

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

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiffs,

—against—

JAMES CARLTON GRAYS, a/k/a JAMES WEBB,
doing business under the firm name and
style of J.C. GRAYS CO., and EDWARD T.
ROSS,

Defendant.

ORDER TO
SHOW CAUSE

UPON reading the summons and complaint herein, duly verified
the **5th** day of **February**, 19**58**, the annexed affidavit
of **GRISTAS J. MIHALY**,

Assistant Attorney General of the State of New York, duly sworn to the
5th day of **February**, 19**58**, and it appearing that
the interest of the People of the State of New York, the plaintiffs herein, require
the same,

LOUIS J. LEFROWITZ

NOW on motion of ~~JOHN B. KUNJAVIKS~~ **JOHN B. KUNJAVIKS**, Attorney General of the
State of New York, attorney for plaintiffs, it is

ORDERED, that the above named defendantS show cause before
Special Term, Part III of this Court, for the hearing of contested motions, to be
held at the Courthouse, Foley Square, Borough of Manhattan, City of New York
on the **10th** day of **February** 19**58**, at 10:00 o'clock in the
forenoon of that day, or as soon thereafter as counsel can be heard.

WHY the defendant should not be enjoined and restrained, pending
the determination of this action and until the entry of final judgment herein, from
directly or indirectly engaging in any business relating to the purchase and sale of
securities or commodities with the public, within and from the State of New York;
and from acting and engaging as agent, salesman or employce of any person, firm
or corporation engaged in any business relating to the purchase and sale of securities

or commodities with the public, within and from the State of New York; and from writing, publishing, preparing, selling and distributing any letter or other literature advising, suggesting or in any other manner communicating advice to the public within the State of New York with respect to the purchase or sale of securities or commodities and of the future price fluctuations of securities or commodities market in general; and from forecasting, advising or in any other manner suggesting either orally or in writing any method or methods to be used in connection with the purchase or sale of securities or commodities, and from any act in aid or furtherance of the same; and

WHY the defendantS should not be further enjoined and restrained, pending the determination of this action and until the entry of final judgment herein, from directly or indirectly engaging in the business of broker or dealer in securities; and from acting and engaging as agent, salesman or employee of any broker or dealer in the securities business; and from acting as or being a stockholder, director, trustee, officer, member or employee of any corporation, association, syndicate, company, trust or other combination engaged in the securities business as broker or dealer; and from being a partner or member (limited, dormant or otherwise) of any partnership, firm, association or person engaged in the securities business as broker or dealer within and from the State of New York; and from any act in aid or furtherance of the same; and

WHY the defendantS should not be further enjoined and restrained, pending the determination of this action and until the entry of final judgment herein, from acting and engaging as agent, salesman, employec, stockholder, director, trustee, officer, associate and partner (limited, dormant or otherwise) of any corporation, company, association, trust, syndicate, firm, person or other combination, in the negotiation, advertisement, distribution and purchase to and from the public within and from the State of New York, of any negotiable documents of title, foreign currency order, calls, options, stocks, bonds, notes, evidences of interest or indebtedness and any other securities including oil and mineral deeds and leases,

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or any interest therein, sold or transferred in whole or in part to the purchaser where the same do not effect a transfer of title in fee to the land, and including any commodity as defined in Section 352 of the General Business Law of the State of New York, issued and which may hereafter be issued of any person, partnership, corporation, company, trust or association and from any act in aid or furtherance of the same; and it is further

ORDERED, that in the meantime and pending the determination of this motion and until the further order of this Court, the defendants ARE hereby enjoined and restrained from directly or indirectly engaging in any business relating to the purchase and sale of securities or commodities with the public, within and from the State of New York; and from acting and engaging as agent, salesman or employee of any person, firm or corporation engaged in any business relating to the purchase and sale of securities or commodities with the public within and from the State of New York; and from writing, publishing, preparing, selling and distributing any letter or other literature advising, suggesting or in any other manner communicating advice to the public within and from the State of New York with respect to the purchase or sale of securities or commodities and of the future price fluctuation of securities or commodities market in general; and from forecasting, advising or in any other manner suggesting either orally or in writing any method or methods to be used in connection with the purchase or sale of securities or commodities, and from any act in aid or furtherance of the same; and it is further

ORDERED, that in the meantime and pending the determination of this motion, and until the further order of this Court, the defendants ARE hereby enjoined and restrained from directly or indirectly engaging in the business of broker or dealer in securities; and from acting and engaging as agent, salesman or employee of any broker or dealer in the securities business; and from acting as or being a stockholder, director, trustee, officer, member or employee of any corporation, association, syndicate, company, trust or other combination engaged in the securities business as broker or dealer; and from being a partner or member

(limited, dormant or otherwise) of any partnership, firm, association or person engaged in the securities business as broker or dealer within and from the State of New York; and from any act in aid or furtherance of the same; and it is further

ORDERED, that in the meantime and pending the determination of this motion, and until the further order of this Court, the defendant~~s~~ ~~ARE~~ hereby enjoined and restrained from acting and engaging as agent, salesman, employee, stockholder, director, trustee, officer, associate and partner (limited, dormant or otherwise) of any corporation, company, association, trust, syndicate, firm, person or other combination in the negotiation, advertisement, distribution and purchase to and from the public within and from the State of New York of any negotiable documents of title, foreign currency orders, calls, options, stocks, bonds, notes, evidences of interest or indebtedness and any other securities including oil and mineral deeds and leases, or any interest therein, sold or transferred in whole or in part to the purchaser where the same do not effect a transfer of title in fee to the land, and including any commodity as defined in Section 352 of the General Business Law of the State of New York, issued and which may hereafter be issued, of any person, partnership, corporation, company, trust or association, and from any act in aid or furtherance of the same; and it is further

ORDERED, that the defendant ~~S~~ individually and as broker, dealer, owner, partner (limited, dormant or otherwise), agent, or employee of any other person, firm, association, or corporation and all other persons acting in aid or assistance of defendant , be and they are hereby enjoined and restrained pending the determination of this motion and until further order of this Court, from transferring or disposing of or in any way interfering with the property of the defendant in their possession or under their control, derived by the fraudulent practices set forth in the verified complaint herein; and it is further

ORDERED, that service of a copy of
this order with copies of the papers upon which
it was granted, made on the defendants personally
within the State of New York, on or before the
7th day of February, 1958, shall be deemed
sufficient service.

Dated: New York, New York, February 5, 1958

Justice of the Supreme Court

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

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THE PEOPLE OF THE STATE OF NEW YORK, :
 :
 Plaintiffs, : SUMMONS
 :
 -against- :
 :
 JAMES CARLTON GRAYE, a/k/a JAMES WEBB, :
 doing business under the firm name and :
 style of J.C. GRAYE CO., and EDWARD T. :
 MOSS, :
 :
 Defendants. :
-----X

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and serve a copy of your Answer, or if the complaint is not served with the summons, serve a notice of appearance on the plaintiffs' attorney within twenty (20) days after the service of this summons, exclusive of the day of service. In case of your failure to answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated: New York, New York, February 5, 1958.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Plaintiffs
Office and Post Office Address
80 Centre Street
New York 13, New York

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

-----X
PEOPLE OF THE STATE OF NEW YORK,

Plaintiffs,

-against-

JAMES CARLTON GRAYE, a/k/a JAMES WEBB,
doing business under the firm name and
style of J. C. GRAYE CO., and
EDWARD T. MOSS,

Defendants.
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Plaintiffs, by LOUIS J. LEFKOWITZ, Attorney
General of the State of New York, complaining of the above
named defendants, allege upon information and belief:

FIRST: That since on or about May 8,
1956 to the present time, the defendant, JAMES CARLTON
GRAYE, was doing business as a sole proprietorship under
the firm name and style of J. C. GRAYE Co., and was a
dealer in securities within the State of New York with-
in the meaning of Article 23-A of the General Business Law
of the State of New York, and maintained offices from
on or about May 8, 1956 to the present time at 15 Maiden
Lane in the Borough of Manhattan, City and State of New
York.

SECOND: That during the period from on
or about August 15, 1957 to the present time, the defend-
ant, JAMES CARLTON GRAYE, offered for sale and sold to
the plaintiffs and the public generally within the State
of New York, many thousands of shares of the common stock
of Atlas Gypsum Corporation Ltd. (hereinafter referred to
as Atlas) an Ontario, Canada corporation at prices varying

from, approximately \$1.37 per share to approximately \$3.62 per share.

THIRD: That in connection with the offering for sale and sale of the aforesaid shares of common stock of Atlas, the defendant, JAMES CARLTON GRAYE, published, circulated, distributed and sent reports, bulletins, pamphlets and other literature that contained promises and representations concerning the stock of Atlas and the history and business of Atlas through the United States mails to the plaintiffs and the public generally, within and from the State of New York, for the purpose of inducing said plaintiffs and the public to purchase the aforesaid common stock of Atlas.

FOURTH: That the defendant, JAMES CARLTON GRAYE, employed salesmen, newspaper advertising, the United States mails and the telephone to offer for sale and sell the said common stock of Atlas to the plaintiffs and the public generally, within the State of New York and to make promises and representations concerning Atlas and its stock as hereinabove and hereinafter set forth.

FIFTH: That during the period from In or about August, 1957, to in or about the present time the defendant, JAMES CARLTON GRAYE, in connection with the offering for sale and sale of the said shares of the common stock of Atlas, made the following representations to plaintiffs and the public in New York in the aforesaid reports, bulletins, pamphlets, other literature and telephone conversations concerning Atlas and its common stock:

A. "The Atlas Gypsum Corporation is currently surveying and developing its gypsum properties in the Moose River Basin Area... in preparation for open pit mining. The company may be taking the initial steps in the opening of the Moose River Basin Area to active mining."

B. "But at the end of August, two American technical men of eminence visited the area with the express intention of searching specifically for Selenite.

"They were accompanied by Mr. Archibald Freeman, General Manager of the Ontario Northland Railway, on whose Right of Way Atlas' properties lie.

"In a letter to Atlas Gypsum Corporation, Mr. Freeman had this to say:

"I went to Moose River, accompanied by Professor G. Frederick Smith of Columbus, Ohio and Dr. Harvey Diehl, Iowa State College, Department of Chemistry. On Thursday, September 1st and Friday, September 2nd, Professor Smith and Dr. Diehl examined outcroppings of Gypsum which occur on the banks of the Moose River, beginning perhaps half a mile north of the bridge and extending intermittently for at least two miles."

C. "Atlas Gypsum Corp. is the holder of 14 mineral claims...along the northeast side of the right of way of the Ontario Northland Railway, commencing at mile post 143 at the north end of the Moose River Crossing Bridge...in Carroll and Canfield townships, District of Cochrane."

D. "The Ontario Northland Railway has quoted Atlas Gypsum the following rates per cwt. (subject to revision) for the handling of large shipments of crude gypsum ore loaded in open gondola cars...to North Bay, 30 cents Toronto, 48 cents... Montreal, 50 cents... Buffalo, (N.Y.) 55 cents."

- E. "On 26 of the company's claims the top beds of gypsum have reportedly been estimated as having a thickness of twenty feet over the entire area which would represent gypsum reserve of 60 million tons. Engineers' report concur in this opinion."
- F. "In addition, the company has 18 water claims, some of which are on two islands in the Moose River and the others under the river. It is possible that the gypsum deposits already indicated on the 26 claims, extend into the subaqueous claims, which if proved out, would give ATLAS GYPSUM'S 44 contiguous claims an imposing value in gypsum ore."
- G. "It is the intention of ATLAS GYPSUM to develop these claims in accordance with the recommendations of its technical consultants by entering into an extensive diamond drilling program to define the extent of the deposits and also to obtain information necessary for locating the best site for the initial open pit operation. It is estimated that the company should spend about \$125,000.00 on the investigation and preliminary work needed before production is initiated."
- H. "The continued growth of the gypsum industry is well assured and we believe that ATLAS GYPSUM will develop into an important supplier of this all important versatile mineral."
- I. "U.S. Gypsum has an enviable record of earnings and dividends. Cash dividends were initiated in the year of its founding 1920...and have been maintained ever since at steadily increasing rates. There was no interruption in dividend payments during the depression years of the thirties...We feel that ATLAS GYPSUM CORP. is on the threshold of such growth and is therefore a very worthwhile vehicle for speculative capital gains."

- J. "COMPANY HOLDS IMPORTANT GYPSUM RESERVE."
- K. "18 GYPSUM CLAIMS HAVE AN ASSURED YEAR ROUND PRODUCTION"
- L. "COMPANY OWNS 26 ADDITIONAL CLAIMS WHICH REPRESENT 60,000,000 TONS OF GYPSUM ORE IN SIGHT."
- M. "TAKING ORE OUT OF THE GROUND FOR SHIPMENT IS EXPECTED TO BE DONE AT VERY ECONOMICAL COSTS PERMITTING COMPANY TO SELL OUTPUT PROFITABLY AGAINST COMPETITIVE PRICES."
- N. "INTENSIVE DEVELOPMENT PLANS ARE PROCEEDING."
- O. "ATLAS GYPSUM ...holds a number of mineral claims in the Moose River Basin and vicinity and may be taking the initial steps in the opening of the Moose River Basin to active mining."
- P. "On 26 of the company's claims the top beds of gypsum are reportedly estimated to have a thickness of twenty feet over the entire area of the claims... which indicate gypsum reserves of approximately 60 million tons...on this one block of claims."
- Q. "The shares of Atlas Gypsum have been in good demand in recent weeks, and in this period the price has advanced from under \$2.00 to over \$3.00 a share.. despite the general weakness of the securities market."
- R. "Since Atlas Gypsum is likely to develop into an important supplier of gypsum..to Canada's building and construction industries..the company's shares on a speculative basis, afford excellent promise of substantial capital gains promise."
- S. "Atlas has what we believe to be the finest gypsum property in Canada."

T. "Gypsum stocks as a group have held remarkably steady.. U.S. GYPSUM at around 61.. NATIONAL GYPSUM at around 39.. both on the BIG BOARD are only about 5 and 6 points below their 1957 highs..ATLAS GYPSUM'S shares have moved up from around \$2.00 a share in early August to over \$3.25 a share..held like the Rock of Gibraltar at around the \$3.00 level through the worst days of the October stock market decline."

SIXTH: That the aforesaid representations were false, fraudulent, untrue, misleading, beyond reasonable expectation and unwarranted by the circumstances existing at the time they were made, and should have been known by JAMES CARLTON GRAYE to be so, and were made for the purpose of fraudulently inducing the plaintiffs and the public generally within the State of New York to purchase from the defendant JAMES CARLTON GRAYE, shares of the common stock of Atlas.

SEVENTH: That the aforesaid representations, suggestions and recommendations made by the defendant, JAMES CARLTON GRAYE, were false, fraudulent and misleading in that the defendant, JAMES CARLTON GRAYE, while recommending to members of the public of the State of New York the purchase of Atlas stock, falsely and fraudulently concealed from and failed to disclose to said purchasers certain material facts that defendant, JAMES CARLTON GRAYE, knew, or with reasonable effort could have known.

EIGHTH: That since on or about August, 1957, to January 10, 1958, the defendant, EDWARD T. MOSS, residing at 60 Remsen Street, Brooklyn, New York, was

employed as a salesman by defendant JAMES CARLTON GRAYE.

NINTH: That during said time the defendant, EDWARD T. MOSS, made fraudulent representations to members of the investing public of the State of New York in the sale of the securities of Atlas Gypsum Corporation Ltd. to members of the public of the State of New York.

TENTH: Mountex Minerals Corporation is a corporation incorporated under the laws of the State of Colorado on the 11th day of October, 1955, with its principal office at 26-09 Sunset Boulevard, Houston, Texas.

ELEVENTH: That Mountex Minerals Corporation from on or about June 11, 1957 to June 20, 1957 commenced to offer for sale and did offer to sell to the members of the public of this State the securities of Mountex Minerals Corporation, as a dealer in securities, as defined by Section 359-e of the General Business Law of the State of New York, without first having filed a Dealer's Statement with the Department of Law of the State of New York, as required by said statute.

TWELFTH: That the defendant, JAMES CARLTON GRAYE, from on or about June 11, 1957 and to June 20, 1957 commenced to offer for sale and did offer and sell the stock of Mountex Minerals Corporation, as agent of Mountex Minerals Corporation in violation of Section 359-e of the General Business Law of the State of New York.

THIRTEENTH: That the aforesaid acts and course of conduct by the defendants were fraudulent and in violation of law and constituted fraudulent practices with the intent and meaning of Article 23-A of the General Business Law of the State of New York.

FOURTEENTH: That as a result of the fraudulent conduct of the defendants, the plaintiffs and the public generally were induced to part with monies, securities and other valuable properties in reliance thereon to their loss and detriment.

FIFTEENTH: That at all times hereinbefore mentioned and at the present time the defendants have been and continue to be engaged in other fraudulent practices in the offer and sale of securities within and from the State of New York.

SIXTEENTH: That the plaintiffs and the public generally have been and are being irreparably damaged and have no adequate remedy at law.

WHEREFORE, plaintiffs demand judgment against the defendants as follows:

1) That the defendants and each of them be restrained and enjoined permanently and during the pendency of this action, from directly or indirectly engaging or attempting to engage in any business relating to the purchase and sale of securities or commodities with the public, within and from the State of New York; and from acting and engaging as agent, salesman or employee of any person, firm or corporation engaged in any

business relating to the purchase and sale of securities or commodities with the public, within the State of New York; and from writing, publishing, preparing, selling and distributing any letter or other literature advising, suggesting or in any other manner communicating advice to the public within the State of New York with respect to the purchase or sale of securities or commodities and of the future price fluctuations of securities or commodities markets in general; and from forecasting, advising or in any other manner suggesting either orally or in writing any method or methods to be used in connection with the purchase or sale of securities or commodities, and any act in aid or furtherance of the same;

3) That the defendants and each of them be restrained and enjoined permanently and during the pendency of this action from directly or indirectly engaging or attempting to engage in the business of broker or dealer in securities within or from the State of New York, and from any act in aid or furtherance thereof; and from acting and engaging or attempting to act and engage as agent, salesman or employee of any broker or dealer in the securities business; and from acting as or being or attempting to act as or be a stockholder, director, trustee, officer, member or employee of any corporation, association, syndicate, company, trust or other combination engaged in the securities business as brokers or dealers; and from being or attempting to be a partner or member (limited, dormant or otherwise) of any partnership, firm, association or person engaged in the

securities business as brokers or dealers within or from the State of New York; and from any act in aid or furtherance of the same;

3) That the defendants and each of them be enjoined and restrained permanently and during the pendency of this action from acting and engaging or attempting to act and engage as agent, broker, salesman, owner, employee, stockholder, director, trustee, officer, associate or partner (limited, dormant or otherwise) of any corporation, company, association, trust, syndicate, firm, person or other combination, or as an employee and representative of another or in any other capacity, or by or through any other person or agency, from the issuance or offering for sale, or sale, or promotion, or negotiation, or advertisement, or distribution, or purchase, to or from the public within or from the State of New York, of any negotiable documents of title, foreign currency orders, calls, options, stocks, bonds, notes, evidences of interest or indebtedness and any other securities including oil and mineral deeds and leases, or any interest therein, sold or transferred in whole or in part to the purchaser where the same do not effect a transfer of title in fee to the land, and including any commodity as defined in §352 of the General Business Law of the State of New York, issued and which may hereafter be issued by any person, partnership, corporation, company, trust or association and from any act in aid or furtherance thereof, or in any attempt thereat;

4) That the plaintiffs have such other and further relief as to the Court may seem just and proper in the premises, together with the costs and disbursements of this action, pursuant to Subdivision 4 of Section 1513 of the Civil Practice Act of the State of New York.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Plaintiffs
Office and Post Office Address
No. 80 Centre Street
Borough of Manhattan
City of New York 13,
New York

VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

ORESTES J. MIHALY, being duly sworn, deposes
and says:

I am an Assistant Attorney General of the
State of New York, and one of the plaintiffs in the
within action.

I have read the foregoing complaint and know
the contents thereof, and the same is true to my own
knowledge except as to those matters said to be
alleged on information and belief, and as to those
matters I believe it to be true.

The sources of my information and the
grounds of my belief are investigations made by me
on behalf of the Attorney General, together with
exhibits and records filed with the Attorney General's
office.

Sworn to before me this
5th day of February, 1958.

ORESTES J. MIHALY

Assistant Attorney General
of the State of New York

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

-----X
: PEOPLE OF THE STATE OF NEW YORK,
:

Plaintiffs,
:

-against-
:

JAMES CARLTON GRAYE, a/k/a JAMES WEBB, doing
business under the firm name and style of J.
C. GRAYE COMPANY, and EDWARD T. MOSS,
:

Defendants.
:-----X

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ORESTES J. MIHALY, being duly sworn, deposes and says:

I am an Assistant Attorney General in the Department of Law of the State of New York, assigned to the Bureau of Securities at 80 Centre Street, City, County and State of New York in the office of Attorney General, Louis J. Lefkowitz.

During the course of my employment, I have been placed in charge of the above matter. Based upon documents and records on file in the Department of Law, the sworn testimony of various witnesses and the reports of Abraham Pass, Senior Accountant in the Department of Law, I make the following statements upon information and belief in regard to the above matter.

James Carlton Graye has been conducting a business as a broker-dealer in securities in and from the State of New York with offices at 15 Maiden Lane in the City of New York since May of 1956 under the firm name and style of J. C. Graye Co. While so engaged in business, he has been entrusted with the possession, custody, care and safekeeping of monies and securities belonging to members of the public of this State.

Graye has a long and notorious criminal record dating back to 1927, including convictions for the possession of bur-

glary tools, auto theft, strong-arm robbery and escaping from prison. Graye was released from a Nevada State Prison in 1947 after serving 2 years of a 5-10 year sentence for robbery.

It is not surprising, therefore, that his venture into the securities business, a business charged with a public trust, should result in the perpetration of a despicable fraud upon the public of this State. This fraud was committed in connection with the promotion and sale of the securities of Atlas Gypsum Corporation Ltd., a Canadian corporation, (hereinafter referred to as Atlas). During the past six or seven months, Graye, through high pressure boiler room methods, has bombarded the investing public of this state and other states with a barrage of literature containing fraud, misrepresentations and untruths designed to induce and inveigle the public to purchase the securities of Atlas.

During these past six or seven months Graye has fraudulently represented in his literature that Atlas owned various gypsum claims in Canada and was working on and developing these claims and that the company was on the threshold of production. Official records obtained from Canadian officials indicate that Atlas has never owned many of these claims and that no work has been done on any of these properties by Atlas for years.

Graye, through his fraudulent activities, has succeeded in manipulating the price to its present artificial level and has disposed of hundreds of thousands of shares of Atlas stock, resulting in a loss to the investing public of hundreds of thousands of dollars.

The activities of his firm, J.C. Graye Co., were relatively small until he began to sell the securities of Atlas

sometime during the month of August, 1957. At that time, Graye's quarters at 15 Maiden Lane became too small for his operation and he was forced to obtain larger quarters on another floor in that building where he placed an additional ten to twelve salesmen to sell the stock of Atlas over the telephone. A great many of the telephone calls were made during evening hours when prospective customers were more easily contacted at their homes and less suspecting of any duplicity.

Graye commenced a full-scale promotion of the stock of Atlas at that time, using newspaper advertisements and stockholders lists to obtain the names of prospective customers residing in New York State and elsewhere to which his literature could be sent and upon which his salesmen could prey. During the month of August, 1957, Graye had at least 10,000 copies of a booklet concerning Atlas (Exhibits A-1 through A-11) printed and has disseminated this booklet widely all over the United States and to residents of the State of New York. Since that time and up until the present time this booklet has been so distributed and used to induce the purchase of Atlas stock. In addition, Graye employed various other pieces of literature in order to induce the purchase of this stock by residents of this State including so-called market trend letters (Exhibits B through G) and "announcements" (Exhibits H and I) of a free report on the Gypsum stock.

Exhibit "B" is dated August 28, 1957; Exhibit "C" is dated September 12, 1957; Exhibit "D" is dated October 7, 1957; Exhibit "E" is dated October 14, 1957; Exhibit "F" is dated October 25, 1957; and Exhibit "G" is dated December 11, 1957. According to the sworn testimony of Graye taken at this office, these "market trend" letters, (Exhibits B through G) were cir-

culated at and for periods of time subsequent to the respective given dates. Exhibit "H" was used and distributed during August and September and Exhibit "I" was used and distributed in September and through December.

These various pieces of literature are appended to this affidavit and marked as exhibits to this affidavit and are made a part hereof. This literature contains false, untrue, misleading and fraudulent representations and fraudulently and falsely conceals other material facts from the prospective purchasers of this stock, as will be indicate below.

According to a prospectus filed by Atlas with the Quebec Securities Commission sometime in June of 1956, Atlas was incorporated in the province of Ontario on the first day of September, 1955, with head offices located at 80 Richmond Street, West, Toronto, Canada and executive offices at 377 St. James Street, West, Montreal, Canada. This prospectus indicates that on or about February 6, 1956, Atlas acquired from Abraham Fleming and Gaston Julien Durand, fourteen unpatented mining claims (hereinafter called the Fleming claims) situated in the District of Cochrane in the Sudbury Mining Division in the province of Ontario, being described as claims S-90176 to S-90189 inclusive, for an in consideration of \$90,000 which was fully satisfied by the allotment and issuance of 900,000 fully paid up shares of the capital stock of Atlas to the vendors of the claims. This 900,000 shares of stock is said to be held in escrow and subject to release only upon the approval of the Quebec and Ontario Securities Commission. Of the 900,000 shares so held, 90,000 shares have been so released. The prospectus further indicates that on or about September 21, 1956 Atlas acquired eighteen additional unpatented mining claims (hereinafter

called the Sigler claims) from William Sigler of Montreal, Quebec, for the sum of \$9,000 cash. These claims are contiguous to the Fleming claims mentioned above and are numbered T-37132 to T-37149 inclusive. The literature issued and distributed through the United States mails by J. C. Graye constantly refers to these two groups of claims and falsely alludes to an additional twelve claims, which presumably are a group of claims originally staked by W. Tees Curran in the summer of 1911. These latter twelve claims were patented and vested in the names of W. Tees Curran and R. M. Hamilton in the summer of 1923.

In order to ascertain the standing of the claims of Atlas, this office has requested and received abstracts of the mining claims enumerated above, which represent the claims acquired by Atlas from Fleming, Durand and Sigler, from the Office of the Mining Recorder of the Ontario Department of Mines in Timmins, Ontario. The abstracts of the Sigler claims (No. T-37132 to T-37149 inclusive) indicate that the claims were staked by a Richard Ernest Parkes of Montreal, Quebec on October 10, 11, 12 and 13 of 1955. (A copy of one such abstract, referring to claim T-37132, is attached to this affidavit, marked Exhibit J and made a part hereof). These claims were recorded in Timmons, Ontario on November 7, 1955. The abstracts for these claims further indicate that all the interest of Mr. Parkes was transferred on April 19, 1956 to James P. Manley and that on November 30, 1956, Manley's interest was transferred to Atlas. In order to keep these claims in good standing, the holder of the claims was required to fulfill forty day's work on each claim during the first year after the recording of the claim. The abstracts indicate that on eight out of the eighteen Sigler claims, twenty-four day's work was done on each of the eight claims as of September 27, 1956, indicating, prima facie, that no work had been

claims were transferred to Atlas on January 8, 1958. (A copy of one such abstract, referring to claim S-90184, is attached to this affidavit, marked Exhibit M and made a part hereof.

It is therefore apparent that while J. C. Graye was distributing the literature appended as exhibits to this affidavit and while his salesmen were extolling the possibilities and potentialities of Atlas and its purported properties to members of the investing public of this State, the claims were allowed to fall open and were re-staked because Atlas had not met its minimum assessment requirements. Indeed, during certain periods of time from August, 1957 to the present, Atlas did not even own these claims in good standing. Atlas did not have a right to the Sigler claims from November 7, 1957 to January 8, 1958 and did not have any right to the Fleming claims from October 24, 1957 to January 8, 1958. Nowhere in the literature distributed to the investing public of this state, did James Carlton Graye inform the purchasers of Atlas stock that no work had been done on the claims for years and that the claims were about to fall open. James Carlton Graye continued to distribute the glowing literature describing the claims even after Atlas had no title or right to the claims.

This office has just received Certificates of Search from the Local Master of Titles and Registrar of Deeds in Cochrane, Ontario, Canada, which indicate that the present owners in fee of the Curran claims (the additional 12 claims which allegedly contain the 60,000,000 ton gypsum reserves) are W. Tees Curran and Joseph Benson Curran. According to these certificates Atlas does not own these claims and has never owned them. (A copy of one such certificate, referring to claim No. S. 5307, is attached to this affidavit marked Exhibit N and O and made a part

hereof).

While the literature published and distributed by J. C. Graye, Co., represented to its customers that they were receiving full and complete information concerning Atlas, these customers were never told about the failure of Atlas' working on its properties and that, indeed, these claims had been allowed to lapse and fall open. The failure to disclose this and other material facts is a travesty when taken in the light of other statements contained in this literature such as "our extensive report on this company and its money making potentials for those who buy at current market prices gives you the details and facts needed for intelligent, speculative purchases", and "Important: profits in stocks are nine times out of ten made by those with most complete facts at their command and disposal", and "To make money in the stock market . . . you must first know the 'inside facts.' Here's your chance to obtain full information on a special stock situation with dynamic profits potentials . . ." (see Exhibits H, I and P. annexed hereto).

Little need be added in order to indicate the false, untrue and misleading nature of the statements made in the literature by J. C. Graye Co., as enumerated in Subdivision A through T of Paragraph 5 of the annexed complaint. There is no basis for the statement that Atlas Gypsum Corp. Ltd., is "currently surveying and developing its gypsum properties in the Moose River basin area * * * in preparation for open pit mining" (See Exhibit A-2). So little work had been done on these claims that Atlas had lost title to them at one time or another from October 24, 1957 and November 7, 1957 to January 8, 1958, according to the aforementioned abstracts.

Any statements made in the literature that Atlas was

holding or developing or intending to develop these claims is false and misleading in view of the evidence contained in these abstracts and purposely designed to fraudulently induce the purchase of Atlas stock.

In Exhibits A-3 and A-4 (pages from the booklet distributed to the investing public by Graye) there is contained a statement concerning a visit by two American technical men with Mr. Archibald Freeman, General Manager of the Ontario Northland Railway to the Moose River Basin area. This statement is false, untrue and misleading, inasmuch as Mr. Freeman never visited this area with these two technical consultants on behalf of Atlas Gypsum and the excerpt from a purported letter to Atlas by Freeman is actually an excerpt from an intra-company memorandum, the company being the Ontario Northland Railway. Freeman never wrote this letter to Atlas. While the excerpt of this purported letter speaks of the "end of August" and "September 1 and 2", nowhere is there given to the reader the year to which this refers. Indeed, since this literature was sent out during September, October, November and December, 1957, the reader was led to believe that the trip by Mr. Freeman was also made during the year 1957. Actually the trip was made in August and September of 1955. The misleading character of this statement becomes readily apparent from the testimony taken at this office of some of the salesmen of J. C. Graye Co. They admitted that they did not know when the trip was made, but assumed that it was made in 1957, since the literature was sent out concurrently in 1957.

Similarly, Exhibit A-5, a page of the same booklet distributed by Graye, refers to rates quoted to Atlas for the shipment of crude gypsum ore. These price quotations were also made in 1955 and have since become subject to revision and increase.

Nowhere is the reader informed that the prices quoted were given in 1955.

The literature of J. C. Graye Co., states that there is a gypsum reserve on 26 of the company's claims amounting to 60 million tons (see Exhibits A-5, D, E, H, I and Q). This 60 million ton figure was first given to this gypsum deposit in a report by John Lanning, B. A. Sc., appearing in the Mining Journal of December 10, 1926. This Lanning report refers specifically to the 12 Curran claims which we have mentioned above and which were never owned by Atlas. This 60 million ton figure is reiterated in the engineer's reports accompanying the Canadian prospectus, which we have also mentioned previously. The estimate of 60 million tons is not based on extensive diamond drilling, but rather based primarily on visual and radiographic surveys. Again in connection with this estimate of 60 million tons existing on Atlas' claims, we must again refer to the evidence provided by the abstracts and certificates that Atlas did no work on the claims to justify their further holding the same and that Atlas never owned the 12 claims commonly referred to as the Curran claims which allegedly contain the 60 million ton deposit.

Graye's literature states that the company intends to develop the claims in accordance with its engineer's recommendations that the company expend \$125,000 for preliminary work (see Exhibits A-5 and A-6). The impression is given to the reader that the company is about to expend \$125,000 for preliminary work prior to its entering into actual production. The reader of this literature is not apprised of the fact that the company has a small cash position and is not able to even expend the amount of \$125,000, which, which the literature admits is necessary before any production could be contemplated.

Exhibits A-9 and A-10, pages of the booklet distributed by Grays, represent a common-place deception used by boiler rooms in their literature; i.e., a comparison with a similar well-known company whose earning or dividend records is enviable or whose shares have risen in price spectacularly. In this case, the comparison is made with U.S. Gypsum and the statement is made that Atlas Gypsum is on the threshold of the growth similar to that which was experienced by U. S. Gypsum.

It is readily apparent that Atlas with its property holdings in such a dubious state can in no fashion be so compared with U.S. Gypsum and to do so is fraudulent and misleading.

The literature distributed by Grays also contained statements that 18 of Atlas' claims "have an assured year round protection" (see Exhibit H and I). By this statement the reader is led to believe once again that Atlas is either producing gypsum ore or is about to produce gypsum ore, a statement far from the truth. The basis of this statement apparently stems from a reference to these claims made in the engineer's reports accompanying the Canadian prospectus, which only states that, inasmuch as some of these claims are subaqueous, these subaqueous claims can be worked during the winter months while work on the other parts of these claims could be carried out only during the warmer summer months.

The literature distributed by Grays contained statements concerning the rise in price of Atlas during a time when the stock market, in general, experienced difficulties. The literature contains statements that the shares of Atlas Gypsum were in good demand and "held like the Rock of Gibraltar". (See Exhibits C, D, E and F). The price did rise during this period and there was a quasi-demand for the stock but only because of the

high pressure methods and tactics used by J. C. Graye in soliciting its purchase. J. C. Graye made and controlled the market in the stock and got as much as the market would bear for the stock. An example of the type of market that existed in Atlas is aptly illustrated in the November 19, 1957 "pink sheets" (Daily quotations furnished to all brokers by the National Daily Quotation Bureau) which shows J. C. Graye offering the stock at \$3.50 and another firm offering it at \$2.50.

As has been indicated before, Atlas' only assets consist of the two groups of claims acquired from Fleming, Durand and Sigler according to the prospectus filed with the Canadian Commissions. These claims were acquired from these individuals at a cost to Atlas of 900,000 shares (a monetary equivalent of \$90,000.00) and \$9,000 in cash. The abandonment of the claims by Atlas indicates the extent of the watering of the stock, and the failure of J. C. Graye to accurately, honestly, and fully advise his customers of the true state of affairs of the company's properties and financial activities constitutes a gross fraud upon the purchasers of this stock. The purchasers did not know and were not advised by J. C. Graye that they were buying stock in a company which had paid out 900,000 shares of stock for properties that had since been allowed to lie fallow and later become abandoned.

The salesmen of J. C. Graye Co., who have testified at this office have indicated that they relied chiefly, if not solely upon the representations made in the literature of J. C. Graye Co. in their telephone conversations with the customers of J. C. Graye Co. In addition, however, this office has been advised that further fraudulent statements were made to the customers of J. C. Graye Co., including representations that the properties of Atlas were close to or adjacent to properties held by Johns Menville

Corporation and Bestwall Gypsum Company, and that Johns Manville Corporation and Bestwall Gypsum Company were to take over 'Atlas' properties or to merge with Atlas on a stock exchange basis. That representations of this type were made has been admitted by one of the salesmen employed by J. C. Graye Co. The defendant, Edward T. Moss, a salesman employed by J. C. Graye Co., in testimony given at this office on January 10, 1958, was asked the following questions and gave the following answers:

Q. Did you ever hear of Bestwall Gypsum Corp.?

A. Sure.

Q. What do you know about Bestwall?

A. It is a big board company mining gypsum.

Q. Have you ever talked to your customers about Bestwall Gypsum?

A. Yes.

Q. What have you told them about it?

A. I told them it was a big board company and it could make money and so forth and so on. I talked about U.S. Gypsum.

Q. What else?

A. Johns Manville uses gypsum.

Q. What connection do they have with Atlas Gypsum?

A. Who?

Q. These companies?

A. None.

Q. Have you ever told any of your customers that they have properties adjacent to Atlas Gypsum's properties?

A. Up in Canada...I don't know how adjacent they are up in Canada. Also

Bestwall Gypsum is up in Canada. In fact from what I know practically all the Gypsum comes from up in Canada, 90% of it.

Q. What have you told them about Bestwall and gypsum properties up there in relation to Atlas Gypsum?

A. Nothing that I know of.

Q. You say that Bestwall Gypsum has properties up in Canada?

A. Yes.

Q. Did you ever tell anyone that?

A. Yes.

Q. Did you ever tell anybody where those properties were located?

A. I may have.

Q. Did you ever tell them they were adjacent to or near to the properties of Atlas Gypsum?

A. I may have.

Q. Where did you get that information from?

A. I made that up.

Q. What do you mean you "made it up"?

A. I used it for making comparisons of gypsum companies.

Q. And just "made it up" that they were adjacent?

A. No close proximity perhaps maybe miles away.

Q. You just "made that up"?

A. That's right.

Q. Without any substantiation as

far as you know?

A. That's right.

Q. Why did you do that, just to get somebody to buy the stock?

A. Perhaps.

. . .

Q. Did you ever hear any other salesman make that up?

A. I may have.

Q. Who?

A. I don't know. There is a lot of men talking and you're listening and you walk by and hear something and if it can help you, you use it.

Q. Did you ever hear any of the salesmen say that about Johns Manville in connection with Atlas Gypsum Corp?

A. In what way?

Q. That they have properties near to Atlas Gypsum's properties.

A. Not that I know.

Q. But it was mentioned as far as Bestwall?

A. It may have been mentioned as far as Bestwall.

. . .

Q. But they did say that Bestwall Gypsum's properties were located near Atlas Gypsum's properties.

A. Now when you say "they say it" don't pin me down I don't know if

they used it. I know that I used it.

Q. Without any substantiation whatsoever, is that correct?

A. The only substantiation is that both of them are located up in Canada.

Affidavits on file with this office executed by responsible executives of Johns Manville Corporation and Bestwall Gypsum Company (copies of these affidavits are attached to this affidavit, marked Exhibits R and S and made a part hereof) indicate that Atlas Gypsum Company Ltd., has no property adjacent to or near properties of Bestwall Gypsum Company located in the Moose River crossing area in Ontario, Canada since Bestwall does not now own, nor did it ever own, any properties in that area or anywhere else in Ontario Canada; and that there is no present, past or contemplated merger or other relationship between Johns Manville Corporation and Bestwall Gypsum Company with Atlas.

The salesmen of J. C. Graye examined at this office demonstrated that, with no substantiation or knowledge, they were accustomed to make the grossest of exaggerated claims concerning Atlas in order to sell the stock. The defendant, Moss, the same salesman who admitted he "made up" the story concerning Bestwall Gypsum, also stated the following in his testimony at this office on January 10, 1958, after denying that he told the customers anything whatsoever about Atlas' claims, in answer to the following queries:

Q. Well, Mr. Moss, you're trying to tell me that you call a person

up and sell them stock telling them how good gypsum is without telling them what this company has?

A. They have a mine. A gypsum mine.

Q. Alright, so what do you tell them about what they have?

A. They have . . . they're mining gypsum.

. . .

Q. When a person says "what have they got up in Canada".

A. A gypsum mine.

Q. They have a gypsum mine in Canada, is that what you tell them?

A. Yes.

. . .

Q. What does Atlas Gypsum have in Canada, Mr. Moss?

A. What have they there?

Q. Yes.

A. They have some mines . . . mining gypsum. Whatever it says in there (referring to exhibit A-1 through A-11).

. . .

Q. What do you mean, they are actually mining gypsum up in Canada?

A. I don't know.

Q. You don't know?

A. No, I never asked anybody, I don't discuss it.

Q. Well, what do you know about what Atlas Gypsum is doing on its properties now?

A. I don't know. I haven't been there. I haven't any idea.

Q. No one has told you?

A. No one has told me.

Q. Do you know how many claims they have?

A. No.

Q. Well, have you read the brochure?

A. I read it a long time ago.

The representations made by Moss concerning the alleged mines and alleged mining of gypsum are absolutely false since Atlas at most only has properties with purported gypsum deposits and these properties are not mines, nor is any mining being conducted by Atlas on these properties, as evidenced by the abstracts and certificates.

In order to appreciate and understand the whole picture with regard to the sale of Atlas by J. C. Graye Co., a brief look must be taken of a transaction which was consummated in Canada immediately prior to the commencement of James Carlton Graye's promotion of the Atlas stock here in the United States. Sometime during the month of September 1957, the Securities and Exchange Commission placed Atlas on its Canadian restricted list. The placing of Atlas on the Canadian restricted list gives notice to all brokers selling the stock of Atlas that the Securities and Exchange Commission believes that the stock of this company is being sold in violation of the registration requirements of the Securities and Exchange Commission. Graye, according to his

sworn testimony, in order to justify his distribution of Atlas stock allegedly wrote various letters to various individuals and companies in Canada. He received a letter from Atlas dated July 4, 1957, to the effect that an underwriting of Atlas stock was completed in June of 1957 by a Canadian underwriter. Northwestern Securities Ltd., of Vancouver, British Columbia, advised Graye that it was the underwriter referred to and that it had distributed 175,000 shares of the common stock of Atlas on or about June 5, 1957, and that such shares were not offered or sold through sub-underwriters or optionees and did in fact come to rest in the hands of members of the Canadian public. By this correspondence J. C. Graye intended to establish the fact that he was not acting on behalf of Atlas, or on behalf of any of the promoters of Atlas in the distribution of large blocks of Atlas stock in the State of New York and in the rest of the United States. This office has been advised by reliable sources in Canada that Atlas sold 175,000 shares of its capital stock at a price of 20 cents per share to Northwestern Securities Ltd., sometime prior to August 10, 1957, and that Northwestern Securities was to pay for the stock on or before the 10th day of August, 1957. In this agreement of sale, which was reduced to writing, one, Harold M. Kerr, signed on behalf of Northwestern Securities Ltd., and Henry C. Druce, president of Atlas, signed on behalf of Atlas. This agreement was entered into in Calgary, Alberta, Canada. Another agreement entered into in Calgary signed at approximately the same time provided for the sale of 175,000 shares of the capital stock of Atlas from Northwestern Securities Ltd., to Hyman Sigler, described as a "merchant" from the City of Montreal. The sales price in this agreement was $20\frac{1}{2}$ cents per share, a mark-up of $\frac{1}{2}$ cent per share. Thus, there was a transfer from Atlas to Northwestern at 20 cents per share of 175,000 shares and a

similar transfer of 175,000 shares at 20½ cents per share from Northwestern Securities Ltd., to the mysterious Mr. Sigler. Evidently, the letter written by Northwestern Securities to J. C. Graye to the effect that the 175,000 shares owned by them had been publicly distributed in Canada was a falsehood. It is significant that the date upon which payment was to be made to Atlas by Northwestern Securities Ltd., was August 10, 1957. J. C. Graye commenced his promotion of the Atlas stock in August of 1957, and his first sale was made on August 14, 1957. Graye bought his Atlas stock through the facilities of Craddock Securities Inc., of New York City, who in turn purchased their stock from a Toronto firm known as R. H. Scarlett, Ltd., and from Harold M. Kerr, Ltd., of Calgary, Alberta. The Harold M. Kerr who executed the agreement on behalf of Northwestern Securities, Ltd., purchasing the Atlas stock from Atlas and selling the stock to Sigler, is the same Harold M. Kerr of the firm of Harold M. Kerr, Ltd., of Calgary, Alberta, Canada.

The financial condition of J. C. Graye Co., during the past year has been precarious and bordering upon an insolvent condition. At various times during the past year Graye has been forced to make cash contributions to his capital account in order to prevent an actual insolvent position. These cash contributions according to the sworn testimony of Graye taken at this office have come largely from his wife. Graye denied any knowledge of the source of the funds contributed by his wife to his business. His wife has contributed in the neighborhood of \$95,000 in cash to her husband's business during the past year. The sworn testimony taken of Mrs. Graye indicates on the record that, of this amount, close to \$8,000 was received as a gift from her father, that \$32,000 was borrowed from an acquaintance of hers by the name of James H. Taylor of New York City, and that over \$50,000 was received as a "gift" from a mysterious person who purportedly

resided in Baltimore, Maryland. Mr. Taylor testified that the \$32,000 loaned to Mrs. Graye was not evidenced by any note or any formal agreement and that the \$32,000 loan did not bear any interest. This office has checked with various authorities in the State of Maryland and this search has not substantiated the explanation given by Mrs. Graye of her receipt and retention of this large cash gift. It is believed by this office that J. C. Graye is acting as a front for other individuals and undisclosed principals in the securities business and that these large unexplained amounts of ready cash which have been put into his business come from undisclosed principals acting through J. C. Graye. This office knows of two individuals, having notorious reputations in the securities business, who have associated with Graye during the past year and is continuing its investigation to determine their exact position and interest in J. C. Graye's operations.

According to the sworn testimony of Graye taken at this office, in May or June of 1957, Graye allegedly was approached by one R. Sugden Tilley, who represented himself to Graye as an emissary of the firm of Kerr-McCann Inc., of Roswell, New Mexico. Mr. Tilley proposed to Graye that Graye's firm be taken over by this New Mexico outfit in order to establish a New York outlet of its activities in the securities business. Tilley at one time had been brought up on charges by the office of the Attorney General. Graye eventually became the president of this brokerage firm and while holding the position of president commenced to act as one of the underwriters of the common stock of Mountex Minerals Corporation. Mountex Minerals Corporation was incorporated under the laws of the State of Colorado in October, 1955, with its principal office at 2609 Sunset Blvd., Houston, Texas. The books and records of J. C. Graye Co., indicate that during the month of June, 1957, J. C. Graye Co., offered and sold to

the public of the State of New York the securities of Mountex Minerals Corporation as an underwriter and that thereafter Graye continued to trade in these securities in the secondary market. Mountex Minerals Corporation, in the sale of its original issue stock through the agency of J. C. Graye Co., was acting as a dealer of securities in this State within the meaning of Article 23-A of the General Business Law of the State of New York and was required to file a Dealer's Statement with the Department of Law prior to the offering of its securities in this manner. Mountex Minerals Corporation, did not file the required Dealer's Statement and consequently the sale of this stock by J. C. Graye Co., was in violation of law, inasmuch as it was a sale of unregistered securities under the laws of this State. Furthermore, J. C. Graye Co., was obliged, as an underwriter of these securities, to file with the Department of State of the State of New York a Further State Notice pursuant to the provisions of Article 23-A of the General Business Law of the State of New York. J. C. Graye did not file the aforesaid Further State Notice and his sale of these securities without complying with this requirement was also a fraudulent practice within the meaning of Article 23-A.

The defendant has been committing other fraudulent practices within the meaning and intent of Article 23-A of the General Business Law of the State of New York.

That the plaintiffs and the public generally within the State of New York have been and are being irreparably damaged and have no adequate remedy at law.

The defendants have sold the stock of Atlas to the plaintiffs and the public generally by means of false, fraudulent and untrue representations and the suppression of material facts as to the true condition of Atlas and its properties, and are, and have been employing the same course of conduct as heretofore

mentioned and stated, and that the plaintiffs and the public generally, relying upon such statements and representations, have purchased the stock of Atlas from the defendants herein.

Your deponent is of the opinion that it is to the best interest of the People of the State of New York, that an injunction be granted by this Court, restraining and enjoining the defendants as prayed for in the complaint.

That no previous application for the relief sought herein has been made to this or any other court or Justice.

Sworn to before me this
day of , 1958.
