

# CHART, DEPO EXCERPT & EXPERT REPORT LIST

for the March 6, 2017 Hearing  
before Judge Brady (Hamed v. Yusuf – 370)

Ex #	Status	Description
29	Admitted	<b>Chart 8</b> – Totals items f – j in the Yusuf claims (over \$1 million)
34	Admitted	<b>Schoenbach</b> Opinion Letter
36	Admitted	<b>Chart</b> – FRE Rule 1006 - Total sum Fathi knew of prior to 2001 and 2006
37	Admitted	<b>Chart 5</b> - BDO's analysis of Hamed versus Yusuf "lifestyle" charges
38	Admitted	<b>Chart</b> - Records BDO States it Does and Does Not Have for the P'ship
39	Admitted	<b>Jackson</b> Expert Report
40	Admitted	Excerpt from <b>John Gaffney Depo</b> – cant's determine pre-2012 financials
41	Admitted	<b>Chart</b> – Reasons why BDO Report Incomplete / Unreliable
42	Admitted	<b>Chart 2</b> - The Yusuf accounts left out of BDO's Report
43	Admitted	<b>Chart</b> – Examples of Errors in BDO Report by Jackson
44	Admitted	<b>Gordon Rhea</b> declaration
49a	Admitted	Excerpt from <b>Mike Hamed Depo</b> intentionally destroyed heaps of docs
50	Admitted	<b>Chart 4</b> - Hamed versus Yusuf Files in BDO Bank and CC Analysis
51	Admitted	<b>Chart 6</b> - Comparison of BDO's Calc. Atty Fees for Hamed & Yusuf
57	Admitted	<b>Chart</b> – Samples of BDO Errors and Omissions

**CHART 8 - From Exhibit A to Yusufs' Claims - \$2,228,672.94 in Items  
Yusuf Claims that Were Known to Fathi Yusuf Before 2007**

			Items Yusuf Knew about Before 2007
III. Less Debts of the Partnership			
F. Reimb. United for Gross Receipts Taxes	\$ 60,586.96	\$	60,586.96
G. Black Book Balance owed to United	\$ 49,997.00	\$	49,997.00
H. Ledger Balances owed to United	\$ 199,760.00	\$	199,760.00
I. Water Revenue Re: Plaza Extra-East	\$ 693,207.46	\$	693,207.46
J. Unreimbursed Transfers from United	\$ <u>188,132.00</u>	\$	<u>188,132.00</u>
			\$ 1,191,683.42



LAWRENCE H. SCHOENBACH\*\*  
PARTNER, INSTITUTE FOR TAX AND  
COMMERCIAL LAW, CHZURICH

OF COUNSEL

ELLEN BESSIS\*\*  
JORG BRAND\*\*\*  
ERICA B. POPKIN  
A. JEFFREY WEISS\*\*\*

\*ALSO ADMITTED IN D. PUERTO RICO AND U.S.V.I

\*\*ADMITTED IN FRANCE ONLY

\*\*\*ADMITTED IN SWITZERLAND ONLY

\*\*\*\*ALSO ADMITTED IN U.S.V.I AND ILL.

LAW OFFICES OF  
LAWRENCE H. SCHOENBACH, PLLC  
A PROFESSIONAL LIMITED LIABILITY COMPANY

THE TRINITY BUILDING  
111 BROADWAY, SUITE 1305  
NEW YORK, NEW YORK 10006  
(212) 346-2400

FACSIMILE (212) 346-4665

SCHOENBACHLAWOFFICE@ATTENET  
WWW.SCHOENBACHLAW.US

108 BOULEVARD DU MONTDARNASSE  
75014, PARIS, FRANCE

TALSTRASSE 82  
POSTFACH 4818  
8022, ZURICH, SWITZERLAND

2111 COMPANY STREET  
CHRISTIANSTED, ST. CROIX  
U.S. VIRGIN ISLANDS 00820

September 19, 2016

To: Joel Holt, Esquire

From: Lawrence Schoenbach, Esquire

Re: Expert Opinion re: United Corporation (STX);  
*Mohammad Hamed v. Fathi Yusuf and United Corporation*;  
St. Croix, U.S. Virgin Islands

**OPINION LETTER**

You have engaged me to render an expert opinion in the context of the civil litigation currently in the Superior Court of the Virgin Islands, Division of St. Croix, in a matter captioned *Mohammad Hamed v. Fathi Yusuf and United Corporation*, docket number Civil No. SX-12-CV-370 (Brady, J.). Specifically, you have sought the expert opinion of a criminal defense attorney with experience in federal criminal practice and so-called "white collar" business crimes involving tax evasion, money laundering, and/or compliance.

In particular, you have asked me to determine whether it is possible for the books and records of a business entity to be re-constructed after a business entity (here a partnership) has been deeply involved in a money-laundering such as the one presented here.

Further, you have asked me to render an expert opinion as an experienced criminal lawyer who advises individuals and companies on compliance with criminal laws<sup>1</sup> -- particularly white collar and business entity crimes. I have been asked to

<sup>1</sup> Although my primary law practice is in the federal courts in New York City (Southern and Eastern Districts of New York), I am admitted to (and have represented

EXHIBIT

C

EXHIBIT

34

Blumberg No. 5208

HAMD642089

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review a series of documents related to the instant litigation, as well as the related criminal indictment, and to formulate an opinion based upon them.

**Documents Reviewed**

In connection with this Opinion Letter, I have reviewed the filed documents of record containing Hamed's claims, the defenses, the analysis done by Hamed's CPA regarding 2012-present, various deposition and other testimony (identified within this Opinion Letter) and following documents:

- Memorandum Opinion in response to Plaintiff's Emergency Motion and memorandum to Renew Application for TRO (Brady, J.);
- Opinion Letter of David Jackson, PC;
- "Exhibit 5" consisting of a plea agreement between the United States and the criminal defendants charged in Indictment 2005-14F/B; and a supplemental plea agreement; and a second addendum to the plea agreement;
- "Exhibit 6" consisting of the cover letter of RSM McGladrey, Inc., by Ronald J. Soluri, Sr., Managing Director; Flow Chart, and a Letter of Waleed Hamed, dated July 22, 1998; and
- "Defendant Exhibit C" consisting of a Press Release from the United States Attorney for the Virgin Islands, Indictment 2003-147 (St. Thomas Division) captioned *United States of America and Government of the Virgin Islands v. Fathi Yusef Mohamad Yusef, et al.*; Defendant's Notice of Filing of Criminal Indictment (Third Superseding Indictment), dated September 8, 2004; a Plea Agreement between the Government and the defendants named in the indictment;
- A PACER search of the ECF docket sheet for Indictment 05-Cr-00015 (RLF)(GWB).
- The various documents referenced herein.

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clients in criminal proceedings in) the U.S. Virgin Islands and the federal district court in Puerto Rico. I have also represented clients throughout the country and internationally. A portion of my practice involves advising business clients on regulatory and potential criminal matters and I have done so in the U.S. Virgin Islands and elsewhere. My resume and curriculum vitae are annexed hereto.

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### **The Facts**

In 2003 a grand jury sitting in St. Thomas, U.S. Virgin Islands voted a 76-count indictment against United Corporation (“United”) and various related individuals, including, among others, Fathi Yusuf and members of his and Mohammad Hamed’s families. The indictment charged, *inter alia*, numerous counts of mail fraud, money laundering, enterprise corruption (pursuant to Virgin Islands Law), and tax evasion.

Although all of the individual defendants were charged in the criminal indictment, only the corporate defendant, United Corporation (“United” or the “Company”), was convicted of a crime (Count 60 -- tax evasion).<sup>2</sup> For purposes of this Opinion Letter, it is the Company’s guilty plea and conviction, as well as its admissions during the course of the plea of guilty, that allow me to reach the conclusions herein.

United is a corporate entity wholly owned by Fathi Yusuf and family. He is an officer of the Company and his son, Mike (Maher) Yusuf, is the President. It is my understanding, based upon the findings of fact by Judge Brady in his Memorandum Opinion that Mohammad Hamed, although a partner in the Plaza Extra supermarkets in St. Croix and St. Thomas, was *not* a shareholder or officer of United.<sup>3</sup> Critical to my analysis is that United admitted at the time of entry of the corporate plea that it under-reported gross receipts by utilizing the money laundering scheme outlined in the 3<sup>rd</sup> superseding indictment. Specifically, in admitting guilt to Count 60 of the indictment, United admitted that:

On or about September 19, 2002, United willfully aided, assisted, procured, counseled, advised, or caused the preparation and presentation of a materially false corporate income tax return on Form 1120S for the year 2001 and filed such return with the Virgin Islands Bureau of Internal Revenue (“VIBIR”). Specifically, United Reported gross receipts or sales on line 1c as \$69,579,412,

<sup>2</sup> By agreement between the parties and the Government, United was allowed to plead guilty to one count of tax evasion in full satisfaction of the indictment. The case against the remaining defendants was dismissed with prejudice.

<sup>3</sup> “Yusuf’s management and control of the “office” was such that Hamed was completely removed from the financial aspects of the business.” See Memorandum Opinion (Brady, J), dated April 25, 2014, at ¶ 19.

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knowing that the true amount was approximately \$79,305,980.

By pleading guilty United acknowledged that it underreported its 2001 gross receipts by nearly \$10 million. More importantly, for purposes of making an accurate, and legal accounting of the true gross receipts of the company from in the years prior to 2001, one must understand the nature of that tax evasion during the relevant time period.

According to the indictment, from “at least as early as in or about January 1996 and continuing through at least in or about September, 2002, defendant[] . . . UNITED defrauded the Virgin Islands of money in the form of tax revenue, specifically territorial gross receipts taxes by failing to report at least \$60 million in Plaza Extra sales on gross receipts tax returns and corporate income tax returns. See Indictment, at ¶10. The fraudulent scheme to report gross receipts was, according to the indictment, *inter alia*, for United and certain of its officers/employees:

to withhold from deposit substantial amounts of cash received from sales, typically bills in denominations of \$100, \$50, and \$20. Instead of being deposited into the bank accounts with other sales receipts, this cash was delivered to one of the defendants or placed in a dedicated safe in a cash room. From 1996 through 2001, tens of millions of dollars in cash was withheld from deposits in this manner and as such, was not reported as gross receipts on tax returns filed by UNITED.

Indictment, at ¶12.

Once United skimmed these extraordinary amounts of cash from its gross receipts, it engaged in “various efforts to disguise and conceal the illegal scheme and its proceeds . . . by, [among several methods,] purchas[ing] cashier's checks, traveler's checks, and money orders with unreported cash, typically from different bank branches and made payable to individuals and entities other than the defendants, in order to disguise the cash as legitimate-appearing financial instruments.” See Indictment, at ¶15. Much of the illegally underreported income was then sent to various banks and/or other entities off shore.

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I accept the allegations made in the indictment to which United pled guilty, at a minimum as to United and its officers, because the standard of proof for a grand jury indictment is probable cause to believe a crime was committed (i.e. more likely than not) and the defendant committed the crime. It is the same standard of proof in a civil case. The indictment alleged that from 1996-2001 United was involved in the same scheme to skim from its \$300 million gross revenues cash receipts of approximately \$60 million. I have no reason to disbelieve this allegation as a factual premise, at least for purposes of this Opinion Letter because United has acknowledged by its guilty plea its complicity in the scheme to underreport its income and thus partnership funds.

The scheme to skim funds from the stores (i.e. removal of funds from sales receipts before those funds are accounted for and taxes paid on them) is a classic white collar/business crime in which the purpose is to hide those funds from the governmental taxing authorities to avoid taxation, both regarding the receipt and disbursement. Most of such tax avoidance schemes require the removal of funds before accounting and/or the alteration of accounting records to reflect less cash received by the company than ultimately reported. The method used here, removal of funds prior to their being reported as sales, can be accomplished by several means, some of which were used here, to wit: those acting on behalf of the Company took cash out of sales before the Company could properly account for them. Another example of the fraudulent scheme involved cashing checks for third parties and then keeping and transacting the checks elsewhere. Cash was distributed without records or controls or those records were destroyed.

The most fundamental feature of such a scheme is that the actual accounting records of the entity do not, and in fact cannot, accurately reflect the amount of cash taken in. No proper accounting can be determined from the Company's financial records because the gross receipts have been intentionally misapplied and documented. The very purpose of this sort of scheme is to render any accounting inaccurate. Moreover, any remaining records would have to be suspect because a criminal -- with criminal intent and a criminal purpose -- would have created them. Further, because of the admitted lack of internal controls at United during the pre-

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2001 time period, there could be no legal or properly accurate way by which one could ascertain the correct amount of cash actually received or disbursed by the company.<sup>4</sup>

It is critical that the parties have both admitted that many records of transaction that should have gone into any accurate accounting were not kept or mutually and intentionally destroyed. For example, in his deposition, Mike Yusuf, President of United Corporation (and Fathi Yusuf's oldest son) testified that he and some of the Hamed brothers, upon hearing that the FBI was about to raid them in 2001, intentionally destroyed "a whole heap of" records (including those that would show where millions in cash partnership funds really went -- two months before the FBI raid and subsequent criminal charges).<sup>5</sup> As such, there could be no way to verify

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<sup>4</sup> I note that the plea agreement, at page 9, ¶ 5, requires the company to "develop and submit to the Court an effective compliance and ethics program consistent with § 8B2.1 (Effective Compliance and Ethics Program) of the United States Sentencing Guidelines." No such compliance program was in place in 2001 or for the years prior to that date.

<sup>5</sup> At the April 3, 2014 deposition Mike Yusuf testified, at pages 62-65, as follows (emphasis supplied):

Q. Okay. And to the best of your knowledge, all of those receipts still exist today from 1986 on?

A. No.

Q. Okay. Why don't you tell me about that?

A. About what?

Q. Why -- why some of them don't exist?

A. Should I explain -- that would explain the 1.6 that we have here on the letter.

Q. I'll get there, I swear. I just want to -- right now, I just want to know, **I asked you if I could go around and collect all these receipts, add them up and find out how much the Hameds took out, and how much the Yusufs.** You said yes. And I said, So I should be able to do that from the -- from back till now, and you said, no, there's a problem. You said some might be in the possession of a third party.

A. Right.

Q. When I have those from the third party, will I then be able to get that number?



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the completeness of such records. Because the very nature of the crime, particularly money laundering/tax evasion, is to hide such incoming and outgoing funds from legitimate accounting it is impossible to determine and account for any portion of that amount each partner has or owes to the other. Since many such transactions were not recorded or destroyed, any remaining "records" can never be legitimately credited or debited against the unknown amounts.

Fathi Yusuf was (and remains) the majority owner of United Corporation. United was the corporate entity used by him, and others, to accomplish the tax

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A. To physically check every receipt by receipt?

Q. Through all the --

A. **There's -- there's some receipt was destroyed by Waleed Hamed, and some receipts were destroyed by me.**

Q. Okay. Tell me about that.

A. Sure. In 2000 -- that's, I'm -- to explain to you, that's where the 1.6, I'm going to explain.

\* \* \*

A. 2001, that's the -- the year that we had the raid.

Q. Okay. What -- approximately what date [was the FBI raid]?

A. October 23rd of 2001.

Q. Okay.

A. Okay. Sometime I would say a month and a half to two months before that, Waleed got a call from Waheed saying that something is going on. Some kind of agency is coming to spot check us, look at us. ... **We didn't know. So between among us, we decided to destroy some of the receipts, because they were all in cash. We pulled out a good bit of receipts from the safes in Plaza East. Mufeed was present with me. He had a whole, a heap of receipts for the Hameds only. It could be from either one of the Hameds, once it's the Hamed.** And receipts from the Yusuf, which basically was just me, not, you know, nobody else. Mufeed, I guess you call it, tallied, and, you know, put a tape on what they withdraw, and I put a tally, a tape, on what I withdraw. And I gave him my receipts to double-check my work, he gave me his receipt to double-check his work. Once everything dropped to the penny, we were fine, **I said, Listen. I'm destroying my receipts. You know what I owe you guys.** I owe you guys 1.3 million, and at that time, they had pulled in receipts about 2.9 million. Wally wanted to take a look at it, **and as far as I know, Wally got rid of the receipts.** So 1.3 million from 2.9 million, this is where you get the 1.6 million. (Emphasis supplied.)

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evasion in 2001 to which United admitted its guilt.<sup>6</sup> Moreover, Mr. Yusef has repeatedly stated that he was in charge of the businesses<sup>7</sup> and was certainly in charge

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<sup>6</sup> This is not to say that others were not involved. Corporations can only act through its individual agents. The Government charged activities in aid of the scheme by several of the Yusuf and Hamed sons and others. Who directed, as opposed to carried out, the acts is not a particularly relevant factor in this matter. The relevant fact is that United has admitted, by its guilty plea, that funds from Plaza Extra were never accounted for as gross receipts of the company (nor is there any documentation reflecting how these unreported funds were divided, if at all, among the recipients). The example of Mike Yusuf's testimony as to both family's cooperation in pre-FBI-raid destruction of millions of dollars in records underlines why no proper evaluation of the accounting or partnership value prior to 2001 is possible.

<sup>7</sup> Support for this statement can be found in several places. For example, at the outset of this case, Mohammad Hamed testified at the January 25, 2013 *Preliminary Injunction* hearing that the agreement in the partnership was that Mr. Yusuf would be in control of the front office functions and he (Hamed) was in charge of the warehouse/store operations. Similarly, at the same hearing, Wally Hamed agreed, on cross-examination:

A: That was the duty of Fathi Yusuf, he was responsible for the office.  
Q: Because Fathi Yusuf was in charge, correct?  
A: No, he was responsible for the office.

Tr. 100.

Further, in Yusuf's March 4, 2013 *Proposed Findings of Fact and Conclusions of Law* submitted to the Court after those hearings, Yusuf specifically asked for a finding that he was in charge of the business' functions which would include accounting and payment of taxes -- agreeing with Hamed's statement, to wit:

40. Mohammad Hamed also readily admitted that he never worked in any management capacity at any of the Plaza Extra Stores, **which role was under the exclusive ultimate control of Fathi Yusuf, as Fathi Yusuf "is in charge for everybody"** and everything. (Jan. 25, 2013 Hr'g Tr. At 201 :4 (reflecting Mohammad Hamed's concession, even during his direct testimony, that "Mr. Yusuf he is in charge for everybody"), 201:23 -24, 210:21 -23 (acknowledging again that Fathi Yusuf is in "charge" of "all the three storesj ")).

After the Court's April 2013 *Preliminary Injunction* was issued in response to that testimony, Yusuf continued his assertion that he alone was in charge of the partnership's management functions -- as was the case in his May 9, 2013, *Motion to Stay* the Preliminary Injunction.

However, the testimony of the Plaintiff was clear when he admitted that he never worked in any **management capacity** at any of the Plaza Extra Stores, **which role was under the exclusive ultimate control of Fathi Yusuf. . .**

*Id.* at 6.

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of the office functions which would include accounting and payment (or avoidance) of taxes. This would mean that he was "in charge of" and directed what I can state was a sophisticated scheme involving international money laundering and offshore banks -- and the attendant alteration of accounting records.

### Conclusion

Because the nature of the tax fraud in this case (i.e. the skimming of gross receipts and cash distributions through various means) involves deception and, by definition, an incomplete set of books and records of the company, it is impossible for the partnership to reconstruct an accurate set of books and records prior to 2001. Although the parties and the Government have agreed to recognize approximately \$10 million in underreported gross income for the 2001 tax year, there is no such agreement for the years prior to 2001. Even if it can be assumed that the \$10 million

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Indeed, in a motion filed soon thereafter, in which Yusuf attempted to preclude the Hameds from all accounting information, he stated, with regard to the accounting:

There is no dispute that Defendant Fathi Yusuf has always been the ultimate decision maker.

*See May 16, 2013, Defendants' Motion To Clarify Scope Of Preliminary Injunction With Respect To United Corporation's Financial Statements, And Access To United's Financial Systems, at 3.*

Finally, because Mr. Yusuf had, apparently, complete control over the accounting and accounting records and would not allow Hamed access, the Court entered an order ending that absolute control. On May 31, 2013 the Court:

ORDERED that Defendant United Corporation shall provide revised financial statements for the three Plaza Extra Supermarket stores only within 30 days of the date of this Order;

ORDERED that said financial statements for the three Plaza Extra Supermarket stores shall be used for internal purposes only, and may not be disseminated to any third parties (excepting legal, accounting and tax advisors of the Parties) without the written consent of the other Party, and

**ORDERED that only mutual access of all sensitive financial data, records and financial statements shall be permitted** according to a process to be determined by the Parties.

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of underreported income in 2001 is accurate, it cannot be known, within any degree of legal or factual certainty, where or to whom the money went.

The only year for which there is a specific acknowledgment of a defined amount of underreported income is 2001. It is the only year for which there can be any proper, legal accounting. The nearly \$10 million of 2001 gross receipts was secreted and, presumably, given to someone. It is now impossible, by use of United's tax returns or accounting records, to determine where that money went. This is particularly true because the underlying income was cash and because much of the unreported gross receipts were transmitted in various forms internationally.

The only other arguably, detailed and accurate "accounting" related to this period was contemporaneously done by the U.S. Attorney's Office, which I am informed will be attached to Hamed's *Notice of Claims* for the Court's review. Because there is transaction-by-transaction documentary support for this accounting, it shows that Mr. Yusuf took \$4.5 million more than Hamed out of the partnership that, along with interest, would now be due to Mr. Hamed.

Specifically, the FBI and the U.S. Attorney's Office performed a detailed accounting and analysis of funds covertly removed from the partnership from 1996 to 2001. On January 4, 2005, the Government produced a document showing the amount Fathi Yusuf or his family received in cash or transfers from the Partnership -- and the amount Hamed or his family received. See Document Bates numbered HAMD629722-HAMD630014. The document is accompanied by extensive, line-by-line, date-specific supporting records from offshore banks, wire transfers and other means by which funds were removed. Thus, the FBI was able to specifically trace disbursements of over \$47 million between 1996 and 2001. The document was prepared as part of the criminal case 2003-147 and would normally be used by the prosecution to calculate the amount of tax United failed to pay on behalf of the partnership in its criminal settlement, conviction and allocution in that case. The amount of the disparity on the \$47 million skimmed was \$4,646,276.96 overage to Yusuf. This amount, plus interest should be due to Mr. Hamed. The chart below was

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prepared by Hamed's counsel from that document and shows a summary of the results.

US Government Calculation of Additional Income to Fathi Yusuf, Wally Hamed and Willie Hamed from January 4, 2005 Draft Bates Number FY 009991-  
(Overage to Fathi Yusuf was \$4.646 Million)

	1996	1997	1998	1999	2000	2001	Total
1996-2001 Additional Income for Fathi Yusuf	\$ 2,939,822.40	\$ 301,230.42	\$ 2,231,582.09	\$ 5,413,214.70	\$ 7,206,897.12	\$ 7,756,376.54	\$ 25,929,123.27
1996-2001 Additional Income for Wally Hamed	\$ 4,068,283.17	\$ 1,696,282.02	\$ 3,009,176.42	\$ 1,981,853.48	\$ 8,647,150.59	\$ 382,618.63	\$ 21,195,364.31
1996-2001 Additional Income for Willie Hamed		\$ 14,700.00	\$ 16,300.00	\$ 25,189.00	\$ 31,293.00		\$ 87,482.00
							\$ -
							\$ -
Overage Obtained by Fathi Yusuf over Hameds:	\$ (1,928,460.77)	\$ (1,409,751.60)	\$ (1,403,894.33)	\$ 3,406,172.22	\$ (1,391,546.47)	\$ 7,373,757.91	\$ 4,646,276.96

A copy of my resume and curriculum vitae of professional experience is annexed hereto for your review.

Thank you for your consideration.

Very truly yours,

LAW OFFICES OF  
LAWRENCE H. SCHOENBACH, PLLC



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

Lawrence Schoenbach, Esquire

LHS/sms - No Redactions [REDACTED]

LAWRENCE H. SCHOENBACH\*  
PARTNER, INSTITUTE FOR TAX AND  
COMMERCIAL LAW, CH-ZURICH

OF COUNSEL  
ELLEN BESSIS\*\*  
JURG BRAND\*\*\*  
ERICA B. POPKIN  
A. JEFFREY WEISS\*\*\*\*

\*ALSO ADMITTED IN D. PUERTO RICO AND U.S.V.I

\*\*ADMITTED IN FRANCE ONLY

\*\*\*ADMITTED IN SWITZERLAND ONLY

\*\*\*\*ALSO ADMITTED IN U.S.V.I AND ILL.

LAW OFFICES OF  
**LAWRENCE H. SCHOENBACH, PLLC**

A PROFESSIONAL LIMITED LIABILITY COMPANY

THE TRINITY BUILDING  
111 BROADWAY, SUITE 701  
NEW YORK, NEW YORK 10006  
(212) 346-2400

FACSIMILE (212) 374-1506

SCHOENBACHLAWOFFICE@ATTENET  
WWW.SCHOENBACHLAW.US

108 BOULEVARD DU MONT-PARNASSE  
75014, PARIS, FRANCE

TALSTRASSE 82  
POSTFACH 4818  
8022, ZURICH, SWITZERLAND

211 COMPANY STREET  
CHRISTIANSTED, ST. CROIX  
U.S. VIRGIN ISLANDS 00820

**LAWRENCE H. SCHOENBACH  
RESUME AND CURRICULUM VITAE OF  
PROFESSIONAL EXPERIENCE**

**Employment History**

Law Offices of Lawrence H. Schoenbach, PLLC New York, New York	Private Practice of Law 1983-present
Legal Aid Society Queens, New York	Public Defender - NYC 1980-1983
Skadden, Arps, Slate, Meagher & Flom New York, New York	Summer Associate 1979
Kings County District Attorney's Office Brooklyn, New York	Summer Intern 1978

**Private Law Practice - Overview**

Since 1983 the Law Offices of Lawrence H. Schoenbach, PLLC and primarily, its principal attorney, Lawrence H. Schoenbach, has had a varied national and international litigation practice concentrating on criminal defense and since 2001, on Corporate Compliance. Mr. Schoenbach is admitted to practice law in New York and the United States Virgin Islands. Although based primarily in New York, the firm has affiliate offices in Paris, Zurich, Puerto Rico and the U.S. Virgin Islands. Mr. Schoenbach is also the New York partner in a Swiss law and business consulting firm.

For more than 25 years, Mr. Schoenbach has worked as an instructor of trial techniques at the National Institute of Trial Advocacy at the Hofstra University School of Law (Hempstead, New York) and the Cardozo School of Law (New York, New York). Mr. Schoenbach has also appeared regularly as a legal commentator on what was formerly known as Court TV.

Mr. Schoenbach has served as outside Compliance Counsel for a number of companies, most recently a national wholesale distributor of tobacco products. He has

drafted corporate Compliance Manuals, and overseen their implementation and personnel training.

Mr. Schoenbach has tried to verdict well in excess of 100 jury trials primarily in U.S. federal court and has represented clients throughout the United States (Houston, Miami, Tampa, Seattle, Las Vegas, Boston, San Juan, St. Thomas, St. Croix, Newark, Washington, D.C., and Palm Beach) as well as around the world (Hong Kong, Saudi Arabia, Italy, France, Switzerland, Canada, Nigeria, and Pakistan). Most of the firm's representation of its clients involved complex federal criminal matters including, but not limited to, securities and tax investigations, money laundering, and racketeering and violations of the Foreign Corrupt Practices Act ("FCPA").

Mr. Schoenbach has argued before various federal and state Courts of Appeal approximately 40 times. A sample of the more notable trials in U.S. District Court in which Mr. Schoenbach was defense counsel includes:

- The "Pizza Connection" ( a 22 defendant indictment in New York charging \$1.5 Billion narcotics conspiracy between the Sicilian and American mafia;
- The trial of the "Westies" (alleged to be New York's Irish mafia);
- The 1988 "Air America" civil forfeiture prosecution in Pennsylvania of reputed former agent of the Central Intelligence Agency;
- The 14 month-long trial in New York of the "DeMeo Crew" of the Gambino Crime family;
- The prosecution of "Phyber Optic," at the time the largest and most comprehensive federal case ever charged against a computer "hacker;"
- The Securities & Exchange Commission civil and criminal investigation and prosecution of the "Crazy Eddie" corporation;
- The attempted assassination conspiracy (in New York) of Egyptian President Hosni Mubarak (a part of the case involving the 1993 bombing of the World Trade Center in New York);
- The political corruption/bribery prosecution in St. Thomas of the former Commissioner of Public Works for the U. S. Virgin Islands; representation also of the Governor of the U.S. Virgin Islands;
- The Swiss and American prosecution of the then-largest ever Securities Fraud, Tax, and Money Laundering investigation involving the two countries (concerning the sale of penny stocks and reverse mergers);
- Representation of the co-lead defendant in the criminal trial in Italy against former Italian Prime Minister Giulio Andreotti; and
- Representation of the widow of Dr. Robert Atkins ("The Atkins Diet) in a multi-district, multi-state civil litigation.

**Publications**

“Doing Business in America in the New Millennium: Criminal Law Meets Corporate Responsibility.” World Watch, September 2002 (a publication of American Express Tax and Business Services. See article reproduced at: [www.schoenbachlaw.com](http://www.schoenbachlaw.com))

**Education**

Hofstra University School of Law  
Hempstead, New York  
*Juris Doctor*, 1980

Honors/Awards: Constitutional Law  
Law Fellow: Criminal Law, Property

State University of New York at Albany, School of Criminal Justice  
Albany, New York  
*Master of Arts*, 1980

Franklin & Marshall College  
Lancaster, Pennsylvania  
*Bachelor of Arts* (English & Government), 1975



**FRE Rule 1006 Summary Chart --  
Examples of Amounts BDO Claimed Against Hamed, But Which  
Fathi Yusuf Knew About Prior to 2007 Based on Partnership Records**

			Amount of Those Claims Fathi Yusuf Knew Prior to 2001 based on P'Ship Records	Amount of Those Claims Fathi Yusuf Knew Prior to 2007 based on P'Ship Records	
Category Listed in the BDO Report					
Individual #	BDO Report		<b>TOTAL OF ALL 5 HAMEDS =</b>	<b>\$5,432,286.14</b>	<b>\$285,605.20</b>
Mohammad Hamed	1 p.24	Table 2A—Withdrawals from Pship thru tickets/receipts (1994-09/2001)	\$848,718.00	0	
	2 p.24	Table 2B—Withdrawals from Pship Thru tickets/receipts (10/2001-2012)	0	\$5,000.00	
	3 p.25	Amounts Ascribed to Certified Checks which were not Withdrawals	\$62,000.00	0	
		Sub-Total	<b>\$910,718.00</b>	<b>\$5,000.00</b>	
Wally Hamed	4 p.27	Table 7A—Funds withdrawn from Pship thru Checks (1994-09/2001)	\$451,500.00	0	
	5 p.28	Table 8A—Withdrawals from Pship thru tickets/receipts (1994-9/2001)	\$859,615.75	0	
	6 p.29	Table 9A—Payments to Third Parties with Partnership funds (1994-9/2001)	\$713,146.46	0	
	7 p.30	Table 11A—Withdrawn with Cashier's Checks (1994-09/2001) Y.Jaber Cks in Safe	\$285,000.00	0	
	8 p.31	French Bank Acct checks (not signed or cashed)	\$75,000.00	0	
		Sub-Total	<b>\$2,384,262.21</b>	<b>\$0.00</b>	
Willie Hamed	9 p.33	Table 15A—Funds withdrawn from Pship thru Checks (1994-09/2001)	\$50,000.00	0	
	10 p.33	Table 15B—Funds withdrawn from Pship thru Checks (2002-2012)	0	\$22,400.44	
	11 p.33	Table 16A—Withdrawals from Pship thru tickets/receipts (1994-09/2001)	\$1,281,122.00	0	
	12 p.33	Table 16B—Withdrawals from Pship Thru tickets/receipts (10/2001-2012)	0	\$26,500.00	
	13 p.33	Table 17A—Payments to 3 <sup>rd</sup> Parties w/Pship funds (1994-2001)	\$526,333.36	0	
	14 p.33	Table 17B – Payments to 3 <sup>rd</sup> Parties w/Pship funds (10/2001-2012)	0	\$2,665.45	
		Sub-Total	<b>\$1,857,455.36</b>	<b>\$51,565.89</b>	
Mafi Hamed	15 p.36	Table 24A—Withdrawals from Pship thru tickets/receipts (1994-9/2001)	\$168,163.07	0	
	16 p.36	Table 24B—Withdrawals from Pship thru tickets/receipts (10/2001-2012)	0	\$188,903.31	
	17 p.37	Table 25A—Payments to Third Parties with Partnership funds (1994-9/2001)	\$3,987.50	0	
	18 p.37	Table 25B—Payments to Third Parties with Partnership funds (10/2001-2012)	0	\$5,636.00	
		Sub-Total	<b>\$172,150.57</b>	<b>\$194,539.31</b>	
Shawn Hamed	19 p.39	Table 29A—Withdrawals from Pship thru tickets/receipts (1994-09/2001)	\$102,000.00	0	
	20 p.39	Table 29B—Withdrawals from Pship Thru tickets/receipts (10/2001-2012)	0	\$34,500.00	
	21 na	PNC Bank Check Ascribed to Shawn Hamed but not His	\$2,800.00	0	
	22 na	PNC Bank Check Ascribed to Shawn Hamed but not His	\$2,900.00	0	
		Sub-Total	<b>\$107,700.00</b>	<b>\$34,500.00</b>	

**CHART 5 - BDO's ANALYSIS OF HAMED versus YUSUF "LIFESTYLE" CHARGES**  
 (From BDO Report - Page 63)

	Partnership Withdrawals		
	Hamed	Yusuf	Total
Withdrawals from Supermarkets	\$ 13,553,076.27	\$ 8,354,410.77	\$ 21,907,487.04
Lifestyle Analysis	14,938,589.07	795,903.85	15,734,492.92
Total Withdrawals	28,491,665.34	9,150,314.62	\$ 37,641,979.96

**4.1.2 Lifestyle Analysis to Identify Undisclosed Withdrawals from the Partnership**

Our examination was aimed to identify all other income received by the Partners, family members and/or their agents that could be construed to be partnership distributions, which otherwise had not been disclosed as a withdrawal. Mr. Mohammad Hamed testified that their only source of income was salaries and/or wages, and the distributions received from the Partnership since 1986.24

Total **HAMED** Lifestyle Pending for 1986-2012 = **\$14,938,589.07**

Total **YUSUF** Lifestyle Pending for 1986-2012 = **\$ 795,903.85**

## Records BDO States (at p. 22) it Does and Does Not Have for the Plaza Extra Partnership

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
<b>Any Partnership Records</b>	None	None	None	None	None	None	None	Some	Some	Some	Some	Some	Some	Some	Some	Some	Some	Some	Some	Some	Some	All	All	All	All	All
<b>Any Bank Records to Check</b>	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	All	All	All	All	All
<b>Plaza East Records</b>	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	Some	Some	Some	All	All	All	All	All	All
<b>Plaza West Records</b>	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	Some	Some	Some	All	All	All	All	All	All
<b>Plaza Tutu Records</b>	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	Some	Some	Some	Some	Some	Some	All	All	All

**BDO States it Had**

- = No Reliable Information
- = Some Information, But not All
- = Reliable Information

### 4.5 Limitations (From BDO Report p. 22)

Our report and the findings included herein have been impacted by the limitation of the information available in the Case. Following is a summary of the limitations we encountered during the performance of the engagement.

- Accounting records of Plaza Extra-East were destroyed by fire in 1992 and the information was incomplete and/or insufficient to permit us to reconstruct a comprehensive accounting of the partnership accounts before 1993.
- Accounting records and/or documents (checks registers, bank reconciliations, deposits and disbursements of Supermarkets' accounts) provided in connection with Supermarkets were limited to covering the period from 2002 through 2004, East and West from 2006 through 2012, and Tutu Park from 2009 through 2012.
- Accounting records and/or documents provided to us for the periods prior to 2003 are incomplete and limited to bank statements, deposit slips, cancelled checks, check registers, investments and broker statements, cash withdrawal receipt listings. For example, the retention policy for statements, checks, deposits, credits in Banco Popular de Puerto Rico is seven years; therefore, there is no Bank information available prior to 2007 and electronic transactions do not generate any physical evidence as to regular deposits and/or debits.
- Information discovered about the case up to August 31, 2014. We only considered information up to December 31, 2012. Transactions after that date were adjusted in our report.

# 1 - Records BDO Admits it Does Not Have for the Plaza Extra Partnership, from p. 22

1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010

Partnership Records	None	None	None	None	None	None	None	Some	Some	Some	Some	Some	Some	Some	Some	Some	Some	Some	Some	Some	All	All	All	All
Bank Records	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	All	All	All	All
Records	None	None	None	None	None	None	None	None	None	None	Some	Some	Some	Some	Some	Some	Some	Some	Some	All	All	All	All	
Records	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	Some	Some	Some	All	All	All	All	
Records	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	Some	Some	Some	Some	Some	Some	All	All

**DO**  
**ates**  
**Had**

 = No Reliable Information

 = Some Information, But not All

 = Reliable Information

s (Text is verbatim From BDO Report p. 22)

findings included herein have been impacted by the limitation of the information available in the Case. Following is a summary of the limitations we encountered during the performance of the engagement.

Records of Plaza Extra-East were destroyed by fire in 1992 and the information was incomplete and/or insufficient to permit us to reconstruct a comprehensive accounting of the partnership accounts before 1993.

Records and/or documents (checks registers, bank reconciliations, deposits and disbursements of Supermarkets' accounts) provided in connection with Supermarkets were limited to covering the period through 2004, East and West from 2006 through 2012, and Tutu Park from 2009 through 2012.

Records and/or documents provided to us for the periods prior to 2003 are incomplete and limited to bank statements, deposit slips, cancelled checks, check registers, investments and broker statements, and receipt listings. For example, the retention policy for statements, checks, deposits, credits in Banco Popular de Puerto Rico is seven years; therefore, there is no Bank information available for electronic transactions do not generate any physical evidence as to regular deposits and/or debits.

We reviewed about the case up to August 31, 2014. We only considered information up to December 31, 2012. Transactions after that date were adjusted in our report.

August 1, 2014

Joel H. Holt, Esq.  
2132 Company Street  
Christiansted, VI 00820

Re: Mohammad Hamed v. Fathi Yusuf and United Corporation

Dear Attorney Holt:

As you know, I am a Certified Public Accountant licensed in the U.S. Virgin Islands. Exhibit 1. You have asked my firm to render certain accounting opinions related to the lawsuit pending between Mohammed Hamed and Fathi Yusuf/United Corporation as follows:

1. Do the tax returns filed by United Corporation in 2013 for the years 2002 to 2012 reflect two separate businesses—one for the three Plaza Extra Supermarkets and one for the United Corporation's shopping center at Sion Farm, St. Croix?
2. Do the tax returns filed by United Corporation in 2013 for the years 2002 to 2012 contain any improper statements based upon the information you have reviewed?
3. Is it possible to provide an accurate accounting of the partnership accounts before 2012 either by reviewing existing accounting records or reconstructing comprehensive or cohesive partnership transactions for Plaza Extra Supermarkets prior to 2012—in order to make any assumptions about which partner owes the other partner specific amounts due to their "partner accounts"?
4. Are there ascertainable post-January 1, 2012 amounts that are clearly owed by Yusuf to the partnership for diverting partnership funds to United's account or for its benefit for the period in which actual accounting records are available?

Blumberg No. 5208

EXHIBIT

39

We have reviewed the Preliminary Injunction opinion entered by Judge Brady, which has provided factual background related to this case. We have also reviewed the items listed in Exhibit 2 regarding the accounting issues related to these four questions you have asked us to consider. This includes testimony and exhibits related to the available accounting information (or lack thereof) for the Partnership from 1986 to present as well as the tax returns filed for United Corporation for the years 2002 to 2012 (all filed in 2013).

We have also been supplied the *Sage 50* accounting program and data for all three Plaza Extra Supermarket operations for the period from January 1, 2012 to July 7, 2013. Data from that system has allowed us to review and understand the financial activities and tax obligations for 2012 to date.

This report will address our opinions with respect to each question in the order raised.

**Question #1-**Applying the "mirror" U.S. Tax Code and Generally Accepted Accounting Principles (GAAP) in the manner routinely employed by accountants, it is our expert opinion that the tax returns filed by United in 2013 for the years 2002 to 2012 reflect two distinct business operations. These tax returns contain the financial information for the operations of the three Plaza Extra Supermarkets in the basic return and then attach a separate schedule for the shopping center business as a separate operation distinct from the three supermarkets.

United was incorporated on March 5, 1979 and elected to be treated as an S-Corporation beginning January 1, 1999. The tax returns filed by United Corporation each year since then have been on *Form 1120S, "U.S. Income Tax Return for an S Corporation."*

An S Corporation is treated for federal income tax purposes in a manner somewhat similar to a partnership. The primary similarity is the requirement to flow the income of the entity out to the owners, and then the owners must report the income on their personal returns.

In order for the shareholders (S-Corp) or partners (partnership) to determine how to report their share of income and expense, the Internal Revenue Service requires that the income or loss from different types of business activities be aggregated into appropriate groups and the net income of each group reported separately to the owners, based on their percentage of ownership.

The United Corporation tax filings as presented clearly indicate two distinct business operations. Page 1 of the Form 1120S tax return as filed by United Corporation contains the financial information for the operations of the three Plaza Extra Supermarkets. This is the same information that was used to file the individual returns for Mohammad Hamed for the same time period. Form 8825, which is included with the

Form 1120S as filed by United Corporation, includes the rental portion of the income and expenses reported on the United Corporation return.

The separation of the two businesses on the tax return is consistent with the view that the Plaza Extra Supermarkets are a separate business operation from the shopping center rental activities. While the income and expenses of the two distinct business activities were separated on the United Corporation filings, there is no allowance for Mohammed Hamed as a shareholder/owner and the United filing did not report Mr. Hamed's allocation of income and expenses when he was clearly a 50% owner in the Plaza Extra Supermarket. In that regard the tax filings by United Corporation are not correct.

A review of the 2012 tax return (in light of information also gained in the accounting data) demonstrates this inconsistency. You have provided me with the rent payment made to United by Plaza Extra in February of 2012. In this regard, the schedule attached for the shopping center reports this rent as income for United, which we understand was placed in the non-supermarket 'shopping center bank account' belonging solely to the Yusuf interests. However, the tax return portion for the Plaza Extra operations reflects this amount as a deduction. By combining the two businesses on the same return, the Yusufs were able to receive the payment of rent from Plaza Extra as income without having to pay any taxes on it since the return also treats that rent payment as a deduction. In short, the treatment of this payment on this return again confirms that the tax return shows two distinct businesses, not one business as the single return would suggest.

**Question # 2-** Applying the "mirror" U.S. Tax Code and Generally Accepted Accounting Principles (GAAP) in the manner routinely employed by accountants, it is our expert opinion that the filing of a single tax return by United for both businesses led to an improper avoidance of income by United. It reported \$5.4 million in income as part of its rental income as a landlord in 2012, which was the rent paid by the Plaza East (Sion Farm) store to United, but United avoided paying any gross receipts or income tax on this item by then deducting this rent payment as one of the business deductions for the Plaza Extra Supermarket partnership. While this was a proper deduction for the supermarket partnership, United should have paid taxes on this income, which was avoided by not filing a separate tax return as it was required to do by law. (I understand the 2013 returns will be filed correctly instead of combining these businesses.)

In addition, the tax returns filed by United Corporation are improper since United is a corporation owned by individuals from the Yusuf family, with no allowance for Mr. Hamed's ownership in the Plaza Extra Shopping Center. However, as noted in the multiple documents provided, United and Mr. Yusuf concede that Mohammed Hamed is entitled to 50% of the net income from the operations of the three Plaza Extra stores. Thus, reporting 100% of the income from the operations of the three Plaza Extra Supermarkets as part of the income of United Corporation is improper. S Corporations differ from partnerships in that they do not allow for uneven allocations of earnings and expense. In other words all of the income and expenses of the S Corporation have to

be allocated based on ownership percentage. Mr. Hamed is not a shareholder in United when in fact he is entitled to 50% of the earnings of the Plaza Extra Shopping Center since inception, therefore the filings are improper.

**Question # 3-** Applying Generally Accepted Accounting Principles (GAAP), the answer to this question is "no." In reaching this conclusion, we note as follows:

- We have examined, operated and are entirely familiar with the data supplied by Defendants and the Controller (Gaffney) for the three Plaza Expert Stores on the Sage50 computer system. (John Gaffney is the "Controller" for United, and we have relied on his sworn statements in a preliminary injunction hearing and deposition (Exhibit 3) as to the state of the accounting records in United's possession prior to Defendant Yusuf's April 7, 2014 concession that Plaza Extra Supermarkets is a partnership.)
- We work frequently with this and similar accounting systems and are experienced in their use —and the act of accounting for different businesses on such systems.
- The present "books and accounting records" of Plaza Extra Supermarkets as kept on the Sage50 system began with 2012. (Gaffney).
- No cohesive books and records for the period 2003 to 2012 have been supplied to us (to Plaintiff) in discovery that reflect transactions prior to 2012. (Gaffney and Sage 50). A large number of documents obtained from the U.S. Attorney/FBI and supplied to Mr. Hamed do contain some information from pre-2003<sup>1</sup> —but no cohesive accounting.
- The computer disk containing some or all of the 2003-2012 accountings was destroyed or damaged by defect, and Gaffney states there was no full backup kept.
- Gaffney has testified that he believes that there may be some paper records somewhere in warehouses for transactions prior to 2012.
- No such records have been produced. Exhibit 3.
- In any case, Gaffney also testified that the records before 2012 were of little accounting value, and were little more than bank reconciliations.
- We have also viewed records seized by the FBI and Justice Department prior to 2003 (Exhibit 4), and the two plea agreements involving the computation of income and taxes for the period from 2001 to 2013. Exhibit 5.

<sup>1</sup> This disk was supplied by Defendants. Exhibit 4.



Based on all available data, it is our expert opinion that no set of useable or reliable accounting records exist for two reasons<sup>2</sup> and that it is impossible to reconstruct the accounting transactions of Plaza Extra Supermarkets for the years 2002 through 2011 —and for period 1986 through 2001. It is impossible to:

a. Reconstruct the individual partnership accounts before 2012. (Thus, the only appropriate method to determine partnership accounts is to accept what both partners have used as a practical matter—the Sage50 accounting records to date which they began keeping as of 2012.)

b. Reconstruct any comprehensive or cohesive partnership disbursements for Plaza Extra Supermarkets prior to 2012.

c. Reconstruct how single documents purporting to show disbursements or removal of funds relate to one another, to the partnership's accounting or to each other. Thus, no such individual records taken out of context can reflect anything about the value of either partner's "partner account" or what might be owed at dissolution.

**Question # 4-** Attached as Exhibit 8 (3 files prepared on 07/07/14, one for each store) is the most recent backup of the Sage 50 accounting for Plaza Extra Supermarkets compiled and supplied by the Controller, John Gaffney. Under the applicable U.S. Virgin Islands enactment of the Revised Uniform Partnership Law (RUPA), this new, mutually used accounting is the only possible method of calculating the value of each partner's account—each being entitled to 50% of the value reflected therein with only "corrections" *shown in that accounting* after the date the accounting became reliable—such as the following payments made from the Plaza Extra accounts:

1. Payment of \$2.7 million to Fathi Yusuf/United objected to by Hamed as shown in Exhibit 9.

<sup>2</sup> First, prior to 2003, Yusuf maintained two completely separate systems by which funds were removed from Plaza Extra Supermarkets. One consisted of the books and reporting showed to VI and US taxing authorities. The other was a sophisticated enterprise removing millions of unaccounted dollars of Plaza Extra Supermarkets funds prior to ANY accounting, converting these funds to transferable mechanisms and depositing them in overseas property and institutions. Exhibit 6 is a letter sent to Fathi Yusuf —with a chart reflecting the general nature of the enterprise by which he and others removed such funds. As additional examples, Exhibit 7 is a listing of Fathi Yusuf's transactions involving millions of dollars of such funds at the Cairo Amman Bank, and Exhibit 5, Plea Agreement, Section II, *Nature of the Offense*.

Second, computer and other records from the time after the FBI raided the business and placed a federal monitor, have been destroyed and/or lost, as set forth above.

2. Payment of \$504,591.03 to Joseph DiRuzzo for United's attorney fees as shown in Exhibit 10.

3. Payment of \$49,808.13 in V.I. Gross Receipts taxes on behalf of United as shown in Exhibit 11.

4. Payment of \$211,351.04 in insurance by Plaza Extra for the United Shopping Center (non-supermarket) coverage from January 1, 2012, shown in Exhibit 12.

The foregoing opinions are subject to supplementation if further information becomes available. Please let me know if you have any questions, or need anything else.

Respectfully submitted,



CPA

J. David Jackson, CPA

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

MOHAMMED HAMED by His Authorized )  
Agent WALEED HAMED, )

Plaintiff/Counterclaim Defendant, )

vs. )

Case No. SX-12-CV-370

FATHI YUSUF and UNITED CORPORATION, )

Defendants/Counterclaimants, )

vs. )

WALEED HAMED, WAHEED HAMED, MUFEEED )  
HAMED, HISHAM HAMED, and PLESSEN )  
ENTERPRISES, INC., )

Additional Counterclaim Defendants.)

**THE VIDEOTAPED ORAL DEPOSITION OF JOHN GAFFNEY**

was taken on the 3rd day of April, 2014, at the Law Offices  
of Adam Hoover, 2006 Eastern Suburb, Christiansted,  
St. Croix, U.S. Virgin Islands, between the hours of  
3:14 p.m. and 4:41 p.m., pursuant to Notice and Federal  
Rules of Civil Procedure.

Reported by:

Cheryl L. Haase  
Registered Professional Reporter  
Caribbean Scribes, Inc.  
2132 Company Street, Suite 3  
Christiansted, St. Croix U.S.V.I.  
(340) 773-8161



JOHN GAFFNEY -- DIRECT

1                   ~~So, essentially, the decision was made to put~~  
2 ~~in a~~ ~~an accounting system in all three locations that~~  
3 ~~would have the same system of controls, and the~~ ~~the most~~  
4 ~~major thing that was implemented was the interface between~~  
5 ~~Point of Sale and Peachtree.~~

6           Q.     So you said early on that you were brought in  
7 pursuant to a court order, or something like that, to try to  
8 fix what I think you described it as pretty much a -- a  
9 total mess.

10                         Would that be true?

11           A.     Yeah, it was pretty -- it was a pretty good  
12 description that it was a pretty total mess before.

13           ~~Q.     And you~~

14           ~~A.     I'm not saying that it was~~ ~~it didn't have any~~  
15 ~~integrity. It did have integrity.~~

16           ~~Q.     Uh huh.~~

17           ~~A.     It's just that it lacked controls.~~

18           ~~Q.     Okay. And was it accurate?~~

19           ~~A.     I'd say fairly accurate.~~

20           Q.     Okay. And do you know where -- where the -- where  
21 the accounting records were before -- you've given me 2012  
22 and 2013, is that correct?

23           A.     Correct, yeah.

24           Q.     Okay. And do you have any idea where the  
25 accounting records are for 2002 through 2011?

Cheryl L. Haase  
(340) 773-8161

HAMD642142

JOHN GAFFNEY -- DIRECT

1           **A.**   Well, I know that there are accounting records  
2 over in the warehouse at St. Thomas. I've been up there, --

3           **Q.**   Uh-huh.

4           **A.**   -- and I got tired of looking for things, because  
5 I couldn't really get anything that was too cohesive.

6                         Now, when I first came here, I was aware of  
7 being able to get financial statements that dated back to  
8 about 2005 and '6, but there was a hard drive crash, I  
9 believe it was December 17th, and Margie portrayed to me  
10 that she lost all her backups and everything in the process.

11                         We restored the accounting system from a  
12 backup that I had made on December 11th, after a great deal  
13 of effort to try and get that backup made.

14           **Q.**   And for what year did you restore it?

15           **A.**   Well, the -- my backup was made on December 11th,  
16 2012, and what happened was the crash occurred on the 17th.  
17 I think by the 18th it was restored, and then we had to  
18 reconstruct that week's work. And I was in Miami, or I was  
19 in Florida at the time.

20           **Q.**   I guess what I'm asking is, was it just 2012  
21 financials, or did it go back? Would, for instance, 2006 be  
22 on it?

23           **A.**   There is some, there is some data in there.  
24 There's some general ledger data that goes back beyond two  
25 years. Sage maintains two years of detail, --

Cheryl L. Haase  
(340) 773-8161

HAMD642143

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1 Q. Uh-huh.

2 A. -- but there are some comparative numbers that --  
3 that go back beyond that.

4 And in -- in the 2012 the backup that I gave  
5 you, that contains -- that contains all of that information.  
6 Nothing has changed, and that remains static right now,  
7 because once 2012 was closed, I've kept those, and I've --  
8 I've been diligent about making sure that those records stay  
9 alive.

10 Q. Those are comparison numbers. Those aren't the  
11 actual financial transactional records for years before  
12 that, is that correct?

13 A. Yeah. I mean, if I might look in here.

14 Q. Certainly.

15 A. I think there's -- do you have the 2012s restored  
16 in here?

17 Q. Yep.

18 A. Okay. I don't see the 2012s in here.

19 Q. Well, I -- I didn't bring it today.

20 A. Okay.

21 Q. It was brought from the CPA, so it's possible --

22 A. Okay. It seems to me, if my memory's correct, it  
23 seems to me I'm able to get comparative information that  
24 goes back to at least 2010.

25 Q. Okay.

Cheryl L. Haase  
(340) 773-8161

HAMD642144

JOHN GAFFNEY -- DIRECT


1           A.    If I do some comparative financial statements, I  
2 can get it at least through back to 2010.

3           Q.    And your recollection is that the financial  
4 records before 2010 are in a warehouse?

5           A.    The -- I'm hoping that there are hard copies of  
6 most of the records in the warehouse at St. Thomas. I did  
7 look for a lot of them after the crash, when I was trying to  
8 find things, but I -- I didn't have a great deal of success.

9           Q.    Okay.

10          A.    And I did find a -- spotty old backups on  
11 computers, but -- and I had to get help from Sage to -- to  
12 break through them, because they had old passwords and  
13 whatnot on them. But I didn't get anything cohesive, like  
14 I -- I had one old backup at East, and it was, you know, as  
15 far as I was concerned, East and West were just using it to  
16 process payroll and/or accounts payable, and it was being  
17 used much like a word processor. There was no integrity  
18 when it came to general ledgers or anything like that, or  
19 anything that would feed into a financial statement.



20          Q.    Okay. Now, in the ~~let's use the 2013 year that~~  
21 ~~you supplied on January 5th, 2014.~~

22                    You said, sort of off the bat, it ~~it~~  
23 ~~lagged in certain areas, such as accounts payable and~~  
24 ~~securities for a couple of months. Beyond that, is there~~  
25 ~~any other major financial data related to the Plaza Extra~~

Cheryl L. Haase  
(340) 773-8161

HAMD642145

## Partnership accounting records incomplete:

- **Jackson report**-Incomplete partnership records-could not be done
- **Gaffney deposition**- admits pre-2012 records incomplete
- **BDO report (p. 22)**-BDO admits records not complete

## BDO Methodology Unreliable:

- Records that were available, but not used (Kim Japinga Chart)
- Documents used without proper foundation (e.g., Hisham checks)
- Doubling Up-No offsetting of identified cash against expenditures
- No equal balancing between Yusuf and Hamed (Yusuf houses, etc.)
- Errors in accounting work-more than one or two errors make it unreliable

Blumberg No. 5208

EXHIBIT

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## CHART 2 - THE YUSUF ACCOUNTS LEFT OUT OF BDO'S REPORT

Account Holder	Account Type	Name of Financial Institution & Account	BDO Report
Fathi Yusuf	Bank /Invest.	Banque Francaise Commerciale 0 40 60 63877 90	NOT in BDO Report
Fathi Yusuf	Bank /Invest.	Cairo Amman Bank 01 500 172349 00	NOT in BDO Report
Fathi Yusuf	Bank /Invest.	Cairo Amman Bank 01 532 172349 00	NOT in BDO Report
Fathi Yusuf	Bank /Invest.	Cairo Amman Bank 02 033 172349 00	NOT in BDO Report
Fathi Yusuf	Bank /Invest.	Cairo Amman Bank 02 503 172349 00	NOT in BDO Report
Fathi Yusuf	Bank /Invest.	Cairo Amman Bank 02 528 172349 00	NOT in BDO Report
Fathi Yusuf	Bank /Invest.	Cairo Amman Bank 02 533 172349 00	NOT in BDO Report
Fathi Yusuf	Credit Card	American Express-3713 -845112 -21003	NOT in BDO Report
Fathi Yusuf	Credit Card	Scotiabank Visa Gold 4563-4601- 5003-9052	NOT in BDO Report
Fathi Yusuf/ Hamdan Diamond Corp.	Bank /Invest.	Merrill Lynch 140-07884	NOT in BDO Report
Fathi Yusuf/ Hamdan Diamond Corp./Isam	Bank /Invest.	Banque Francaise Commerciale 0 40 60 63887 90	NOT in BDO Report
Fathieh Yousef	Bank /Invest.	Merrill Lynch 140-21722	NOT in BDO Report
Hamdan Diamond	Bank /Invest.	Merrill Lynch 140-07951	NOT in BDO Report
Mike Yusuf	Bank /Invest.	Scotiabank 60804314 (personal checking)	NOT in BDO Report
Mike Yusuf	Credit Card	Citi-Visa-4922 0020 0003 6759	NOT in BDO Report
Nejeh Yusuf	Bank /Invest.	BP 194-018332	NOT in BDO Report
Nejeh Yusuf	Bank /Invest.	First Bank 58-02114835	NOT in BDO Report
Nejeh Yusuf	Credit Card	Banco Popular-4549-0550-1358-6262	NOT in BDO Report
Nejeh Yusuf	Credit Card	Bank of America-5474-1500-0117-5222	NOT in BDO Report
Nejeh Yusuf	Credit Card	ML-4264-5200-2653-6235	NOT in BDO Report
United Corp.	Bank /Invest.	Prudential Securities 05Q-958838-55	NOT in BDO Report

### CHART 3 - BDO Did Not Discuss Either the 1996-2001 "FBI/ US Gov. Analysis" or Large Accounts the FBI and U.S. Attorney Reviewed in that Analysis

In the DTF/Yusuf Opposition to the BDO Daubert Motion it is stated that BDO did Consider the 1996-2001 "FBI/U.S. Attorney Summary Report" and the any Accounts Analyzed -- however, BDO Report does no Analysis of the FBI's Findings and Ignores Many Accounts

- Number of Times the "FBI/U.S. Attorney Analysis" is Mentioned in BDO Report TEXT: **NONE**
- Number of Times the "FBI/U.S. Attorney Analysis " is Mentioned in BDO Report Exhibits: **NONE**
- Mentions of "FBI/U.S. Attorney Analysis " -- In BDO List of Documents Reviewed: **NONE**

#### YUSUF ACCOUNTS LOCATED AND ANALYZED BY THE FBI BUT NOT ANALYZED IN BDO REPORT

Fathi Yusuf	Bank	Banque Francaise Commerciale 0 40 60 63877 90	NOT in BDO [In FBI]
	/Invest.		
Fathi Yusuf	Bank	Cairo Amman Bank 02 503 172349 00	NOT in BDO [In FBI]
	/Invest.		
Fathi Yusuf	Bank	Cairo Amman Bank 02 528 172349 00	NOT in BDO [In FBI]
	/Invest.		
Fathi Yusuf/ Hamdan Diamond Corp./Isam Yousuf	Bank	Banque Francaise Commerciale 0 40 60 63887 90	NOT in BDO [In FBI]
	/Invest.		



**Examples of Errors:  
BDO's Reporting of  
Wally Hamed's 1993 Tax Information**

Stock Sales Proceeds Improperly      **\$4,931,019.00**  
Attributed\*\* to Wally Hamed's  
1993 Taxes

\*\*Based on 9 Months of Available Information from  
United's Prudential-Bache Account

Blumberg No. 5208

EXHIBIT

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**Stock Sales Proceeds Improperly Attributed to Wally Hamed's 1993 Taxes**

Detail

Source	Stock Name	No. of Shares Sold	Purchase Date	Sale Date	Amount	Notes
Wally Hamed's 1993 Taxes (YUSF106160-YUSF106171)	AALR	20,000	2/6/1992	10/18/1993	\$59,400.00	<u>Exact match</u> between United's 10/93 Prudential statement and Wally Hamed's 1993 taxes, both in shares sold and resulting proceeds
Prudential Securities 10/31/93 Statement, Acct. No. 05Q-958838-55 - United Corp. (HAMD566369- HAMD566371)	ADVANCED LOGIC RESH	20,000	N/A	10/18/1993	\$59,400.00	
Wally Hamed's 1993 Taxes (YUSF106160-YUSF106171)	CYN	17,000	11/17/1992	1/20/1993	\$163,625.00	Total proceeds from the stock sale between Wally Hamed's 1993 taxes and United's 1/93 Prudential statement are off slightly, but <u>number of shares matches exactly</u>
Prudential Securities 01/31/93 Statement, Acct. No. 05Q-958838-55 - United Corp. (HAMD566341- HAMD566343)	CITY NATL CORP	17,000	N/A	1/27/1993	\$161,970.54	

Source	Stock Name	No. of Shares Sold	Purchase Date	Sale Date	Amount	Notes
Wally Hamed's 1993 Taxes (YUSF106160-YUSF106171)	BORL	4,000	12/7/1992	10/18/1993	\$61,000.00	Total proceeds from the stock sale between Wally Hamed's 1993 taxes and United's 10/93 Prudential statement are off slightly, but <b>number of shares matches exactly</b>
Prudential Securities 10/31/93 Statement, Acct. No. 05Q-958838-55 - United Corp. (HAMD566369-HAMD566371)	BORLAND INTL INC DEL	4,000	N/A	10/25/1993	\$60,932.00	

Wally Hamed's 1993 Taxes (YUSF106160-YUSF106171)	DP	18,000	11/2/1992	3/22/1993	\$454,601.00	Total proceed amounts between Wally Hamed's 1993 taxes and United's Prudential statement are off slightly, but <b>number of shares matches exactly</b>
Prudential Securities 03/31/93 Statement, Acct. No. 05Q-958838-55 - United Corp. (HAMD566347-HAMD566350)	DIAGNOSTIC PROD CORP	2,000	N/A	3/1/1993	\$47,518.40	
" "	" "	1,000	N/A	3/12/1993	\$24,996.65	
" "	" "	300	N/A	3/15/1993	\$7,498.99	
" "	" "	5,000	N/A	3/18/1993	\$124,983.29	
" "	" "	900	N/A	3/18/1993	\$22,718.65	
" "	" "	4,700	N/A	3/18/1993	\$118,065.66	
" "	" "	100	N/A	3/18/1993	\$2,536.79	
" "	" "	1,000	N/A	3/22/1993	\$25,244.15	
" "	" "	3,000	N/A	3/29/1993	\$76,474.92	
	<b>Total Diagnostic Prod Corp:</b>	<b>18,000</b>			<b>\$450,037.50</b>	

HAMD642151

Source	Stock Name	No. of Shares Sold	Purchase Date	Sale Date	Amount	Notes
Wally Hamed's 1993 Taxes (YUSF106160-YUSF106171)	OEA	1,500	10/23/1992	2/9/1993	\$38,813.00	Total proceed amounts between between Wally Hamed's 1993 taxes and United's Prudential statement are off slightly, but the <u>number of shares matches</u> <u>exactly</u>
" "	" "	11,000	10/23/1992	2/11/1993	\$282,113.00	
	<b>Total OEA:</b>	<b>12,500</b>			<b>\$320,926.00</b>	
Prudential Securities 02/28/93 Statement, Acct. No. 05Q-958838-55 - United Corp. (HAMD566344- HAMD566346)	OEA INC	1,900	N/A	2/17/1993	\$48,436.58	
" "	" "	1,500	N/A	2/17/1993	\$38,426.90	
" "	" "	4,800	N/A	2/17/1993	\$121,766.14	
		4,300	N/A	2/18/1993	\$109,082.16	
	<b>Total OEA INC:</b>	<b>12,500</b>			<b>\$317,711.78</b>	

Source	Stock Name	No. of Shares Sold	Purchase Date	Sale Date	Amount	Notes
Wally Hamed's 1993 Taxes (YUSF106160-YUSF106171)	UBS	100,000	10/21/1992	9/17/1993	\$878,551.00	<b>The numbers don't match exactly, but they are somewhat close:</b> Wally Hamed's taxes show 100,000 of <b>US BIOSCIENCE INC</b> sold, the Prudential Securities 9/30 statement shows 99,800 sold. Proceeds from sale are somewhat close: \$878,551.00 vs. \$867,999.59
Prudential Securities 09/30/93 Statement, Acct. No. 05Q-958838-55 - United Corp. (HAMD566365- HAMD566368)	US BIOSCIENCE INC	10,700	N/A	9/13/1993	\$97,981.95	
" "	" "	3,400	N/A	9/15/1993	\$29,451.50	
" "	" "	400	N/A	9/15/1993	\$3,104.88	
" "	" "	25,000	N/A	9/15/1993	\$210,367.91	
" "	" "	1,100	N/A	9/16/1993	\$9,800.67	
" "	" "	10,800	N/A	9/17/1993	\$96,224.76	
" "	" "	7,900	N/A	9/20/1993	\$69,418.91	
" "	" "	20,000	N/A	9/20/1993	\$173,294.16	
" "	" "	8,500	N/A	9/22/1993	\$73,628.77	
" "	" "	700	N/A	9/23/1993	\$6,063.54	
" "	" "	6,300	N/A	9/24/1993	\$55,351.50	
" "	" "	5,000	N/A	9/24/1993	\$43,311.04	
	<b>Total US Bioscience Inc:</b>	<b>99,800</b>			<b>\$867,999.59</b>	

Source	Stock Name	No. of Shares Sold	Purchase Date	Sale Date	Amount	Notes
Wally Hamed's 1993 Taxes (YUSF106160-YUSF106171)	DFI	50,000	11/17/1992	6/30/1993	\$1,151,702.00	United's 6/93 Prudential Securities statement shows 10,000 shares of <b>Duty Free Intl Inc</b> sold and 40,000 shares remaining in the portfolio, for a total of 50,000, which equals the amount of shares shown as sold on Wally Hamed's 1993 taxes
Prudential Securities 06/30/93 Statement, Acct. No. 05Q-958838-55 - United Corp. (HAMD566356- HAMD566358)	DUTY FREE INTL INC	10,000	N/A	6/28/1993	\$268,528.95	

Wally Hamed's 1993 Taxes (YUSF106160-YUSF106171)	MGR	31,500	11/7/1991	1/29/1993	\$520,088.00	United's 1/31/93 Prudential Securities statement shows 31,500 shares of MERRY GO ROUND ENTS remaining in the portfolio, the exact same number of shares Wally Hamed's 1993 taxes show as sold.
Prudential Securities 01/31/93 Statement, Acct. No. 05Q-958838-55 - United Corp. (HAMD566341- HAMD566343)	MERRY GO ROUND ENTS	N/A	N/A	N/A	N/A	



Source	Stock Name	No. of Shares Sold	Purchase Date	Sale Date	Amount	Notes
Wally Hamed's 1993 Taxes (YUSF106160-YUSF106171)	HF	63,000	10/8/1992	9/8/1993	\$530,000.00	This entry does not match up at all with the 9/93 Prudential Securities statement, however, the total number of HOUSE OF FABRICS INC shares sold by United in 1993 is 63,000, the same number on Wally Hamed's 1993 taxes
Prudential Securities 09/30/93 Statement, Acct. No. 05Q-958838-55 - United Corp. (HAMD566365- HAMD566368)	HOUSE OF FABRICS INC	8,000	N/A	9/15/1993	\$67,317.73	
	HOUSE OF FABRICS INC	10,000	N/A	9/15/1993	\$84,147.16	
	HOUSE OF FABRICS INC	10,000	N/A	9/15/1993	\$84,147.16	
	<b>Total House of Fabrics Inc:</b>	<b>28,000</b>			<b>\$235,612.05</b>	

Source	Stock Name	No. of Shares Sold	Purchase Date	Sale Date	Amount	Notes
Wally Hamed's 1993 Taxes (YUSF106160-YUSF106171)	SYN	88,000	11/13/1992	7/28/1993	\$1,593,327.00	7/93 Prudential Securities statement shows 38,000 shares of <b>Syntex Corporation</b> sold and 50,000 shares remaining in the portfolio for a total of 88,000--the same amount Wally Hamed's 93 taxes show as sold
Prudential Securities 07/31/93 Statement, Acct. No. 05Q-958838-55 - United Corp. (HAMD566359- HAMD566361)	Syntex Corporation	15,000	N/A	7/2/1993	\$276,517.18	
" "	Syntex Corporation	23,000	N/A	7/28/1993	\$401,307.73	
	<b>Total Syntex Corporation:</b>	<b>38,000</b>			<b>\$677,824.91</b>	

Amounts Still In Dispute Regarding Wally Hamed's 1993 Stock Proceeds

Source	Stock Name	No. of Shares Sold	Purchase Date	Sale Date	Amount	Notes
Wally Hamed's 1993 Taxes (YUSF106160- YUSF106171)	INEL	70,000	10/19/1992	1/28/1993	\$1,015,000.00	This entry does not match up at all with the Prudential Securities statement (HAMD566341-HAMD566343)--no INEL sold in 1/93. Also, no INEL sold on Wally Hamed's 1/93 (HAMD209797-HAMD209799)Merrill Lynch statement, nor any INEL purchased on Wally Hamed's 10/92 Merrill Lynch statement (HAMD209806-HAMD209809). It is unknown whether Wally Hamed had other brokerage accounts during this time.
Wally Hamed's 1993 Taxes (YUSF106160- YUSF106171)	SNRS	10,000	12/9/1992	1/13/1993	\$67,500.00	This entry does not match up at all with the Prudential Securities statement (HAMD566341-HAMD566343)--no SNRS sold in 1/93. However, on 12/22/92 10,000 shares of SUNRISE TECH INC appeared to be purchased, but the buy was cancelled on 3/4/93, according to the Prudential Securities statement for United). It is unclear whether SUNRISE TECH INC is SNRS. Also, Wally Hamed's 1/93 Merrill Lynch statement does not show a sale of SNRS.
Wally Hamed's 1993 Taxes	MKC	10,000	11/11/1992	9/2/1993	\$195,000.00	This entry does not match up at all with the Prudential Securities statement (HAMD566365-HAMD566368)--no MKC sold in 9/93. Wally Hamed's 9/93 Merrill Lynch statement is missing.

**Amount of Stock Sales Proceeds Properly Attributed to Wally Hamed's 1993 Taxes**

Source	Stock Name	No. of Shares Sold	Purchase Date	Sale Date	Amount	Notes
Wally Hamed's 1993 Taxes (YUSF106160-YUSF106171)	MERRY GO RND	2,050	11/7/1991	2/18/1993	\$26,035.00	This item was properly listed on Wally Hamed's taxes. Although the proceeds are slightly different, the <b><u>number of shares is identical</u></b> to Wally Hamed's 2/93 Merrill Lynch statement
Wally Hamed's Merrill Lynch 2/93 statement, acct. no. 140-16184 (HAMD209793- HAMD209796)	MERRY GO ROUND ENT RPRS	100	N/A	2/11/1993	\$1,432.27	
" "	" "	200	N/A	2/12/1993	\$2,884.93	
" "	" "	1,750	N/A	2/25/1993	\$21,717.53	
	<b>Total Merry Go Round ENT RPRS:</b>	2,050			\$26,034.73	

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, MUFEEED HAMED,  
HISHAM HAMED,**  
and **PLESSEN ENTERPRISES, INC.**,

*Counterclaim Defendants.*

---

**MOHAMMAD HAMED**,

*Plaintiff,*

vs.

**UNITED CORPORATION**,

*Defendant.*

---

**MOHAMMAD HAMED**,

*Plaintiff,*

vs.

**FATHI YUSUF**,

*Defendant.*

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

ACTION FOR DAMAGES  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF

JURY TRIAL DEMANDED

**Consolidated With**

**CIVIL NO. SX-14-CY-287**

ACTION FOR DAMAGES  
AND DECLARATORY  
RELIEF

**CIVIL NO. SX-14-CY-278**

ACTION FOR DEBT  
AND CONVERSION

**JURY TRIAL DEMANDED**

**DECLARATION OF GORDON C. RHEA, ESQ.**

I, GORDON C. RHEA, declare under penalty of perjury pursuant to 28 U.S.C. Section 1746, as follows:

1. I have personal knowledge of the facts set forth herein.
2. I am an attorney licensed to practice law in the U.S. Virgin Islands.

**HAMD642159**



3. I was one of the defense lawyers in the criminal action filed by the United States of America in the District Court of the Virgin Islands (St. Thomas Division), Docket No, 1:05-cr-00015, against the following defendants:

FATHI YUSUF MOHAMAD YUSUF, aka Fathi Yusuf  
WALEED MOHAMMAD HAMED, aka Wally Hamed  
WAHEED MOHAMMAD HAMED, aka Willie Hamed  
MAHER FATHI YUSUF, aka Mike Yusuf  
NEJEH FATHI YUSUF,  
ISAM YUSUF, and  
UNITED CORPORATION

4. All of the defendants in that criminal case, except for Isam Yousef who was never apprehended, were represented jointly by multiple counsel, including myself, under a Joint Defense Agreement.

5. Pursuant to the Joint Defense Agreement, all defense counsel worked together on behalf of all of the represented defendants in a joint effort to defend the case

6. A plea agreement was reached in December of 2010 (See Exhibit 1), with a modification made thereafter in early 2011 (See Exhibit 2). As noted therein, the only defendant who pled guilty was United Corporation, as the charges were dismissed against all of the other represented defendants.

7. The Joint Defense Agreement then continued during the sentencing phase of the case (to primarily address the tax issues related to the Plea) until September 19, 2012, when the Joint Defense Agreement was terminated.

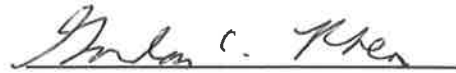
8. Under the Joint Defense Agreement;

- a. All legal and accounting work was done jointly on behalf of all represented defendants in an effort to defend all of them at the same time.

- b. Bills for attorneys' fees and expenses reflected the work of counsel done for all defendants without allocating specific items to individual defendants.
- c. Simply because a bill was directed to a specific defendant did not reflect their individual personal obligation, as the bills were the joint obligation of all defendants while the Joint Defense Agreement was in place.
- d. All defendants were all aware of this fact, as applications for payment of the bills submitted under Joint Defense Agreement had to be made to the United States Attorney, who would then have to authorize funds to pay these bills from the defendants' bank accounts which had been frozen by court order.
- e. Until the Joint Defense Agreement was terminated all legal bills were paid from a United Plaza Extra account,

I declare under penalty of perjury that the foregoing is true and correct.

**Dated:** March 1, 2017

  
**Gordon C. Rhea, Esq.**

IN THE DISTRICT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

UNITED STATES OF AMERICA, and  
GOVERNMENT OF THE VIRGIN ISLANDS,  
Plaintiffs,

vs.

FATHI YUSUF MOHAMAD YUSUF,  
aka Fathi Yusuf  
WALEED MOHAMMAD HAMED,  
aka Wally Hamed  
WAHEED MOHOMMAD HAMED,  
aka Willie Hamed  
MAHER FATHI YUSUF,  
aka Mike Yusuf  
NEJEH FATHI YUSUF  
ISAM YUSUF, and  
UNITED CORPORATION,  
dba Plaza Extra,  
Defendants.

CRIMINAL NO. 2005-15F/B

RECEIVED  
2010 FEB 26 PM 4:00  
DISTRICT OF THE VIRGIN ISLANDS  
ST. THOMAS, V.I.

PLEA AGREEMENT

I.

INTRODUCTION

This agreement is entered into by and between defendant United Corporation, d/b/a Plaza Extra (hereinafter "United"), Thomas Alkon, Esquire, and Warren B. Cole, Esquire, Attorneys for United; Fathi Yusuf Mohamad Yusuf, Waleed Mohammad Hamed, Waheed Mohammad Hamed, Maher Fathi Yusuf, NejeH Fathi Yusuf, and the Department of Justice, Tax Division, and the United States Attorney for the District of the Virgin Islands (collectively referred to as the "Government").

The parties agree to the following terms:



5228044.1



A. United will plead guilty to Count Sixty of the Third Superseding Indictment, which charges willfully making and subscribing a 2001 U.S. Corporation Income Tax Return (Form 1120S), in violation of Title 33, Virgin Islands Code, Section 1525(2).

B. At the time that United enters its plea to the above-referenced count, the Government will dismiss all counts of the Indictment with prejudice against FATHI YUSUF MOHAMAD YUSUF, aka Fathi Yusuf, WALEED MOHAMMAD HAMED, aka Wally Hamed, WAHEED MOHAMMED HAMED, aka Willie Hamed, MAHER FATHI YUSUF, aka Mike Yusuf, ISAM MOHAMAD YOUSUF, aka Sam Yousuf, and NEJEH FATHI YUSUF (all collectively referred to as "individual defendants"), including the temporary restraining order and forfeiture allegations. The Government agrees not to file any additional criminal charges against United or any of the individual defendants for conduct arising out of the facts alleged in the Indictment. In accordance with paragraph VI. below, the Department of Justice of the Virgin Islands also agrees that it will file no criminal charges against United or any of the individual defendants for any conduct arising out of the facts alleged in the Indictment.

The Government agrees to dismiss with prejudice all remaining counts of the Indictment against United, including the temporary restraining order and forfeiture allegations, at the time of sentencing.

II.

NATURE OF THE OFFENSE

United agrees to plead guilty to Count Sixty of the Indictment, which charges a violation of Title 33, Virgin Islands Code, Section 1525(2). United acknowledges that the offense to which it is pleading has the following elements:

A. Elements

1. United aided, assisted, procured, counseled, advised, or caused the preparation and presentation of a return;
  2. The return was fraudulent or false as to a material matter;
- and
3. United acted willfully.

B. Elements Understood and Admitted.

United, through a representative empowered to accept this plea by virtue of a duly enacted resolution of its Board of Directors, has fully discussed the facts of this case with defense counsel. United committed each of the elements of the crime charged in Count Sixty of the Indictment and admits that there is a factual basis for a plea of guilty to the charge.

C. Factual Basis.

The parties agree that the following facts are true and undisputed:

On or about September 18, 2002, United willfully aided, assisted, procured, counseled, advised, or caused the preparation and presentation of a materially false corporate income tax return on Form 1120S for the year 2001 and filed such return with the Virgin Islands Bureau of Internal Revenue (VIBIR).

Specifically, United reported gross receipts or sales on line 1c as \$69,579,412, knowing that the true amount was approximately \$79,305,980.

III.

PENALTIES

A. United acknowledges that the maximum penalties for violation of Count Sixty are the following:

1. A maximum fine of \$5,000;
2. The Government may seek costs of prosecution, including but not limited to 1) costs incurred to produce discovery in the investigation and prosecution of this matter; 2) costs incurred by the United States Marshal's Service to monitor the operations of Defendant United pursuant to the Temporary Restraining Order, currently estimated at approximately \$1.5 million; and 3) costs related to witness appearance and travel fees in the investigation and prosecution of this matter. United reserves the right to object to the imposition of the aforementioned costs and to contest the amounts claimed by the Government.
3. Restitution in an amount that represents any and all unpaid gross receipts taxes, corporate income taxes, and individual income taxes owing to the VIBIR for the Indictment years 1996, 1997, 1998, 1999, 2000, and 2001. Said restitution is to be determined by the Court in accordance with the figures and ranges set forth in Exhibit 1, accepting as proven those figures stipulated by the parties. For those numbers still in dispute, the Court will determine the appropriate amount within the ranges proposed by the parties in Exhibit 1, following briefing, evidentiary presentation, and argument. In making its

determination, the Court may consider all relevant and material evidence presented by the parties without regard to the Federal Rules of Evidence, so long as such evidence is disclosed in advance to the opposing party. Prior to submitting restitution amounts for the Court's consideration in preparation for sentencing, the parties agree to negotiate in good-faith to arrive at a mutually acceptable amount.

4. A term of probation of one year, with conditions as set forth in paragraph VIII.E. United understands that failure to comply with any of the conditions of probation may result in the imposition of further penalties.

B. In addition to the statutory penalties for violation of Title 33, Virgin Islands Code, Section 1525(2), United shall pay a substantial monetary penalty within the range set forth in paragraph VIII.B., as determined by the Court following briefing and argument by the parties.

#### IV.

#### WAIVER OF TRIAL RIGHTS

United understands that this guilty plea waives all of the following rights:

- A. To plead not guilty and to require the Government to prove the elements of the crimes beyond a reasonable doubt;
- B. To a speedy and public trial by jury;
- C. To assistance of counsel at all stages of trial;
- D. To confront and cross-examine witnesses against United; and
- E. To present evidence and to have witnesses testify on United's behalf.

V.

**UNITED'S REPRESENTATION THAT GUILTY PLEA IS KNOWING  
AND VOLUNTARY**

United represents that:

- A. United has had a full opportunity to discuss all the facts and circumstances of this case with its counsel and has a clear understanding of the charges and the consequences of pleading guilty;
- B. No one has made any promises or offered any rewards in return for United's guilty plea, other than those contained in this Plea Agreement, in Exhibit 2, which contains the letter of understanding dated February 12, 2010 (this plea agreement controls in the event of any conflicts), or otherwise disclosed to the Court;
- C. No one has threatened United to induce this guilty plea; and
- D. United is pleading guilty because in truth and in fact United is guilty and for no other reason.

VI.

**AGREEMENT LIMITED TO UNITED STATES ATTORNEY'S OFFICE FOR THE  
DISTRICT OF THE VIRGIN ISLANDS AND TAX DIVISION**

This Plea Agreement is between United Corporation, the Individual Defendants, and the Government. This Agreement is not intended to bind any other federal, state, or local prosecuting, administrative, or regulatory authorities except to the extent specifically expressed herein. The Government will bring this Plea Agreement to the attention of other authorities if requested by United.

VII.

PLEA AGREEMENT SUBJECT TO COURT APPROVAL

Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the parties acknowledge and agree that United should be ordered to pay the fine, restitution, and monetary penalties contained within this Plea Agreement and should be sentenced to a term of probation of one year.

If the Court does not adopt the agreement of the parties pursuant to Rule 11(c)(1)(C), both United and the Government reserve the right to withdraw from this Plea Agreement.

VIII.

PARTIES' SENTENCING RECOMMENDATIONS

A. Fine. The parties agree that the maximum statutory fine of \$5,000 should be imposed.

B. Monetary Penalty: The parties propose that the monetary penalty to be imposed pursuant to paragraph III.B. above be imposed in an amount between \$250,000 to \$5,715,748.

C. Costs of Prosecution: The Government proposes that costs of prosecution be imposed as discussed above in paragraph III.A.2. United contests said number and the categories of costs to be awarded.

D. Restitution. The parties propose the restitution amounts and ranges as set forth in Exhibit 1, as referenced in paragraph III.A.3. above.

E. Terms of Probation

1. United agrees to a term of probation of one year and agrees to be monitored by an independent third party certified public accounting firm to

assure its compliance with the tax laws of the VIBIR. United agrees to cooperate with the independent third party in carrying out such party's obligations under this agreement. The selection of a certified public accounting firm as the independent third party will be expressly approved by the Government prior to the beginning of the term of probation. If the parties cannot reach agreement on a third party, the independent third party will be selected by the Court.

2. The independent third party shall make quarterly reports to the Government, the Court, and United of United's financial condition, results of business operations, tax filings, tax payments, and accounting for the disposition of all funds received.

3. United shall submit to:

(a) a reasonable number of regular or unannounced examinations of its books and records at appropriate business premises by the independent third party; and

(b) a periodic review of financial statements and tax returns of United.

4. United shall be required to notify the court or independent third party immediately upon learning of (a) any material adverse change in its business or financial condition or prospects, or (b) the commencement of any bankruptcy proceeding, major civil litigation, criminal prosecution, or administrative proceeding against United, or any investigation or formal inquiry by governmental authorities regarding United's financial operations.

5. United shall make periodic payments, as specified by the Court, in the following priority: (a) restitution; (b) fine; and (c) substantial monetary penalty. After sentencing, the Government agrees to release all liens, pendencies, restraining orders, liens, or other encumbrances or property except to the extent necessary to assure valid security for the payments of all amounts referenced above. United shall develop and submit to the Court an effective compliance and ethics program consistent with §8B2.1 (Effective Compliance and Ethics Program) of the United States Sentencing Guidelines. United shall include in its submission a schedule for implementation of the compliance and ethics program.

6. Upon approval by the Court of the ethics program referred to above, United shall notify its owners, shareholders, directors, officers, and employees of its criminal behavior and its programs referred to above. Such notice shall be in a form prescribed by the Court.

7. United shall make periodic reports to the Government and to the Court at intervals and in a form specified by the Court, regarding the organization's progress in implementing the ethics program referred to above. Among other things, such reports shall disclose any criminal prosecution, civil litigation, or administrative proceeding commenced against United, or any investigation or formal inquiry by governmental authorities concerning United's financial operations of which United learned since its last report.



IX.

**UNITED WAIVES APPEAL AND COLLATERAL ATTACK**

In exchange for the Government's concessions in this Plea Agreement, United waives, to the full extent of the law, any right to appeal or collaterally attack the conviction and sentence, including any restitution order, except in the following circumstances: (i) the sentence exceeded the maximum statutory penalty; or (ii) the sentence violated the Eighth Amendment to the United States Constitution.

X.

**FURTHER CRIMES OR BREACH OF THE AGREEMENT WILL PERMIT THE GOVERNMENT TO RECOMMEND A HIGHER SENTENCE OR TO SET ASIDE THE PLEA**

This Plea Agreement is based on the understanding that United will commit no additional criminal conduct before sentencing. If United engages in additional criminal conduct between the time of execution of this agreement and the time of sentencing, or breaches any of the terms of any agreement with the Government, the Government will not be bound by the recommendations in this Plea Agreement and may recommend any lawful sentence.

XI.

**COOPERATION WITH INTERNAL REVENUE SERVICE AND VIRGIN ISLANDS BUREAU OF INTERNAL REVENUE**

During the pendency of this matter, United, its shareholders, the individual defendants in this case, and certain related entities and individuals identified in various pleadings or motions in this case, upon the specific advice of their counsel in this matter, did not file tax returns and certain other reporting

documents to the United States or the United States Virgin Islands (USVI) on Fifth Amendment grounds. During the pendency of this matter, those same individuals and entities endeavored to work cooperatively with the U.S. Marshals Service and the USVI governments to pay over as deposits their best estimate of taxes owed on those returns.

Prior to sentencing, United agrees to cooperate with the Government and the VIBIR in filing complete and accurate corporate income tax returns and gross receipts returns for years 2002, 2003, 2004, 2005, 2006, 2007, and 2008 and in paying in full the amounts due thereupon. United agrees to comply with all current tax reporting and payment obligations between the execution of this agreement and sentencing. In addition, prior to the sentencing hearing in this matter, United's shareholders (FY 32.5%, FY 32.5%, SY 7%, ZY 7%, YY 7%, MY 7%, NY 7%), and the individual defendants shall file the outstanding returns and reporting documents and shall make full payments of the amounts due thereupon. United acknowledges that a special condition of probation will require that all corporate returns be filed, and all amounts due and owing under this agreement and all taxes due and owing for tax years 2002 through 2008 must be paid prior to the termination of the period of probation.

The Government agrees that no foreign bank account-related charges or discretionary penalties shall be applied with respect to United or any of the individual defendants so long as such reporting and regulatory compliance is made for each of the years 1996 through 2008 prior to sentencing.

XII.

ENTIRE AGREEMENT

The Plea Agreement and Exhibit 2 embody the entire agreement between the parties.

Upon the acceptance of the plea of guilty to Count Sixty by United in accordance with this agreement, the Government agrees to promptly move the Court for an Order dismissing the restraining orders against the individual defendants, except to the extent necessary to assure valid security for the payments of all amounts referenced in paragraph VIII., and shall move for entry of an order removing of record all notices of lis pendens or other encumbrances filed in connection with this case against all properties owned in whole or in part by any persons other than United. The parties agree to meet and confer to determine a schedule to remove pending lis pendens, liens, and other restrictions.

XIII.

MODIFICATION OF AGREEMENT MUST BE IN WRITING

No modification of the Plea Agreement shall be effective unless in writing signed by the Government, United, the individual defendants, and United's shareholders.

XIV.

UNITED AND COUNSEL FULLY UNDERSTAND AGREEMENT

By signing this Plea Agreement, United's representative certifies that he or she has been given lawful authority to enter into this Plea Agreement. United further certifies that its counsel has discussed the terms of this Plea Agreement


with appropriate officer and directors of United and that United fully understands its meanings and effect.

The Government agrees to the terms set forth in this Plea Agreement.

RONALD SHARPE  
UNITED STATES ATTORNEY

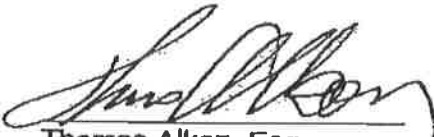
JOHN A. DICICCO  
ACTING ASSISTANT ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE, TAX DIVISION

Dated: 2/26/10

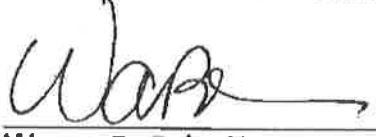
  
\_\_\_\_\_  
Mark F. Daly  
Lori A. Hendrickson  
Kevin C. Lombardi  
Trial Attorneys

The defendant United Corporation agrees to the terms set forth in this Plea Agreement.

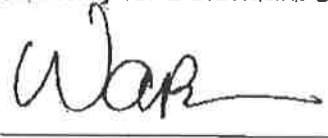
Dated: 2, 26/10

  
\_\_\_\_\_  
Thomas Alkon, Esq.  
Attorney for Defendant United Corporation

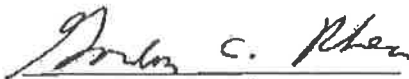
Dated: 2/26/10


  
\_\_\_\_\_  
Warren B. Cole, Esq.  
Attorney for Defendant United Corporation

Dated: 2/26/10

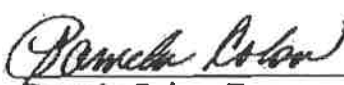
  
\_\_\_\_\_  
Warren B. Cole, Esq.  
Attorney for Defendant's unindicted shareholders


Dated: 2-26-10   
Maher Fathi Yusuf  
President, Defendant United Corporation

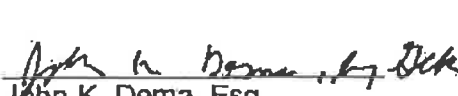
Dated: 2/26/10   
Gordon C. Rhea, Esq.  
Attorney for Defendant Waleed Mohammed Hamed

Dated: 2/26/10   
Randall P. Andreozzi, Esq.  
Attorney for Defendant Waleed Mohammed Hamed

Dated: 2/26/10   
Derek M. Hodge, Esq.  
Attorney for Defendant Nejeh Fathi Yusuf

Dated: 2/26/10   
Pamela Colon, Esq.  
Attorney for Defendant Waheed Mohammed Hamed

Dated: 2/26/10   
Henry C. Smock, Esq.  
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

Dated: 2/26/10   
John K. Dema, Esq.  
Attorney for Defendant Maher Fathi Yusuf

**EXHIBIT I - RESTITUTION NUMBERS FOR TAX LOSS**

<b>Description</b>	<b>Government</b>	<b>Defendant</b>
Gross Receipts Tax 1996	\$324,149.55	\$0.00
Gross Receipts Tax 1997	\$234,506.94	\$0.00
Gross Receipts Tax 1998	\$619,496.89	\$272,251.00
Gross Receipts Tax 1999	\$558,830.86	\$603,633.00
Gross Receipts Tax 2000	\$642,057.28	\$642,057.00
Gross Receipts Tax 2001	\$478,832.33	\$386,081.00
<b>TOTAL GROSS RECEIPTS TAXES</b>	<b>\$2,857,873.85</b>	<b>\$1,904,022.00</b>
Corporate Income Tax - 1996	\$2,214,307.41	\$0.00
Corporate Income Tax - 1997	\$2,360,868.66	\$427,011.00
Corporate Income Tax - 1998	\$3,993,535.34	\$488,323.00
<b>TOTAL CORPORATE INCOME TAX</b>	<b>\$8,568,711.41</b>	<b>\$915,334.00</b>
Individual Income Tax - 1999 - FY 32.5%	\$1,046,359.70	\$0.00
Individual Income Tax - 1999 - FY 32.5%	\$1,046,359.70	\$0.00
Individual Income Tax - 1999 - SY 7%	\$225,369.78	\$0.00
Individual Income Tax - 1999 - ZY 7%	\$225,369.78	\$0.00
Individual Income Tax - 1999 - YY 7%	\$225,369.78	\$0.00
Individual Income Tax - 1999 - MY 7%	\$225,369.78	\$0.00
Individual Income Tax - 1999 - NY 7%	\$225,369.78	\$0.00
<b>TOTAL INDIVIDUAL INCOME TAX - 1999</b>	<b>\$3,219,568.31</b>	<b>\$0.00</b>
Individual Income Tax - 2000 - FY 32.5%	\$1,458,473.19	\$0.00
Individual Income Tax - 2000 - FY 32.5%	\$1,458,473.19	\$0.00
Individual Income Tax - 2000 - SY 7%	\$314,132.69	\$0.00
Individual Income Tax - 2000 - ZY 7%	\$314,132.69	\$0.00
Individual Income Tax - 2000 - YY 7%	\$314,132.69	\$0.00
Individual Income Tax - 2000 - MY 7%	\$314,132.69	\$0.00
Individual Income Tax - 2000 - NY 7%	\$314,132.69	\$0.00
<b>TOTAL INDIVIDUAL INCOME TAX - 2000</b>	<b>\$4,487,609.81</b>	<b>\$0.00</b>
Individual Income Tax - 2001 - FY 32.5%	\$1,545,993.69	\$0.00
Individual Income Tax - 2001 - FY 32.5%	\$1,545,993.69	\$0.00

Individual Income Tax - 2001 - SY 7%	\$332,983.26	\$0.00
Individual Income Tax - 2001 - ZY 7%	\$332,983.26	\$0.00
Individual Income Tax - 2001 - YY 7%	\$332,983.26	\$0.00
Individual Income Tax - 2001 - MY 7%	\$332,983.26	\$0.00
Individual Income Tax - 2001 - NY 7%	\$332,983.26	\$0.00
<b>TOTAL INDIVIDUAL INCOME TAX - 2001</b>	<b>\$4,756,903.67</b>	<b>\$0.00</b>
<b>TOTAL ALL TAXES</b>	<b>\$23,890,667.04</b>	<b>\$2,819,356.00</b>

Exh: 657 2

February 12, 2010

Lori A. Hendrickson, Esq.  
US DOJ/Tax Division/N.Criminal Section  
601 D. Street NW, Room 7814  
Washington, DC 20004-2904

**Re: United States v. Fathi Yusuf, Crim. No. 05-0015**

Dear Ms. Hendrickson:

We write to memorialize the process and parameters that will culminate in a formal plea agreement in this case. The parties have agreed to the following terms:

- Defendant United Corporation (d.b.a. Plaza Extra) agrees to plead guilty to Count Sixty, filing a false 2001 Form 1120S, in violation of Title 33, Virgin Islands Code, Section 1525(2);
- The government agrees to dismiss the pending charges against the individual defendants immediately after defendant United Corporation's guilty plea has been entered in court by an authorized representative of defendant United Corporation, according to the terms of a signed plea agreement. The Government agrees not to prosecute United Corporation or any other individual or entity for any other crimes arising out of the conduct alleged in the Third Superseding Indictment;
- The government agrees to dismiss the remaining pending charges against United at the sentencing hearing;
- The parties agree to meet with each other and with representatives of the Virgin Islands Bureau of Internal Revenue (VIBIR) to try to reach agreement for restitution numbers for unpaid gross receipts taxes, corporate income taxes, and individual income taxes for the Indictment years 1996, 1997, 1998, 1999, 2000, and 2001. The numbers for which the parties are able to agree will be set forth in the plea agreement;
- If the parties are unable to reach agreement on any of the tax loss numbers for the Indictment years, they will set forth their own tax loss numbers for each year and for each particular tax, in a format identical to the attached chart. The parties agree that the final determination of the restitution amount for the unpaid gross receipts taxes, corporate income taxes, and individual income taxes for the Indictment years 1996, 1997, 1998, 1999, 2000, and 2001, will be made by Judge Finch after the



Letter of Agreement  
February 12, 2010  
Page 2 of 5

parties submit sentencing memoranda and present testimonial and documentary evidence at a hearing. The parties agree that Judge Finch will determine a liability based on the range of numbers asserted by the parties in the plea agreement.

- The determination of Judge Finch of the restitution by United Corporation shall be conclusive of all taxes due and owing to the Government of the Virgin Islands for years 1996, 1997, 1998, 1999, 2000, and 2001 with respect to all taxes of the shareholders of United Corporation, both indicted and non-indicted, and employees of United, including Waheed Hamed and Waleed Hamed, due on or for or on account of income earned by United Corporation during said years and upon payment all such tax liabilities shall be deemed satisfied in full.
- Defendant United Corporation agrees to a term of probation of one year, and agrees to be monitored by an independent third party certified public accounting firm during the term of probation to assure its compliance with the tax laws of the VIBIR. The selection of the independent third party will be expressly approved by the government prior to the beginning of the term of probation. If the parties cannot reach agreement on a third party, the independent third party will be selected by the Court;
- The government agrees not to prosecute United Corporation or individual defendants, or assert any civil or criminal accuracy related or reporting penalties, in years 2002, 2003, 2004, 2005, 2006, 2007, and 2008, provided that the individual defendants tender documentary proof that they have filed tax returns and paid tax due as set forth on those returns and as reviewed and accepted by the VIBIR;
- United, its shareholders, and the individual defendants referenced in the Indictment agree to cooperate with VIBIR to file full and complete tax returns for all post indictment years through present and to make full payment on any amounts due thereon. The Government agrees that no interest, penalties, or time and interest sensitive penalties should be imposed on the post-indictment returns so long as said returns are filed in accordance with this agreement. To the extent tax deposits already submitted exceed the amount owed on the post indictment returns as filed, such deposits should be reallocated to other tax periods or refunded to the particular tax payer. The VIBIR reserves the right to review the returns to be filed hereunder to determine whether they are accurate as filed.
- No foreign bank account-related charges or discretionary penalties shall be applied with respect to any of the individuals and entities so long as such reporting and regulatory compliance is made for the subject post-indictment years. (United States Department of Justice, and not VIBIR, has authorization over this provision).
- The parties agree that United will pay a \$5,000 fine and that the Government may seek a substantial monetary penalty. The parties will negotiate in good faith to determine the character of this penalty and will set forth a defined range from

Letter of Agreement  
February 12, 2010  
Page 3 of 5

which Judge Finch will make a final ruling. The parties agree that the Government may also seek reimbursement from United for the actual costs of prosecution, which will be set forth in the plea agreement. United reserves the right to contest the above mentioned penalties and prosecution costs.

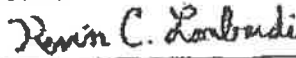
- Defendant United Corporation, the individual defendants, and the shareholders of United Corporation, all agree to file original individual income tax returns (or correcting amended returns, if appropriate) for the years 2002, 2003, 2004, 2005, 2006, 2007, and 2008, and provide any documentation or information requested by the VIBIR in order for the VIBIR to make their own independent review and assessment of the accuracy of such returns. Defendant United Corporation, the individual defendants, and the shareholders of United Corporation all agree to take these actions prior to the sentencing hearing;

The United States government and the United States Virgin Islands government agree to the terms set forth in this Letter of Agreement.

RONALD SHARPE  
UNITED STATES ATTORNEY


JOHN A. DICICCO  
ACTING ASSISTANT ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE  
TAX DIVISION

Dated: 2/12/2010


  
Mark F. Daly

Loti A. Hendrickson  
Kevin C. Lombardi  
Trial Attorneys

Dated: 2/15/10

  
Claudette Watson Anderson  
Director  
Virgin Islands Bureau of Internal Revenue

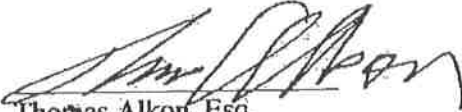
Dated: 2/18/10

  
Denise George Conroy  
Assistant Attorney General  
Virgin Islands Department of Justice  
Office of the Attorney General

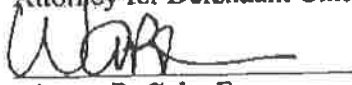
The defendant United Corporation agrees to the terms set forth in this Letter of Agreement.

Letter of Agreement  
February 12, 2010  
Page 4 of 5

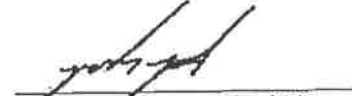
Dated: 2/26/10

  
Thomas Alkon, Esq.  
Attorney for Defendant United Corporation

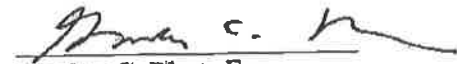
Dated: 2/26/10

  
Warren B. Cole, Esq.  
Attorney for Defendant United Corporation

Dated: 2/26/10

  
MAHER FATHI YUSUF  
President, Defendant United Corporation

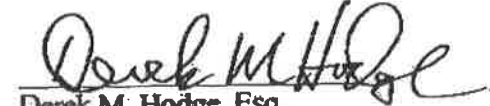
Dated: 2/26/10

  
Gordon C. Rhea, Esq.  
Attorney for Defendant Waleed Mohammed Hamed

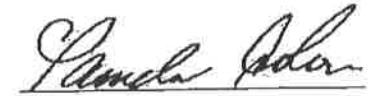
Dated: 2/26/10

  
Randall P. Andreozzi, Esq.  
Attorney for Defendant Waleed Mohammed Hamed

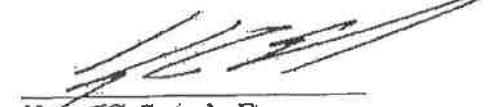
Dated: 2/26/10

  
Derek M. Hodge, Esq.  
Attorney for Defendant Nejeih Fathi Yusuf

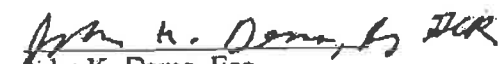
Dated: 2/26/10

  
Pamela Colon, Esq.  
Attorney for Defendant Waheed Mohammed Hamed

Dated: 2/26/10

  
Henry C. Smock, Esq.  
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

Dated: 2/26/10

  
John K. Dema, Esq.  
Attorney for Defendant Maher Fathi Yusuf

IN THE DISTRICT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

UNITED STATES OF AMERICA, and  
GOVERNMENT OF THE VIRGIN ISLANDS,  
Plaintiffs,

vs.

FATHI YUSUF MOHAMAD YUSUF,  
aka Fathi Yusuf  
WALEED MOHAMMAD HAMED,  
aka Wally Hamed  
WAHEED MOHOMMAD HAMED,  
aka Willie Hamed  
MAHER FATHI YUSUF,  
aka Mike Yusuf  
NEJEH FATHI YUSUF  
ISAM YUSUF, and  
UNITED CORPORATION,  
dba Plaza Extra,  
Defendants.

CRIMINAL NO. 2005-15F/B

PLEA AGREEMENT- ADDENDUM

The parties agree to the following:

- 1) United will pay a \$5,000 fine, as set forth in Paragraphs III.A.1 and VIII.A;
- 2) United will pay \$10 million to the VIBIR for restitution, as set forth in Paragraphs III.A.3 and VIII.D;
- 3) United will pay \$1 million as a substantial monetary penalty, as set forth in Paragraphs III.A.2, III.B, VIII.B, and VIII.C.

In consideration of the settlement herein, United, the individual defendants, and United's shareholders, and their heirs, executors, administrators, or assigns do hereby stipulate and agree to pay the agreed upon



sums, and to waive and release any and all claims, demands, rights, and causes of action of whatsoever kind and nature, whether sounding in tort, contract, or any other theory of legal liability, including any claims for fees, interest, costs, and expenses, arising from, and by reason of, any and all known and unknown, foreseen and unforeseen, bodily and personal injuries, death, or damage to property, and the consequences thereof, which United, the individual defendants, and United's shareholders, or their heirs, executors, administrators, or assigns may have or hereafter acquire against the United States, its agents, servants, and employees on account of the same subject matter that gave rise to the above-captioned action. United, the individual defendants, and United's shareholders, and their heirs, executors, administrators, and assigns do hereby further agree to reimburse, indemnify, and hold harmless the United States and its agents, servants, and employees from and against any and all such claims, causes of action, liens, rights, or subrogated or contribution interests incident to, or resulting or arising from, the acts or omissions that gave rise to the above-captioned action. Provided, however, that the duties to reimburse, indemnify and hold harmless the United States and its agents as set forth in the preceding sentence shall be strictly limited to claims made by United, the individual defendants, United's shareholders, or their executors, administrators, assigns, or their family members.

UNITED AND COUNSEL FULLY UNDERSTAND PLEA AGREEMENT-  
ADDENDUM

By signing this Plea Agreement-Addendum, United's representative certifies that he has been given lawful authority to enter into this Plea Agreement-


Addendum. United further certifies that its counsel has discussed the terms of this Plea Agreement- Addendum with appropriate officers, directors, and shareholders of United and that United fully understands its meanings and effect.

The Government agrees to the terms set forth in this Plea Agreement- Addendum.

RONALD SHARPE  
UNITED STATES ATTORNEY


JOHN A. DICICCO  
ACTING ASSISTANT ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE, TAX DIVISION

Dated: 2/2/2011


  
Mark P. Daly  
Lori A. Hendrickson  
Kevin C. Lombardi  
Trial Attorneys

The defendant United Corporation agrees to the terms set forth in this Plea Agreement-Addendum.

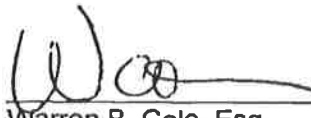
Dated: 1/20/11


  
Thomas Alkon, Esq.  
Attorney for Defendant United Corporation

Dated: 1/20/11

  
Warren B. Cole, Esq.  
Attorney for Defendant United Corporation

Dated: 1/20/11

  
Warren B. Cole, Esq.  
Attorney for Defendant's unindicted shareholders

Dated: \_\_\_\_\_  
  
Maher Fathi Yusuf  
President, Defendant United Corporation

Dated: \_\_\_\_\_  
Gordon C. Rhea, Esq.  
Attorney for Defendant Waleed Mohammed Hamed

Dated: \_\_\_\_\_  
Randall P. Andreozzi, Esq.  
Attorney for Defendant Waleed Mohammed Hamed

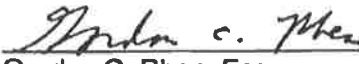
Dated: \_\_\_\_\_  
Derek M. Hodge, Esq.  
Attorney for Defendant Nejeih Fathi Yusuf

Dated: \_\_\_\_\_  
Pamela Colon, Esq.  
Attorney for Defendant Waheed Mohammed Hamed

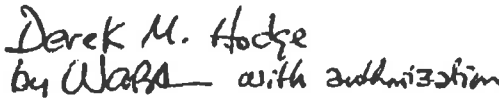
Dated: \_\_\_\_\_  
Henry C. Smock, Esq.  
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

Dated: \_\_\_\_\_  
John K. Dema, Esq.  
Attorney for Defendant Maher Fathi Yusuf

Dated: \_\_\_\_\_  
Maheer Fathi Yusuf  
President, Defendant United Corporation

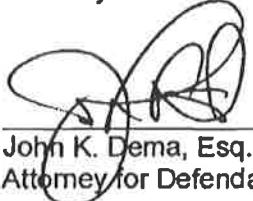
Dated: 1/20/2011   
Gordon C. Rhea, Esq.  
Attorney for Defendant Waleed Mohammed Hamed

Dated: \_\_\_\_\_  
Randall P. Andreozzi, Esq.  
Attorney for Defendant Waleed Mohammed Hamed

Dated: 2/2/11   
Derek M. Hodge, Esq.  
Attorney for Defendant Nejeah Fathi Yusuf

Dated: \_\_\_\_\_  
Pamela Colon, Esq.  
Attorney for Defendant Waheed Mohammed Hamed


Dated: \_\_\_\_\_  
Henry C. Smock, Esq.  
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

Dated: \_\_\_\_\_   
John K. Dema, Esq.  
Attorney for Defendant Maheer Fathi Yusuf



Dated: \_\_\_\_\_  
Maher Fathi Yusuf  
President, Defendant United Corporation

Dated: \_\_\_\_\_  
Gordon C. Rhea, Esq.  
Attorney for Defendant Waleed Mohammed Hamed

Dated: 1/24/11   
Randall P. Andreozzi, Esq.  
Attorney for Defendant Waleed Mohammed Hamed

Dated: \_\_\_\_\_  
Derek M. Hodge, Esq.  
Attorney for Defendant Nejeih Fathi Yusuf

Dated: \_\_\_\_\_  
Pamela Colon, Esq.  
Attorney for Defendant Waheed Mohammed Hamed

Dated: \_\_\_\_\_  
Henry C. Smock, Esq.  
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

Dated: \_\_\_\_\_  
John K. Dema, Esq.  
Attorney for Defendant Maher Fathi Yusuf

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

\_\_\_\_\_  
Maher Fathi Yusuf  
President, Defendant United Corporation

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

\_\_\_\_\_  
Gordon C. Rhea, Esq.  
Attorney for Defendant Waleed Mohammed Hamed

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

\_\_\_\_\_  
Randall P. Andreozzi, Esq.  
Attorney for Defendant Waleed Mohammed Hamed

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

\_\_\_\_\_  
Derek M. Hodge, Esq.  
Attorney for Defendant Nejeih Fathi Yusuf

Dated: 2/1/11

  
\_\_\_\_\_  
Pamela Colon, Esq.  
Attorney for Defendant Waheed Mohammed Hamed

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

\_\_\_\_\_  
Henry C. Smock, Esq.  
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

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

\_\_\_\_\_  
John K. Dema, Esq.  
Attorney for Defendant Maher Fathi Yusuf


Dated: \_\_\_\_\_  
Maher Fathi Yusuf  
President, Defendant United Corporation

Dated: \_\_\_\_\_  
Gordon C. Rhea, Esq.  
Attorney for Defendant Waleed Mohammed Hamed

Dated: \_\_\_\_\_  
Randall P. Andreozzi, Esq.  
Attorney for Defendant Waleed Mohammed Hamed

Dated: \_\_\_\_\_  
Derek M. Hodge, Esq.  
Attorney for Defendant Nejeih Fathi Yusuf

Dated: \_\_\_\_\_  
Pamela Colon, Esq.  
Attorney for Defendant Waheed Mohammed Hamed

Dated: 1-25-11  
  
Henry C. Smock, Esq.  
Attorney for Defendant Fathi Yusuf Mohamad Yusuf

Dated: \_\_\_\_\_  
John K. Dema, Esq.  
Attorney for Defendant Maher Fathi Yusuf

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

MOHAMMED HAMED by His Authorized )  
Agent WALEED HAMED, )

Plaintiff/Counterclaim Defendant, )

vs. )

Case No. SX-12-CV-370

FATHI YUSUF and UNITED CORPORATION, )

Defendants/Counterclaimants, )

vs. )

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

Additional Counterclaim Defendants.)

**THE VIDEOTAPED 30(b)(6) ORAL DEPOSITION OF UNITED CORPORATION through its representative, MAHER "MIKE" YUSUF,** was taken on the 3rd day of April, 2014, at the Law Offices of Adam Hoover, 2006 Eastern Suburb, Christiansted, St. Croix, U.S. Virgin Islands, between the hours of 10:07 a.m. and 2:42 p.m., pursuant to Notice and Federal Rules of Civil Procedure.

Reported by:

Cheryl L. Haase  
Registered Professional Reporter  
Caribbean Scribes, Inc.  
2132 Company Street, Suite 3  
Christiansted, St. Croix U.S.V.I.  
(340) 773-8161

Blumberg No. 5208

EXHIBIT

49-2A

## 30(B) (6) OF UNITED CORP. - MAHER "MIKE" YUSUF -- DIRECT

1           A.    Should I explain -- that would explain the 1.6  
2   that we have here on the letter.

3           Q.    I'll get there, I swear. I just want to -- right  
4   now, I just want to know, I asked you if I could go around  
5   and collect all these receipts, add them up and find out how  
6   much the Hameds took out, and how much the Yusufs. You said  
7   yes.

8                   And I said, So I should be able to do that  
9   from the -- from back till now, and you said, no, there's a  
10   problem. You said some might be in the possession of a  
11   third party.

12          A.    Right.

13          Q.    When I have those from the third party, will I  
14   then be able to get that number?

15          A.    To physically check every receipt by receipt?

16          Q.    Through all the --

17          A.    There's -- there's some receipt was destroyed by  
18   Waleed Hamed, and some receipts were destroyed by me.

19          Q.    Okay. Tell me about that.

20          A.    Sure. In 2000 -- that's, I'm -- to explain to  
21   you, that's where the 1.6, I'm going to explain.

22          Q.    I -- I understand that.

23          A.    Okay.

24          Q.    But right now, just tell me how --

25          A.    Because it comes -- it's going to drive to this.

Cheryl L. Haase  
(340) 773-8161

## 30(B)(6) OF UNITED CORP. - MAHER "MIKE" YUSUF -- DIRECT

1 Q. Okay.

2 A. Okay?

3 Q. That's fine.

4 A. 2001, that's the -- the year that we had the raid.

5 Q. Okay. What -- approximately what date?


6 A. October 23rd of 2001.

7 Q. Okay.

8 A. Okay. Sometime I would say a month and a half to  
9 two months before that, Waleed got a call from Waheed saying  
10 that something is going on. Some kind of agency is coming  
11 to spot check us, look at us. I -- I don't know the details  
12 of that. So among us, at that time, it was me, Mufeed and  
13 Waleed in the Plaza Extra East, I was doing construction at  
14 that time -- or, no, the store in West was open at that  
15 time.

16 So I left my store, and I came to East to --  
17 to discuss what's -- what's going on. Nobody wanted to  
18 speak over the phone. We -- you know? We were trying to  
19 not say anything over the phone, because we didn't know what  
20 was going on. We just heard through the grapevine,  
21 something is happening. We didn't know.

22 So between among us, we decided to destroy  
23 some of the receipts, because they were all in cash. We  
24 pulled out a good bit of receipts from the safes in Plaza  
25 East. Mufeed was present with me. He had a whole, a heap



Cheryl L. Haase  
(340) 773-8161

30(B)(6) OF UNITED CORP. - MAHER "MIKE" YUSUF -- DIRECT

1 of receipts for the Hameds only. It could be from either  
2 one of the Hameds, once it's the Hamed. And receipts from  
3 the Yusuf, which basically was just me, not, you know,  
4 nobody else.

5 Mufeed, I guess you call it, tallied, and,  
6 you know, put a tape on what they withdraw, and I put a  
7 tally, a tape, on what I withdraw. And I gave him my  
8 receipts to double-check my work, he gave me his receipt to  
9 double-check his work.

10 Once everything dropped to the penny, we were  
11 fine, I said, Listen. I'm destroying my receipts. You know  
12 what I owe you guys. I owe you guys 1.3 million, and at  
13 that time, they had pulled in receipts about 2.9 million.  
14 Wally wanted to take a look at it, and as far as I know,  
15 Wally got rid of the receipts. So 1.3 million from  
16 2.9 million, this is where you get the 1.6 million.

17 Q. In Exhibit --

18 A. In Exhibit 146.

19 Q. Okay. So let me just see if I'm clear. The two  
20 of you collected the receipts from everywhere?

21 A. No. You're -- I told you, from Plaza Extra East.

22 Q. Oh, just from Plaza Extra East?

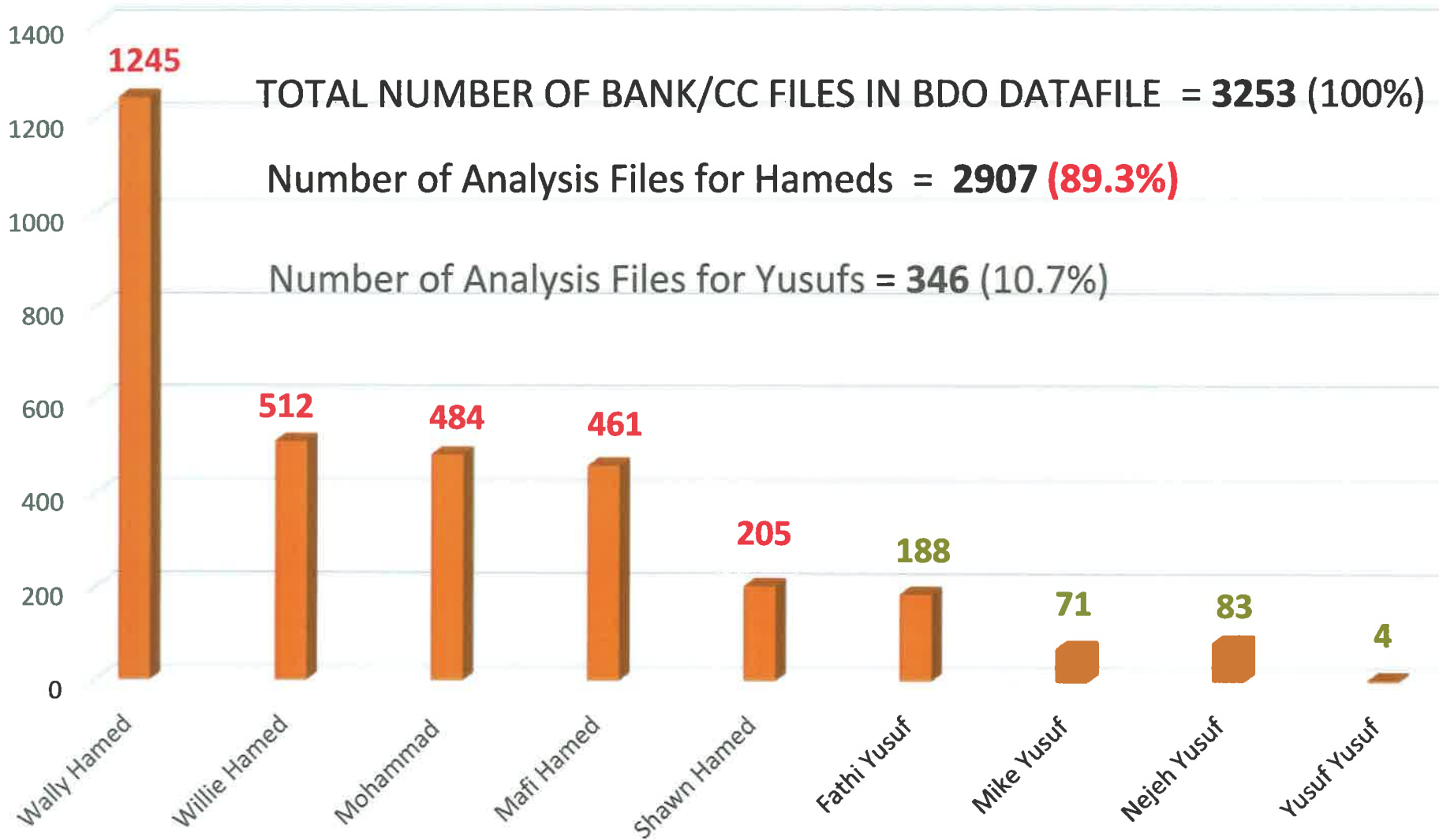
23 A. I came from Plaza West.

24 Q. Okay.

25 A. I was open at that time.

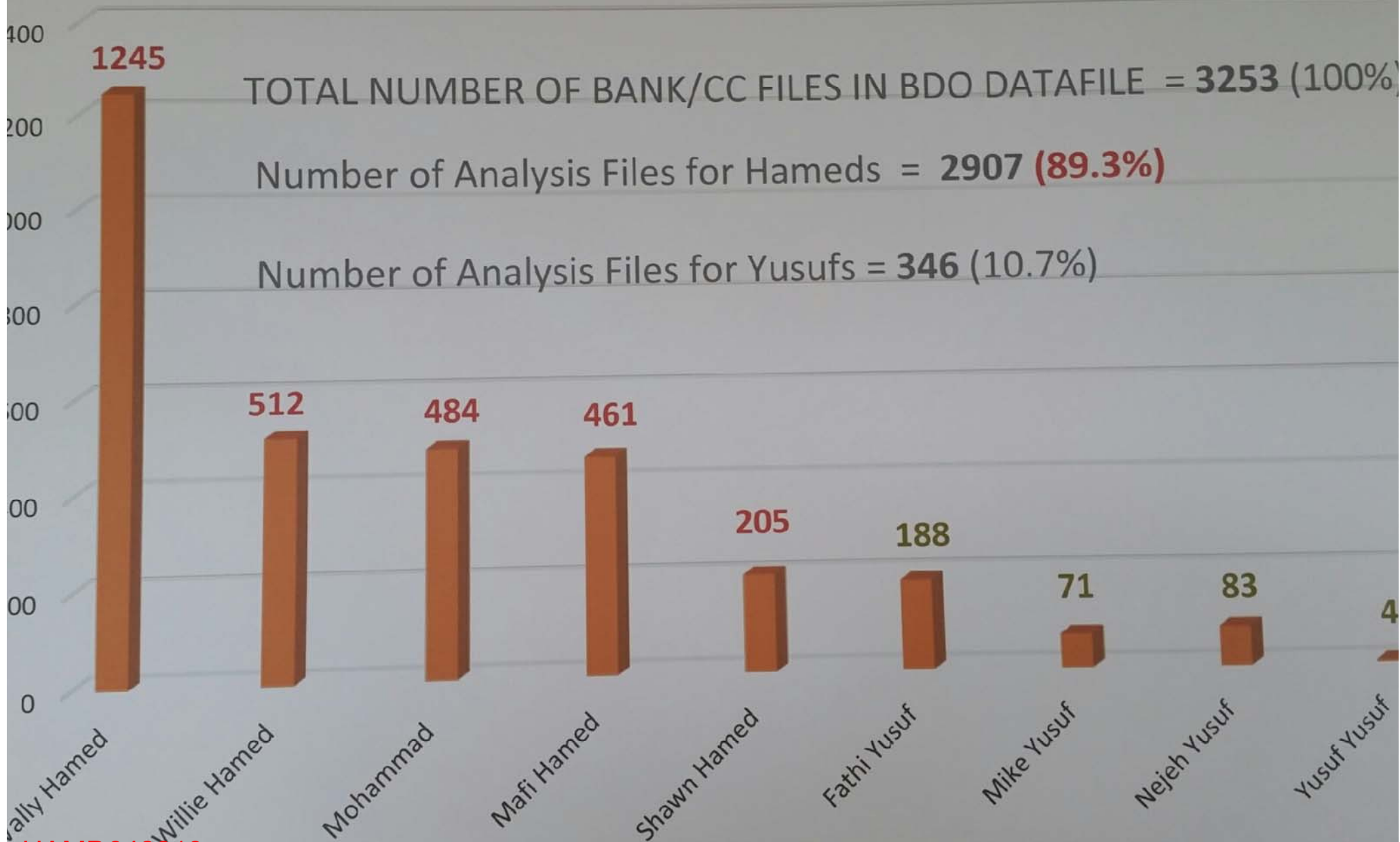
Cheryl L. Haase  
(340) 773-8161

# CHART 4 - Hamed versus Yusuf Files in BDO Bank and CC Analysis

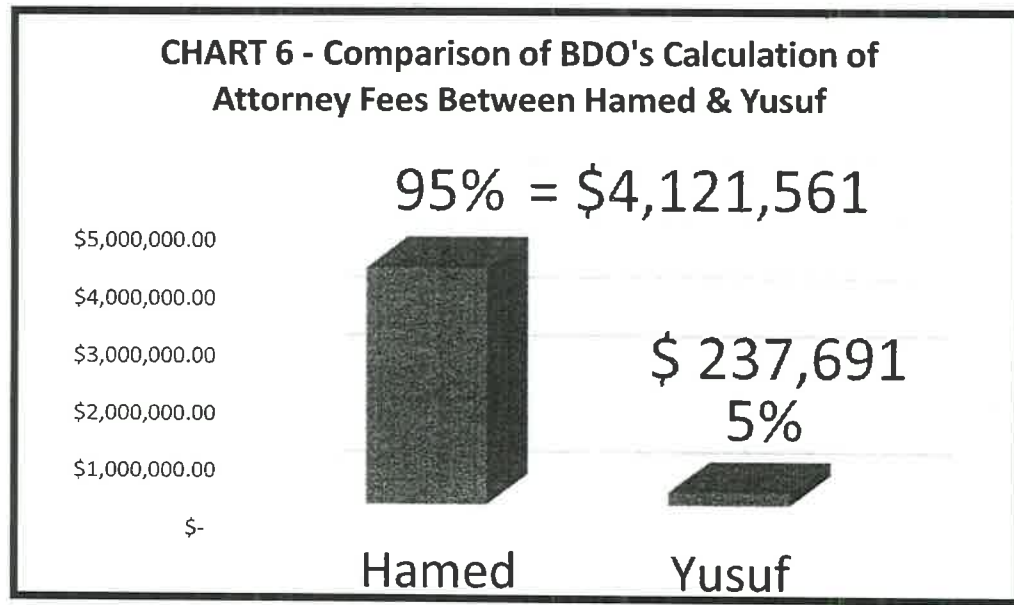




# CHART 4 - Hamed versus Yusuf Files in BDO Bank and CC Analysis



**CHART 6 - Comparison of BDO's Calculation of Attorney Fees Between Hamed & Yusuf**



Blumberg No. 5208  
EXHIBIT  
51

# CHART 6 - Comparison of BDO's Calculation of Attorney Fees Between Hamed & Yusuf

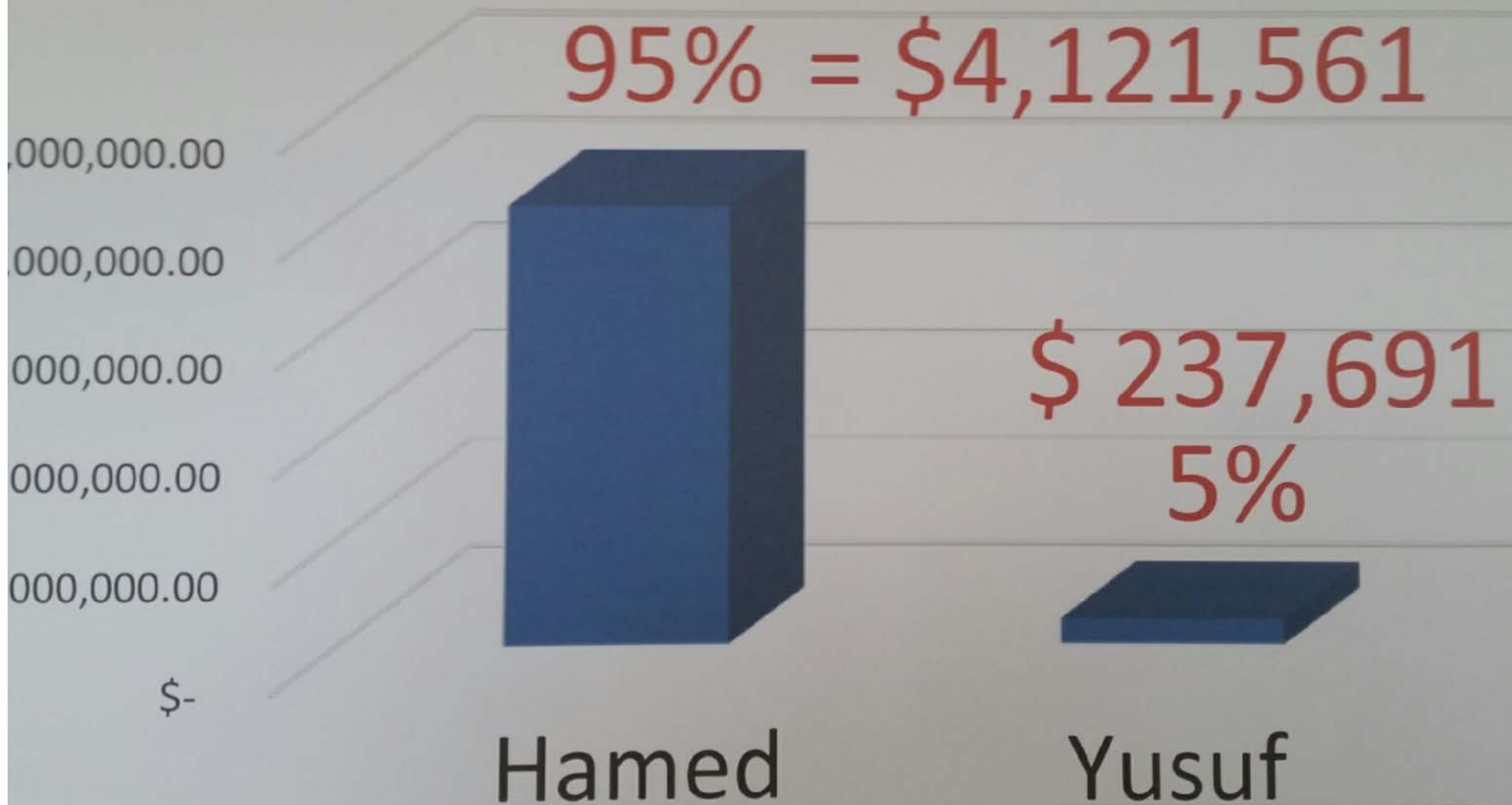


Table 35A - Fathi Yusuf



**Dudley, Topper and Feuerzeig, LLP**  
 Mohammad Hamed v. Fathi Yusuf and United Corporation  
 Civil No. SX-12-CV-99

(January 1994 to September 2001)

**Account Owner:** United Corporation DBA Plaza Extra  
**Supermarket Location:** Tutu Park, St. Thomas  
**Financial Institution:** Scotiabank  
**Type of Account:** Checking Account  
**Account Number:** 044-55312010

Year	Statement Date	Transaction Date	Check #	Amount	Adjustment	Adjustments suggested by Fathi Yusuf	Adjusted Amount	Pay to the order of	Tickmarks/ Note
2000	4/16/2001	4/16/2000	10180	\$ 500,000.00		\$ (500,000.00)	\$ -	Fathi Yusuf	A, C, 2
2000	10/18/2000	10/16/2000	9449	687,170.00		(687,170.00)	-	V. I. Bureau of Internal Revenue	A, C, 1
<b>Total Year 2000</b>				<b>1,187,170.00</b>	<b>-</b>	<b>(1,187,170.00)</b>	<b>-</b>		
2001	4/20/2001	4/16/2001	10187	538,703.00		(538,703.00)	-	V. I. Bureau of Internal Revenue	A, C, 1
2001	4/19/2001	4/19/2001	10205	700,000.00		(700,000.00)	-	Fathi Yusuf	A, C, 2
2001	4/23/2001	4/19/2001	10210	100,000.00		(100,000.00)	-	Fathi Yusuf	A, C, 2
2001	4/23/2001	4/23/2001	10216	100,000.00		(100,000.00)	-	Fathi Yusuf	A, C, 2
2001	5/9/2001	5/9/2001	10292	100,000.00		(100,000.00)	-	Fathi Yusuf	A, C, 2
<b>Total Year 2001</b>				<b>1,538,703.00</b>	<b>-</b>	<b>(1,538,703.00)</b>	<b>-</b>		
<b>Total</b>				<b>\$ 2,725,873.00</b>	<b>\$ -</b>	<b>\$ (2,725,873.00)</b>	<b>\$ -</b>		

**Tickmarks:**

- A Amount was observed in bank statement.
- C Amount was observed in cancelled check.

**Notes:**

1 As per Mr. Fathi Yusuf, all tax expenses were covered by partnership's funds. He confirmed that these checks were made to V. I. Bureau of Internal Revenue; amount was adjusted in order to eliminate them from his analysis.

2 These checks were pay to the order of Mr. Fathi Yusuf and used to buy cashier checks for Hamdam Diamond. As per Mr. Yusuf, these cashier checks represent a repayment of a debt of the Partnership with Hamdam Diamond.



## Sample BDO Errors and Omissions

- The \$1.5 million Hamden Diamond/Fathi checks
- The \$50,000 Willie check
- Shawn's \$2800 and \$2,900 checks (\$5700)
- Rebated checks
- Mafi chits (employee loan) (double charge)
- Mafi (9811-Carlton Account)
- Wally's Scotiabank account
- Wally unsigned chits (8-B)
- Wally unsigned chits (9-B)
- Receipts charged to Wally (Gas station refunds and Receipt of loan) (9-A)
- Shawn' \$250,000 charge
- Shawn's \$34,500 chit
- The BFC \$75,000 unsigned, undated check
- The \$286,000 "Jaber" checks
- United Pru-Bache/Wally 1993 Tax Return summary

