

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

MOHAMMAD HAMED, by his	)	
authorized agent WALEED HAMED,	)	
	)	<b>CIVIL NO. SX-12-CV-370</b>
<i>Plaintiff/Counterclaim Defendant,</i>	)	
	)	
vs.	)	ACTION FOR DAMAGES,
	)	INJUNCTIVE RELIEF AND
FATHI YUSUF and	)	DECLARATORY RELIEF
UNITED CORPORATION,	)	
	)	
<i>Defendants/Counterclaimants,</i>	)	
	)	
vs.	)	JURY TRIAL DEMANDED
	)	
WALEED HAMED, WAHEED	)	
HAMED, MUFEED HAMED,	)	
HISHAM HAMED,	)	
and PLESSEN ENTERPRISES, INC.,	)	
	)	
<i>Counterclaim Defendants.</i>	)	
	)	

**PLESSEN’S RULE 12(b)(5) MOTION TO QUASH SERVICE OF PROCESS, RULE  
12(b)(6) MOTION AND TO DISMISS CASE FOR MISJOINDER**

The Counterclaim Defendant, Plessen Enterprises, Inc. (“Plessen”) moves to quash service in this case as well as to dismiss this case for failing to state a cause of action, or, alternatively, to dismiss for misjoinder.

1. Motion To Quash Process

Plessen requests this Court to quash the service of process in this case pursuant to Rule 12(b)(4) and 12(b)(5), as Fathi Yusuf served the complaint filed by himself on himself as the Registered Agent of the corporation without providing notice to anyone else. See Exhibit A. Indeed, he waited until the time to file an answer had expired before providing a copy of this service to the Court as an attachment to its opposition to the motion to dismiss on April 14, 2014.

As such, such service should be quashed as being a fraud on the corporation, as a party cannot sue a corporation and then effectuate service on himself without informing the other

corporate officers and directors. Indeed, on April 30<sup>th</sup> the Board of Directors met and retained the undersigned counsel to now appear and defend this case. It also removed Fathi Yusuf as the Registered Agent so he can now serve his complaint properly. See Exhibit B.

## 2. Motion To Dismiss For ~~Failure To~~ State A Claim

Plessen also moves pursuant to Rule 12(b)(6) to dismiss this case for failure to state a cause of action against Plessen. The Court is familiar with the standard as noted its December 5, 2013 Opinion in this case .

Count IX of the First Amended Counterclaim seeks the dissolution of Plessen. The dissolution of corporations in the Virgin Islands is governed by Title 13 section 283. That section requires a resolution and consent of 2/3 of all of the stockholders having voting power. As noted in the First Amended Counterclaim there is no such allegation that a resolution has been adopted by the board and therefore the First Amended Counterclaim fails to state a cause of action for dissolution under Title 13. As such, Count IX of the First Amended Counterclaim must be dismissed as to Plessen for failing to state a cause of action for dissolution.


## 3. Misjoinder

Finally, Plessen moves to dismiss this case for misjoinder. In this regard, the other counterclaim defendants have previously addressed this issue as it relates to Plessen, moving to dismiss Plessen pursuant to Rules 13 and 20. Plessen hereby joins in that motion, a copy of which is attached as Exhibit C, which is incorporated herein by reference.

## 4. Conclusion

For the foregoing reasons, service of process should be quashed and this case should be dismissed.

**Dated:** May 19 2014



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**Jeffrey B.C. Moorhead, Esq.**  
*Counsel for Plessen Enterprises, Inc.*  
C.R.T. Building  
1132 King Street,  
Christiansted, VI 00820  
email: jeffreymlaw@yahoo.com  
(340) 773-2539 (tele)  
(340) 773-8659 (fax)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 19<sup>th</sup> day of May, 2014, I served a copy of the foregoing on the following persons in the manner as noted:

Joel H. Holt, Esq.  
Law Offices of Joel H. Holt  
2132 Company Street,  
Christiansted, VI 00820  
Email: holtvi@aol.com (by Hand)

Carl J. Hartmann III, Esq.  
5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820  
carl@carlhartmann.com (by Mail)

Nizar A. DeWood  
The DeWood Law Firm  
2006 Eastern Suburb, Suite 101  
Christiansted, VI 00820  
dewoodlaw@gmail.com (by Hand)

Gregory H. Hodges  
VI Bar No. 174  
Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
ST. Thomas, VI 00802  
ghodges@dtflaw.com (by Hand)

Mark Eckard, Esq.  
Eckard, PC  
P.O. Box 24849  
Christiansted, VI 00824  
Email: mark@markeckard.com (by Hand)



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SUMMONS

(CIVIL-ORIGINAL)

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

MOHAMMAD HAMED, by his  
authorized agent WALEED HAMED,  
  
Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and UNITED CORPORATION,  
  
Defendants/Counterclaimants,

vs.

WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,

Additional Counterclaim Defendants.

CIVIL NO. SX-12-CV-370 14 JAN 29 P2:27

ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF  
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

TO: Plessen Enterprises, Inc., ADDITIONAL COUNTERCLAIM DEFENDANT  
c/o Fathi Yusuf, Resident Agent  
ADDRESS: St. Croix, Virgin Islands

You are hereby summoned and required to serve upon Dudley, Topper and Feuerzeig, LLP, defendants/counterclaimant's attorney, whose address is shown below, an answer to the first amended counterclaim which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the first amended counterclaim

Witness my hand and Seal of this Court this 29 day of Jan, 2014.

Estrella George, Acting Clerk of the Court

By: Deputy Clerk

Gregory H. Hodges, Esq.  
(Attorney for Defendants/Counterclaimants)

Address: DUDLEY TOPPER AND FEUERZEIG, LLP  
Law House - 1000 Frederiksberg Gade  
P. O. Box 756  
St. Thomas, USVI 00804-0756  
Telephone: (340) 715-4405

NOTE: The defendant, if served personally, is required to file his/her answer or other defense with the Administrator/Clerk of this Court, and to serve a copy thereof upon the defendants' attorney within twenty (20) days after service of this summons, excluding the date of service. If served by publication or by personal service outside the jurisdiction, the additional counterclaim defendant is required to file his/her answer or other defense with the Clerk of this Court, and to serve a copy thereof upon the attorney for the defendants within thirty (30) days after the completion of the period of publication or personal service outside of the jurisdiction.



SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

Mouhammad Ahmed  
v.  
FATHI YUSUF AND UNITED CORPORATION  
v.  
WALEED HAMED ET AL  
} CASE NO: SK 12 CV 370  
} ACTION FOR:

TERRITORY OF THE VIRGIN ISLANDS }  
DISTRICT OF ST. CROIX } SS:

I, FELIPE TORRES, JR., being duly sworn according to law upon my oath depose and state:

1. That I am a citizen of the United States and a resident of St. Croix, Virgin Islands and I am a process server duly appointed by the Courts of the Virgin Islands.

2. That I received copies of (  ) summons and complaint, ( ) subpoena, ( ) citation, ( ) letters, ( ) order, ( ) request for admission, ( ) request for production, ( ) other

In the above matter and served the same as follows:

RECEIVED: JANUARY 29 2014 SERVED: FEBRUARY 11 2014  
PERSON SERVED: FATHI YUSUF, AGENT PLACE SERVED: GALLOWS BAY

3. That such service was personally made by delivering to and leaving with the person, who was properly identified to be the person mentioned and described in said process or authorized according to law to receive such process true copies of the above-mentioned document(s).

4. That I made diligent search and inquiry in St. Croix for the person to be served but have been unable to find or learn of the whereabouts of the person and thus have been unable to serve process on the said person. Locations endeavors are: \_\_\_\_\_

Felipe Torres, Jr.  
FELIPE TORRES, JR.

SUBSCRIBED AND SWORN to before me  
this 27th day of February 2014.

Arvid J. Gibbs  
Notary Public  
Name: Arvid J. Gibbs  
Notary No: \_\_\_\_\_  
Commission Expires: 2015

**RETURN OF SERVICE**

I hereby certify that I received this summons on the 29 day of January 2014 and that thereafter, on the 11 day of FEBRUARY 2014, 2014, I did serve the same on the above named defendant, FATHI YUSUF by showing him/her this original and by then delivering to him/her a copy of the complaint and the summons which were forwarded to me attached thereto.

  
\_\_\_\_\_  
Marshal

\_\_\_\_\_  
Deputy

**RETURN OF SERVICE**

I hereby certify that I received this summons on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, and that after making a careful, diligent search the defendant cannot be found in this jurisdiction.

\_\_\_\_\_  
Marshal

\_\_\_\_\_  
Deputy

**PLESSEN ENTERPRISES, INC.  
RESOLUTIONS OF THE BOARD OF DIRECTORS**

WHEREAS, Plessen Enterprises, Inc. ("Plessen"), did conduct a special meeting of the Board of Directors on April 30, 2014, at its offices and

WHEREAS, the Board did consider the following five RESOLUTIONS, and

WHEREAS, two Directors did vote for each of the RESOLUTIONS;

NOW, THEREFORE, the undersigned, being the President of the Corporation takes the following action as authorized under the Articles of Incorporation, the By-Laws and the laws of the Virgin Islands,

**RESOLVED**, that any and all actions of Waleed Hameed to remove and distribute funds in May of 2013 in the amount of \$460,000 as dividends is ratified and approved,

**RESOLVED**, that the President of the Corporation is hereby authorized to take any and all action necessary, proper or desirable to enter into a lease agreement with KAC357, Inc. for the Premises (the "Lease") of the building and adjoining improvements located at the corporation's property located at L4 Estate Plessen, St. Croix, where the current Plaza Extra Supermarket is located, and pursuant to such provisions as such officer or officers deem in the best interests of the Corporation;

**NOTED**, that Waleed Hamed, a director in Plessen Enterprises, Inc., has disclosed to the entire Board that he has a financial interest in KAC357, Inc. as a 33.33% shareholder in said company and may act as an officer and/or director in the company in the future;

**RESOLVED**, that Jeffrey Moorhead, be retained by the President to represent the corporation in the pending litigation filed against Plessen Enterprises, Inc. by (1) United Corporation and Fathi Yusuf, Case No. STX -L2-CV-370, and (2) the lawsuit naming Plessen Enterprises, Inc. as a party defendant in Yusuf Yusuf v. Waleed Hamed et al..


**RESOLVED**, that the President of the Corporation is hereby authorized to take any and all action necessary, proper or desirable to issue additional dividends up to \$200,000 from the company's bank account to the shareholders.



**RESOLVED**, That Fathi Yusuf is removed as the Registered Agent of the Corporation, and that the President shall report to the USVI Government that henceforth, Jeffrey Moorhead shall be the Registered Agent.

**DATED this 30th day of April, 2014.**

**DIRECTORS VOTING AGREED:**

  
\_\_\_\_\_  
MOHAMMAD HAMED

Director

  
\_\_\_\_\_  
WALEED HAMED

Director

\_\_\_\_\_  
FATHI YUSUF

Director



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

**MOHAMMAD HAMED**, by his  
authorized agent **WALEED HAMED**,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and  
**UNITED CORPORATION**,

*Defendants/Counterclaimants,*

vs.

**WALEED HAMED, WAHEED  
HAMED, MUFEED HAMED,  
HISHAM HAMED,  
and PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants.*

**CIVIL NO. SX-12-CV-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

**JURY TRIAL DEMANDED**

**PLAINTIFF'S MOTION TO DISMISS  
COUNTERCLAIM DEFENDANT PLESSEN ENTERPRISES, INC.**

Pursuant to Rule 13 and Rule 20 of the Rules of Civil Procedure, Mohammed Hamed moves to dismiss Plessen Enterprises, Inc. as a counterclaim defendant in the First Amended Counterclaim filed in this case. The basis for the motion is more fully set forth in the memorandum being submitted in support of said motion, which is incorporated herein by reference. For the reasons set forth therein, it is respectfully submitted that the relief sought be granted. A proposed order is also being submitted with this motion.



**Dated:** March 3, 2014



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**Joel H. Holt, Esq.**

*Counsel for Plaintiff*

Law Offices of Joel H. Holt

2132 Company Street,  
Christiansted, VI 00820

Email: holtvi@aol.com

Tele: (340) 773-8709

Fax: (340) 773-8677

**Carl J. Hartmann III, Esq.**

*Counsel for the Waheed Hamed*

5000 Estate Coakley Bay, L-6

Christiansted, VI 00820

(340) 719-8941

carl@carlhartmann.com

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 3<sup>rd</sup> day of March, 2014, I served a copy of the foregoing Memorandum by email, as agreed by the parties, on:

**Nizar A. DeWood**

The DeWood Law Firm

2006 Eastern Suburb, Suite 101

Christiansted, VI 00820

**Gregory H. Hodges**

Law House, 10000 Frederiksberg Gade

P.O. Box 756

ST. Thomas, VI 00802

ghodges@dtflaw.com

**Mark W. Eckard**


Eckard, PC

P.O. Box 24849

Christiansted, VI 00824

Telephone: (340) 514-2690

Email: [mark@markeckard.com](mailto:mark@markeckard.com)



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

MOHAMMAD HAMED, by his  
authorized agent WALEED HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

FATHI YUSUF and  
UNITED CORPORATION,

*Defendants/Counterclaimants,*

vs.

WALEED HAMED, WAHEED  
HAMED, MUFEED HAMED,  
HISHAM HAMED,  
and PLESSEN ENTERPRISES, INC.,

*Counterclaim Defendants.*

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF

JURY TRIAL DEMANDED

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO DISMISS  
COUNTERCLAIM DEFENDANT PLESSEN ENTERPRISES, INC.**

Pursuant Federal Rules of Civil Procedure 13 and 20, Mohammed Hamed moves to dismiss Plessen Enterprises, Inc. ("Plessen") as a counterclaim defendant in the First Amended Counterclaim filed in this case. To date, Plessen has not entered an appearance in this case, but it is respectfully submitted that this Court need not wait for it to appear, as Plessen is not a proper counterclaim defendant under the applicable rules. In addition, Hamed also notes that a parallel case has already been filed in this Court with regard to Plessen (**See Exhibit 1**), which constitutes a separate reason to dismiss Plessen from this suit. Each point will be addressed separately.

## I. Rules 13 and 20

As this Court knows, the Amended Complaint involves a dispute as to whether there is a partnership between Mohammad Hamed and Fathi Yusuf ("Defendants"). Defendants answered and filed a First Amended Counterclaim asserting various claims against Hamad involving the partnership issues.

In addition to these claims, Defendants named Plessen as a counterclaim defendant in the First Amended Counterclaim, which alleges in ¶ 11 that Plessen is a Virgin Islands Corporation owned 50% by the Hamed family members and 50% by the Yusuf family members. Plessen is then not mentioned again as a counterclaim defendant until ¶ 91, which states in part as follows:

91.Hence, Hamed and Yusuf have always demonstrated clean separation of businesses by forming separate corporations to invest in other business activities. Hamed and Yusuf formed the following corporations, owned in equal shares, as follows:

- i. **Sixteen Plus Corporation**, a corporation with 1600 shares issues, owned equally between the Yusuf and Hamed families;
- ii. **Y&H Investments, Inc.**, a corporation with 100 shares issues, owned equally by the Yusuf and Hamed families;
- iii. **Plessen Enterprises, Inc.**, a corporation with 1600 shares issued, owned equally between the Yusuf and Hamed families; and
- iv. **Peter's Farm Investment Corporation**, a corporation with 1000 shares issues, owned equally between Hamed and Yusuf.

The next (and last mention) of Plessen is in Count IX, where the Defendants (Fathi Yusuf and United Corporation) seek an order from this Court dissolving Plessen as a corporation.

With these bare-bones pleadings in mind, Rule 13 of the Rules of Civil Procedure govern the naming of new parties as counterclaim parties, providing in subsection 13(h)

as follows:

**(h) Joining Additional Parties.** Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.

Rule 19 deals with joinder of "Required Parties" which is not applicable here. Rule 20, however, is pertinent here, providing in part as follows:

**Rule 20. Permissive Joinder of Parties**  
**(a) Persons Who May Join or Be Joined.**

**(2) Defendants.** Persons--as well as a vessel, cargo, or other property subject to admiralty process in rem--may be joined in one action as defendants if:

**(A)** any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

**(B)** any question of law or fact common to all defendants will arise in the action.

As can be seen, neither subsection (a)(2)(A) or (B) are met here.

First, seeking dissolution of corporation which just happens to be jointly owned in part by the parties does not seek a right of relief against Hamed and Plessen "jointly" or "severally." Likewise, it does not seek relief "arising out of the same transaction, occurrence, or series of transactions or occurrences." Thus, the requirement of Rule 20(a)(2)(A) cannot be met.

Second, even if subsection (A) could be satisfied, the requirements of Rule 20(a)(2)(B) cannot be met as Count IX is a claim for corporate dissolution governed by 13 V.I.C. § 283, which is clearly not a "question of law or fact common to all defendants" named in the First Amended Counterclaim. In *Glasser v. Government of the Virgin Islands*, 853 F. Supp. 852 (DVI 1994), the District Court addressed a similar issue of

whether the facts raised in the counterclaim arose out of the same facts as the basic controversy between the parties. In that case, the plaintiff sued the Government for allegedly violating the federal Veteran's Reemployment Rights Act. The Government filed a counterclaim against the plaintiff for allegedly incurring unauthorized expenses on a government issued credit-card. In striking the counterclaim, the Court held in part:

Because we cannot find that the two claims either involve the same factual issues or are offshoots of the same basic controversy, and because the legal issues are clearly dissimilar, we must grant plaintiff's motion to dismiss the counterclaim. *Id.* at 859.

The Rule 20(a)(2)(B) analysis here requires the same result as that reached in *Glasser*, as there are no common facts or issues of law related to the other claims between the parties and the corporate dissolution of Plessen.

## **II. Pending shareholder action filed regarding Plessen**

A parallel case has already been filed (SX-13-CV-120, April 16, 2013) in this Court with regard to Plessen -- for the Yusuf shareholders against all of the same Hamed shareholders as set forth in this action. It too alleges fraud and conversion as well as seeks an accounting. Thus, this counterclaim should be dismissed pursuant to the inherent powers of this Court to administer its docket for the two following reasons:

1. This action has already been brought and is *sub judice* in another action, or
2. Splitting of Causes of Action Prohibited: To the extent that there is any claim here that was not included in the prior action, it should have been -- and failure to bring it there obviates taking a second bite of the apple here.

"[A]s part of its general power to administer its docket" a court "may stay or dismiss a suit that is duplicative of another [] court suit [in the same court]." *Curtis v. Citibank, N.A.*, 226 F.3d 133, 138 (2d Cir. 2000). It is, therefore, black letter law that plaintiffs

have no right to maintain two actions arising out of similar actions "in the same court, against the same defendant at the same time." *Id.* at 139.

Moreover, "claim-splitting" is prohibited, and is analyzed like *res judicata*. See, e.g., *Stone v. Dep't of Aviation*, 453 F.3d 1271, 1278 (10th Cir. 2006) ("A plaintiff's obligation to bring all related claims together in the same action arises under the common law rule of claim preclusion prohibiting the splitting of actions."). Like *res judicata*, the rule against splitting causes of action rests upon the principle that cases should not be tried piecemeal and that litigation should end once the rights of the parties have been heard by one court. However, a determination of improper claim-splitting *does not require final judgment*, unlike *res judicata*. *Katz v. Gerardi*, 655 F.3d 1212 (10th Cir. 2011).

Thus, all related claims that accrued together must be brought together, in the same action, or be lost. *Murphy v. Bancroft Constr. Co.*, 135 F. App'x 515, 519 2005 WL 1059249 (3d Cir. 2005).

The doctrine of claim preclusion is central to a court's objective of conclusive resolution of disputes and seeks to avoid the expense and vexation of multiple lawsuits while conserving judicial resources and fostering reliance on judicial action by minimizing the possibility of inconsistent decisions. *Equal Employment Opportunity Comm'n v. U.S. Steel Corp.*, 921 F.2d 489, 492 (3d Cir.1990) (quotation omitted). **More simply, its purpose is to avoid piecemeal litigation of claims arising from the same events.** *Churchill v. Star Enters.*, 183 F.3d 184, 194 (3d Cir.1999). Thus, where there is "no escaping from the fact that [a plaintiff] has relied on different legal theories to seek redress from the [same defendant] for a single course of wrongful conduct ... [by] splitting a cause of action," the doctrine of claim preclusion will prohibit the prosecution of the second lawsuit. *Id.* at 195.

See also *Benjamin v. Cleburne Truck & Body Sales, Inc.*, 424 F. Supp. 1294, 1299, fn. 15 (D.V.I. 1976) ("In accordance with the position taken by the American Law Institute in

Restatement Second, the consortium claim must, where possible, be joined with the claim for bodily injury. See, Tent. draft No. 14, supra, n.7.")

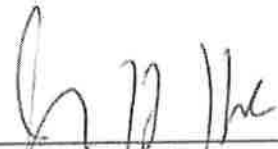
Counterclaimants knew of all of the claims here at the time the Yusuf's Plessen action was filed. They had already been sued in this action. There are no new documents received after 2012 -- no new information about acts years before. This is similar to *Coomer v. CSX Transportation, Inc.*, 319 S.W.3d 366, 371 (Ky. 2010). There plaintiff filed suit in Jefferson Circuit Court to recover for chronic wrist injuries that he claimed arose from his twenty-year employment in labor positions at CSX. Nearly two years later he brought a subsequent suit in Perry Circuit Court against CSX for additional injuries, which he also claimed arose from his years as a laborer for the company. The Kentucky Supreme Court stated that the rule against splitting causes of action "applies not only to the points upon which the court was required by the parties to form an opinion and pronounce judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time."

### **III. Conclusion**

In summary, the requirements of Rule 20 cannot be met, so that Rule 13(h) does not permit Plessen to be named as an additional counterclaim defendant in this case. Likewise, there is already pending litigation filed by the Yusufs regarding the Hameds and Plessen. If Defendants want to pursue dissolution, they already have another forum pending before this Court in which to do so. In any event, for the reasons set forth herein, Plessen should be dismissed as a counterclaim defendant here.



**Dated:** March 3, 2014



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**Joel H. Holt, Esq.**  
*Counsel for Plaintiff*  
Law Offices of Joel H. Holt  
2132 Company Street,  
Christiansted, VI 00820  
Email: holtvi@aol.com  
Tele: (340) 773-8709  
Fax: (340) 773-8677

**Carl J. Hartmann III, Esq.**  
*Counsel for the Waheed Hamed*  
5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820  
(340) 719-8941  
carl@carlhartmann.com


**CERTIFICATE OF SERVICE**

I hereby certify that on this 3<sup>rd</sup> day of March, 2014, I served a copy of the foregoing Memorandum by email, as agreed by the parties, on:

**Nizar A. DeWood**  
The DeWood Law Firm  
2006 Eastern Suburb, Suite 101  
Christiansted, VI 00820

**Gregory H. Hodges**  
Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
ST. Thomas, VI 00802  
ghodges@dtflaw.com

**Mark W. Eckard**  
Eckard, PC  
P.O. Box 24849  
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Telephone: (340) 514-2690  
Email: mark@markeckard.com



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