

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

**MOHAMMAD HAMED**, by his )  
authorized agent **WALEED HAMED**, )  
 )  
Plaintiff/Counterclaim Defendant, )  
 )  
vs. )

CIVIL NO. SX-12-CV-370  
  
ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF  
AND DECLARATORY RELIEF

**FATHI YUSUF and UNITED CORPORATION**, )  
 )  
Defendants/Counterclaimants, )  
 )  
vs. )

**WALEED HAMED, WAHEED HAMED,** )  
**MUFEEED HAMED, HISHAM HAMED, and** )  
**PLESSEN ENTERPRISES, INC.,** )  
 )  
Additional Counterclaim Defendants. )

**Consolidated With**

\_\_\_\_\_  
**MOHAMMAD HAMED**, )  
 )  
Plaintiff, )  
v. )

CIVIL NO. SX-14-CV-287  
  
ACTION FOR DAMAGES  
AND DECLARATORY RELIEF

**UNITED CORPORATION**, )  
 )  
Defendant. )

\_\_\_\_\_  
**MOHAMMAD HAMED**, )  
 )  
Plaintiff, )  
v. )

CIVIL NO. SX-14-CV-278  
  
ACTION FOR DEBT  
AND CONVERSION

**FATHI YUSUF**, )  
 )  
Defendant. )

**JURY TRIAL DEMANDED**

**RESPONSE TO MOTION FOR FURTHER INSTRUCTIONS AND FOR AN INTERIM  
DISCOVERY SCHEDULING ORDER**

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**  
1000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, U.S. V.I. 00804-0756  
(340) 774-4422

Defendants/counterclaimants Fathi Yusuf (“Yusuf”) and United Corporation (“United”) (collectively, the “Defendants”), through their undersigned counsel, respectfully submit this Response to “Hamed’s Motion For Further Instructions And For An Interim Discovery Scheduling Order” filed on October 28, 2016 (the “Motion”).<sup>1</sup> Defendants submit that the Motion should be denied, the “two pending *Daubert* motions (now fully briefed)” (*see* Motion at p. 2) should be referred to the Master for his report and recommendation, and discovery with respect to the Partners’ competing accounting claims and proposed distribution plans should be reopened under the Master’s general direction and oversight of the winding up of the Partnership. To the extent that resolution of Hamed’s Motion for Partial Summary Judgment Re the Statute of Limitations Defense (the “SOL Motion”)<sup>2</sup> may be helpful in determining the scope of discovery concerning the Partners’ disputed accounting claims, Defendants agree with Hamed that resolution of the SOL Motion is appropriate at this time.<sup>3</sup> Since the SOL Motion clearly involves disputed accounting claims that impact the winding up of the Partnership, this motion should also be referred to the Master for his report and recommendation.

In support of this Response, the Defendants respectfully represent the following:

1. Pursuant to a stipulation regarding appointment of Master, Hamed and Yusuf stipulated to the appointment of the Honorable Edgar D. Ross as Master in this case. Further to that stipulation, this Court entered an “Order Appointing Master” on September 18, 2014

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<sup>1</sup> Unless otherwise defined in this Response, capitalized terms have the same meaning as provided in the Final Wind Up Plan of the Plaza Extra Partnership (the “Plan”), which was approved by Order dated January 7, 2015 (the “Wind Up Order”).

<sup>2</sup> The SOL Motion was filed on May 13, 2014, Defendants’ Opposition was filed on June 6, 2015, and Hamed’s Reply was filed on June 20, 2014.

<sup>3</sup> In an Order dated April 27, 2015, this Court denied the SOL Motion, in part, as to Hamed’s claims that the statute of limitations precludes United’s claims for past due rent.

pursuant to which Judge Ross “was appointed to serve as judicial Master in this action, to direct and oversee the winding up of the Hamed-Yusuf Partnership.”

2. On October 7, 2014, this Court entered an “Order Soliciting Comments, Objections and Recommendations” in which the parties were “ordered to review the proposed plan and present comments, objections and recommendations within the time periods provided below.” At p. 6 of that Order, the Court provided, in relevant part, as follows:

Step 6: Distribution Plan.

Upon conclusion of the Liquidation Process, the funds remaining in the Liquidation Expense Account, if any, shall be deposited into the Claims Reserve Account. Within 45 days after the Liquidating Partner completes the liquidation of the Partnership Assets, Hamed and Yusuf **shall each submit to the Master a proposed accounting and distribution plan for the funds remaining in the Claim Reserve Account. Thereafter, the Master shall make a report and recommendation of distribution for the Court for its final determination.** (Emphasis supplied)

That Order provided each party fourteen days within which to submit their comments, objections and recommendations with respect to the proposed Plan and that each party may file a response to the filing of the other party within seven days after receipt of the other party’s filing.

3. On October 21, 2014, Hamed filed his “Comments Regarding Proposed Winding Up Order,” which included a proposed revised plan as Exhibit 4. Hamed’s proposed plan at §8, Step 6 (p. 13), provided as follows:

Within 45 days after the Master completes the liquidation of Partnership Assets, Hamed and Yusuf **shall each submit to the Master a proposed accounting and distribution plan for the funds remaining in the Claims Reserve Account. Thereafter, the Master shall make a report and recommendation of distribution for the Court for its final determination.** (Emphasis supplied)

Nowhere in Hamed's Comments Re Proposed Winding Up Order did he argue or even suggest that a jury should decide the competing accounting claims and distribution plans between the Partners as opposed to the Master making the initial determination by report and recommendation for final determination by this Court. Indeed, the word "jury" did not appear anywhere in the body of Hamed's documents.

4. The identical provisions highlighted in paragraphs 2 and 3 above can be found at p. 9 of the Wind Up Order and §9, Step 6, of the Plan.

5. Hamed never objected to any provisions of the Wind Up Order or the Plan to the extent they arguably interfered with any claimed entitlement to a jury trial. Indeed, when Hamed filed his "Motion to Clarify Order of Liquidation" on August 14, 2015, more than seven months after entry of the Wind Up Order and adoption of the Plan, he actually sought a modification of the Wind Up Order and Plan by significantly extending the time within which the Partners must submit to the Master their competing accounting and distribution plans from 45 days to 120 days after the Liquidating Partner completes the liquidation of Partnership Assets. *See* Motion to Clarify Order of Liquidation at p. 4.

6. On October 7, 2014, this Court stayed discovery to allow the parties to focus their work on the details of the Plan. Although Hamed claims at page 2 of the Motion that this Court also stayed "motions practice," this clearly is incorrect based upon the transcript of the telephone conference held by the Court on October 7, 2014. *See* Exhibit A to Defendants' Reply Memorandum of Law in Further Support of Motion to Strike Hamed's Response Re Jury Issues filed on November 4, 2016. Moreover, a simple review of the Court's docket in this matter reflects that the Partners filed dozens of motions after October 7, 2014, so no one acted as if they thought motion practice had been stayed.

7. Pursuant to an Order dated November 13, 2015 (the “Stipulated Order”), this Court approved the Partners’ Further Stipulation Regarding Motion to Clarify Order of Liquidation, which provided in relevant part as follows:

2. The Partners will submit their proposed accounting and distribution plans required by §9, Step 6, of the Plan to each other and the Master by March 3, 2016[.]

8. At p. 3 of the Motion, Hamed mischaracterizes § 4 of the Plan. He states that it “gave Yusuf the sole power to liquidate the assets and to do a distribution **after a full accounting was done.**” (Emphasis in original). Section 4 of the Plan actually provides as follows:

Pursuant to the Act, the Liquidating Partner shall have authority to wind up the Partnership business, including full power and authority to sell and transfer Partnership Assets, engage legal, accounting and other professional services, sign and submit tax matters, execute and record a statement of dissolution of Partnership, pay and settle Debts, and marshal Partnership Assets for equal distribution to the Partners following payment of all Debts and **a full accounting by the Partners**, pursuant to agreement of the Partners or by order of the Court. (Emphasis supplied).

Section 9, Step 6, of the Plan entitled “**Distribution Plan**” provides in relevant part as follows:

Upon conclusion of the Liquidation Process, the funds remaining in the Liquidation Expenses Account, if any, shall be deposited in the Claims Reserve Account. Within forty-five (45) days after the Liquidating Partner completes the liquidation of the Partnership Assets, Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan for the funds remaining in the Claim Reserve Account. Thereafter, the Master shall make a report and recommendation for distribution to the Court for its final determination.

9. On November 16, 2015, Yusuf, as the Liquidating Partner, filed a Notice of Service of Partnership Accounting (the “Notice”), a copy of which is attached as **Exhibit 1** for the Court’s convenience. As reflected in the Notice, the Partnership accounting provided on

November 16, 2015 represented the accounting contemplated by § 5 of the Plan. Hamed did not respond to the Notice. On November 30, 2015, Yusuf filed the Liquidating Partner's Fifth Bi-Monthly Report the last paragraph of which provided:

Pursuant to a "Further Stipulation Regarding Motion to Clarify Order of Liquidation" filed with the Court on October 5, 2015 and "So Ordered" on November 13, 2015, the Partners stipulated that the Liquidating Partner will provide the Master and Hamed with the Partnership accounting required by § 5 of the Plan on November 16, 2015, which was done, and the Partners will submit their proposed accounting and distribution plans contemplated by § 9, Step 6, of the Plan to each other and the Master by March 3, 2016.

Hamed did not respond or object to this bi-monthly report. Identical language as that quoted above appeared as the final paragraph in the Liquidating Partner's Sixth Bi-Monthly Report filed on February 1, 2016. Although Hamed filed a Notice of Objection To Liquidating Partner's Sixth Bi-Monthly Report on February 8, 2016, nothing in that objection addressed the Partnership accounting provided on November 16, 2015.

10. On August 31, 2016, John Gaffney, the accountant who has prepared all Partnership financial information referenced in all of the Liquidating Partner's bi-monthly reports filed with this Court since the Plan was approved, provided counsel for the Partners with "Partnership financials [, which] are a final accounting for the Partnership through August 2016 . . ." See email from John Gaffney attached as **Exhibit 2**. Immediately thereafter, the Master sent notice to counsel, this Court, the Liquidating Partner, and John Gaffney stating:

Now that the Partnership Accounting is more than 99% completed and have been distributed to the partners, I am giving the partners thirty (30) days, *i.e.*, until September 30, 2016, to file any objection or disputes any item in the accounting. Failure to object or dispute the accounting within said time is a waiver of the right to object or dispute any item contained therein.

See email attached as **Exhibit 3**.

11. It is undisputed that on September 22, 2016, the Master issued a directive to the parties “that the objections to and disagreements with the accounting and that the claims against or on behalf of the partnership should be filed with the Master and served on opposing counsel only.”

12. It is also undisputed that despite the provisions of § 9, Step 6, of the Plan, § 2 of the Stipulated Order, and the Master’s directive quoted above, Hamed filed his objections to the Partnership accounting and his claims against or on behalf of the Partnership directly with the Court on September 30, 2016. On the other hand, Yusuf complied with the applicable Plan provisions, Stipulated Order, and the Master’s directive by submitting his accounting claims and proposed distribution plan only to the Master and counsel for Hamed on September 30, 2016.

13. Defendants have filed a Motion to Strike Hamed’s Notice of Partnership Claims and Objections to Yusuf’s Post-January 1, 2012 Accounting on October 20, 2016, which is now fully briefed and awaiting disposition by this Court.<sup>4</sup>

#### ARGUMENT

Clearly, § 9, Step 6, of the Plan contemplates that after the Liquidating Partner completes the liquidation of the Partnership Assets, which the most recent bi-monthly reports indicate has been completed, “Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan for the funds remaining in the Claim Reserve Account.” If the Partners cannot agree on an accounting and distribution plan, which they obviously cannot, the Plan expressly provides that after considering the Partners’ competing accounting and distribution plans, the Master “shall make a report and recommendation for distribution to the Court for its final

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<sup>4</sup> In his *Daubert* motions, Hamed improperly attached as exhibits certain accounting and valuation reports that were submitted by Yusuf in support of his accounting claims and proposed distribution plan. As pointed out in Defendants’ responses to these motions, these expert reports not only were improperly filed with this Court in direct violation of the provisions of the Plan, Stipulated Order, and Master’s directive, at least one of them included substantial personal data identifiers that remain of record to date.

determination.” Incredibly, after agreeing to these Plan provisions and the Stipulated Order, Hamed now claims that the Master and this Court can have no role whatsoever in determining disputed Partnership claims simply because Hamed made a demand for a jury trial in his Amended Complaint. As reflected in Defendants’ Motion to Strike Jury Demand, Motion to Strike Hamed’s Response Re Jury Issues, and Reply Memorandum of Law in Further Support of Motion to Strike Plaintiff’s Jury Demand, Hamed never had a viable demand for jury trial in the first place and, if he did, it has been waived.

Hamed claims that since the Plan was approved,

no true RUPA final accounting for the Partnership has been filed, as also required by the Court. Instead, only the partial accounting from January 1, 2012 to the present has been submitted – as no accounting for the period from 1986 to 2012 has even been attempted – much less submitted.

See Motion at p. 3 (footnote omitted). Of course, Hamed does not provide this Court with any evidence supporting his claim that no “true” accounting has been filed or explain why he never asserted this claim after the Notice was filed on November 16, 2015. Obviously, the Master has determined that the “Partnership Accounting is more than 99% completed.” Furthermore, Hamed’s claim that no accounting for the period from 1986 – 2012 has even been attempted, much less submitted, is patently false. Indeed, the BDO Report that was submitted in support of Yusuf’s accounting claims and proposed distribution plan provides such an accounting. Not surprisingly, Hamed seeks to exclude that report in one of his *Daubert* motions because after that report accounts for thousands of transactions that should be considered distributions to Partners over the substantial period covered by the report, BDO concludes that as a result of the withdrawals by Hamed and his sons in excess of the withdrawals by Yusuf and his sons, Hamed needs to pay Yusuf \$9,670,675.36 to equalize the Partnership distributions. Hamed, on the other



hand, made no effort whatsoever to submit an accounting for the period from 1986 to 2012, apparently relying on his unsupported belief that the condition of the Partnership books and records during this period of time precludes any such accounting. Obviously, BDO disagrees with this position and Hamed now seeks to exclude the BDO Report because of the substantial evidence it cites to establish that during this period Hamed and his sons were extraordinarily enriched at the expense of Yusuf.

Hamed complains that he was never allowed to review the post-2012 partnership information as provided by § 9, Step 4, of the Plan. Hamed makes no attempt whatsoever to provide this Court with any admissible evidence to support this false claim. Yusuf has repeatedly shown that Hamed was given access to review such information and that his accountants actually reviewed such information. *See, e.g.*, Liquidating Partner's Ninth Bi-Monthly Report filed on August 1, 2016 (p. 9-10) and Yusuf's Reply to Plaintiff's Notice of Objection to Liquidating Partner's Eighth Bi-Monthly Report filed on July 1, 2016.

Since the Partners' competing accounting claims already involve the winding up of the Partnership for which this Court gave the Master authority to "direct and oversee," Defendants respectfully submit that the Master should determine, in the first instance, the nature and scope of the discovery needed to complete the winding up of the Partnership. The Master should also report and recommend to this Court with respect to the two *Daubert* motions and the SOL Motion. Not only is the Master an experienced jurist with the requisite knowledge and experience to resolve these common motions, the issues addressed in these motions directly affect the claims and winding up process, which the Plan authorized the Master to oversee. Defendants submit that the Master should re-open discovery concerning all Partnership

accounting claims that remain disputed and he should recommend the denial of the *Daubert* motions and the SOL Motion.<sup>5</sup>

If one compares the BDO Report, which analyzes the period from January 1994 through January 2013 and then relies, for the most part, on Gaffney's accounting for the period after January 2013, with the "accounting" provided by Hamed's expert, which completely fails to address the pre-2012 period and merely sets forth a myriad of disjointed objections to Gaffney's accounting post-2012, it is clear that only Yusuf has submitted the "full accounting" required by **both** Partners in § 4 of the Plan. Hamed failed to submit any report accounting for or even addressing claims for the period from 1986 through January 2012, apparently based upon his misplaced notion that no accounting is possible with respect to that period. Hamed is wrong. Yusuf respectfully submits that the Master should allow him to engage in discovery regarding his accounting claims for the entire period covered by the BDO Report and that both Partners should be allowed to engage in discovery with respect to post-January 2012 partnership accounting claims. Moreover, the Master should be allowed to report and recommend with respect to the *Daubert* motions and the SOL Motion since they all involve the process of resolving disputed claims in the winding up of the Partnership.

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<sup>5</sup> In Hamed's September 5, 2014 Notice of Supplemental Authority concerning the SOL Motion, he cited this Court to a Superior Court decision in *United Corp. v. Waheed Hamed*, Case No. ST-13-CV-101, granting defendant's motion for summary judgment based on the statute of limitations. According to Hamed, this decision provided support for his argument that this Court should grant summary judgment limiting Yusuf's Partnership accounting claims based upon the statute of limitations. Hamed never bothered to file a further notice that this decision was reversed by the Supreme Court. *See United Corp. v. Hamed*, 64 V.I. 297; 2016 V.I. Supreme LEXIS 1 (V.I. 2016). Recently, Hamed has argued that this Supreme Court decision establishes that limitation issues cannot be resolved by this Court via summary judgment or otherwise, but rather "**MUST** be heard by the jury if one is demanded." *See Hamed's Response Re Jury Issues* at p. 4 (emphasis in original). Although Defendants submit that the *Hamed* decision is distinguishable because it did not address whether a partner's claims in an accounting should be tried by jury and the jury demand in that case was never contested by either party, Hamed's current reliance on the Supreme Court's offhand reference to a jury resolving a discovery rule issue with respect to a limitations defense illustrates Hamed's disingenuousness in suggesting that his SOL Motion remains viable at all.

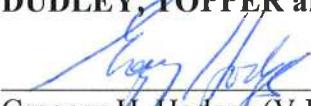
For all of the foregoing reasons, it is respectfully requested that this Court deny Hamed's Motion for Further Instructions And For An Interim Discovery Scheduling Order, refer the two *Daubert* motions and the SOL Motion to the Master for report and recommendation, and refer the determination of the scope of discovery concerning the Partnership claims resolution process to the Master for appropriate disposition.

Respectfully submitted,

**DUDLEY, TOPPER and FEUERZEIG, LLP**

Dated: November 10, 2016

By:

  
\_\_\_\_\_  
Gregory H. Hodges (V.I. Bar No. 174)  
1000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00804  
Telephone: (340) 715-4405  
Telefax: (340) 715-4400  
E-mail: ghodges@dtflaw.com

Attorneys for Fathi Yusuf  
and United Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of November, 2016, I served the foregoing **Response To Motion For Further Instructions And For An Interim Discovery Scheduling Order** via e-mail addressed to:

Joel H. Holt, Esq.  
**LAW OFFICES OF JOEL H. HOLT**  
2132 Company Street  
Christiansted, V.I. 00820  
Email: holtvi@aol.com

Carl Hartmann, III, Esq.  
5000 Estate Coakley Bay, #L-6  
Christiansted, VI 00820  
Email: carl@carlhartmann.com

Mark W. Eckard, Esq.  
Eckard, P.C.  
P.O. Box 24849  
Christiansted, VI 00824  
Email: mark@markeckard.com

Jeffrey B.C. Moorhead, Esq.  
C.R.T. Building  
1132 King Street  
Christiansted, VI 00820  
Email: jeffreymlaw@yahoo.com

The Honorable Edgar A. Ross  
Email: edgarrossjudge@hotmail.com

Michele Baker

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Hamed v. Yusuf, et al.  
Civil No. SX-12-CV-370  
Page 2

Partners will submit their proposed accounting and distribution plans required by § 9, Step 6, of the Plan to each other and the Master by March 3, 2016.

The Partnership accounting provided to the Master and Hamed on this date was prepared by John Gaffney, an accountant who has been engaged on behalf of and paid by the Partnership, which the Liquidating Partner believes is generally reliable and historically accurate.<sup>2</sup>

Respectfully submitted this 16<sup>th</sup> day of November, 2015.

DUDLEY, TOPPER and FEUERZEIG, LLP

By: 

Gregory H. Hodges (V.I. Bar No. 174)  
1000 Frederiksberg Gade - P.O. Box 756  
St. Thomas, VI 00804  
Telephone: (340) 715-4405  
Telefax: (340) 715-4400  
E-mail: [ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)

and

Nizar A. DeWood, Esq. (V.I. Bar No. 1177)  
The DeWood Law Firm  
2006 Eastern Suburbs, Suite 101  
Christiansted, VI 00830  
Telephone: (340) 773-3444  
Telefax: (888) 398-8428  
Email: [info@dewood-law.com](mailto:info@dewood-law.com)

Attorneys for Fathi Yusuf, Liquidating Partner

DUDLEY, TOPPER  
AND FEUERZEIG, LLP  
1000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, U.S. VI. 00804-0756  
(340) 774-4422

<sup>2</sup> The submission by the Liquidating Partner of the Partnership accounting prepared by Mr. Gaffney is without prejudice to his right as a Partner to submit his proposed accounting and distribution plan contemplated by § 9, Step 6, of the Plan.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of November, 2015, I caused the foregoing Notice Of Service Of Partnership Accounting to be served upon the following via e-mail:

Joel H. Holt, Esq.  
**LAW OFFICES OF JOEL H. HOLT**  
2132 Company Street  
Christiansted, V.I. 00820  
Email: [holtvi@aol.com](mailto:holtvi@aol.com)

Carl Hartmann, III, Esq.  
5000 Estate Coakley Bay, #L-6  
Christiansted, VI 00820  
Email: [carl@carlhartmann.com](mailto:carl@carlhartmann.com)

Mark W. Eckard, Esq.  
Eckard, P.C.  
P.O. Box 24849  
Christiansted, VI 00824  
Email: [mark@markeckard.com](mailto:mark@markeckard.com)

Jeffrey B.C. Moorhead, Esq.  
C.R.T. Building  
1132 King Street  
Christiansted, VI 00820  
Email: [jeffreymlaw@yahoo.com](mailto:jeffreymlaw@yahoo.com)

The Honorable Edgar A. Ross  
Email: [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)

Michelle Bartz

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## Gregory H. Hodges

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**From:** John Gaffney <johngaffney@tampabay.rr.com>  
**Sent:** Wednesday, August 31, 2016 6:15 PM  
**To:** 'Joel Holt'; Gregory H. Hodges; Edgar Ross  
**Cc:** fathiyusuf@yahoo.com; George H.T. Dudley; Nizar A. DeWood, Esq.; 'Carl Hartmann'  
**Subject:** Liquidation Budget Comparison Through August 31, 2016  
**Attachments:** 2016-08 00 Plaza Budget Comp.pdf; 2016-08 Plaza Extra Pship Financials.pdf

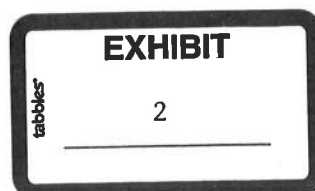
To All,

Judge Ross asked that I send you the attached reports. The budget comparison is through August 2016.

The attached Partnership financials are a final accounting for the Partnership through August 2016, although no adjustments were made for BPPR securities and bank reconciliations have been done yet. Bank statements will be available in the next few days, but BPPR securities statements don't generally arrive until the middle of the following month.

Regards,

John Gaffney  
(305)332-7094





**Gregory H. Hodges**

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**From:** Edgar Ross <edgarrossjudge@hotmail.com>  
**Sent:** Wednesday, August 31, 2016 6:49 PM  
**To:** Gregory H. Hodges; JOEL HOLT  
**Cc:** Douglas A. Brady; Fathi Yusuf; John Gaffney  
**Subject:** Objections and Disagreements to the Partnership Accounting

Now that the Partnership Accounting is more than 99% completed and have been distributed to the partners. I am giving the partners thirty (30) days, i.e., until September 30, 2016, to file any objection or disputes any item in the accounting. Failure to object or dispute the accounting within said time is a waiver of the right to object or dispute any item contained therein.

Additionally, any partner who has a monetary or property claim against the partnership or a partner must file such claim in writing on or before September 30, 2016. Each claim shall include the date of the activity giving rise to the claim, its factual and/or legal basis, and the relief requested. Failure to file a claim may result in a waiver of the right to make a claim.

The fact that a claim is the subject of a pending civil action does not excuse a partner from raising it in the liquidation process and the failure to raise it in the liquidating process may affect the outcome of the civil action.

EDR, Master.

Sent via the Samsung GALAXY S64, an AT&T 4G LTE smartphone

