

# Diamond Intelligence Briefing

By Chaim Even-Zohar



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Corrected version



**DIB**  
Exclusive Exposé

## NY Supreme Court to Hear Fraud Allegations against IGI

Defendants: “No Merits to the Claims”

Court Protocols still under Seal

On Friday, December 23, 2016, the day most businesses in America closed for the Christmas through New Year period, a Notice of Summons was filed with the Clerk of the Supreme Court of the State of New York. It literally went unnoticed. The plaintiff is an innocuous, small New York diamond trading firm, **KS Trade LLC**. It gives notice to 14 defendants, including the **International Gemological Laboratories (IGI)**, all of IGI's owners, the lab's global holding and associated companies, and – quite astonishingly – the **Israel Diamond Exchange**. The Notice of Summons stated: “**This is an action for injunctive relief, deceptive trade practices, unfair competition,**



Supreme Court of the State of New York, County of New York

Photo courtesy: Flickr – by Wallyg

## NY Supreme Court Hears Grading Dispute

### violation of the Donnelly Act, fraud, aiding and abetting fraud, breach of contract, and tortious interference."

It alleges that "plaintiff has been damaged by virtue of the defendants' unethical, deceptive and illegal conduct in an amount to be determined at trial, but estimated to be no less than \$2,000,000. Plaintiff also seeks injunctive relief enjoining the Defendants' ongoing fraudulent scheme as well as treble damages, punitive damages, and its costs and attorneys' fees." The Notice of Summons gave no further clue as to what this was all about.

### A Summons without Complaint...

In the ensuing nine months, a rather odd pattern emerged: After having been served with summons, some of the defendants repeatedly filed motions asking permission from N.Y. State Supreme Court Judge, the Hon. **Saliann Scarpulla to allow delaying the filing (i.e., publication) of the full detailed complaint itself. The plaintiff consented to these repeated requests.** It seemed that none of the parties, including the plaintiff itself, wished the charges to go public.

At the same time, some overseas defendants went to great efforts to avoid being served. In one hearing the Hon. Judge Scarpulla observed that it is inconceivable that foreign parties that engage in active business in America would avoid appearing in a U.S. court – and granted the plaintiff permission (in coordination with the Nevada judiciary) to deliver summons to non-U.S. resident defendants during the JCK show.

Four hearings have taken place already in the offices of Judge Scarpulla, who has so far respected the requests by some of the parties to keep all protocols under seal. Legal and substantive arguments are being advanced – all without a formal complaint being filed.

At some point, apparently, **the Judge insisted that September 15, 2017, was the final date before which the Complaint needed to be filed.** She still holds a ruling in abeyance whether it is in the public interest to keep the proceedings under seal – well below the public's and industry's radar screens. Arguments about this will mostly likely be heard later this month.

Indeed, on September 15, just before the Jewish New Year, the complaint was finally filed. It seemed

as if the phantom had come out of the shadows – but clearly no efforts were made by plaintiffs to reveal more than the bare minimum. At least, trade journalists and others can get a better idea of what the allegations are – though no evidence has been presented.

This DIB is largely based on the few documents in the State Supreme Court's Case No. **656713/2016**. Also known as: **KS TRADE LLC vs INTERNATIONAL GEMOLOGICAL INSTITUTE, INC., Roland Lorie, Jerry Ehrenwald, David Weinstein, Marc Brauner, Karen Weinstein, BROWDY/COPELAND, INC., HATTRON (INDIA) LTD., INTERNATIONAL GEMOLOGICAL INSTITUTE DMCC (DUBAI), INTERNATIONAL GEMOLOGICAL INSTITUTE PVT. LTD. (INDIA), VAZON INVESTMENTS S.A., and THE ISRAELI DIAMOND EXCHANGE.**

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INDEX NO. 656713/2016  
RECEIVED NYSCEF: 09/15/2017

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

KS TRADE LLC,

Plaintiff,

-against-

INTERNATIONAL GEMOLOGICAL INSTITUTE, INC., ROLAND LORIE, JERRY EHRENWALD, DAVID WEINSTEIN, MARC BRAUNER, KAREN WEINSTEIN, BROWDY/COPELAND, INC., HATTRON (INDIA) LTD., INTERNATIONAL GEMOLOGICAL INSTITUTE DMCC (DUBAI), INTERNATIONAL GEMOLOGICAL INSTITUTE PVT. LTD. (INDIA), VAZON INVESTMENTS S.A., and THE ISRAELI DIAMOND EXCHANGE,

Defendants.

Index No. 656713/2016

**COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff KS Trade LLC, by its attorneys, Morrison Cohen LLP, alleges, for its complaint, based upon its personal knowledge and upon information and belief as to all other matters, as follows:

**NATURE OF THIS ACTION**

1. Defendant The International Gemological Institute, Inc ("IGI, Inc.") is a New York corporation in the business of grading diamonds and other precious stones and appraising finished jewelry pieces. Defendant The International Gemological Institute DMCC (Dubai), (hereinafter "IGI Dubai"), a Dubai company, and Defendant International Gemological Institute Pvt. Ltd. (India) (hereinafter "IGI India"), an Indian company, are also in the business of grading diamonds and other precious stones. IGI, Inc., IGI Dubai, and IGI India are part of the IGI

1  
1 of 30

September 15, 2017

MORRISON COHEN LLP  
By: *Jeffrey D. Brooks*  
Y. David Scharf  
Jeffrey D. Brooks  
909 Third Avenue  
New York, New York 10022  
(212) 735-8600  
Attorneys for Plaintiff  
KS Trade LLC

### Negotiations Prior to the Filing of the Complaint

The dispute between KS Trade LLC and IGI has been discussed between the parties for well over a year – if not years.

One of the defendants was put on notice early in this year by plaintiff's lead attorney, **Y. David Scharf**, a partner in New York's **Morrison Cohen LLP** law practice, that **"KS Trade also intends to reach out to Wal-Mart, Macy's, Costco, and other retailers that have sold diamonds or jewelry evaluated or appraised by IGI. When such retailers learn of the fraud, they likely will institute world-wide recalls of all diamonds or finished jewelry pieces sold with an IGI certificate or appraisal."**

It was further stressed by the plaintiff's lawyer that "such retailers will surely seek to hold IGI and its accomplices responsible for the substantial costs involved in such



The plaintiff's legal team: Morrison Cohen LLP Adv. Y. David Scharf (left) and Adv. Jeffrey D. Brooks

undertakings, and **KS Trade hopes to enlist such retailers as co-plaintiffs in its suit."**

In my almost 40 years as an industry journalist, I don't recall any instance in which a diamond merchant, involved in what seems like a private dispute, threatens actions that might trigger a large-scale recall of diamond jewelry sold by the largest U.S. retailers to consumers. What are **Costco** or **Walmart** supposed to do? Urge newlyweds to return the wedding jewelry to the retailer for a "check-up"? To get another examination of the diamonds sold?

DIB could not independently verify if these retailers have a clue about this case to begin with.

### Resembling the Infamous GIA Upgrade Case

Though court actions involving gemological laboratories are not unique, few of these cases aim at influencing wider audiences (such as retailers, consumers, etc.) just to optimize the anticipated monetary awards in either

### A Copy-Cat Case?

The basis of the infamous GIA upgrade scandal known as **Max Pincione versus Vivid Collections** case over a decade ago centered on the assertion that sales transactions involving a 103.78-carat pear-shape diamond (D-Flawless) and a 37.01-carat round diamond (H-VS2) were cancelled by a member of the **Saudi Arabian Royal Family**, allegedly after discovering that the GIA grades were not representing the true grades of the stones. It was discovered that in the case of the 103.78 carat diamond, no price offer was made by the Saudi Royal House and that the transaction was never concluded – that that there was never a need to refund, which implies that there had been no financial loss to the Plaintiff.

**The case was settled in 2005** with the GIA reportedly paying an undisclosed amount (that our sources say totaled \$3.5 million) to Max Pincione. None of the other defendants in the case participated in the payment, even though GIA Chairman **Ralph Destino**, at the time, declared that he would find ways to get the other parties to participate.

The plaintiffs in that case assessed correctly that the **mere fear of further public disclosure** or testimonies in respect to some hardly readable (English and Hebrew) "scribbles" in a trader's notebook listing bribes paid to GIA graders to fraudulently secure upgrades, and that served as an exhibit in the complaint, would become subject to extensive depositions and testimonies, was sufficient to get the GIA to prefer a settlement.

**Apparently, in the current KS Trade LLC complaint, the IGI reasons differently.**

a settlement or jury trial – perhaps all in gross disregard of the best interests of the diamond community at large. At the end of the day, this is just a private suit between a disgruntled client of IGI who seeks a remedy – or maybe even personal revenge. Or is there more?

The lead lawyer of the defendants, **Michael M. Munoz of the Golenbock Eiseman Assor Bell and Peskoe** law practice, advised DIB that "this plaintiff, using a different law firm, made these same baseless allegations several years ago." [See comments on page 4.]

It's probably only a philosophical question whether

it is justified that in order to secure a monetary award one should jeopardize the stability of the entire industry or sue an entire bourse. Maybe in anticipation of these editorial comments, DIB was advised by a spokesman that "KS Trade LLC., **its principals and all related to it are committed to promoting the goal of a clean, fraud free, diamond industry.**" [See comments below.]

One cannot escape the impression that the principal of KS Trade, **Yoni Mizrachi**, has embarked on what uncomfortably appears in some elements like a copy-cat court case of the 2005 case known as **Max Pincione** versus **Vivid Collections**, **Moty Spector**, **Ali Khazane**, and the **Gemological Institute of America**. [See box on previous page.]

### **Essence of Allegations: Fraudulent Upgrading Scheme**

The current Plaintiff seems to perceive itself as some kind of righteous crusader. [See company comment in box.]

**At the time of writing, none of the 14 defendants have filed a response. Therefore, at this point there are only plaintiff's allegations and no shred of evidence has yet been submitted on record.** The main allegations are summarized in the following paragraphs directly quoted from the Complaint [with only bolding added by DIB]:

**"On information and belief, over the last several years, the Defendants have engaged in, or have actively aided and abetted, a fraudulent scheme to manipulate the IGI Group's evaluations of diamonds and jewelry and to misrepresent the true value of diamonds and jewelry in order to create vast sums of illicit profit for themselves at the expense of diamond dealers, jewelry manufacturers and the ultimate end-user consumers who purchase the jewelry.**

**"On information and belief, the Defendants' scheme**

### **KS Trade Comments:**

Plaintiff submitted the following comments:

"KS Trade LLC., its principals and all related to it are committed to promoting the goal of a clean, fraud free, diamond industry.

"Just as KS stood firm in previous litigation, designed to silence then majority partner about his knowledge of mass immigration fraud and immense violations of the PATRIOT act, so will KS stand firm now in order to recover all of the damages caused to it by the actions detailed in the complaint.

"KS Trade LLC notes the ongoing litigation in Luxemburg, and the US, in which the accusations and admissions between the true owners of IGI speak volumes."

KS Trade LLC also finds the following extremely interesting:  
<https://www.themarket.com/law/1.2792151>

### **IGI Comments:**

This [law] firm represents International Gemological Institute, Inc. ("IGI"). IGI has asked us to send you the following response to your recent inquiries to **Jerry Ehrenwald, Marc Brauner, Roland Lorie** and **David Weinstein**. Those individuals will not be making any response of their own. IGI's response is as follows:

We have been advised not to comment publicly on the specific allegations in the pending lawsuit. We will say, however, that this plaintiff, using a different law firm, made these same baseless allegations several years ago. There was absolutely no merit to them then and there is no merit to them now. We fully expect to prevail in court and we intend to seek to dismiss the case at the earliest possible stage.

**Michael Munoz,  
Golenbock Eiseman Assor Bell and Peskoe**

***begins with the intentional and systematic over-grading of diamonds in the IGI Group's affiliated laboratories overseas. In foreign markets such as Dubai, Belgium, India and Israel, the IGI Group's affiliated laboratories systematically over-grade diamonds - giving diamonds higher evaluations than are objectively correct. In so doing, these IGI Group affiliates allow their clients in those markets - primarily diamond dealers and other wholesalers - to re-sell their diamonds at artificially inflated prices, often to companies and consumers in the United States.***

***"This intentional mis-grading appears to be primarily directed at popular classes of stones - diamonds with color grades of H to I and clarity grades of VS 1 to I1, on the Gemological Institute of America grading scale. By over-grading diamonds that do not in fact meet these quality standards, the IGI affiliates manipulate the market by deceptively increasing the supply of stones that purport to meet these quality standards.***

***"On information and belief, IGI Group companies conspire with other companies, including numerous members of the Israel Diamond Exchange (IDE), by promising that the IGI Group's affiliated laboratories will over-grade the stones - thereby artificially***

increasing the value of the rough stones. This over-grading, defrauds wholesalers, retailers and the ultimate purchasers of the diamonds and artificially drives down the price of stones that do meet the proper standards for these grading categories.

**"On information and belief, the IDE itself and some high-ranking officers and members of the IDE are fully aware of these schemes, and the IDE has aided and abetted the ongoing fraud by facilitating the transactions involved and by paying for the advertising and marketing of numerous IDE members participating in the scheme."**

## Further Allegation: Bribing for Grades

The complaint alleges, and we quote [and again the bolding is added]:

**"[The] IGI Group, represent to its customers that IGI is 'the only international certification lab' that can be counted on for consistency in grading 'across the globe.' But that representation is false. In foreign markets such as Dubai, Belgium, India and Israel, the IGI Group laboratories systematically over-grade diamonds - giving diamonds more favorable evaluations than are objectively correct.**

**"But IGI, Inc.'s laboratories in the United States do not follow suit. Thus, the standards used at IGI Inc.'s U.S. laboratories result in lower grades and lower valuations than are received from the IGI Group laboratories overseas.**

**"The IGI Group and IGI, Inc are fully aware of this**

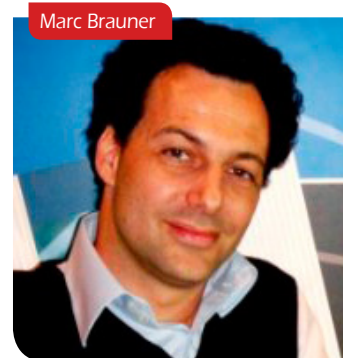
**differential. Indeed, IGI Inc. leverages that differential as part of the fraudulent scheme to create illicit profits for itself and its accomplices, at the expense of diamond dealers, jewelry manufacturers and consumers,"** alleges the complaint.

It then continues to explain that point. **"Many major U.S. retailers of jewelry require that all jewelry sold to them and placed in their stores must have an appraisal report issued by IGI, Inc. in the United States. When a jewelry manufacturer with a contract to sell jewelry to such a retailer submits jewelry pieces to IGI Inc.'s U.S. laboratories seeking jewelry appraisals, IGI, Inc.'s U.S. laboratories - contrary to IGI Inc.'s and the IGI Group's representations of worldwide consistency - refuse to base their appraisals on diamond certificates issued by the IGI Group laboratories overseas,"** alleges the complaint.

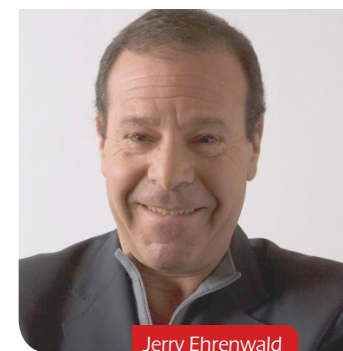
**"Instead, IGI, Inc.'s U.S. laboratories refuse to appraise the pieces at all or insist on re-grading the diamonds and issuing appraisals premised on their own non-inflated evaluations - appraisals at much lower valuations than would have resulted from the original inflated gradings."**

**"When a jewelry manufacturer protests to IGI, Inc.," read the allegations, "IGI, Inc. informs the manufacturer that IGI, Inc. will happily appraise the jewelry pieces at the valuations desired by the manufacturer if the manufacturers agree to pay IGI, Inc. a secret and illicit 'fee.'**

**"Once this illicit 'fee' is paid, IGI, Inc. re-appraises the jewelry and the over-graded and over-valued jewelry is passed on to unwitting retailers and, ultimately, to unwitting consumers who purchase the jewelry in reliance on the fraudulent appraisals."**



Marc Brauner



Jerry Ehrenwald



Roland Rorie

**INTERNATIONAL GEMOLOGICAL INSTITUTE**  
SCIENTIFIC LABORATORY FOR THE IDENTIFICATION AND GRADING OF DIAMOND AND COLORED STONES  
EDUCATIONAL PROGRAMS  
Expertise issued by IGI (IGI) Ltd.  
Suite 501, Tower 1, The Gateway, Harbour City,  
25 Canton Road, Tsim Sha Tsui, Hong Kong  
Tel: +852 2522 9880 - Fax: +852 2522 9887  
E-mail: info@igicertified.com  
www.igicertified.com

**DIAMOND REPORT**  
This report is a statement of the diamond's identity and grade including all relevant information.

NUMBER: A1A12345 HONG KONG, December 14, 2014

LABORATORY REPORT (ORIGINAL) TO WHOM IT MAY CONCERN:

DESCRIPTION: SHAPE AND CUT: NATURAL DIAMOND ROUND BRILLIANT CARAT WEIGHT: 6.34 CARAT COLOR GRADE: I CLARITY GRADE: INTERNALLY FLAWLESS CUT GRADE: VERY GOOD POLISH: GOOD SYMMETRY: VERY GOOD

Measurements: 4.58 - 4.60 x 2.67 mm Table: 62% Crown Height - Angle: 12.5% - 33.5° Pavilion Depth - Angle: 42% - 43° Girdle Thickness: THIN TO SLIGHTLY THICK Culet: MEDIUM Total Depth: 58.1% FLUORESCENCE: NONE

The symbols do not usually reflect the size of the characteristics. Red symbols indicate internal characteristics. Green symbols indicate external characteristics.

(significant external details, visible under high magnification only, are not shown)

One. Results based on request for the diamond and report. Appraisal based on paper and additional features not shown. Not an independent, repeatable security document.

CLARITY GRADE: Internally Flawless VS1 VS2 VS3 S1 S2 S3 I1 I2 I3

COLOR GRADE: D E F G H I J K L M N O P Q R S-Z FANCY COLOR

PROPORTION - MARGIN: ± 1% MEASUREMENTS - MARGIN: ± 0.02mm

The gemological analysis of diamonds, precious stones and other minerals must be carried out by gemologists with many years experience in the field and have a long series of the professional code of ethics governing their work as well as thorough knowledge of gemology, optical and physical phenomena. The identification of the various species and varieties of stones, the distinction between natural and synthetic, treated, as well as various treatment methods currently encountered are all very sensitive factors. Above all, the use of scientific methods, the use of scientific equipment and the use of scientific knowledge are essential. The gemological report is provided upon request of the customer and/or the owner of the gem. By making the report IGI does not agree to purchase or resell the stone. Neither IGI nor any member of its staff shall, at any time, be held responsible for any decision and/or may result from the application of other grading methods. Neither the client nor any purchaser of the gem shall regard the report as an appraisal nor as a warranty or warranty. This report is subject to the terms and conditions set forth above and on reverse. © IGI - 2014, version 2014 All rights reserved. No part of this report may be reproduced or transmitted in any form or by any means, without permission in writing from International Gemological Institute.

## Reliance on Testimony and Affidavits Filed in Other Cases

Apparently, to add an element of international

money-laundering to the alleged fraudulent scheme, the complaint alleges further:

*“On information and belief, IGI, Inc., IGI Dubai, IGI India, [Roland] Lorie, [Jerry] Ehrenwald, [David] Weinstein, [Marc] Brauner, Vazon, Hattron and their other accomplices hide the illicit profits from these illicit “fees” and related schemes by laundering the funds through fraudulent payments to other IGI Group affiliated companies, fraudulent loans and fabricated third-party vendor transactions, with the funds ultimately deposited into the personal accounts of Lorie, Ehrenwald, Weinstein, Brauner, and Mrs. Weinstein.”*



Based on plaintiffs comments [see box] some of the information in support of the complaint, or referred to in the complaint, was reportedly obtained by the plaintiff from other court cases among the IGI partners themselves, in particular partner Marc Brauner's holding company **Vazon Investments S.A.**, individually and derivatively on behalf of **International Gemological Institute, Inc.**, Plaintiffs, versus **Roland Lorié and Jerry Ehrenwald**, defendants. That case is being heard in the very same New York State Supreme Court. It also relies on a case filed by IGI Partner **Marc Brauner** against his fellow partners, through a holding company in Luxembourg.

DIB has been familiar with the **affidavits and documents submitted in both the New York and Luxembourg cases**, but has refrained from reporting on these as we considered these a private quarrel among business partners.

### The Legal Standing of Plaintiff

The legal standing of **KS Trade LLC** is derived from being, what Yoni Mizrahi claims, an “unfortunate victim” who had purchased polished from a DTC sight holder that had been graded by IGI in Israel, but the New York lab rejected these grades requiring regrading in the U.S. According to some sources, and we cannot verify this, the IGI has apparently maintained in the hearings **that only a minute percentage of the grades**

**were different and that these differences are normal in a business largely based on human examination.**

As the court files don't include any formal responses by any defendant, we are unable to authoritatively quote IGI positions at this time. It must be stressed again and again, **that everything stated here are only allegations that will need to be proven in court.**

“Each and every allegation in the complaint are supported by written documents, by video recordings, by taped conversations, and hard evidences,” says one source close to the plaintiffs, stressing that lawyers have checked and double checked the accusations. We'll wait and see.

### Questioning IGI's Grading Consistency Claims

If upgrading represents one leg of the current allegations, the second leg seems to be based on claims allegedly publicly made by the IGI on its website or in advertising and promotional materials. This issue is also viewed from a perspective of “truth in advertising”. When consumers see or hear an advertisement, whether it's on the Internet, radio or television, or anywhere else, U.S. federal law says that ad must be truthful, not misleading, and, when appropriate, backed by scientific evidence.

The **Federal Trade Commission (FTC)** enforces these truth-in-advertising laws, and it applies the same standards no matter where an ad appears – in newspapers and magazines, online, in the mail, or on billboards or buses. The FTC looks especially closely at advertising claims that can affect consumers' health or their pocketbooks!

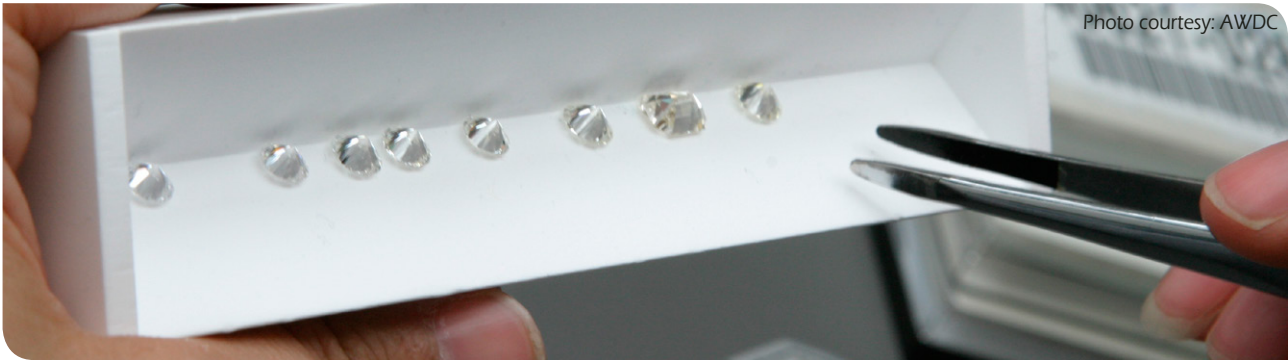
When the FTC finds a case of alleged fraud perpetrated on consumers, the agency files actions in federal district court for immediate and permanent orders to stop scams; prevent fraudsters from perpetrating scams in the future; freeze their assets; and get compensation for victims. DIB is not aware of any complaint filed with the FTC.

Alleges the Complaint [and, again, bolding by DIB]:

*“The Defendants' illicit scheme goes beyond the market manipulation created by the intentional over-grading of diamonds at the IGI Group's overseas laboratories. IGI, Inc. and the other members of the IGI Group, represent to its customers that IGI is ‘the only international certification lab’ that can be counted on for consistency in grading ‘across the globe.’ But that representation is false. In foreign markets such as Dubai, Belgium, India and Israel, the IGI*



NY State Supreme Court Judge, the Hon. Saliann Scarpulla



*Group laboratories systematically over-grade diamonds - giving diamonds more favorable evaluations than are objectively correct. But IGI, Inc.'s laboratories in the United States do not follow suit.*

*"Thus, the standards used at IGI Inc.'s U.S. laboratories result in lower grades and lower valuations than are received from the IGI Group laboratories overseas. The IGI Group and IGI, Inc. are fully aware of this differential. Indeed, IGI, Inc. leverages that differential as part of the fraudulent scheme to create illicit profits for itself and its accomplices, at the expense of diamond dealers, jewelry manufacturers and consumers."*

Then the Complaint mentions the GIA, observing that:

*"The Gemological Institute of America ('GIA') is a non-for-profit diamond grading lab that is widely acknowledged to use the highest and strictest standards in grading diamonds. GIA uses its own grading scale standards and terminology.*

*"The IGI Group uses the exact grading scale and terminology of GIA, but the IGI Group does not use the GIA grading standards. As a result, diamonds graded by IGI Group laboratories will appear to have the same*

*grade and quality of diamonds graded by GIA, but they do not. Upon information and belief, IGI Group laboratories intentionally use the GIA terminology to confuse and deceive consumers."*

It has been confirmed to us that lawyers of **KS Trade LLC** are actively engaged in talks with lawyers of the GIA. This, in itself, is strange in the early phases of a case in which the GIA is not a defendant. [See box below.]

### **Claims of Using the GIA (or any Specific) Standard**

Any organization that has developed a diamond grading standard has, or should have, an interest that its standards are enforced – and that no misleading claims regarding the standard are made. A very recent case in point is the **International Diamond Council's** (IDC) grading standard. This organization, established by the **World Federation of Diamond Bourses** and the **International Diamond Manufacturers Association** in 1975 "to establish unity in the normalization of the grading of polished diamonds" envisioned the development of a

- Continues on page 9

### **Can IGI Use GIA Grading Standards? The View From Carlsbad**

The Complaint introduces some interesting issues: To what extent is the GIA responsible for other labs claiming strict adherence to "GIA standards"? Could tacit acquiescence allowing such claims be interpreted as having "authorized" them to do so – even though the grading results are significantly at odds with the GIA norms and practices? Questions have also been raised as to whether a grading system, developed with the use of tens of millions of tax-free dollars by a not-for-profit association, can selectively be used by profit-making institutions? These questions were posed to GIA Senior Vice President **Tom Moses**, who submitted the following reply on behalf of the GIA:

To begin, GIA has no comment regarding the complaint filed by KS Trading against IGI and related parties. GIA is not a party to that lawsuit and has no personal knowledge of the issues raised in the lawsuit.

You asked, "Can any other lab, and specifically the IGI, claim that it strictly adheres to the GIA standard?"





GIA cannot answer that question which assumes a specific factual scenario – i.e., that another grading lab is making claims of strict adherence to GIA's standards. What I can provide is that GIA, at its core, is an educational/research institute which has widely disseminated knowledge and content through its courses and programs for the last 70 years. GIA created its diamond grading system in the 1940's as a teaching method for GIA students. It was a systematic method that allowed students (mainly retail jewelers at the time) to have a common language to classify the quality of diamonds.

**We created the D to Z “yardstick” establishing a D to Z set of color reference diamonds, and we began offering a service to assist third parties in having a color master set of diamonds to facilitate uniform grading.**

GIA also developed an instrument to support this color grading and sold the color grading instrument as another way to assist trained graders in applying a uniform grading system. Our education courses also outlined the clarity grading categories, and we taught the system and methodology to hundreds of students through GIA education. Indeed, GIA education spread the use of this common language and common methodology, which, we stress, is in furtherance of GIA's long standing mission to ensure the public trust.

In the early 1950's, we started applying the grading system in the GIA laboratory and soon many from the industry began to adopt GIA's nomenclature and system. GIA's laboratory further developed proprietary processes and instruments to refine the grading systems, and those tools continue to evolve with technology; however the standards used remain the same as offered in our education courses.

Other grading laboratories began to open in the 1970's and some used GIA's grading nomenclature and others created their own nomenclature. GIA continued to offer education courses, the service to create color stone master sets, and the sale of grading instruments to help people grade to the standards GIA taught.

A decade or so ago, GIA licensed its FacetWare software that predicts the GIA cut grade for round brilliants. This software is now integrated into measurement scanning devices sold by leading instrument manufacturers.

### **“No Policing of Standards Enforcement Outside the GIA”**

GIA did not, nor do we believe it should, assume the responsibility to “police” or enforce the application of its standards by those outside of GIA. To make an analogy, someone can train to be a surgeon at a medical school and learn the correct procedures, but the medical school cannot be responsible for how the surgeon applies the procedures learned. Let's further assume the medical school in the analogy above holds non-profit status. Its mission is to teach procedures that can be used to benefit the public.

The fact that most of its students will choose careers in a for-profit setting does not affect the school's non-profit status. In the same vein, someone educated on the GIA standards, procedures, and nomenclature may choose to apply what they have learned in a for-profit setting; GIA is not in the business of stifling competition by prohibiting the proper application of its standards in a way that benefits the public.

With regard to the role of enforcement, there are laws, trade organizations or organizations like the Federal Trade Commission (FTC) in the United States that deal with abuse of standards, and they are better equipped to investigate potential or actual misconduct.



Tom Moses



Susan Jacques, GIA President

Tom Moses

- Continued from page 7



Harry Levy, IDC President

set of internationally recognized standards applicable in the same way all over the world. It stresses that "methods for applying these standards should be normalized. This is necessary in order to arrive at uniform certificates."

Historically, the "flagship" lab employing IDC standards was the HRD in Belgium.

Recently, the HRD decided to widen its grading scope of its "excellence" cut grade, to bring

it in line with the GIA definition.

This prompted **IDC president Harry Levy** to inform the HRD's **CEO Michel Janssen** that "we could not lower the IDC standards any further. We take strong views as to the IDC's role in protecting and maintain consumer confidence. We must now ask you to withdraw from all your paperwork that you grade stones according to IDC rules.

This clearly is not the case now," states the IDC president.

## HRD Has Own Grading Standard

Except for triggering some certification printing costs for the HRD, removing the IDC logo will have no, or only a marginal adverse effect. The lab basically represents "its own" brand – and the market knows and appreciates these certificates. IDC co-founder and director **Dieter**

**Hahn** informed DIB that one time "there were three labs working in accordance to IDC rules." These included the laboratory of the Jewellery Council of South Africa, which later switched to GIA, the aforementioned HRD, which "just stepped out by commercial reasons while extending the parameters for the proportions," says Hahn, and "finally the **DPL Diamant Prüflabor GmbH (DPL)** [lab] here in Germany's Idar-Oberstein."

One wonders whether a near-obsolete standard can impact consumer confidence one way or the other, but it shows to what length a polished diamond grading system is willing to go to defend its name, its standards and thus its brand.

The HRD's departure from an external standard also prevents possible lawsuits, similar to the KS Trade case, alleging that its certificates don't adhere to the standards it claims to enforce. The GIA is, undoubtedly, a more complicated story.

**We believe that the diamond market is acutely aware of the value of each and every certificate. A trader may pay a premium for a diamond with a certain certificate, or, conversely, allow a discount on certain other certificates. This by itself is overwhelming evidence that a certain grade appearing on one report may carry a differential weight when appearing on another report, even if identical descriptions appear. Though we don't necessarily subscribe to Adam Smith's notion of the market's "invisible hand" implying that the market is infallible, we do think that in the global diamond business the market "knows best."**

ACCURACY • KNOWLEDGE • EXPERTISE  
A De Beers Group Company

Your Grading Report Number  
**SAMPLE**

**Summary**

Inscription Number	000000
Shape	Round
Measurements	4.14 - 4.17 x 2.53mm
Carat	0.26 ct
Colour	H
Clarity	VS2
Cut	Excellent
Polish	Very Good
Symmetry	Very Good
Fluorescence	Negligible
Comments	

**Carat** 0.26 ct

Carat Weight  
0.26 ct

Measurements  
4.14 - 4.17 x 2.53mm

**Colour** H

Grade

D	E	F	G	H	I	J	K	L	M	N
OP	OR	ST	UV	WX	YZ					

Fluorescence  
Negligible

**Clarity** VS2

Grade

FL	IF	VVS1	VVS2	VS1	VS2	S11	S12	I1	I2	I3
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Symbols  
Cloud  
Crystal  
Feather

Comments

**Cut** Excellent

Grade

EXCELLENT	VERY GOOD	GOOD	FAIR	POOR
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Shape  
Round

Polish  
Very Good

Grade  
Excellent

Symmetry  
Very Good

SAMPLE

One side of the De Beers IIDGR grading report

### Can Non-Adherence to GIA Grades be Considered "Fraud"?

**KS Trade** seems to allege that IGI may violate "truth in advertising" laws, or "consumer protection" statutes, if it can show that GIA grading standards are not followed. Whether IGI's use of the GIA terminology is done, as is alleged, "to confuse and deceive consumers" is for the jury to decide.

The recently established **International Institute of Diamond Grading & Research** laboratory of **De Beers** has developed its own grading technologies though it uses the general GIA developed terminology. It protects itself by qualifying on each grading report that

*"A similar report provided by a third party laboratory may differ from this one depending on when, how and by whom the diamond is examined and the changes and improvements in techniques and equipment that may have occurred between the two examinations. It will not always be possible to determine if a diamond has been treated or processed and IIDGR (UK) Limited offers no guarantees in this respect."*

The IGI has not yet filed any response to the Complaint – though undoubtedly it will have aired some of its arguments within the chambers of the Hon. Judge Saliann Scarpulla. It is not unreasonable to conjecture that it will assert "that its grades are their own opinions – and that they are allowed to render their opinion, even if others may think otherwise."

One can rationally argue that if De Beers can qualify its grading results, so can the IGI. We asked the views of the GIA on the use of the GIA standards by other labs. [See pages 7 and 8 for the reply by the GIA.]



HRD CEO Michel Janssen



### Manipulation of Markets

Once more we must come back to the aforementioned 2005 GIA upgrade scandal. Those participants in the bribing scheme who knew beforehand that they were able to secure significant upgrades **were also willing to pay excessive prices for the rough diamonds – pushing the honest manufacturers out of the market.** Thus, effectively, a few players totally distorted the fair competitive level playing field. The very first company to discover this sudden **market distortion** was the main rough supplier, **De Beers**, itself.

In a confidential internal **De Beers staff report** (dated March 26, 2003), presented to its Executive Committee, it warns that:

*"for many years the GIA certificate has been the accepted market standard on which the value of polished diamonds is based. What appears to have changed significantly over the last six months is the GIA assortment in terms of how stones are graded. Color and quality grades which are being awarded now are far more generous than could have been expected six to twelve months ago. We need to be able to understand the effect of these 'upgrades' and how they relate to the prices at which polished goods are trading in today's market. ....*

*"Such a pattern, when expanded to include the complete range of color, quality and, to some extent, size of polished that is produced from DTC boxes, could be one interpretation of why the premiums that our rough goods have enjoyed in the early part of this year have been so strong. ...."*

The report continues:

*"One thing that we should be aware of, however, before we make any assumptions or take decisions based on the current situation, is that, just as there can be 'upgrades', so also can there be 'downgrades'. Whilst the market's reaction to any downward adjustment in assortment might simply be to reduce the trading discount, there would undoubtedly be a period of significant confusion during which the potential for business to be disrupted would be high.*

*"The resourcefulness of participants within the diamond industry with regard to dealing with this issue is not in doubt. The major concern has to be the potential impact should the current picture enter the consciousness of the consumer. If the latter were to discover that the H color VS2 stone that he or she has just purchased for \$6,000 is really an 'inflated' I*

- Continues on page 12

## The Charges against the Israeli Bourse

The **Israel Diamond Exchange (IDE)** serves its members. It has no other tasks. Its mission, in one sentence, is to provide the industry with essential services for running commercial and business activities. These include shipping companies, branches of commercial banks, a post office, insurance companies, and the office of the Diamond Controller, affiliated to the Ministry of Industry, Trade and Labor, as well as a customs office. The Ramat Gan building complex also houses a number of gemological laboratories, including the GIA and IGI.

The IDE is not itself involved in any of the trading activities of its members. It facilitates its members to conduct arbitrations in order for them to solve disputes. It doesn't operate, or have any interest in, gemological laboratories.

So what issues can KS Trade LLC have with the IDE? In its Complaint, it states:

*"On information and belief, the IDE itself and some high-ranking officers and members of the IDE are fully aware of these schemes, and the IDE has aided and abetted the ongoing fraud by facilitating the transactions involved and by paying for the advertising and marketing of numerous IDE members participating in the scheme."*



IDE President Yoram Dvash

Continues the Complaint:

*"On information and belief, the IDE's bylaws require members to report any unethical or illegal practices, and the bylaws also require members to settle disputes in internal arbitration before the IDE. On information and belief, the IDE became aware of the IGI Group's scheme through these mechanisms, but, rather than expose this international fraud, the IDE aided and abetted it instead."*

Before commenting on any of the above, I want to disclose that I enjoy the distinct privilege of being an **Honorary Life Member of the IDE**, and I hope that my affinity with the bourse will not impact my journalistic views.

In any large purpose-built building complex, **whether a bourse, a university, a shopping mall, or an airport**, there may occasionally be an individual or a group of individuals that are infringing on one law or another. Each of these building complexes are managed by an authority or other management body overseeing its proper functioning.

The Israeli diamond bourse is owned by its members, and its board of directors are elected from within the membership to serve their peers. Elected officials donate their time and efforts voluntarily – without compensation. The charges and allegations in the complaint are all directed at specific persons in their own private

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**SUPREME COURT**  
**NEW YORK COUNTY, NEW YORK**

**KS Trade LLC,**  
**vs**  
**International Gemological Institute, Inc.; et al.**

**Plaintiff(s)**  
**Defendant(s)**

Index No. 656713/2016  
Dept. No.:  
Date:  
Time:

**AFFIDAVIT OF SERVICE**

I, **Manney Watts**, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #804, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the: **Summons with a Notice: Notice of Commencement of Action Subject to Mandatory Electronic Filing** on the 6th day of **June, 2017** and served the same on the 6th day of **June, 2017** at **10:52 AM** by delivering and leaving a copy with the **Defendant(s)**. **The Israeli Diamond Exchange at Yoram Dvash (White Skin Male, 6'1" 210 lbs, curly Black and Gray hair), Chair of the Board of Directors, Mandalay Bay Resort & Casino, JCK Convention, Booth 55026, 3950 S. Las Vegas Blvd., Las Vegas, NV 89119.**

**NOTARY PUBLIC**  
**STATE OF NEVADA**  
**County of Clark**  
**K.E. MURRAY**  
Appt. No. 04-91449-1  
My Appt. Expires Sept. 2, 2020

State of Nevada, County of **Clark**  
SUBSCRIBED AND SWORN to before me on this  
6th day of **June**, 2017  
Notary Public **K.E. Murray**

**Manney Watts**  
Affiant: **Manney Watts # R-077201**

1 of 1

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capacity as a diamond trader in a diamond business. The suggestion that the fact that some bourse members may personally be involved, or the fact that the IGI has offices in the complex will make the institution itself responsible seems, to me, far-fetched, and may not hold water. The further fact that **none of the Israeli diamond traders allegedly involved have been named as defendants** is even more puzzling.

**Not an iota of evidence has been introduced (yet) in the case – and that holds especially true for the allegations against the IDE.** Just because several of the alleged participants in an alleged fraudulent scheme may also happen to serve in the IDE's board of directors, doesn't make the bourse an institution responsible or liable. Unless the plaintiff holds a smoking gun – such as an IDE board decision to assist in the commitment of crimes – it seems that including the IDE as a defendant is quite superfluous.

The judge provided the plaintiff with considerable leeway in serving its summons on the IDE, enabling it to serve the bourse in Las Vegas rather than demanding from the plaintiff to serve in the commonly accepted procedures set by the Hague Convention (through diplomatic channels). Maybe the judge knows something that I don't, but my gut-feeling says that naming the IDE is a matter of "over-shooting."

However, I am not a lawyer, and I must assume that partners in the **Morrison Cohen** law practice, who have worked on preparations of this case for a year and a half, know what they are doing. Irrespective of what happens, **if the IDE decides to counter-sue for libel and defamation, harassment of its members, or for the leveling of, what it may see as, frivolous (or malicious) charges, I wouldn't like to be in the shoes of the plaintiffs. Let's see how matters evolve.**

- Continued from page 10

**color Si1 stone which is worth only \$4,500, what could the damage be to the credibility and image of our product?**

**"There is, as yet, no clarity on how this scenario will play out, and it is a complicated one, but, now that we are beginning to have a more complete grasp of how the current situation has come about, we are in a better position to understand and report on future developments,"** cautions the report to De Beers top management.

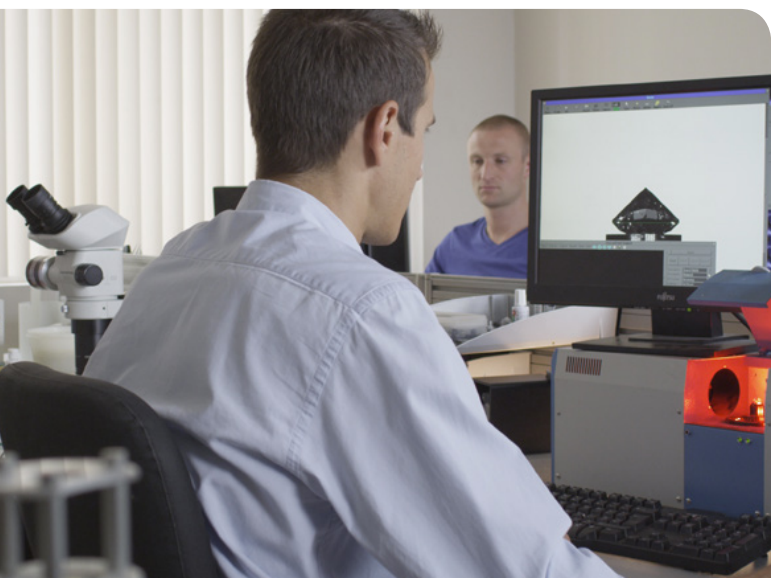
De Beers – and the GIA for that matter – was unaware then that the upgrades were secured fraudulently. It only noted the grave market and price impact triggered by upgrading. The exchanges between De Beers and the GIA advances a series of different possible reasons for the grade discrepancies, but fraud was the not considered. One ought to be cautious when jumping to conclusions. business the market "knows best."

### Large Specials versus Bread and Butter Goods

In spite of the similarities, there is one major difference between the 2005 and 2017 situations: Then, the upgrades were mainly in the highest quality larger goods. **The current KS Trade LLC Complaint focuses on very specific lower quality ranges impacting the color grades of H to I and clarity grades of VS 1 to I1. These are the American market's bread and butter goods.**

DIB has reported previously on a worrisome scenario that occurred at the end of 2015 and 2016. Large retail houses reserve the right to return, after the holiday season, unsold jewelry back to the jewelry supplier. They typically will melt the gold and set the diamonds into new designs – which may have a greater chance to sell. The "new" jewelry needs to be certified again and then some manufacturers were surprised to find out that they could not obtain the same grade for the diamonds which had previously been certified. As DIB reported in the past, one manufacturer confided **"what could I do? Tell the retail house that I had sold jewelry with incorrectly graded diamonds? I had to buy new higher quality diamonds in the market to supply the newly created diamond set jewelry to my supplier."** This company has not survived.

This may have nothing to do with the current Complaint – but it illustrates some of the ill side-effects of upgrading – or inconsistent grading.



### The Requests for Sealing Case Documents

In every situation where qualities of diamonds or their grades are questioned, there is some fear that publicity might lead to consumer class actions – there are plenty of lawyers scouting court records on a daily basis in search of lucrative opportunities. Thus a relatively minor court action might nevertheless have a devastating spillover effect. In such a situation, the retailer can hardly be held responsible and there would be a question as to whom to sue. The suppliers? The traders? The owners of the lab?

One easily could advance several reasons for demanding that the case be tried behind closed doors. When the court is considering the advantages and disadvantages of transparency, it ought to be reminded of the question raised in the 2003 De Beers document on the observed GIA upgrades: **“What could the damage be to the credibility and image of our product?”**

### Changed Media and Governance Environment

Fifteen years ago, the internet, social media, Twitter, Facebook and WhatsApp weren't connecting consumers on a 24/7 basis. The GIA upgrade imbroglio never reached the consumer public at large and it was effectively remedied through sweeping GIA management and governance changes at the highest levels. We are now

in 2017. Not only have the media changed – but so has the judicial and governmental perception of the public's right to know.

It's anyone's guess how the Hon. Judge **Saliann**

**Scarpulla** will view the public interest. Though there has been little publicity around the case, some parties have suggested that several diamond companies may come forward airing their “frustration” with some grading practices. We were unable to independently verify this assertion over the holiday weekend.

In cases where the public trust may have been undermined, in which consumers and traders may have been seriously disadvantaged, and alleged

market manipulation is considered quite conceivable, a judge would likely be reluctant to grant the defendants the “comfort” that keeping the proceedings and testimonies under seal provides – especially in light of the expected opposition to such move by the plaintiffs.

One would hope that the court would make its determination after having formed an opinion on the merits of the case. **At the moment this particular genie is let out of the bottle it may have an impact on the consumers and retailer that cannot be stopped or reversed. Trust in the industry, that has already eroded considerably, may even be further damaged.**

One way or the other – this is a messy case. Let's say no more. ♦



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