on criminal stock-fraud charges in 1999. That case has yet to go to trial.

The SEC first filed the civil claims in September 1997. It alleged that Wernick and Greer moved shares of AFGL International (now called Headway Corporate Resources) from $1 to $7 in early 1994, by controlling two-thirds of AFGL's tradable shares while stirring up retail demand. Greer's firm, L.C. Wegard, then unloaded over a million shares to its customers at inflated prices, the SEC alleged. Greer agreed to pay $562,000 in disgorgement, penalties and interest. Wernick agreed to pay $391,000 in disgorgement and interest.Barron's couldn't reach Greer. When contacted, Wernick said settlement terms barred him from comment.

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BARRON'S

Review & Preview Follow-Up

A Return Visit to Earlier Stories -- Down, Under: Ruling on Barron's article worries Internet publishers

By Michael Santoli

327 words
16 December 2002
Barron's
13
English
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Australia's highest court last week dealt a blow to Barron's publisher Dow Jones and raised new legal hazards for media companies that distribute products online.

The decision allows Joseph **Gutnick**, an Australian businessman, to sue Dow Jones for libel in the state of Victoria, where his hometown of Melbourne is -- a venue whose laws heavily favor plaintiffs in libel cases. **Gutnick** says he was defamed in an article by Barron's senior editor Bill **Alpert** two years ago that detailed alleged stock scams through religious charities in the U.S. ("Unholy Gains," Oct. 30, 2000).

The Australian judicial court didn't rule on the merits of the suit, which now goes back to a lower court.

Dow Jones had sought to have the case moved to New Jersey, where it posted the story to the Web, and where, it says, the act of publication took place. The Australian judicial panel, however, ruled that the placement of an article online represents its publication globally and thus subjects the publisher to defamation claims in any locality where it's read and where a subject's reputation is susceptible to harm.

The court's decision alarmed media companies worldwide. They fear it invites opportunistic claims in countries that, unlike the U.S., place high burdens of proof on news organizations in defending libel charges. One judge, however, cited a need for countries to fashion treaties that set legal procedures in such cases.

Friday, a federal appeals court in Richmond took the opposite tack from the Australian court, finding a Virginia man couldn't bring a libel suit in Virginia against two Connecticut papers, since articles on their Websites were directed at Connecticut audiences.

Alpert vs Australia.
545 words
16 April 2003
Business Wire
English

NEW YORK-(BUSINESS WIRE)-April 15, 2003-

Barron's writer challenges the decision of the High Court of Australia over **Gutnick** case

William **Alpert**, a reporter for Barron's, the American business and financial weekly, today filed a plea with the United Nations High Commissioner for Human Rights, in Geneva, alleging Australia's violation of Mr. **Alpert**'s right to free speech under Article 19 of the International Covenant on Civil and Political Rights.

Mr. **Alpert** wrote a piece for Barron's entitled "Unholy Gains" in October 2000, which described the activities of, amongst others, Mr. Joseph **Gutnick**. The article was then published on The Wall Street Journal Online. This led Mr. **Gutnick** to file an internet defamation suit against Dow Jones & Company, publisher of both Barron's and The Wall Street Journal Online. The case is due to be heard in the Supreme Court of Victoria (Australia) in November this year, following a December 2002 ruling by the Australian High Court that dismissed Dow Jones' appeal that the action should be heard in the U.S., where the article was published, rather than Australia where it could be downloaded.

Mr. **Alpert** said: "I am filing this action with the Human Rights Commission in Geneva because I fear restrictions on the ability of financial journalists such as myself to report truthfully to United States investors on the activities of foreigners who are actively engaged in the U.S. markets. I even fear for our ability to report on U.S. corporations and business people, who might see the High Court's decision as an invitation to attack the U.S. press in a remote forum. Given the differences between the laws of Australia and those of other countries in the Commonwealth and beyond, the impact of Australia's law - as laid out by the High Court - could harm journalists throughout the world. Powerful and sophisticated plaintiffs could search out overseas jurisdictions willing to help stifle news coverage that was only directed at local readers in those journalists' home markets."

He added: "Australia has accepted the jurisdiction of the U.N. Human Rights Committee and is obliged to modify Australia's libel laws, should the Committee find that those laws unduly restrict the right of free speech that's protected under Article 19 of the International Convention on Human Rights."

He also said: "I hope that the Human Rights Committee will recognize the threat to free speech - and an informed public - posed by Australian laws that allow suit against any journalist, anywhere that an article published on the internet can be downloaded. Perhaps the Government of Australia will recognize the need to modify its laws, even before the Human Rights Committee takes up this case."

Dow Jones & Company supports Mr. **Alpert** in his plea.

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CONTACT: Gilbert + Tobin, Sydney, Australia Paul Reidy - Lead lawyer, 612-9263-4231 mobile - 614-13-029-467 or Associate General Counsel for Dow Jones & Company Stuart Karle, mobile +1-917-865-6371.

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Letter from the Managing Editor: Kafka Lives, Down Under

906 words
25 October 2004
Barron's
51
English
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To Our Readers

Australia has a lot going for it: the Great Barrier Reef, the Sydney Opera House, fabulous beaches and, not least, Nicole Kidman. What it doesn't have is a rational libel law. While one might think that this is a matter of little import for Barron's or investors, the implications of a lawsuit between Dow Jones, our parent company, and a Melbourne businessman argue quite the contrary. That's why we're publishing this letter to our readers.

A court in the Australian State of Victoria is expected to finalize a settlement in a few days of a defamation action filed by the businessman, Joseph **Gutnick**, in response to an Oct. 30, 2000, Barron's article entitled "Unholy Gains." The piece, by senior editor Bill **Alpert**, focused on stock transactions, some involving securities in companies controlled by **Gutnick** or his family, that exploited U.S. religious charities and hurt other investors.

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Simply put, because we believed the article didn't carry the meaning **Gutnick** alleged, the law didn't allow us to defend ourselves meaningfully in court. The verdict, had we gone to trial, would have been foregone. Result: a settlement.

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Richard Rescigno

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