

UNCATEGORIZED

The King's Gambit: Valeant's Big Secret

By Roddy Boyd October 19, 2015

If the name Valeant Pharmaceuticals International doesn't ring a bell, its business practices should. The Quebec-based drug manufacturer's policy of implementing regular [price increases](http://www.zerohedge.com/news/2015-09-28/dear-martin-shkreli-how-you-hike-drug-prices) that often run north of 100% has generated plenty of anger, a [congressional investigation](http://www.mccaskill.senate.gov/imo/media/doc/20150923McCaskilllettertoValeant.pdf), [constant press coverage](http://www.nytimes.com/2015/10/05/business/valeants-drug-price-strategy-enriches-it-but-infuriates-patients-and-lawmakers.html?_r=0) and a [subpoena](http://ir.valeant.com/investor-relations/news-releases/news-release-details/2015/Valeant-Provides-Update-Regarding-Government-Inquiries/default.aspx) from the U.S. Attorneys offices in both the Southern District of New York and the District of Massachusetts.

But as strange as it may seem, a slim legal filing in California federal court is poised to make Valeant's world rockier still.

The story starts 50 miles northwest of Los Angeles in Camarillo, Ca. with R&O Pharmacy, a modestly-sized operation co-owned by veteran compounding pharmacists Russell Reitz and Robert Osbakken.

According to a lawsuit filed by R&O, Russell Reitz got a [letter](http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/1-1-Exhibit-A.pdf) from Robert Chai-Onn, Valeant's general counsel and director of business development, requesting repayment of \$69.8 million for "invoiced amounts." This apparently struck Reitz as odd since R&O had done no business, at least in any direct fashion, with Valeant. Moreover, he had never received a single invoice from Valeant or its subsidiaries.

Reitz forwarded the letter to Gary Jay Kaufman, his lawyer down in Los Angeles, who sent a [letter](http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/1-2-Exhibit-B.pdf) to Chai-Onn on September 8 noting that the lack of invoices from Valeant indicated to him one of two things was happening: Valeant and R&O were being jointly defrauded by someone, or Valeant was defrauding R&O. He suggested they talk it over by phone.

Chai-Onn never responded and on October 6, Kaufman filed [suit](http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/1-1-Complaint-1-1.pdf), seeking a determination from the court that R&O owes Valeant nothing.

There is, however, a hook and as these things go, it's a big one: the Southern Investigative Reporting Foundation has confirmed that Reitz was indeed doing business of some sort through a company called [Philidor Rx Services](http://www.philidorrxservices.com/) and a man named Andrew Davenport.

Which makes Valeant's demand letter very interesting.

To understand why, it's important to understand what Philidor is. To the public, it describes itself as a "pharmacy administrator" and, according to a call service operator last Thursday, Valeant is its only client. Located in Hatboro about 30 miles outside Philadelphia, its corporate filings indicate both companies are independent of the other.

Pharmacy administrator appears to be, in Philidor's case, a term of art.

A better description is a "specialty pharmacy," filling, shipping and getting insurance approval for prescriptions of the more complex drugs Valeant makes. In its third quarter conference call last year, the only instance where Philidor has been publicly mentioned by an analyst, Valeant chief executive Mike Pearson said that perhaps 40% of its business flows through specialty pharmacies. In July, he reiterated the company's guidance for up to \$11.1 billion in 2015 revenue, implying that as much as \$4.4 billion in product could move through this channel.

(Note that specialty pharmacies are exempt from reporting the drugs they sell to IMS Health, the tracking service used by companies and analysts to monitor drug sales and inventory channels.)

Like many private companies, Philidor's financials are hard to come by but it is unmistakably an operation of some mass, with around 900 employees and its own legal [unit](https://www.linkedin.com/pub/gretchen-sprigg-wiseshart/12/341/139). A Pennsylvania State Senator posted [interview](https://www.facebook.com/senatorgreenleaf/posts/807822615960322) with company CEO Andy Davenport

ACRUX DDS PTY LTD. et al.

EXHIBIT 1544(2)

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December. With prescription costs regularly running into the hundreds and even thousands of dollars, the company could potentially handle upwards of \$1.5 billion in product this year.

A key cog in Valeant's "patient access" program, patients referred to Philidor often receive coupons for reduced or waived co-pay requirements—given to the prescriber by Valeant's sales representatives—and in turn, Philidor would appear to attempt to recoup the cost of the drug from private insurers or Medicare. Theoretically, this makes price increases less risky for Valeant given that a sizable population of a drug's users frequently won't observe them. Still, the patient access program is central to the company's distribution program, and one of the issues the U.S. Attorney subpoenas specifically sought information on.

Philidor's business practices have generated mixed reviews (at best) on consumer message boards — including numerous instances of alleged unwanted refills (<http://philidor-rx-services.pissedconsumer.com/beware-unwanted-refills-customer-service-hassle-20150904694524.html>) and an allegation of the improper removal (<http://philidor-rx-services.pissedconsumer.com/philidor-rx-services-llc-took-my-hsa-funds-20150102577512.html>) of HSA funds. Another message board account alleges (<http://philidor-rx-services.pissedconsumer.com/unethical-20150901692440.html>) that to get reimbursement approvals, prescriptions already denied at larger insurers were "pushed through" their sister pharmacies. (To be sure, comments on these sites can be gamed, both by consumers and the company, and the Southern Investigative Reporting Foundation was unable to verify these accounts.)

Several questions remain unanswered: On the assumption that there is \$69.8 million due someone, why wouldn't Philidor's two in-house attorneys have issued a demand letter to R&O? Similarly, why wouldn't Valeant's high-profile general counsel, when challenged, not provide support for his demand and avoid the risk and expense of litigation? Additionally, if Valeant does have some sort of claim to that nearly \$70 million, what then is their real relationship to Philidor?

The Southern Investigative Reporting Foundation was able to uncover Valeant's financial connection to Philidor—one that it hasn't disclosed to investors—as laid out below.

The first task was to establish who owns Philidor. What we discovered was indeed revealing, albeit probably not in the way its owners intended.

Put bluntly, Philidor has gone to great lengths to conceal its ownership. Start with a man named Matthew Davenport, the listed principal on most of Philidor's state registrations; additionally, several states list David Wing, John Carne and Gregory Blaszczyński as officers, and a few more have an End Game Partnership LLP listed as an assistant treasurer.

Given Andy Davenport's video above, his role as Philidor's chief executive is clear. Plugging the address of End Game Partnership LLP (which in turn is owned by End Game LLC, a Las Vegas-based entity) from its filings into a search engine turns up a match to a house Andy Davenport owns in Horsham.

A Southern Investigative Reporting Foundation phone call to Philidor's administration revealed that there is no Matthew Davenport, David Wing, (Edward) John Carne or Gregory Blaszczyński working at Philidor. On the other hand, all four work at BQ6 Media (<http://www.bq6media.com/content/matt-davenport>), a pharmaceutical marketing company located about 2.5 miles (<https://www.google.com/maps/dir/400+Horsham+Road,+Horsham,+PA/330+S+Warminster+Rd,+Hatboro,+PA+19040/@40.1788105,-75.1268203,15z/data=!3m1!4m1!3m1!1s1s0x89c6af9724be005:0xd3b5fa645563889e!2m2!1d-75.1367413!2d40.183998!1m5!1m1!1s0x89c6ae360034a0b5:0x4cbcd988cb578194!2m2!1d-75.101816!2d40.171785>) from the company. At one point, prior to Philidor, Andy Davenport was its CEO (<http://web.archive.org/web/20130225052836/http://www.bq6media.com/content/andy-davenport>). Both BQ6 (<https://who.is/whois/https://www.bq6media.com>) and Philidor (<https://who.is/whois/https://www.philidorrxservices.com>) share the same domain registrar, Perfect Privacy LLC. The company's LinkedIn profile lists 28 employees but the majority are consultants or contract workers, with several listing time spent at Philidor.

The Philidor state registration in North Carolina (<https://www.secretary.state.nc.us/Search/profcorp/10657029>) was particularly helpful in that it listed a broader array of owners than other states.

David Cowen is a former hedge fund manager and Elizabeth Kardos (<http://www.us.zolfocooper.com/our-people/elizabeth-s-kardos>) is general counsel for restructuring consultants Zolfo Cooper (<http://www.us.zolfocooper.com/about-us>) who are married (<http://98zo02bh3v9r369dftff01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/WEDDINGS-Elizabeth-Kardos-and-David-Cowen-The-New-York-Times.pdf>) and own Four Beads LLC (http://98zo02bh3v9r369dftff01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/NJ-Four-Beads-BE-Copies_0400379477_5289740384.pdf); they did not return a message left at their house or reply to an email sent to Ms. Kardos. Nick Spuhler (<https://www.linkedin.com/in/nickspuhler>) is a BQ6 alum who could not be reached, David Ostrow (<http://98zo02bh3v9r369dftff01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/NPI-Registry-Provider-Details-David-Ostrow.pdf>) is a Physical Therapist (<http://medcenter100.com/david-ostrow-pt/>) and golf swing coach (<https://www.linkedin.com/in/davidostrow>) who did not return multiple calls to his house and residence, Jeffrey Gottesman (<https://www.jeffgottesman.com/>) is an insurance agent who has a sideline as a competitive poker (<http://forumserver.twoplustwo.com/65/mttc-live/borgata-winter-open-2011-jan-19-feb-4-a-914247/index36.html>) player; reached

business with no apparent connection to Philidor. Alternatively, a [Gina Milner](http://www.bq6media.com/content/gina-milner) (<http://www.bq6media.com/content/gina-milner>) works at BQ6, but it couldn't be determined if she is involved. [Fabien Forrester-Charles](https://www.linkedin.com/profile/view?id=AAkAAAFVYwsBheCoGdvBVXLG6bXIPX0fb7A4l3U&authType=NAME_SEARCH&authToken=JtoJ&locale=en_US&trk=tyah&trkInfo=clickedVertical%3AmyNetwork%2CclickedEntityId%3A22373131%2CauthType%3ANAME_SEARCH%2Cidx%3A1-1%2CtarId%3A1445199174372%2Ctas%3AFabien%20F) (https://www.linkedin.com/profile/view?id=AAkAAAFVYwsBheCoGdvBVXLG6bXIPX0fb7A4l3U&authType=NAME_SEARCH&authToken=JtoJ&locale=en_US&trk=tyah&trkInfo=clickedVertical%3AmyNetwork%2CclickedEntityId%3A22373131%2CauthType%3ANAME_SEARCH%2Cidx%3A1-1%2CtarId%3A1445199174372%2Ctas%3AFabien%20F) of Hatboro, Pa. and Francis Jennings of Naples, Fla. could not be reached, and Michael Ostrow of Bala Cynwyd, Pa. did not return a voice message left at his house. Paula Schuler of Old Greenwich, Ct., listed as an owner along with her husband Timothy, said she couldn't talk at that moment; she never returned two follow-up calls.

It is not readily apparent if there are any specific relationships among group members, beyond the general ties to Matthew and Andy Davenport (according to an online database they appear to be brothers), BQ6 and Philadelphia. One that does jump out is David Cowen and Andy Davenport's tenure together at hedge fund Quasar Financial between 2004 and 2008; Davenport also [donated](http://www.moaf.org/ways-to-give/corporate-support/corp-member-list) (<http://www.moaf.org/ways-to-give/corporate-support/corp-member-list>) to the Museum of American Finance, where Cowen is the president.

Not every state looked kindly upon the way Philidor went about securing out-of-state pharmacy operation privileges. California took exception to Matthew Davenport's attempt to register as Philidor's principal and [rejected](http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/Davenport_Calrejection.pdf) (http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/Davenport_Calrejection.pdf) the company's application for a Non-Residency Pharmacy Permit in May 2014. The state's Department of Consumer Affairs Board of Pharmacy cited a series of disclosure-related problems, specifically his swearing to what was termed "false statement of facts" on the application, several of which involved the failure to disclose Philidor's ownership group, as well as Andrew's 27% ownership stake.

(A brief aside: [Francois-Andre Philidor](http://biography.yourdictionary.com/francois-andre-philidor) (<http://biography.yourdictionary.com/francois-andre-philidor>) was an 18th century French Chess master, writing a book about it, *The Analysis of Chess*. [BQ6 Media](http://www.bq6media.com/introduction) (<http://www.bq6media.com/introduction>) is named after the chess shorthand for Bobby Fisher's legendary move against Russian chess master Boris Spassky in 1972. Another popular chess move is the King's Gambit Accepted, or as it's often referred to in chess notation, KGA.)

Establishing the economic connection between Valeant and Philidor was less time-consuming.

As it happens, Valeant has a wholly-owned unit named [KGA Fulfillment Services Inc](http://www.sec.gov/Archives/edgar/data/885590/000088559015000015/exhibit211.htm) (<http://www.sec.gov/Archives/edgar/data/885590/000088559015000015/exhibit211.htm>), that was formed in Delaware in November, 2014. Its only mention in any Valeant filings is that sole line in last year's annual report. An exhaustive search didn't turn up any references to it in trade publications, nor state and federal databases. (What the initials stand for, apart from the similarity to the chess strategy, is unknown.)

The Southern Investigative Reporting Foundation found KGA Fulfillment Services listed as the "secured party" on UCC-1 [liens](http://smallbusiness.chron.com/ucc-lien-15791.html) (<http://smallbusiness.chron.com/ucc-lien-15791.html>) placed this January and February against the members of Philidor's ownership group. These liens are the public notice that a lending entity may have an interest in the debtor's personal property. In this case, Valeant/KGA lent money to Philidor's ownership group and per the rules, is announcing that their equity stakes in Philidor are potentially collateral.

The UCC-1 financing statements for the group are: [David Cowen](http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/NJ-UCC-David-Cowen-KGA.pdf) (<http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/NJ-UCC-David-Cowen-KGA.pdf>) and [Elizabeth Kardos](http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/NJ-UCC-Elizabeth-Kardos-KGA.pdf) (<http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/NJ-UCC-Elizabeth-Kardos-KGA.pdf>), [Timothy Schuler](http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/CT-Schuler-UCCI.pdf) (<http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/CT-Schuler-UCCI.pdf>) and [Paula Schuler, Nick Spuhler](http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/NY-UCC-Spuhler-KGA.pdf) (<http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/NY-UCC-Spuhler-KGA.pdf>), [Andrew Davenport Trust](http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/PA-UCC-Andrew-Davenport-Trust-KGA.pdf) (<http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/PA-UCC-Andrew-Davenport-Trust-KGA.pdf>), [David Ostrow](http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/PA-UCC-David-Ostrow-KGA.pdf) (<http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/PA-UCC-David-Ostrow-KGA.pdf>), [David Wing](http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/PA-UCC-David-Wing-KGA.pdf) (<http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/PA-UCC-David-Wing-KGA.pdf>), [John Carne](http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/PA-UCC-Edward-Carne-KGA.pdf) (<http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/PA-UCC-Edward-Carne-KGA.pdf>), [Matthew Davenport](http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/PA-UCC-Matthew-Davenport-KGA.pdf) (<http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/PA-UCC-Matthew-Davenport-KGA.pdf>), [Fabien Forrester-Charles](http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/PA-UCC-Fabien-Forrester-Charles-KGA.pdf) (<http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/PA-UCC-Fabien-Forrester-Charles-KGA.pdf>), [End Game Partnership LLP](http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/PA-UCC-End-Game-Partnership-LLP-KGA.pdf) (<http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/PA-UCC-End-Game-Partnership-LLP-KGA.pdf>), [End Game LP](http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/PA-UCC-End-Game-LP-KGA.pdf) (<http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/PA-UCC-End-Game-LP-KGA.pdf>) and [Michael Ostrow](http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/PA-UCC-Michael-Ostrow-KGA.pdf) (<http://98zo02bh3v9r369dtffl01cj.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/PA-UCC-Michael-Ostrow-KGA.pdf>).

That an important financial relationship exists between Philidor and Valeant's KGA unit is inarguable; why it exists is much less clear. From the standpoint of rational self-interest, the owner of a rapidly growing business would almost never want to borrow against their equity stake, let alone from the newly launched subsidiary of the enterprise's sole customer.

Over several days, since coming across the California lawsuit, the Southern Investigative Reporting Foundation made repeated phone calls to every person or company discussed above. With the exception of Jeffrey

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Gottesman from the Philidor ownership group and R&O Pharmacy's lawyer, Gary Jay Kaufman—both of whom declined comment—every other person did not return our calls.

Robert Chai-Onn did not reply to a call to his office; a call to a mobile phone registered to his name was answered by his wife, who said she was on the West Coast and was unsure where her husband was at that moment.

[Meghan Gavigan](http://www.sardverb.com/people/meghan-gavigan/) (<http://www.sardverb.com/people/meghan-gavigan/>) of Sard Verbinnen & Co., an outside spokeswoman for Valeant Pharmaceuticals, was unable to secure a response from the company.
