

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

IN THE MATTER OF THE ESTATE OF )  
ROBERT D. ARMSTRONG, ) CASE NO. SX-14-PB-71  
)  
Deceased. )  
\_\_\_\_\_)

**ELIZABETH ARMSTRONG'S MOTION FOR A FURTHER STAY OF PROCEEDINGS  
IN ORDER TO ALLOW HER TO COMPLETE DISCOVERY ON THE ISSUE OF  
DISQUALIFICATION OF COUNSEL**

Elizabeth Anne Armstrong, by her attorney, Ellen G. Donovan, hereby moves for a further stay of proceedings in the above-entitled action. The purpose of the request for a stay is to allow the completion of discovery on the issue of the disqualification of Petitioner's counsel, Donovan M. Hamm, Jr., Esq.. This motion is based on the exhibits attached hereto, the points and authorities cited herein and all of the pleadings and filings in the above-entitled action.

**FACTS**

On or about January 7, 2015, Douglas Armstrong (Douglas), filed a Motion to Disqualify Counsel and a Motion for a Stay of Proceedings. The Motion to Disqualify Counsel (the Motion) was directed at Attorney Donovan M. Hamm, Jr. (Hamm) who is counsel to Petitioner, Patricia L. Armstrong (Patricia) in the above-entitled action. In response to that motion, the court entered an order staying proceedings until February 20, 2015 with the

exception of allowing limited discovery on the subject raised in the Motion.

Elizabeth Anne Armstrong (Elizabeth) is the daughter of the Deceased, Robert D. Armstrong (Robert) and Patricia. She was named in the pleadings as a putative heir and an interested party. Hamm has represented Elizabeth personally, as a trustee of the Armstrong Family Trust (AFT), as a trust beneficiary and as an heir. Elizabeth will either join in the motion filed by Douglas or file her own motion regarding the need for disqualification.

Pursuant to the Court's order, on January 23, 2015, Elizabeth served Hamm with a Subpoena Duces Tecum (the Subpoena) (**Exhibit 1**) limited to the subject matter of that order. (See Declaration of Ellen G. Donovan, **Exhibit 3**). The response to the Subpoena was extremely disappointing. (See **Group Exhibit 2**). Unfortunately, an attempt to resolve the issues by letter and a telephone conference proved futile. (See **Group Exhibit 2** and Declaration of Ellen G. Donovan, **Exhibit 3**). Hamm has agreed to cooperate in having his deposition taken. However, no date for a deposition has been set.

Given the fact that Robert created trusts for his assets during his lifetime, the two primary legal issues in this action will be:

1. the attempt to assert a spousal election against trust assets despite the passage of almost a decade and transactions which have altered the trusts' positions; and

2. the extent and value of those trust assets.

It is undisputed that Donovan Hamm was the Armstrong Family Trust's<sup>1</sup> ("AFT") attorney with regard to acquiring, transferring and the reporting of taxes<sup>2</sup> on some of those same assets following Robert's death.<sup>3</sup> (See Declaration of Elizabeth Armstrong, **Exhibit 4** and see, e.g., **Group Exhibit 6**). Hamm, as counsel for the AFT, caused the transfer of some of the very same assets that he now contends should have been dealt with in probate into the Trust under odd circumstances.<sup>4</sup> (These are assets which Patricia now argues either were probate estate assets or subject to her spousal election.<sup>5</sup> He then advised the

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<sup>1</sup> Elizabeth Armstrong was both a beneficiary and Trustee of the AFT at times relevant to this matter. See **Exhibit 4**.

<sup>2</sup> Moreover, an opinion letter Hamm authored which was used for Form 706 tax reporting of trust assets not only states that he was giving a legal opinion, but also identifies him as the attesting fact witness as to many of the aspects of the multi-million dollar transaction.

<sup>3</sup> Hamm worked on a number of matters for the Trust. See Credit Memos, **Group Exhibit 5** and Invoices **Group Exhibit 6**.

<sup>4</sup> Assets and rights which were either in the name of the deceased or property owned by him were seemingly moved into the trust without explanation and without passing through probate, despite the fact his client now contends that the assets should have gone through probate. **Exhibit 4**, at ¶¶ 11-14.

<sup>5</sup> Several of Robert Armstrong's assets were either transferred to or purchased by the Trust, rather than probated, on the advice

AFT and its Trustees on the tax reporting some of the identical assets at dispute here. **Exhibit 4.** Finally, in his tax advice letter relating to a number of these assets, he states that he is the witness to the events therein.

In the course of advising the AFT and the trustees he took numerous actions; to wit:

1. he attended confidential meetings of the AFT trustees and its advisors about the AFT's views on and treatment of some of the identical assets at dispute here;<sup>6</sup>

2. had confidential conversations and communications with Elizabeth Armstrong personally<sup>7</sup> and as a trustee regarding some of the identical assets at dispute here;<sup>8</sup>

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of Attorney Hamm-Hamm having not only given the advice, but handled those transfers to the Trust. **Exhibit 4.**

<sup>6</sup> **Exhibit 4**, at ¶14 and **Exhibit 7**.

<sup>7</sup> Hamm originally represented Elizabeth in her divorce in 1993. After her father's death, he provided her with legal advice and obtained confidential information from her without distinguishing between her interests personally, as a trustee, as an heir or the interests of the Trust. This confusion was significantly exacerbated by the fact that Hamm never discussed or provided a letter of representation to the AFT, Trustees, or heirs, which would have differentiated the scope of representation. V.I.S.Ct.R. 211.1.5(b) states "The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation." Hamm never properly identified to Elizabeth that he did not represent her as well, or explained the differentiation between representing her personally, her as a

3. was given access to Elizabeth's and the AFT's documents and communications regarding their views on and treatment of some of the identical assets at dispute here;<sup>9</sup>

4. developed and sought the trustees' views on strategic positions of the AFT with regard to the disposition and treatment of some of the identical assets at dispute here;<sup>10</sup>

5. drafted, discussed and provided a legal opinion and fact attestation for Form 706 trust tax reporting documents explicitly and solely for the purpose of characterizing some of the identical assets at dispute here;<sup>11</sup> and

6. gave legal advice regarding characterizing some of the identical assets at dispute here as assets of the AFT rather than assets which his client now appears to assert should have been subjected to probate—the identical probate he now seeks to bring.<sup>12</sup>

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Trustee, her as an heir or her as a beneficiary. Deposition on this issue is critical to the filing of the motion.

<sup>8</sup> Exhibit 4.

<sup>9</sup> Exhibit 4.

<sup>10</sup> Exhibit 4.

<sup>11</sup> Exhibit 4.

<sup>12</sup> Elizabeth Armstrong has provided information and documents to specialized counsel to research a possible civil suit to hold Hamm responsible for his failure to advise her properly and for attempting to use confidential information obtained while representing her for the benefit of her mother in this proceeding. Hamm has stated, in writing, to Elizabeth's counsel:

**ARGUMENT**

**Elizabeth Armstrong has a reasonable basis for seeking a stay in order to conduct further discovery.**

Elizabeth has attempted to conduct discovery within the bounds of the order of this Court allowing same. Her inquiries via the Subpoena have all been directed to the issue of Hamm's prior representation dealing with matters considered substantially related to the case at bar within the meaning of V.I.S.Ct.R.211.1.9 (Rule 1.9). Her attempts have been frustrated by the lack of a meaningful response from Hamm, in part occasioned by his failure to maintain his files within the ten (10) year period required by V.I.S.Ct.R.211.1.15-2(d). (See Declaration of Ellen G. Donovan **Exhibit 3**). Therefore, Elizabeth has no choice but to seek additional discovery by way of a deposition of Hamm.

The question before the Court in Douglas's motion is whether Hamm should be precluded from appearing in a case against his former client and ordered disqualified. The standard

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"even had I committed the grossest kind of malpractice, my failings might have given rise to a malpractice claim, but they have nothing to do with the current probate proceeding." **Group Exhibit 2** at Letter from Hamm at p. 4.

It is indeed difficult to comprehend how Attorney Hamm can in one breath suggest the possibility of his own malpractice with regard to these identical assets and simultaneously claim that is irrelevant to disqualification.

is clear. An attorney cannot represent a party against a former client in a matter substantially related to the prior representation. V.I.S.Ct.R.211.1.9(a).

In Lynch v. Lampkin, 27 V.I. 152 (TC STX 1992), the defendant sought removal of plaintiff's counsel because of her prior representation of him in matters similar to the one in which she was appearing against him. In granting the disqualification, the court noted that the prior representation allowed the attorney to know details and nuances regarding the client gleaned from the prior representation that would be helpful to the client's adversary, despite the protestations of the attorney to the contrary.

Hamm has represented Elizabeth and the AFT in several other matters having to do with property transfers and taxes of the estate or trusts and has knowledge and has obtained information regarding them. The court in Lynch stated that the attorney's recollections were irrelevant.<sup>13</sup> It is not the court's task to

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<sup>13</sup> "...it is apparent that Attorney Rohn had a substantial professional relationship with Hickman over the course of several years, which at least touched on Hickman's activities as a contractor. Attorney Rohn's insistence that Hickman never "shared any confidences" is not persuasive. While she may not be able to identify any specific confidences at this point, they may well come to mind in the future as this lawsuit develops and discovery and trial preparation proceed. It is reasonable to conclude that Attorney Rohn knows details and nuances of Hickman's personality and behavior, not to mention his work as a contractor, gleaned from her representation of him in the past,

determine whether confidences were in fact revealed, rather, in determining the substantial relationship between representations, the court must only assess the possibility that such confidences were exchanged and the relevance and detriment that such confidences might carry in the present litigation. Bluebeard's Castle, Inc. v. Delmar Mktg., Inc., 886 F. Supp. 1204, 1209, 32 V.I. 205, (D.V.I. 1995).

The Supreme Court of the Virgin Islands has promulgated the Virgin Islands Rules of Professional Conduct. These rules appear at V.I.S.Ct.R.211, et. seq. and follow the Model Rules of Professional Conduct promulgated by the American Bar Association (ABA) in governing the conduct of attorneys. Thus, the decisions made by the courts of the Virgin Islands pursuant to the Model Rules regarding the conduct of attorneys prior to the adoption of the current rules are instructive. *In re Drue*, 57 V.I. 517, 2012 WL 4767278, at \*3 (V.I. Sept. 18, 2012). In Illaraza v. Hovensa LLC, No. CV 07-125, 2014 WL 4746774, at \*2 (D.V.I. Sept. 24, 2014), Judge Harvey Bartle applied the Model Rules in disqualifying attorney Lee Rohn a second time in the same case, relying on Model Rule of Prof'l Conduct 1.9(a) (which is

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which knowledge is likely to be helpful in this case. Whether or not Hickman ever discussed this particular project with her is not dispositive." Lynch. At 155.



identical to V.I.S.Ct.R.211.1.9(a)). The court prohibited Attorney Rohn from representing either or both of the plaintiffs in the case based on her prior representation which the court determined to be substantially related and the interests in putative current representation to be materially adverse to the former clients.

In deciding a motion for disqualification, courts balance certain factors; to wit: (1) the moving litigant's interest in the "continued loyalty of his attorney; (2) the opposing litigant's interest in retaining his chosen counsel, (3) prejudice to the opposing litigant in terms of "time and expense required to familiarize a new attorney with the matter; and (4) the "policy that attorneys be free to practice without excessive restrictions." Cubica Grp., LLLP v. MAPFRE Puerto Rican Am. Ins. Co. No. 3:11-cv-108; 2012 WL 5331257 (D.V.I. Oct. 29, 2012) (Miller, Mag. Judge) (citations omitted). In analyzing the four factors, it would appear that the motion for disqualification currently before the court should be granted.

(1) the moving litigant's interest in "the continued loyalty of his attorney." Elizabeth and the AFT and related trusts have a strong interest in the continued loyalty of Hamm, given the fact that he has been privy to extensive confidential information.

(2) "the opposing litigant's interest in retaining his chosen counsel." Given the fact that this matter has just been filed, there is no long-standing interest in having this particular counsel. To the contrary, Hamm's vast experience with this assets involved in this case has come at the expense of Elizabeth and related parties.

(3) prejudice to the opposing litigant in terms of "time and expense required to familiarize a new attorney with the matter." Elizabeth's position is the same as set forth in (2) above. The time and expense were all those of Elizabeth and related parties.

(4) the "policy that attorneys be free to practice without excessive restrictions." Disqualification in this case is not an excessive restriction. It seeks to avoid a violation of client confidences and violations of attorney's obligations.

When viewed within the context of the four factors, Elizabeth's request for an extension of time in which to pursue additional discovery is all the more compelling. Having received the Court's order, she prepared and served the Subpoena. Within a week of receiving Hamm's clearly deficient response, she made her objections known in writing and attempted to resolve the matter in a telephone conference.


Now, Elizabeth is faced with a dilemma. Having pursued her remedy with all due diligence, she is now faced with an inability to go forward because the attorney who is the subject of the pending motion for disqualification has denied having the documents that would reasonably be expected to remain in an attorney's file as required by V.I.S.Ct.R.211.1.15-2. Based on her involvement as a trustee and beneficiary of the AFT and as one of Robert's heirs, she knows that Hamm has represented Robert, the trustees, the AFT and related companies in various matters. She knows that he must have generated and received documents and that he engaged in written and oral communications that made him privy to confidential information regarding the same assets that he now seeks to garner for Patricia. The lack of documents should either be dealt with as an insurmountable presumption against him or she should be allowed to conduct the significant additional discovery needed. She should not be stymied in her efforts by the obstructive actions of the very person who now seeks to profit at her expense. At a bare minimum, she should have the opportunity to take Hamm's deposition in order to obtain information and for estoppel purposes with regard to his oral and written representations. (It is also important to note that Elizabeth has provided information and documents to specialty counsel to research a

possible civil claim against Hamm which would create an even greater conflict.) He should not be able to avoid either disqualification in this matter by effectively preventing the limited discovery ordered by this Court. He should not be allowed to argue that there is not a sufficient basis for his disqualification while he obstructs the efforts to establish the basis by denying the existence of records that he is legally and ethically required to maintain.

#### CONCLUSION

Hamm cannot be allowed to successfully engage in such acts of conflict and negligence. The Court has recognized the need for discovery. Patricia Armstrong and her counsel are not supplying the materials sought by subpoena in a timely manner. Thus, Elizabeth should be allowed an additional stay to obtain these materials and to take a deposition where Hamm's claims of having virtually nothing with regard to records are explored under oath.

Dated: 2/20/15

  
\_\_\_\_\_  
Ellen G. Donovan  
Attorney for Elizabeth Armstrong  
2116 (53-B) Company Street  
Christiansted, VI 00820  
(340) 773-0464

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that, on the 20 day of *Feb*, 2015 a true and correct copy of the foregoing Motion for a Further Stay of Proceedings was mailed, postage prepaid, to:

Warren B. Cole, Esq.  
Hunter & Cole  
1138 King Street  
Christiansted, VI 00820

Andrew C. Simpson, Esq.  
2191 Church Street, Suite 5  
Christiansted, VI 00820

Robert A. Waldman, Esq.  
Hamm Law Firm  
5030 Anchor Way  
Christiansted, VI 00820

  
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# **Exhibit 1**

Issued by the  
**SUPERIOR COURT OF THE VIRGIN ISLANDS**

Probate

DIVISION OF

St. Croix

**SUBPOENA IN A CIVIL CASE**

IN THE MATTER OF THE ESTATE OF  
ROBERT D. ARMSTRONG,  
Deceased.

Case No: PROBATE NO. SX-14-PB-71

15  
JAN 22 P 3:27

**SUBPOENA DUCES TECUM**

TO: Donovan M. Hamm, Esq.  
c/o The Hamm Law Firm  
ADDRESS: 5030 Anchor Way, Suite 5  
Christiansted, VI 00802

YOU ARE HEREBY COMMANDED to appear in the Superior Court of the Virgin Islands in the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE HEREBY COMMANDED to appear in the Superior Court of the Virgin Islands in the place, date, and time specified at the taking of a Deposition in the above case.

PLACE OF DEPOSITION	LAW OFFICES OF ELLEN G. DONOVAN 2116 (53-B) Company Street Christiansted, VI 00820 Phone: 340-773-0464, Fax: 340-773-6575	DATE AND TIME
		February 4, 2015 1:00 p.m.

Note: In lieu of appearing for the deposition at the time and place specified, you may comply with this subpoena duces tecum by producing the documents referenced in Exhibit A on or before the stated date.

YOU ARE HEREBY COMMANDED to produce and permit inspection and copying of the following documents or object at the place, date and times specified below (list documents or objects):

PLACE:

DATE AND TIME:

YOU ARE HEREBY COMMANDED to permit inspection of the following premises at the date and time specified below:

PREMISES

DATE AND TIME:

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE

ESTRELLA H. GEORGE

ACTING CLERK OF THE SUPERIOR COURT:

By:

*Frances M. Harvey*

DATE

1/22/15

ISSUING ATTORNEY'S ADDRESS AND TELEPHONE NUMBER:

LAW OFFICES OF ELLEN G. DONOVAN

2116 (53-B) Company Street

Christiansted, VI 00820

Phone: 340-773-0464, Fax: 340-773-6575

*Ellen G. Donovan* 1/22/15

RETURN OF SERVICE

I personally served the within subpoena duces tecum by delivering a copy to *Donovan*

Dated:

1-23-15

By:

*Al Song*

RETURN OF SERVICE

This is to certify that \_\_\_\_\_ cannot be found in this jurisdiction.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

RETURN OF SERVICE

I hereby certify that I served the within subpoena duces tecum by leaving a copy at \_\_\_\_\_ the usual place of abode, with \_\_\_\_\_, a member of his/her family over the age of 14 years, then residing with him/her.

Dated: \_\_\_\_\_

By: \_\_\_\_\_



## Attachment A

1. For the time period after May 21, 2003<sup>1</sup>, please provide any list or records that would list in whole or part:
  - a. Your (or any law practice in which you have or have had an interest) representation of following entities or persons:
    - i. The Robert D. Armstrong Living Trust
    - ii. The Robert D. Armstrong Family Trust
    - iii. Douglas Armstrong and Elizabeth Anne Armstrong, Trustees of the Declaration of EDA Family Trust dated January 2, 2009, and any amendments thereto or the "EDA Trust"
    - iv. The Modified EDA Trust, dated November 22, 2011
    - v. Robert D. Armstrong
    - vi. Doug Armstrong or any Trust or business owned by him
    - vii. Elizabeth Armstrong or any Trust or business owned by her
    - viii. Robert W. Armstrong or any Trust or business owned by himThis shall include, but not be limited to, any corporations, unincorporated entities or other businesses in which i-viii above have any interest known to you.
  - b. Your (or any business in which you have or have had an interest) financial or business dealings with any person or entity in 1(a) above. This shall include, but not be limited to the Gallows Bay Hardware.
2. For each of the representations or business dealings described in document request no. 1, please provide any and all documents received, generated or otherwise related to that representation or business dealing. This request is limited to the time period from May 21, 2003 to the present.
3. For each of the representations described in document request no. 1, please provide copies of your billings to the client, payments from the client, and your financial/accounting records related to those representations. This request is limited to the time period from May 21, 2003 to the present.
4. For each of the representations described in document request no. 1, please provide any legal documents submitted, including but not limited to, courts or other forums, drafted by you or your firm. This request is limited to the time period from May 21, 2003 to the present.
5. For each of the representations set forth in document request no. 1, please provide all attorney notes or memos or other communications, including but not limited to, emails, letters, or texts regarding these representations
  - a. To or from clients
  - b. To or from third parties
6. Please provide a log for all documents applicable to these document requests, but withheld on the basis of any claim of privilege or other basis for withholding.

<sup>1</sup> The date two years prior to the death of Robert W. Armstrong.

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

# **Group Exhibit 2**

# The Hamm Law Firm

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Donovan M. Hamm, Jr.  
*Virgin Islands & Maryland*

Robert A. Waldman  
*Virgin Islands, Texas & Iowa*

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Of Counsel:  
Paul M. Vettori  
*Maryland*  
John H. Warren  
*Virgin Islands*

February 5, 2015

Ellen G. Donovan  
2116 (53-B) Company Street  
Christiansted, VI 00820

Warren B. Cole, Esq.  
Hunter & Cole  
1138 King Street, Suite 3  
Christiansted, VI 00820

Andrew C. Simpson, Esq.  
14 AB Church Street  
Christiansted, VI 00820

Re: Motion to Disqualify  
Estate of Robert D. Armstrong  
Case No. SX-14-PB-71

Dear Counsel:

In response to Douglas L. Armstrong's motion to disqualify me from representing Patricia L. Armstrong in the probate proceeding, the Court stayed the matter until February 20, 2015. The Court stated that the parties may conduct limited discovery relating solely to the factual issues raised by such motion.

I have received what I believe to be a defective and overly burdensome subpoena *duces tecum* from Attorney Donovan. I have objected to this subpoena. I have also been served by Attorney Cole with a request to produce documents which relate to my representation of third parties. Even were I a party in this proceeding, which I am not, this request is premature because there has been no Rule 26(f) conference. To the extent that this request can be construed as being directed at the Petitioner, Patricia L. Armstrong, she cannot produce documents that are not under her possession or control. Attorney Cole has been served with an appropriate response on behalf of the Petitioner. I can find no authority requiring me, personally, to respond to this request.

However, in an effort to avoid unnecessary delay, I am voluntarily providing all of the information that I believe any of you would ultimately be able to obtain for use in connection with Douglas L. Armstrong's motion to disqualify me.

Robert D. Armstrong

Prior to his death, I was retained by Robert D. Armstrong to provide legal services to him and to several business entities owned by him. I was not retained, however, to provide any services whatsoever with respect to his estate plan. With two exceptions, all of the matters with respect to which I had provided legal advice had been concluded prior to his death. These two

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exceptions were the sale of the stock of the Haywood Street Redevelopment Corporation (“HSRC”) and the acquisition of certain undeveloped land in Estate Constitution Hill (the “Constitution Hill Property”). As discussed below, I am providing you with all of the documents related to these two matters generated following the death of Robert D. Armstrong.

There are a few other matters that I handled for Robert D. Armstrong in the two years prior to his death. The documents in my possession related to these matters are included on the disc provided herewith.

Elizabeth Anne Armstrong and her related trusts and business entities

At no time following the death of Robert D. Armstrong was I ever retained by Elizabeth Anne Armstrong to represent her personally, nor, except as expressly described below with respect to the Armstrong Family Trust (the “AFT”), was I retained during this time period by any trust or other entity owned or controlled by her, directly or indirectly, or any trust of which she is a beneficiary. So there are no documents to produce.

Douglas L. Armstrong and his related trusts and business entities

At no time following the death of Robert D. Armstrong was I ever retained by Douglas L. Armstrong to represent him personally, nor, except as expressly described below with respect to the AFT, was I retained during this time period by any trust or other entity owned or controlled by him, directly or indirectly, or any trust of which he is a beneficiary. So there are no documents to produce.

Robert W. Armstrong and his related trusts and business entities

I was retained by Robert W. Armstrong to represent him and certain of his business entities during the period following the death of Robert D. Armstrong. I have received a demand from Robert W. Armstrong that I not disclose any information regarding any matter with respect to which I provided legal services to him or to any entity owned by him, or to any trust of which he is a beneficiary, other than the AFT. I intend to honor this demand.

The HSRC Matter

Shortly before his death, I was retained by Robert D. Armstrong to represent him in connection with the sale of the stock of the Haywood Street Redevelopment Corporation. That was accomplished as of the first day of 2005.

In the summer of 2005, I was contacted by Stanley Miller, Esq., the attorney that had represented Robert D. Armstrong in connection with his estate plan and who had actually drafted all of the documents related to that plan, including the trust agreement that established the AFT. Mr. Miller informed me that his law firm was in the process of preparing a Federal Estate Tax Return for Robert D. Armstrong’s estate and needed an opinion regarding certain tax aspects of the HSRC stock sale. I was retained to prepare this opinion and was paid for my work. It did not involve any internal aspect of the estate or its other assets. All of the documents in my possession relating to this opinion are included on the disc provided herewith.

The stock purchase agreement provided that, prior to closing, a deed conveying title to certain property in North Carolina to Robert D. Armstrong or his designee, would be executed and delivered to Robert D. Armstrong, but would not be recorded by him for up to a year

following closing. At some time following closing, the new owner of the corporation proposed changes to the agreement that would have involved his development of the land described in the unrecorded deed. Robert W. Armstrong and Attorney Joel Holt requested that I attend a meeting in North Carolina regarding this proposal, which was, to the best of my recollection, ultimately rejected. I was not involved in the preparation of the deed to the North Carolina land, nor its recordation. Following my trip to North Carolina, I had no further involvement with the land. The documents in my possession related to that matter are included on the disc provided herewith.

Finally, the stock purchase agreement provided that, after all of the stock had been purchased, HSRC would be merged into a new North Carolina corporation. I was asked to assist in that process by Robert W. Armstrong and prepared articles of merger for filing with the Lieutenant Governor's office in 2007. The documents in my possession related to the merger are included on the disc provided herewith.

#### Purchase of Constitution Hill Property

Another issue raised by Douglas L. Armstrong concerned my involvement in completing a real estate purchase transaction that Robert D. Armstrong had placed under contract in 2002. At that time, the proposed purchaser was DIP, Inc., a corporation that Mr. Armstrong had formed. The seller was Wilfredo Geigel, Esq. as agent for members of the Ortiz family. Shortly before the death of Robert D. Armstrong, he instructed me that the property would be conveyed to River Development Associates, Inc., another corporation formed by him, instead of DIP, Inc.

Following the death of Robert D. Armstrong, my firm continued to try to close this transaction, which had been delayed for years because of various probate issues regarding the sellers. Eventually, the title issues were resolved and the purchase closed in August 2008. Robert W. Armstrong directed that the title to the property be placed in Robert W. Armstrong, Douglas L. Armstrong and Elizabeth A. Armstrong, Trustees of the Armstrong Family Trust instead of River Development Associates, Inc., and that is what I instructed the seller to do.

The documents in my possession related to this property purchase are included on the disc provided herewith.

In addition, all of my billings related to the above described matters are included on the disc provided herewith.

As you are all aware, I am not precluded from representing the interests of a client that are adverse to those of a former client, unless my former representation involved the same or similar issue or provided me with confidential information that I would not have obtained without such prior representation. As the Motion of Douglas L. Armstrong correctly observes, ultimately, the issue in the current probate proceeding will be whether or not Patricia L. Armstrong is entitled to claim a share of the assets owned by Robert D. Armstrong immediately prior to his death, including those assets that were placed into the revocable trust that he established five days before his death.

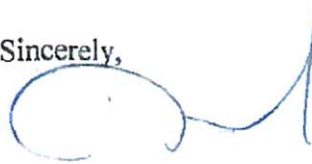
Our position is that Mrs. Armstrong is entitled to an undivided interest in all of these assets. Her claim is not dependent upon any transactions that occurred before or after the death of Robert D. Armstrong. It is a statutory right to a share of the assets. The record will show that I had nothing to do with Robert D. Armstrong's estate planning or any decision regarding to

Ellen B. Donovan, Warren B. Cole and Andrew C. Simpson  
February 5, 2015  
Page 4

whom his assets should be left. The record will also show that there is nothing that I learned, or could have learned, during my limited representation of the Armstrong Family Trust, following his death that could conceivably have any impact on the statutory rights of Mrs. Armstrong.

Finally, while I disagree with the suggestions in the affirmation of Douglas L. Armstrong that I "should have" done certain things differently, and while I am disappointed at the obvious, and rather clumsy, attempt to extort my withdrawal, the record will show that I was never retained to provide the advice that Mr. Armstrong claims was given improperly. Moreover, even had I committed the grossest kind of malpractice, my failings might have given rise to a malpractice claim, but they have nothing to do with the current probate proceeding.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donovan M. Hamm, Jr.", with a large, stylized initial "D" and a long, sweeping tail.

Donovan M. Hamm, Jr.

Enclosures

ARMS201345



Law Office of  
Ellen G. Donovan  
2116 (53-B) Company Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820-4945

Tel: (340) 773-0464

Fax: (340) 773-6575

February 13, 2015

Donovan M. Hamm, Jr. Esq.  
Hamm Law Firm  
5030 Anchor Way  
Christiansted, VI 00820

BY EMAIL TO [dmh@hammlawvi.com](mailto:dmh@hammlawvi.com)

RE: Estate of Robert D. Armstrong  
Case No. SX-14-PB-71

Dear Van,

I have reviewed the documents that you have provided as well as your letter of February 5, 2015 and the Objection to Subpoena Duces Tecum that you filed. I have some issues with your responses. I hope that we can resolve them without involving the court.

Your Objection was based on FRCP 45. The Subpoena Duces Tecum was not a Rule 45 subpoena. It was a Superior Court subpoena and is governed by Super. Ct. R. 11. I may have muddied the waters by attaching a sheet that referenced Rule 45. To the extent that I created any confusion, I apologize. However, I think that we can agree that Rule 11 controls as to the remedies that either of us might seek regarding the subpoena.

**Objections to the Responses to Request for Production of Documents**

**Request No. 1(a):**

1. For the time period after May 21, 2003<sup>1</sup>, please provide any list or records that would list in whole or part:
  - a. Your (or any law practice in which you have an interest) representation of following entities or persons:
    - i. The Robert D. Armstrong Living Trust
    - ii. The Robert D. Armstrong Family Trust

---

<sup>1</sup> The date two years prior to the death of Robert D. Armstrong.

ARMS201349



- iii. Douglas Armstrong and Elizabeth Anne Armstrong, Trustees of the Declaration of EDA Family Trust dated January 2, 2009, and any amendments thereto or the "EDA Trust"
- iv. The Modified EDA Trust, dated November 22, 2011
- v. Robert D. Armstrong
- vi. Doug Armstrong or any Trust or business owned by him
- vii. Elizabeth Armstrong or any Trust or business owned by her
- viii. Robert W. Armstrong or any Trust or business owned by him This shall include, but not be limited to, any corporations, unincorporated entities or other businesses in which i-viii above have any interest known to you. .

**Response to Request 1(a)**

No specific response was provided.

**Deficiency**

Please provide the lists requested in Request 1(a) or state that no such list or lists exist.

**Request No. 1(b):**

1. For the time period after May 21, 2003, please provide any list or records that would list in whole or part:

- b. You (or any business in which you have an interest) financial or business dealings with any person or entity in 1(a) above. This shall include, but not be limited to the Gallows Bay Hardware.

**Response to Request 1(b)**

No specific response was provided.

**Deficiency**

You did not produce documents related to Request 1(b). For example, there are no documents related to the arrangement where the Armstrong Family Trust (AFT) offset your rent for your law office space at a business contained within the AFT. You also did not produce any documents related your representation of Gallows Bay Hardware, a business also within the AFT, or other such businesses during the time they were within the trust. While some documents pertaining to this matter may have been privileged, you also did not include a privilege log identifying which documents were withheld.

**Request No. 2:**

2. For each of the representations or business dealings described in document request no. 1, please provide any and all documents received, generated or otherwise related to that representation or business dealing. This request is limited to the time period from May 21, 2003 to the present.

**Response to Request No. 2 Related to Robert D. Armstrong**

"Prior to his death, I was retained by Robert D. Armstrong to provide legal services to him and to several business entities owned by him. I was not retained, however, to provide any services whatsoever with respect to his estate plan. With two exceptions, all of the matters with respect to which I had provided legal advice had been concluded prior to his death. These two exceptions were the sale of the stock of the Haywood Street Redevelopment Corporation ("HSRC") and the acquisition of certain undeveloped land in Estate Constitution Hill (the "Constitution Hill Property"). As discussed below, I am providing you with all of the documents related to these two matters generated following the death of Robert D. Armstrong."

"There are a few other matters that I handled for Robert D. Armstrong in the two years prior to his death. The documents in my possession related to these matters are included on the disc provided herewith."

**Deficiency**

Any document from 2003 forward that deals with legal representation for Robert D. Armstrong must be produced, irrespective of whether you believe it related to his estate plan. You are claiming that you represented him or the Trust with regard to matters that you characterize as carrying over from this period. Thus, it is important that I understand your claims regarding your representation.

Please produce all documents relating to legal services provided to Robert D. Armstrong from 2003 to the time of his death or confirm that all such documents have been produced.

**Response to Request No. 2 Related to the Robert D. Armstrong Family Trust (AFT).**

No specific response was provided.

**Deficiency**

Any documents related to any work you did for businesses that were held in the Armstrong Family Trust prior to the first decanting are not privileged and must be produced. This is without regard to the fact that you characterize them as being "Rob's". You did not include, for example, any documents relating the following matters contained on two Christiansted Port Terminal Corporation (CPTC) credit memos sent to you on September 30, 2005; to wit: a line of credit extended by Companion Insurance to Jeff Prosser, a 2004 audit opinion letter for the Buccaneer, meetings regarding RDA estate with trustees, accountants, and estate planners. Additionally, debt securing for 3V, Vivot Construction and Vivot Equipment is listed and your production of documents related to that matter does not seem complete, based on the dates and types of documents produced. These and all other such matters are critical to this issue. Your response should address not only the items I have identified, but all other similar matters.

For example, a January 31, 2006 credit memo to you listed the following matters: (1) meetings and telephone calls with Elizabeth A. Armstrong, (2) revise Opinion Letter and transmit to Miles Adler.

In addition to the items identified above that have not been produced, there were no emails, texts or other Electronic Discovery included in your production. There were very few letters or memos produced. Finally, none of the credit memos sent to you by CPTC were produced. Please produce all documents requested.

**Response to Request No. 2 Related to Robert W. Armstrong and his related trusts and business entities**

"I was retained by Robert W. Armstrong to represent him and certain of his business entities during the period following the death of Robert D. Armstrong. I have received a demand from Robert W. Armstrong that I not disclose any information regarding any matter with respect to which I provided legal services to him or to any entity owned by him, or to any trust of which he is a beneficiary, other than the AFT. I intend to honor this demand."

**Deficiency**

The deficiencies set forth regarding to the AFT are incorporated. Further, no invoices related to the representation of Robert W. Armstrong have been included and should be produced. Finally, no privilege log referencing the withheld documents has been produced. Please produce the documents and provide a privilege log.

**Request No. 3:**

For each of the representations described in document request no. 1, please provide copies of your billings to the client, payments from the client, and your financial/accounting records related to those representations. This request is limited to the time period from May 21, 2003 to the present.

**Hamm Response to RFPDs 3**  
**The HSRC Matter**

Purchase of Constitution Hill Property

In addition, all of my billings related to the above described matters are included on the disc provided herewith.

**Deficiency**

Please provide all invoices billed to any entity or person listed in document Request no. 1, not just the invoices related to the HSRC matter and the purchase of Constitution Hill. Notably, only one invoice was provided for 2003 and 2004. No invoices were provided after 2008. Additionally, no invoices were produced for work done on behalf of Robert W. Armstrong. Please produce all invoices, including those where work was done for Robert W. Armstrong.

**Request No. 4:**

For each of the representations described in document request no. 1, please provide any legal documents submitted, including but not limited to, courts or other forums, drafted by you or your firm. This request is limited to the time period from May 21, 2003 to the present.

**Response to Request No. 4**

No specific response was given.

**Deficiency**

As noted above, there are matters listed in deficiency to Request No. 2 that were not addressed by your production. Please produce all documents related to request number 4.

**Request No. 5:**

For each of the representations set forth in document request no. 1, please provide all attorney notes or memos

Donovan M. Hamm, Jr., Esq.

February 13, 2015

Page 6

or other communications, including but not limited to, emails, letters, or texts regarding these representations

- a. To or from clients
- b. To or from third parties

**Response to Request No. 5**

No specific response was given.

**Deficiency**

As noted above in the deficiency related to Request No. 2, no attorney notes, emails, or texts were provided, and very few memos or letters were produced. Please produce the requested documents.

**Request No. 6:**

Please provide a log for all documents applicable to these document requests, but withheld on the basis of any claim of privilege or other basis for withholding.

**Response to Request No. 6**

No specific response was given.

**Deficiency**

No privilege logs were produced, despite your admission that documents were withheld on the basis of privilege. Please produce a privilege log identifying all documents withheld.

I look forward to meeting with you so that we may resolve these issues amicably. Please advise me of your availability early in the week.

Sincerely,



Ellen G. Donovan

# **Exhibit 3**

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

IN THE MATTER OF THE ESTATE OF )  
ROBERT D. ARMSTRONG, ) CASE NO. SX-14-PB-71  
)  
Deceased. )  
\_\_\_\_\_ )

**DECLARATION OF ATTORNEY UNDER PENALTY OF PERJURY  
5 VIC §699**

Ellen G. Donovan, an attorney duly admitted to practice law in the US Virgin Islands, affirms as follows:

1. I am the attorney for Elizabeth A. Armstrong (Elizabeth) in the above-entitled action.

2. I am submitting this affirmation in support of a Motion for a Further Stay of Proceedings in Order to Complete Discovery.

3. This is a proceeding in which the assets at issue are located in the Armstrong Family Trust (AFT) or successor trusts, making those trusts and their beneficiaries and trustees primary real parties in interest. On or about January 20, 2015, the Court entered an order staying proceedings in this matter in order to allow the parties to conduct limited discovery on the subject of the disqualification of Attorney Donovan M. Hamm, Jr. (Hamm) as counsel to Patricia Armstrong due to his prior representation of one or more of those parties.

4. On January 23, 2015, I served a Subpoena Duces Tecum (the Subpoena) on Hamm. A copy of the Subpoena is attached as Exhibit 1.

5. At the time that I served the Subpoena, I was aware that Hamm had represented Robert D. Armstrong (Robert) individually and that he had represented businesses owned and/or controlled by Robert. I also knew that after Robert's death, he had represented the Armstrong Family Trust (AFT) on various matters and that he had advised the trustees and beneficiaries of the AFT, one of whom was Elizabeth. Douglas L. Armstrong (Douglas) and Robert W. Armstrong (Rob) were the other trustees of the AFT. They were also beneficiaries.

6. I was also aware that Hamm's office was in a complex owned by an Armstrong company, Christiansted Port Terminal Company, CPTC) and that Hamm and CPTC had an arrangement whereby Hamm would submit invoices for his work on behalf of the AFT and Armstrong companies and that CPTC, at times that it was owned by the AFT, would issue credit memos to Hamm against his rent. See Group Exhibit 5.

7. The documents that I requested were directed at Hamm's representation of Robert and his companies during the last two (2) years of Robert's life and Hamm's representation of the AFT, Elizabeth, Douglas, Rob and the various Armstrong companies that were made a part of the AFT in a variety of capacities after Robert's death.

8. On February 5, 2015, I received a letter from Hamm and a disc containing documents which he said constituted a response to the Subpoena. (See Letter from Hamm in Group Exhibit 2).



9. After reviewing the letter and the documents contained on the disc, I found the documents produced to be deficient in many respects. On February 13, 2015, I wrote to Hamm outlining the deficiencies in his responses and requesting an opportunity to discuss the matter. (See my letter to Hamm in Group Exhibit 2).

10. On February 17, 2015. I spoke with Attorneys Hamm and Waldman regarding the deficiencies. Hamm told me that he was no longer asserting a privilege regarding matters in which he had represented Robert during his lifetime. However, he also denied having any emails, memos or notes pertaining to any of the matters of representation.

11. I asked Hamm about the seemingly inexplicable lack of documents pertaining to certain of the matters.

12. For example, in response to the Subpoena, Hamm had produced several documents pertaining to a transaction regarding a loan from Companion, Inc. to 3V, Inc.. At the time of the representation, Companion, Inc. was owned by the AFT. The documents produced consisted mainly of unsigned drafts of word documents that appeared to involve loans in various amounts and a line of credit to 3V, Inc. in the amount of Two Million Dollars (\$2,000,000.00). The drafts were dated in 2004 and September, 2005. According to the Credit Memo from CPTC to Hamm dated September 30, 2005 entitled "Reimburse for legal services performed for Companion, Inc. and used to offset rent owed to

Christiansted Port Terminal", Hamm billed Eight Thousand Eight Hundred Three Dollars and Forty Five Cents (\$8,803.45) on the matter for that billing period. (See Group Exhibit 5). When I asked Hamm what happened to the transaction, he said that he didn't know. On the same Credit Memo, there was a credit for "Theo Dependable Mortgage". There were no documents produced that mentioned that transaction. There was also an credit entry for "Prosser line of credit" for which he received a credit in the amount of Three Thousand Nine Hundred Three Dollars and Thirty Four Cents (\$3,903.34). See Group Exhibit 5. There were no documents produced pertaining to that transaction either. When I asked Hamm about the lack of documents, he said that he thought that the deal didn't go through. He did not offer any explanation about what he did for the amount charged.

13. While we were discussing various matters that appeared on the Credit Memos, I asked Hamm if he had copies of those memos or if he had any comments about them. He stated that he no longer had them.

14. In reviewing the invoices produced by Hamm, there were also references to Parcel 2 Mt. Pleasant and Rem. Parcel 3 Estate Marienhoj. (See Group Exhibit 6) There were no documents produced pertaining to either parcel.

15. It is clear that Hamm has represented the AFT and related companies on various matters and that the documents obtained show discussions with and attendance at meetings with

Elizabeth. He has billed substantial sums for the representation. However, he has produced very little in the way of documentation and he has denied having documents that one would reasonably expect to find in an attorney's files. According to V.I.S.Ct.R. 211.1.15-2, an attorney is required to retain files for 10 years after the conclusion of the representation. During our telephone conference, I asked Hamm what would have happened to the emails and other documents. He said that he might have stripped the files or given them back to the client. I asked him to clarify whether he was stating that he had returned any of the documents to the client, and he stated that he had not. If the production of documents in response to the Subpoena is accurate, Hamm is clearly in violation of that rule.

16. At present, there is ample evidence that Hamm represented the AFT and related companies while they were the property of the AFT on several matters; to wit: the purchase of property in Constitution Hill, the conclusion of the transaction on the sale of Haywood Street Realty Corporation (HSRC), a loan outstanding to Prosser, loans to 3V, Inc., an audit for Buccaneer, Inc., and that he billed for some inquiries regarding Parcel 2 Estate Mt. Pleasant and Rem. Parcel 3 Estate Marienhøj.

17. The documentation produced pertaining to the Constitution Hill property is extremely sparse, considering the

fact that the property was the subject of litigation in which Hamm intervened and that lasted until 2008.

18. There is also ample evidence that he attended meetings with the trustees of the AFT, the estate planner for the RDA Living Trust (Attorney Stan Miller) and the trust advisor (Attorney Joel Holt) and that he had numerous other contacts with them as shown by the Credit Memos and the Invoices.

19. When viewed in light of what we know about Hamm's involvement with Robert and his businesses and the representation of the AFT and related companies, the response to the Subpoena is wholly inadequate and requires further inquiry.

20. Hamm and I discussed the need for his deposition. He said that he would cooperate. It is important that his deposition be taken both to obtain information and for estoppel purposes with regard to his oral and written representations. It is probable that a second document subpoena may be necessary after that deposition.

21. I am requesting a further extension of the stay of proceedings in order to depose Hamm so that he will be required to make the representations under oath.

I AFFIRM THE FOREGOING STATEMENTS UNDER PENALTY OF PERJURY

Dated: 2/19/15

  
\_\_\_\_\_  
Ellen G. Donovan

# **Exhibit 4**

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

IN THE MATTER OF THE ESTATE OF )  
ROBERT D. ARMSTRONG, ) CASE NO. SX-14-PB-71  
 )  
Deceased. )  
\_\_\_\_\_ )

**DECLARATION OF ELIZABETH ANNE ARMSTRONG**

1. I am the daughter of Robert D. Armstrong.
2. I am submitting this declaration in support of a motion to disqualify the Hamm Law Firm from representing the petitioner in the above-entitled estate. I believe that attorney Donovan M. Hamm ("Attorney Hamm") is the principal of the firm.
3. For the reasons that I will state in this declaration, I consider myself a former client of the Hamm Law Firm and Attorney Hamm as described in V.I.S.Ct.R. 211.1.9 and Rule 1.9 of the Model Rules of Professional Conduct.
4. I am one of the persons named as a personal representative in the Last Will and Testament of the Deceased dated May 16, 2005 ("the Will".)
5. Article Two, §2.02 of the Will provides that all of the assets of the probate estate of the Deceased was to be placed in the Robert D. Armstrong Living Trust dated May 16, 2005 ("the RDA Living Trust").
6. Article Two, §2.03 directed the personal representatives named in the Will to establish a testamentary trust to include

any existing probate assets for the beneficiaries of the RDA Living Trust.

7. In accordance with the terms of the RDA Living Trust, on the death of the Deceased, my siblings and I became the trustees and beneficiaries of the Armstrong Family Trust ("AFT"), which was the successor to the RDA Living Trust.

8. In accordance with the terms of the RDA Living Trust, the Patty Armstrong Trust ("the PLAT Trust") was created for the benefit of our mother, Patricia L. Armstrong. I have served as trustee of the PLAT but I no longer do so. My mother has been receiving income and other distributions from the PLAT since my father's death.

9. In accordance with the terms of the RDA Living Trust and the AFT, my mother has the right to use and occupy the former residence of my father, known as Estate Bulows Minde and Hafensight, St. Croix ("the residence"), the expense of maintenance of the residence being the obligation of AFT.

10. During my father's lifetime, Attorney Hamm represented by father on numerous business and tax matters. When I say that he represented my father, I mean that he represented him and the businesses in which my father had an interest. I do not know the particulars of all of the transactions in which he was involved.

11. After my father died, I became aware of the fact that my father had contracted to purchase Plots 17, 17-D, 17-C and

17A Estate Constitution Hill ("the Constitution Hill Property"). The purchase was not completed during my father's lifetime. There was no record of my father's rights in the contract having been assigned or otherwise transferred to the RDA Living Trust during his lifetime. As such, they may have been part of my father's probate estate. As of 2008, the sale was still pending. As trustees of the AFT, we consulted Attorney Hamm regarding the manner in which the transaction should be completed. Attorney Hamm represented us in getting the property directly into the trust. At no time did Attorney Hamm advise us of the advisability of probating the Will or other implications of directly shifting the right to purchase the Constitution Hill property to the AFT.

12. Attorney Hamm also represented my father in the sale of the stock in Haywood Street Realty Corporation ("HSRC") a Virgin Islands corporation that owned real property in Asheville, North Carolina. I understand that the transaction exceeded Eleven Million Dollars (\$11,000,000.00). My father was the sole shareholder of HSRC. After my father died, Attorney Hamm represented the trustees of the AFT in the completion of various matters pertaining to the sale.

13. Although my father sold the stock in HSRC, there were assets of the corporation that were not included in the sale. Those assets were not removed from HSRC during my father's



lifetime. Although he was representing the trustees of the AFT, Attorney Hamm never advised us of the possibility or advisability of probating my father's will in order to get those assets into the AFT. In addition to finalizing certain aspects of the HSRC transaction, Attorney Hamm represented the trustees of the AFT in a tax matter pertaining to the transaction.

14. After my father's death, my siblings and I had numerous meetings of the trustees of the AFT. Attorney Hamm attended at least one (1) meeting of the trustees at which the accountant and my father's estate planner were present. I also had occasion to meet with Attorney Hamm and to speak with him by telephone on matters pertaining to the AFT and entities formerly owned by my father which had become AFT assets.

15. After my father's death, Attorney Hamm performed other legal services for entities owned by AFT.

16. It is my understanding that Attorney Hamm had communications with Attorney Joel Holt, (the trust advisor) regarding legal matters. I do not know the sum and substance of those conversations.

17. On or about August 8, 2014, my mother commenced an action in Superior Court against me, my siblings and contingent beneficiaries in a suit styled Patricia Layland Armstrong v. Elizabeth Anne Armstrong, et. al., Case No. SX-14-CV-280 (the Civil Suit). The complaint seeks, inter alia, rescission of

certain actions of the AFT trustees and a re-conveyance of certain property to the AFT. The Hamm Law Firm represents my mother in that suit. I believe that Attorney Hamm is the principal of that firm.

18. Approximately a month before my mother filed the Civil Suit, I called Attorney Hamm. The purpose of my call was to obtain information regarding the exact numbers of the plots that constituted the Constitution Hill property so that I could fence in the entire area. In response to my question regarding the plot numbers, he replied "I was just looking at that file.". He said that he would get back to me. He never did. A few weeks later, I received the first letter from Attorney Hamm on behalf of my mother, with my brother, Robert W. Armstrong ("Rob") shown as my mother's attorney-in-fact.

19. The Hamm Law Firm has now filed the instant petition. The petition seeks to have my mother issued Letters of Administration, CTA with the stated objective of filing an election against the Will in order to reach the assets of the trusts established by my father.

20. During his representation of the AFT, Attorney Hamm became privy to information that is of benefit to my mother in her Civil Suit and her attempt to enforce a right of election. In particular, he has gained confidential knowledge regarding the assets of the trust and tax matters pertaining thereto.

21. Attorney Hamm now seeks to offer the Will for probate despite the fact that he never advised the trustees of the advisability of probating the will in the course of his representing the trustees of the AFT, when he knew or should have known that my father left assets that had not been transferred to the trust.

22. In the course of seeking a statutory election against the Will, the estate will have to be valued. Any elective share will have to be reduced by the value of the dispositions made by my father for my mother. Attorney Hamm's representation of the AFT, including his knowledge of its assets and tax obligations, are directly related to the estate valuations. He is likely to be a critical witness.

23. At this point, I do not have a specific recollection of other transactions in which Attorney Hamm represented my father and/or the AFT. I am requesting that I be given the opportunity to pursue discovery on those matters.

24. I believe that allowing The Hamm Law Firm and/or Attorney Hamm to represent my mother in this matter would be in violation of my rights as a former client.

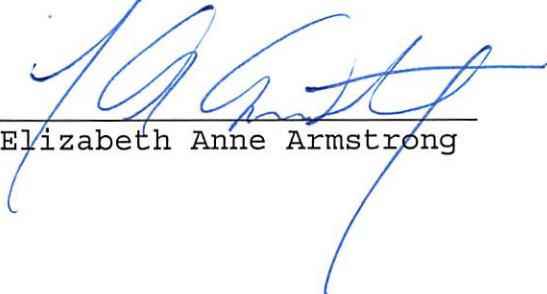
25. I have provided information and documents to specialized counsel to research a possible civil action to hold attorney Hamm accountable for his failure to advise me properly and for attempting to use confidential information obtained

Declaration of Elizabeth Anne Armstrong  
Estate of Robert D. Armstrong  
Page 7

while representing me for the benefit of my mother in this  
action.

I HEREBY STATE UNDER PENALTY OF PERJURY THAT THE FOREGOING  
DECLARATION IS TRUE AND CORRECT.

Dated: 2/18/15

  
Elizabeth Anne Armstrong

# **Group Exhibit 5**

Christiansted Port Terminal Corporation

PO Box 25200  
 Christiansted, VI 00824-1200

# Credit Memo

Date	Credit No.
9/30/2005	5355

<b>Customer</b>
Donovan Hamm Jr. 5030 Anchor Way Gallows Bay St. Croix, VI 00820

Description	Qty	Rate	Amount
Reimburse for legal services performed for Robert D Armstrong Living Trust and used to offset rent owed to Christiansted Port Terminal			
HDB3 - photocopying (HDB3 account)		120.00	-120.00
2004 Audit Opinion Letter for The Buccaneer applied to rent due to Christiansted Port Terminal (Misc account)		325.00	-325.00
Constitution Hill purchase negotiations (Misc account)		902.50	-902.50
Sale of HSRC (HSRC account)		14,705.00	-14,705.00
Prosser line of credit (Companion & Prosser account)		3,903.34	-3,903.34
Meetings regarding RDA estate w/trustees; accountants; estate planners (Misc account)		6,919.25	-6,919.25
		<b>Total</b>	<b>\$-26,875.09</b>

ARMS200468

Christiansted Port Terminal Corporation

PO Box 25200

Christiansted, VI 00824-1200

# Credit Memo

Date	Credit No.
9/30/2005	5354

Customer
Donovan Hamm Jr. 5030 Anchor Way Gallows Bay St. Croix, VI 00820

Description	Qty	Rate	Amount
Reimburse for legal services performed for Companion, Inc and used to offset rent owed to Christiansted Port Terminal		0.00	0.00
3V - Vivot Construction - Vivot Equipment - debt securing		8,803.45	-8,803.45
Theo Dependable Mortgage		195.00	-195.00
		<b>Total</b>	<b>\$-8,998.45</b>

ARMS200467

Christiansted Port Terminal Corporation

PO Box 25200

Christiansted, VI 00824-1200

# Credit Memo

Date	Credit No.
12/31/2005	5461

<b>Customer</b>
Donovan Hamm Jr. 5030 Anchor Way Gallows Bay St. Croix, VI 00820

Description	Qty	Rate	Amount
Reimburse for legal services performed for Robert D Armstrong Living Trust and used to offset rent owed to Christiansted Port Terminal			
3V - December meeting with Bruce Bennet / copies (3V account)		124.50	-124.50
November - Research and prepare draft Opinion Letter on HSRC sale (Misc account)		16,825.00	-16,825.00
December - T/C's; meetings; travel to NC regarding sale of HSRC (Misc account)		5,390.00	-5,390.00
October - message to Joel Holt (HSDC account)		105.00	-105.00
		<b>Total</b>	<b>\$-22,444.50</b>

ARMS200469



Christiansted Port Terminal Corporation

PO Box 25200

Christiansted, VI 00824-1200

# Credit Memo

Date	Credit No.
1/31/2006	5462

Customer
Donovan Hamm Jr. 5030 Anchor Way Gallows Bay St. Croix, VI 00820

Description	Qty	Rate	Amount
Reimburse for legal services performed for Robert D Armstrong Living Trust and used to offset rent owed to Christiansted Port Terminal			
January - online research (HSDC account)		679.50	-679.50
January - meetings / t/c's with EAA; revise Opinion Letter and transmit to Miles Adler		2,175.00	-2,175.00
		<b>Total</b>	<b>\$-2,854.50</b>

ARMS200474

# **Group Exhibit 6**

**Hamm & Barry**  
 5030 Anchor Way  
 Christiansted, VI 00820

**Robert D. Armstrong Family Trust**  
 P.O. Box 25200  
 Christiansted VI 00824

**Date :** 05/07/2007  
**REF.:** 1198/001  
**Invoice Number:** 2260

**Re: Armstrong Trust - HSRC**

**Attention:**

DATE	INIT	DESCRIPTION OF SERVICE	HOURS	AMOUNT
04/18/2007	dmh	Revise Stock Purchase Agreement	0.60	225.00
		OUR FEE:	0.60	<u>225.00</u>

**TIME SUMMARY**

LAWYER INITIALS	RATE	HRS	AMOUNT
dmh	375.00	0.60	225.00

**NON-TAXABLE EXPENSES:**

Government of the Virgin Islands/Haywood St.Redvelopm.Joe Kimmell-File Plan & Merger Agreem.	150.00
Government of the VI/Filing Fees for Merger Docs	150.00
Government of the VI - Reversal/Filing Fees for Merger Docs	-150.00
<b>Total Non-Taxable Expenses</b>	<b>\$150.00</b>

**Total Expenses** **\$150.00**

**TOTAL** **\$375.00**

**Amount transferred from trust** 0.00

**Net amount owing on this bill** **\$375.00**

**STATEMENT OF ACCOUNT**

Prior Balance	75.00
Payment & adjustments	0.00
Current Fees	225.00
Current Expenses	150.00
<b>AMOUNT DUE AND OWING TO DATE</b>	<u><u><b>\$450.00</b></u></u>

Please be advised we have changed to a new soft-ware program. Please examine your invoice carefully and call the office should you have any questions. (340) 773-6955.

HAMM101505

**Hamm & Barry**  
5030 Anchor Way  
Christiansted, VI 00820

Ph:(340) 773-6955

Fax:(340) 773-3092

Robert W. Armstrong  
P. O. Box 25200  
Christiansted, VI 00824

June 1, 2005

Attention: File #: armstr13  
Inv #: 15506

RE: Misc

**NOTE: INVOICE IS DUE UPON RECEIPT. YOUR PROMPT ATTENTION IS APPRECIATED**

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
May-10-05	Rem Parcel 3 Marienhoj; Virgin Islands Natural Heritage Trust; research and establish contact with owner	1.00	40.00	KM
May-17-05	Call to Stan Miller	0.20	65.00	DMH
May-24-05	Meeting with Robbie and Douglas	2.00	650.00	DMH
	Totals	3.20	\$755.00	
	<b>Total Fees &amp; Disbursements</b>			<b>\$755.00</b>
	Previous Balance			\$1,552.50
	Previous Payments			\$0.00
	<b>Balance Due Now</b>			<b>\$2,307.50</b>

HAMM101470

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Hamm & Barry  
5030 Anchor Way  
Christiansted, VI 00820

Armstrong, Robert W.  
PO Box 25200, GBS  
Christiansted, VI 00824-1200

Date: 8/02/2006

Regarding: Armstrong, Misc  
Invoice No: 003614

**Services Rendered**

<u>Date</u>	<u>Staff</u>	<u>Description</u>	<u>Hours</u>	<u>Rate</u>	<u>Charges</u>
7/11/2006	MWE	Draft and prepare letter to W.Geigel re closing of purchase of Constitution Hill property	0.40	\$200.00	\$80.00
<b>Total Fees</b>					<b>\$80.00</b>
<b>Total New Charges</b>					<b>\$80.00</b>
<b>Previous Balance</b>					<b>\$0.00</b>
<b>Balance Due</b>					<b>\$80.00</b>

Payment is due upon receipt. Any payments received after the invoice date will be reflected on the next bill. If you have any questions regarding this bill, please do not hesitate to call our office.

HAMM101496

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Hamm & Barry  
5030 Anchor Way  
Christiansted, VI 00820

Armstrong, Robert W.  
PO Box 25200, GBS  
Christiansted, VI 00824-1200

Date: 9/30/2006

Regarding: Armstrong - HSDC  
Invoice No: 004134

**Services Rendered**

<u>Date</u>	<u>Staff</u>	<u>Description</u>	<u>Hours</u>	<u>Rate</u>	<u>Charges</u>	
9/13/2006	DMH	Call to Elizabeth Armstrong	0.40	\$375.00	\$150.00	
9/14/2006	DMH	Calls to and from Elizabeth; review of Cici email	0.50	\$375.00	\$187.50	
9/19/2006	DMH	Conference call	2.00	\$375.00	\$750.00	
9/21/2006	DMH	Message to and call from Elizabeth	0.40	\$375.00	\$150.00	
					<u>Total Fees</u>	<u>\$1,237.50</u>
<b>Total New Charges</b>						<u>\$1,237.50</u>
<b>Previous Balance</b>						\$0.00
<b>Balance Due</b>						<u><u>\$1,237.50</u></u>

Payment is due upon receipt. Any payments received after the invoice date will be reflected on the next bill. If you have any questions regarding this bill, please do not hesitate to call our office.

HAMM101497

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Hamm & Barry  
5030 Anchor Way  
Christiansted, VI 00820

Armstrong, Robert W.  
PO Box 25200, GBS  
Christiansted, VI 00824-1200

Date: 1/04/2007

Regarding: Armstrong - HSDC  
Invoice No: 005085

**Services Rendered**

<u>Date</u>	<u>Staff</u>	<u>Description</u>	<u>Hours</u>	<u>Rate</u>	<u>Charges</u>
12/07/2006	DMH	Message to Holt; finalize opinion letter	2.00	\$375.00	\$750.00
12/21/2006	DMH	Message to Elizabeth	0.40	\$375.00	\$150.00
<b>Total Fees</b>					<u>\$900.00</u>
<b>Total New Charges</b>					<u>\$900.00</u>
<b>Previous Balance</b>					<u>\$1,462.50</u>
<b>Balance Due</b>					<u><u>\$2,362.50</u></u>

Payment is due upon receipt. Any payments received after the invoice date will be reflected on the next bill. If you have any questions regarding this bill, please do not hesitate to call our office.

HAMM101500

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**Hamm Barry & Eckard**  
5030 Anchor Way  
Christiansted, VI 00820

Ph:340-773-6955

Fax:340-773-3092

Robert Armstrong  
P.O. Box 24141  
Christiansted, VI  
00824-0141

March 2, 2008

**Attention:**

File #: Armstr-002  
Inv #: 190

**RE:** Armstrong Family Trust - Purchase of 17 Constitution Hill

<b>DATE</b>	<b>DESCRIPTION</b>	<b>HOURS</b>	<b>AMOUNT</b>	<b>LAWYER</b>
Feb-04-08	Letter to W.Geigel re sale of property	0.30	67.50	HWB
Feb-07-08	teleconference with W.Geigel re ortiz action and call court to request hearing	0.30	67.50	HWB
Feb-21-08	Draft letter to judge brady regarding informative motion in ortiz v. ortiz	0.40	90.00	HWB
	Totals	1.00	<u>\$225.00</u>	
	<b>Total Fee &amp; Disbursements</b>			<u>\$225.00</u>
	Previous Balance			112.50
	Previous Payments			112.50
	<b>Balance Now Due</b>			<u>\$225.00</u>
<b>PAYMENT DETAILS</b>				
Feb-20-08	On A/C of Fees & Disb. :armstr2			112.50
	<b>Total Payments</b>			<u>\$112.50</u>

HAMM100543



**Hamm & Barry**  
5030 Anchor Way  
Christiansted, VI 00820

Ph:340-773-6955

Fax:340-773-3092

Robert Armstrong  
P.O. Box 24141  
Christiansted, VI  
00824-0141

April 1, 2008

**Attention:**

File #: Armstr-002  
Inv #: 4294

**RE:** Armstrong Family Trust - Purchase of 17 Constitution Hill

<b>DATE</b>	<b>DESCRIPTION</b>	<b>HOURS</b>	<b>AMOUNT</b>	<b>LAWYER</b>
Mar-07-08	Review of motion requesting hearing filed by W.Geigel in ortiz v. ortiz, discussion with D.Hamm	0.30	67.50	HWB
	Totals	0.30	<u>67.50</u>	
	<b>Total Fee &amp; Disbursements</b>			<u>\$67.50</u>
	Previous Balance			225.00
	Previous Payments			225.00
	<b>Balance Now Due</b>			<u>\$67.50</u>

HAMM100544

**Hamm & Barry**  
5030 Anchor Way  
Christiansted, VI 00820

Ph:(340) 773-6955

Fax:(340) 773-3092

Robert W. Armstrong  
P. O. Box 25200  
Christiansted, VI 00824

July 5, 2005

Attention: File #: armstr13  
Inv #: 15586

RE: Misc

**NOTE: INVOICE IS DUE UPON RECEIPT. YOUR PROMPT ATTENTION IS APPRECIATED**

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jun-09-05	Message to Stan Miller re HSRD note; call to Stan; research re situs and installment sale - possible basis step up	2.50	812.50	DMH
Jun-10-05	Research on HSRC note; memo to Stan Miller	5.00	1,625.00	DMH
Jun-13-05	Conference call with Miller, Holt, Elizabeth and Doug	0.50	162.50	DMH
Jun-28-05	Message to Rob re Parcel 2, Mt. Pleasant	0.20	65.00	DMH
	Totals	8.20	\$2,665.00	

**DISBURSEMENTS**

		Disbursements	Receipts
Jul-05-05	Photocopy Recovery	9.25	
	Totals	\$9.25	\$0.00

HAMM101472

Invoice #: 15586

Page 2

July 5, 2005

<b>Total Fees &amp; Disbursements</b>	<b>\$2,674.25</b>
<b>Previous Balance</b>	<b>\$2,307.50</b>
<b>Previous Payments</b>	<b>\$0.00</b>
<b>Balance Due Now</b>	<b>\$4,981.75</b>

HAMM101473

**Hamm & Barry**  
5030 Anchor Way  
Christiansted, VI 00820

Ph:(340) 773-6955

Fax:(340) 773-3092

Robert W. Armstrong  
P. O. Box 25200  
Christiansted, VI 00824

July 31, 2005

Attention:

File #: armstr13  
Inv #: 15800

RE: Misc

**NOTE: INVOICE IS DUE UPON RECEIPT. YOUR PROMPT ATTENTION IS APPRECIATED**

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jul-05-05	Research regarding tax issues re sale of HSRC	1.80	585.00	DMH
Jul-08-05	Tax research re Section 1014	2.50	812.50	DMH
Jul-19-05	Call from Elizabeth re Haywood Street note, etc.	0.50	162.50	DMH
Jul-20-05	Robbie and Doug Armstrong;	0.80	260.00	DMH
	<b>Totals</b>	<b>5.60</b>	<b>\$1,820.00</b>	
	<b>Total Fees &amp; Disbursements</b>			<b>\$1,820.00</b>
	Previous Balance			\$4,981.75
	Previous Payments			\$0.00
	<b>Balance Due Now</b>			<b>\$6,801.75</b>

HAMM101475

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Hamm & Barry  
5030 Anchor Way  
Christiansted, VI 00820

Armstrong, Robert W.  
PO Box 25200, GBS  
Christiansted, VI 00824-1200

Date: 10/07/2005

Regarding: Armstrong - HSDC  
Invoice No: 000614

**Services Rendered**

<u>Date</u>	<u>Staff</u>	<u>Description</u>	<u>Hours</u>	<u>Rate</u>	<u>Charges</u>
8/01/2005	DMH	AR Forward	0.00	\$14,495.00	\$14,495.00
8/10/2005	DMH	Conference Call with Stan Miller	0.60	\$350.00	\$210.00
				<b>Total Fees</b>	<b>\$14,705.00</b>
<b>Total New Charges</b>					<b>\$14,705.00</b>
<b>Previous Balance</b>					<b>\$0.00</b>
<b>Balance Due</b>					<b>\$14,705.00</b>

Payment is due upon receipt. Any payments received after the invoice date will be reflected on the next bill. If you have any questions regarding this bill, please do not hesitate to call our office.

HAMM101476

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Hamm & Barry  
5030 Anchor Way  
Christiansted, VI 00820

Armstrong, Robert W.  
PO Box 25200, GBS  
Christiansted, VI 00824-1200

Date: 10/07/2005

Regarding: Armstrong, Misc  
Invoice No: 000613

**Services Rendered**

<u>Date</u>	<u>Staff</u>	<u>Description</u>	<u>Hours</u>	<u>Rate</u>	<u>Charges</u>
8/01/2005	DMH	Elizabeth Armstrong call re securities sale	0.20	\$350.00	\$70.00
8/01/2005	DMH	AR Forward	0.00	\$6,801.75	\$6,801.75
9/29/2005	DMH	Call to Stan Miller	0.20	\$350.00	\$70.00
9/30/2005	DMH	Research re tax opinion letter	4.00	\$350.00	\$1,400.00
				<b>Total Fees</b>	<b>\$8,341.75</b>
					<b>\$8,341.75</b>
					<b>\$0.00</b>
					<b>\$8,341.75</b>

Payment is due upon receipt. Any payments received after the invoice date will be reflected on the next bill. If you have any questions regarding this bill, please do not hesitate to call our office.

HAMM101477

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Hamm & Barry  
5030 Anchor Way  
Christiansted, VI 00820

Armstrong, Robert W.  
PO Box 25200, GBS  
Christiansted, VI 00824-1200

Date: 12/02/2005

Regarding: Armstrong, Misc  
Invoice No: 000901

**Services Rendered**

<u>Date</u>	<u>Staff</u>	<u>Description</u>	<u>Hours</u>	<u>Rate</u>	<u>Charges</u>
11/12/2005	DMH	Research for Opinion letter on HSRC	3.50	\$350.00	\$1,225.00
11/15/2005	DMH	Research re HSRC	2.50	\$350.00	\$875.00
11/16/2005	DMH	Research/Draft Opinion Letter	4.50	\$350.00	\$1,575.00
11/17/2005	DMH	Research and draft opinion letter	1.50	\$350.00	\$525.00
11/18/2005	DMH	Research and draft opinion	5.30	\$350.00	\$1,855.00
11/19/2005	DMH	Research and draft opinion	2.40	\$350.00	\$840.00
11/20/2005	DMH	Research and draft opinion	4.90	\$350.00	\$1,715.00
11/21/2005	DMH	Research and draft opinion	2.00	\$350.00	\$700.00
11/22/2005	DMH	Research Draft Opinion	3.80	\$350.00	\$1,330.00
11/23/2005	DMH	Research draft opinion	2.60	\$350.00	\$910.00
11/24/2005	DMH	Research, Draft Opinion	4.00	\$350.00	\$1,400.00
11/25/2005	DMH	Draft opinion	4.50	\$350.00	\$1,575.00
11/27/2005	DMH	Draft Opinion	5.50	\$350.00	\$1,925.00
11/28/2005	ELB	Review opinion letter	1.50	\$250.00	\$375.00
Total Fees					\$16,825.00

HAMM101479

Interest

\$53.48

Total New Charges

\$16,878.48

Previous Balance

\$8,341.75

Balance Due

\$25,220.23

Payment is due upon receipt. Any payments received after the invoice date will be reflected on the next bill. If you have any questions regarding this bill, please do not hesitate to call our office.



Hamm & Barry  
5030 Anchor Way  
Christiansted, VI 00820

Armstrong, Robert W.  
PO Box 25200, GBS  
Christiansted, VI 00824-1200

Date: 1/18/2006

Regarding: Armstrong - HSDC  
Invoice No: 001155

**Services Rendered**

<u>Date</u>	<u>Staff</u>	<u>Description</u>	<u>Hours</u>	<u>Rate</u>	<u>Charges</u>
8/01/2005	DMH	AR Forward	0.00	\$14,495.00	\$14,495.00
8/10/2005	DMH	Conference Call with Stan Miller	0.60	\$350.00	\$210.00
10/10/2005	DMH	Message to Joel Holt	0.30	\$350.00	\$105.00
<b>Total Fees</b>					<b>\$14,810.00</b>

**Expenses**

<u>Start Date</u>	<u>Description</u>	<u>Quantity</u>	<u>Charges</u>
1/12/2006	Online Research Expense	1.00	\$679.50
<b>Total Expenses</b>			<b>\$679.50</b>

Total New Charges

\$15,489.50

Previous Balance

\$0.00

Balance Due

\$15,489.50

Payment is due upon receipt. Any payments received after the invoice date will be reflected on the next bill. If you have any questions regarding this bill, please do not hesitate to call our office.

HAMM101481

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Hamm & Barry  
5030 Anchor Way  
Christiansted, VI 00820

Armstrong, Robert W.  
PO Box 25200, GBS  
Christiansted, VI 00824-1200

Date: 1/18/2006

Regarding: Armstrong, Misc  
Invoice No: 001156

**Services Rendered**

<u>Date</u>	<u>Staff</u>	<u>Description</u>	<u>Hours</u>	<u>Rate</u>	<u>Charges</u>
8/01/2005	DMH	Elizabeth Armstrong call re securities sale	0.20	\$350.00	\$70.00
8/01/2005	DMH	AR Forward	0.00	\$6,801.75	\$6,801.75
9/29/2005	DMH	Call to Stan Miller	0.20	\$350.00	\$70.00
9/30/2005	DMH	Research re tax opinion letter	4.00	\$350.00	\$1,400.00
11/12/2005	DMH	Research for Opinion letter on HSRC	3.50	\$350.00	\$1,225.00
11/15/2005	DMH	Research re HSRC	2.50	\$350.00	\$875.00
11/16/2005	DMH	Research/Draft Opinion Letter	4.50	\$350.00	\$1,575.00
11/17/2005	DMH	Research and draft opinion letter	1.50	\$350.00	\$525.00
11/18/2005	DMH	Research and draft opinion	5.30	\$350.00	\$1,855.00
11/19/2005	DMH	Research and draft opinion	2.40	\$350.00	\$840.00
11/20/2005	DMH	Research and draft opinion	4.90	\$350.00	\$1,715.00
11/21/2005	DMH	Research and draft opinion	2.00	\$350.00	\$700.00
11/22/2005	DMH	Research Draft Opinion	3.80	\$350.00	\$1,330.00
11/23/2005	DMH	Research draft opinion	2.60	\$350.00	\$910.00
11/24/2005	DMH	Research, Draft Opinion	4.00	\$350.00	\$1,400.00

HAMM101482

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11/25/2005	DMH	Draft opinion	4.50	\$350.00	\$1,575.00
11/27/2005	DMH	Draft Opinion	5.50	\$350.00	\$1,925.00
11/28/2005	ELB	Review opinion letter	1.50	\$250.00	\$375.00
12/05/2005	DMH	Call from Elizabeth the Rick Hassen	0.30	\$350.00	\$105.00
12/09/2005	DMH	Meeting with Elizabeth and Stan Miller	1.00	\$350.00	\$350.00
12/13/2005	DMH	Call to Joel Holt; Call to Miles Adler; email to RWA	0.60	\$350.00	\$210.00
12/14/2005	DMH	Email message to Joel Holt.	0.20	\$350.00	\$70.00
12/18/2005	DMH	Travel	5.00	\$350.00	\$1,750.00
12/19/2005	DMH	Travel and Meeting with Mile Adler and Joe Kimel	8.30	\$350.00	\$2,905.00
1/05/2006	DMH	Meeting with Elizabeth	1.50	\$350.00	\$525.00
1/13/2006	DMH	Research; Call from Elizabeth Armstrong	1.50	\$350.00	\$525.00

				<b>Total Fees</b>	<b>\$31,606.75</b>
	<b>Total New Charges</b>				<b>\$31,606.75</b>
	<b>Previous Balance</b>				<b>\$0.00</b>
	<b>Balance Due</b>				<b>\$31,606.75</b>

Payment is due upon receipt. Any payments received after the invoice date will be reflected on the next bill. If you have any questions regarding this bill, please do not hesitate to call our office.

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Hamm & Barry  
5030 Anchor Way  
Christiansted, VI 00820

Armstrong, Robert W.  
PO Box 25200, GBS  
Christiansted, VI 00824-1200

Date: 2/02/2006

Regarding: Armstrong, Misc  
Invoice No: 001240

**Services Rendered**

<u>Date</u>	<u>Staff</u>	<u>Description</u>	<u>Hours</u>	<u>Rate</u>	<u>Charges</u>
1/17/2006	DMH	Revise Opinion Letter; transmit to Miles Adler with covering message	3.00	\$375.00	\$1,125.00
				<b>Total Fees</b>	<b>\$1,125.00</b>
<b>Total New Charges</b>					<b>\$1,125.00</b>
<b>Previous Balance</b>					<b>\$31,606.75</b>
<b>Balance Due</b>					<b>\$32,731.75</b>

Payment is due upon receipt. Any payments received after the invoice date will be reflected on the next bill. If you have any questions regarding this bill, please do not hesitate to call our office.

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HAMM101485

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Hamm & Barry  
5030 Anchor Way  
Christiansted, VI 00820

Armstrong, Robert W.  
PO Box 25200, GBS  
Christiansted, VI 00824-1200

Date: 3/07/2006

Regarding: Armstrong, Misc  
Invoice No: 001709

**Services Rendered**

<u>Date</u>	<u>Staff</u>	<u>Description</u>	<u>Hours</u>	<u>Rate</u>	<u>Charges</u>	
2/17/2006	DMH	Review of fax from Gregg; message to RWA, Holt and Bronstein	0.30	\$375.00	\$112.50	
2/18/2006	DMH	Message to RWA	0.20	\$375.00	\$75.00	
2/20/2006	DMH	Call to Groner; various email messages	1.00	\$375.00	\$375.00	
2/21/2006	DMH	Meeting with Robbie, Elizabeth and Alan Bronstein re HSRC	1.00	\$375.00	\$375.00	
2/22/2006	DMH	Call from Holt; Call to Adler; Call to RWA	0.60	\$375.00	\$225.00	
					<u>Total Fees</u>	<u>\$1,162.50</u>
<b>Total New Charges</b>						<u>\$1,162.50</u>
<b>Previous Balance</b>						<u>\$32,731.75</u>
<b>Balance Due</b>						<u><u>\$33,894.25</u></u>

Payment is due upon receipt. Any payments received after the invoice date will be reflected on the next bill. If you have any questions regarding this bill, please do not hesitate to call our office.

HAMM101487

Hamm & Barry  
5030 Anchor Way  
Christiansted, VI 00820

Armstrong, Robert W.  
PO Box 25200, GBS  
Christiansted, VI 00824-1200

Date: 4/04/2006

Regarding: Armstrong, Misc  
Invoice No: 001955

**Services Rendered**

<u>Date</u>	<u>Staff</u>	<u>Description</u>	<u>Hours</u>	<u>Rate</u>	<u>Charges</u>
2/22/2006	DMH	Travel to Asheville	3.00	\$375.00	\$1,125.00
2/23/2006	DMH	Meeting with Kimmel, et al and travel to Charleston	8.00	\$375.00	\$3,000.00
<b>Total Fees</b>					<b>\$4,125.00</b>

**Expenses**

<u>Start Date</u>	<u>Description</u>	<u>Quantity</u>	<u>Charges</u>
3/13/2006	Online Research Expense	1.00	\$37.00
<b>Total Expenses</b>			<b>\$37.00</b>

<b>Total New Charges</b>	<b>\$4,162.00</b>
<b>Previous Balance</b>	<b>\$33,894.25</b>
<b>Balance Due</b>	<b><u>\$38,056.25</u></b>

Payment is due upon receipt. Any payments received after the invoice date will be reflected on the next bill. If you have any questions regarding this bill, please do not hesitate to call our office.

HAMM101489

**Hamm & Barry**  
5030 Anchor Way  
Christiansted, VI 00820

Ph: 340-773-6955

Fax: 340-773-3092

Robert Armstrong  
P.O. Box 24141  
Christiansted, VI 00824-0141

June 2, 2008

**Attention:**

File #: Armstr-002  
Inv #: 4994

**RE:** Armstrong Family Trust - Purchase of 17 Constitution Hill

<b>DATE</b>	<b>DESCRIPTION</b>	<b>HOURS</b>	<b>AMOUNT</b>	<b>LAWYER</b>
May-19-08	Review of motion to dismiss, discussion with D.Hamm re procedural history of case and parties in interest, draft opposition to dismissal with proposed order	2.00	450.00	HWB
	Totals	2.00	<u>450.00</u>	

**DISBURSEMENTS**

	<b>Disbursements</b>	<b>Receipts</b>
May-29-08 Postage May 2008	0.42	
Totals	<u>\$0.42</u>	<u>\$0.00</u>

**Total Fees, Disbursements**

**\$450.42**

Previous Balance

\$45.00

Previous Payments

\$45.00

**Balance Due Now**

**\$450.42**

HAMM100546

**Hamm & Barry**  
5030 Anchor Way  
Christiansted, VI 00820

Ph: 340-773-6955

Fax: 340-773-3092

Robert Armstrong  
P.O. Box 24141  
Christiansted, VI 00824-0141

July 1, 2008

**Attention:**

File #: Armstr-002  
Inv #: 5192

**RE:** Armstrong Family Trust - Purchase of 17 Constitution Hill

<b>DATE</b>	<b>DESCRIPTION</b>	<b>HOURS</b>	<b>AMOUNT</b>	<b>LAWYER</b>
Jun-09-08	Attend hearing re ortiz v. ortiz, including travel to/from court	2.00	500.00	HWB
Jun-11-08	Discussion with D.Hamm re course of action	0.30	75.00	HWB
	Review partition of real property statutes	0.70	175.00	HWB
Jun-12-08	Teleconference with farchette and hanley re contract	0.40	100.00	HWB
	Review title report and calculate inherited shares	0.30	75.00	HWB
Jun-13-08	Discussion with D.Hamm re obtaining referee deed and order confirming sale.	0.30	75.00	HWB
	Draft petition for guardianship, consent and proposed order	0.40	100.00	HWB
	Draft letter to W.Geigel re appointment of inocencio ortiz to act as guardian	0.20	50.00	HWB
	Revise warranty deed to name referee and guardian of jesus ortiz camacho as grantors	0.40	100.00	HWB
	Revise amended order appointing inocencio ortiz as referee and ordering him to convey property	0.40	100.00	HWB
Jun-24-08	Teleconference with farchette and hanley re earnest money	0.20	50.00	HWB
	Teleconference with court re status of issuing amended order	0.30	75.00	HWB
Jun-26-08	Review of order granting sale and discuss with F.Harvey	0.20	50.00	HWB
Jul-01-08	Teleconference with court re guardianship of jesus ortiz	0.20	50.00	HWB

HAMM100547



Totals	6.30	<u>\$1,575.00</u>
<b>Total Fees, Disbursements</b>		<u><b>\$1,575.00</b></u>
Previous Balance		\$450.42
Previous Payments		\$450.42
<b>Balance Due Now</b>		<u><b>\$1,575.00</b></u>

**Hamm & Barry**  
5030 Anchor Way  
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Robert Armstrong  
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Christiansted, VI 00824-0141

August 1, 2008

**Attention:**

File #: Armstr-002  
Inv #: 5356

**RE:** Armstrong Family Trust - Purchase of 17 Constitution Hill

<b>DATE</b>	<b>DESCRIPTION</b>	<b>HOURS</b>	<b>AMOUNT</b>	<b>LAWYER</b>
Jul-02-08	Teleconferences with C.Hanley re earnest money and closing	0.30	75.00	HWB
	Teleconference with bank of stx re cashier's check	0.20	50.00	HWB
Jul-08-08	Review order granting guardianship to I.Ortiz and call to Bank of STX re cashier's check	0.30	75.00	HWB
Jul-09-08	research parcel tax id for properties and fill out tax clearance letter	0.20	50.00	HWB
Jul-11-08	Teleconference with bank of stx re cashier's check and unclaimed property form	0.20	50.00	HWB
	Teleconference with farchette and hanley re cashier's check	0.20	50.00	HWB
Jul-15-08	Teleconference with bank of st.croix and N.Gentry at farchette re earnest money	0.20	50.00	HWB
Jul-16-08	draft letter to W.Geigel re taxes for 2004 and 2005	0.30	75.00	HWB
	correspondence to bank of st. croix re earnest money	0.20	50.00	HWB
Jul-17-08	Teleconference with N.Gentry and C.Hanley re closing and earnest money	0.30	75.00	HWB
	review purchase contract re cost obligation between the parties	0.40	100.00	HWB
Jul-29-08	Review closing statement and forward to D.Armstrong and C.Hanley	0.30	75.00	HWB
Jul-30-08	Meeting with W.Geigel and I.Ortiz to sign deed	0.20	50.00	HWB
	<b>Totals</b>	<b>3.30</b>	<b>\$825.00</b>	

**DISBURSEMENTS**

**Disbursements**

**Receipts**

Jul-09-08	Tax Clearance: #17 Constitution Hill:Armstr-2	25.00	
	Tax Clearance:#17A Constit. Hill:Armstr-2	25.00	
	Totals	<u>\$50.00</u>	<u>\$0.00</u>

**Total Fees, Disbursements**

**\$875.00**

Previous Balance

\$1,575.00

Previous Payments

\$0.00

**Balance Due Now**

**\$2,450.00**

*pd check # 3878*

# **Exhibit 7**

# Armstrong Family Trust

## Trustees Meeting

December 9, 2005

Present: Robert W. Armstrong Douglas L. Armstrong Elizabeth A. Armstrong

By Invitation: Joel Holt, Stan Miller, Donovan Hamm & Rick Hasson

At 4:00 PM the meeting of the Trustees of the Armstrong Family Trust was brought to order with RWA acting as Secretary for the meeting.

1. A phone call with Marc Rudow was conducted regarding HSRC and Hamburg Mountain.
2. DH presented his conclusions on the HSRC stock option sale documentation and his opinion letter on the tax consequences thereof. His letter was reviewed, discussed and accepted. JH will contact Miles Adler and introduce DH to him as the attorney handling tax issues for the estate. DH will then explain to Miles that he has prepared an "implementation letter" for the Trustees, that explains what needs to be done to continue to observe the agreement despite RDA's death, and that he would like to review it with him when he is in the States.
- 3.

