

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

WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	
	)	
Plaintiff/Counterclaim Defendant,	)	CIVIL NO. SX-12-CV-370
v.	)	
FATHI YUSUF and UNITED CORPORATION,	)	ACTION FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, AND
	)	PARTNERSHIP DISSOLUTION, WIND UP, AND ACCOUNTING
Defendants/Counterclaimants,	)	
v.	)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,	)	
	)	
Additional Counterclaim Defendants.	)	Consolidated With
<hr/>		
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	
	)	CIVIL NO. SX-14-CV-287
Plaintiff,	)	
v.	)	ACTION FOR DAMAGES AND DECLARATORY JUDGMENT
UNITED CORPORATION,	)	
	)	
Defendant.	)	
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WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	CIVIL NO. SX-14-CV-278
	)	
Plaintiff,	)	ACTION FOR DEBT AND CONVERSION
v.	)	
FATHI YUSUF,	)	
	)	
Defendant.	)	

**OPPOSITION TO MOTION AS TO HAMED CLAIM NO. H-9:  
JOHN GAFFNEY'S SALARY, BENEFITS AND BONUS**

DUDLEY, TOPPER  
AND FEUERZEIG, LLP  
1000 Frederiksberg Gade  
P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756  
(340) 774-4422

Defendants/counterclaimants Fathi Yusuf (“Yusuf”) and United Corporation (“United”) (collectively, the “Defendants”), respectfully submit this Opposition to the “Motion as to Hamed Claim No. H-9: John Gaffney’s Salary, Benefits and Bonus” filed on December 19, 2017 (the “Motion”).

Based on an “analysis” prepared by Hamed’s accounting experts, Jackson, Vizcaino Zomerfeld, LLP (“JVZ”), Hamed claims that the Partnership<sup>1</sup> should only have paid 10% of the salary of John Gaffney (“Gaffney”) for the period from October 7, 2012 to April 24, 2013, and 50% of Gaffney’s salary from April 25, 2013 “to present,” which presumably is June 30, 2016. *See* Motion at page 2 and Exhibit 1 to the Motion at page JVZ- 000002. While Hamed and his experts refer to “applicable accounting rules and laws,” *see* Motion at page 2-3, they fail to cite a single relevant accounting rule or law to support their completely arbitrary allocation of Gaffney’s salary.

Hamed’s effort to recover \$226,231.62 on behalf of the Partnership is supported by nothing more than two conclusory paragraphs in JVZ’s report:

Partnership paid John Gaffney salary, benefits and bonus from October 2012 to April 24, 2013, despite Mr. Gaffney’s under oath testimony that he was an employee of the United Corporation. From April 25, 2013 (the date identified in the Winding Up Order) to present, 100% of his salary and benefits have been charged to the partnership with no allocation documented.

\*\*\*

Given that John Gaffney was hired by the United Corporation in 2012 through April 24, 2013, only 10% of his salary, benefits and allowances should be allocated to the Partnership. From April 25, 2013 to the present, 50% of his salary, benefits and allowances should be allocated to the Partnership in

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<sup>1</sup> Unless otherwise defined, all capitalized terms shall have the meanings set forth in this Court’s Final Wind Up Plan of the Plaza Extra Partnership dated January 7, 2015 (the “Plan”).

recognition of his work for the Liquidating Partner and his work for Plaza Extra- New East.

See Exhibit 1 to the Motion at pages JVZ-0000031-2. These purported allocations are completely untethered to any record facts.

### FACTS

While it may be “uncontested that in his 2013 testimony at the Preliminary Hearing, Mr. Gaffney stated: (1) he is not a Certified Public Accountant (CPA) in the Virgin Islands or elsewhere, (2) he worked for the United Corporation, (3) he began his employment with United on October 7, 2012, and (4) he did not receive a formal engagement letter with job duties,” see Motion at page 2, this omits Gaffney’s testimony reflecting his extensive accounting background. For example, he testified that he graduated from the University of Florida in 1973 with a Bachelor of Science (Business Administration). After he graduated, he went to work for a “Big Eight” accounting firm called Haskins & Sells also known as Delloitte Haskins & Sells and later known as Delloitte and Touche. See portions of the transcript of the hearing held on January 31, 2013 attached as **Exhibit A** at page 65-66. After spending 3 ½ years at Haskins & Sells, Gaffney opened up his own accounting practice in the late 1970s primarily geared to tax work, accumulating fifteen to twenty years of experience in public accounting and fifteen years in private accounting. Gaffney became a certified public accountant in Florida in 1975, but let his CPA license expire after six years. *Id* at 67. Not only was Gaffney involved in retail accounting for about 10 years as a part owner of 16 stores, he was the Director of Finance for Kazi Management, managing approximately 11 comptrollers for 275 fast food restaurants. *Id.* at 67-68.

Hamed then attempts to mischaracterize Gaffney’s testimony at his April 3, 2014 deposition to suggest that Gaffney conceded he did substantial accounting work for United

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade  
P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756  
(340) 774-4422

that is not related to the Partnership. *See* Motion at page 3, which mischaracterizes by omission the actual questions and Gaffney's actual responses. More importantly, Hamed fails to provide the Master with Gaffney's testimony preceding the testimony he purports to quote, which clarifies the fact that Gaffney treated United and the Partnership as one and the same at that time. Attached as **Exhibit B** is a copy of the first 15 pages of Gaffney's testimony at his deposition on April 3, 2014. As reflected at page 7, when asked "are you an employee of United Corporation, or Plaza Extra Supermarkets?," he answered "it's the same thing." Again, at page 12, when Gaffney was asked "were you hired to do financial-any financial work for United Corporation, . . . the corporate entity, or were you hired to work on the books and records of Plaza Extra Supermarkets?," Gaffney answered "As I said in a previous answer, it's really one in (sic) the same, because it is United Corporation doing business as Plaza Extra." *Id.* at p. 13.

As the Master will recall, Yusuf did not concede the Partnership until April 7, 2014. *See* ¶ 7 of Yusuf's Memorandum in Support of Motion to Appoint Master for Judicial Supervision of Partnership Winding Up or, in the Alternative, to Appoint Receiver to Wind Up Partnership. The Court did not declare the existence of the Partnership until its Order dated November 7, 2014.

As the Master is well aware, the Partnership operated under the umbrella of United for decades and even after the Partnership was declared by the Court, it continued to operate under that umbrella. For example, the two accounts that were opened by the Liquidating Partner and the Master pursuant to the express terms of the Plan (the Claims Reserve Account and Liquidating Expenses Account) were set up under the name of "United Corporation Partnership." Accordingly, it is hardly surprising that Gaffney testified in January 2013 and

April 2014 that he was employed by United. For Hamed and his experts to suggest that this testimony somehow supports the conclusion that Gaffney spent only 10% of his work week dealing with Partnership issues between October 7, 2012 and April 24, 2013 is completely divorced from reality and ignores Gaffney's written response to JVZ stating that his "typical work week is 70 hours" and that "[t]hroughout my entire employment with United Corporation d/b/a Plaza Extra and Plaza Extra Partnership, I easily spend over 60 plus hours weekly on PE business." See Exhibit 1 to Motion at page JVZ-0000533. Hamed and JVZ do not even attempt to dispute this representation. Attached as **Exhibit C** is the declaration of John Gaffney confirming at ¶ 5 his previous, unsworn representations. As reflected in that declaration, from October 7, 2012 through December 2015, Gaffney effectively spent all of his time working on Partnership matters. From January through July of 2016, Gaffney spent approximately 80% of his time working on Partnership matters including a small percentage of his time working on matters involving Plessen Enterprises, Inc., Sixteen Plus Corporation, and Peter's Farm Investment Corporation, companies jointly owned by the Hamed and Yusuf families. After discussions between Gaffney and the Master, beginning in August 2016, the percentage of Gaffney's salary paid by the Partnership was reduced to 50%, which roughly corresponded with the amount of his work week devoted to Partnership matters. Beginning in January of 2017, Gaffney received no salary payments from the Partnership. See Exhibit C at ¶ 2 through 4.

It is noteworthy that after the March 8, 2015 and April 30, 2015 store splits, United provided Gaffney with a vehicle, copy machines, and other overhead items all of which were used for the benefit of the Partnership without cost to the Partnership. *Id.* at ¶ 7.

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

Throughout the time the Partnership was paying 100% of Gaffney's salary, he worked at least 40 -50 hours per week on Partnership matters, including endless inquiries or challenges from Hamed's counsel and JVZ<sup>2</sup>. During the five months in 2016 that the Partnership paid only 50% of Gaffney's salary, he worked on Partnership matters more than 50% of his time, if one includes his work for the three companies equally owed by the Hameds and Yusufs, which work was traditionally performed by Plaza Extra employees.

Hamed criticizes Gaffney for not keeping contemporaneous time records reflecting the work he was performing on behalf of the Partnership. Although Hamed claims that he first raised this issue in 2013, *see* Motion at page 6, he points to no record evidence supporting this claim. In any event, Gaffney was hired as an employee not as an outside consultant. No employee of the Partnership was ever required to maintain contemporaneous time sheets, even though it was well known that members of both Partners' families worked on non-partnership matters. Indeed, the Master will recall a significant dispute involving the payment of Waleed Hamed's salary for over a year even though he never showed up for work.

If Gaffney had been hired as an outside consultant, his hourly rate would have easily been \$150.00 given his extensive accounting experience. Defendants note that JVZ was retained by Hamed based upon their "normal hourly rates for this type of work ranging from

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<sup>2</sup> The extraordinary amount of time Gaffney spent responding to inquiries and challenges by Hamed, his counsel and experts is reflected in two declarations previously submitted as Exhibits in this matter. Attached as **Exhibit D** is the declaration of Gaffney dated February 16, 2016, attached as an exhibit to Yusuf's Opposition to Plaintiff's Motion and Memorandum in Support Thereof to Remove the Liquidating Partner. The second declaration dated April 3, 2017, attached as **Exhibit E**, was attached as an exhibit to Yusuf's Opposition to Hamed's Motion to Terminate the Master. In the later declaration, Gaffney estimated "that the amount of time I spent compiling information for or meeting with Plaintiff's CPAs was at least fifty times longer than the time I spent compiling information for or meeting with Defendants' CPAs." *See* Exhibit E at ¶8.

\$50- \$350 per hour.” See **Exhibit F**. Hamed’s other CPA, Jonathan David Jackson, charged \$250 per hour for consulting based on a report he submitted on August 1, 2014. See **Exhibit G**.

Courts in this jurisdiction have approved hourly rates for CPAs in the amount of \$340.00 per hour, see V.I. Port Authority v. Callwood, 2014 WL 1239985 (Super. Ct. March 17, 2014) (copy attached as **Exhibit H**), and \$395.00 per hour, see In re Jeffrey J. Prosser, 2008 WL 3876048 (Bankr. Aug.19, 2008)(copy attached as **Exhibit I**). Although the rates approved in these cases were for CPAs and Gaffney is not currently a CPA, given the fact that he was a CPA and the extensive accounting experience he has accumulated over decades of practice, an hourly rate of \$150.00 would certainly be fair and reasonable. If Gaffney had charged such an hourly rate for the 50 hours per week he routinely worked on Partnership matters from October 12, 2012 through mid-2016, the amounts paid to him would have easily quadrupled in amount.

For all the foregoing reasons, it is respectfully submitted that Hamed’s Claim No. H-9 regarding Gaffney’s salary, benefits and bonus should be denied in all respects.

Respectfully submitted,

**DUDLEY, TOPPER and FEUERZEIG, LLP**

DATED: December 28, 2017

By:

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

Attorneys for Fathi Yusuf and United Corporation

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade  
P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756  
(340) 774-4422

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of December, 2017, I caused the foregoing document which complies with the page and word limitation set forth in Rule 6-1(e), to be served upon the following via the Case Anywhere electronic filing system:

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

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

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

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

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



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



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

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )  
 )  
Plaintiff/Counterclaim Defendant, )

v. )

FATHI YUSUF and UNITED CORPORATION, )  
 )  
Defendants/Counterclaimants, )

v. )

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

Additional Counterclaim Defendants. )

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )  
 )  
Plaintiff, )

v. )

UNITED CORPORATION, )  
 )  
Defendant. )

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )  
 )  
Plaintiff, )

v. )

FATHI YUSUF, )  
 )  
Defendant. )

CIVIL NO. SX-12-CV-370

ACTION FOR INJUNCTIVE  
RELIEF, DECLARATORY  
JUDGMENT, AND  
PARTNERSHIP DISSOLUTION,  
WIND UP, AND ACCOUNTING

Consolidated With

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND  
DECLARATORY JUDGMENT

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND  
CONVERSION

**EXHIBIT A**

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

MOHAMMED HAMED By His	)	CIVIL NO. SX-12-CV-370
Authorized Agent WALEED HAMED,	)	
	)	ACTION FOR DAMAGES
Plaintiff,	)	INJUNCTIVE AND
	)	DECLARATORY RELIEF
v.	)	
	)	
FATHI YUSUF and UNITED	)	
CORPORATION,	)	
	)	JURY TRIAL DEMANDED
Defendants.	)	

Thursday, January 31, 2013  
Kingshill, VI 00850

The above-entitled action came on for Hearing on a TRO, before the Honorable DOUGLAS A. BRADY, Judge, in Courtroom Number 211, commencing at approximately 9:12 a.m.

SANDRA HALL  
REGISTERED PROFESSIONAL REPORTER  
OFFICIAL COURT REPORTER II  
(340) 778-9750 EXT. 6701

A P P E A R A N C E S:

ON BEHALF OF THE PLAINTIFF:

JOEL H. HOLT, ESQ.  
Law Offices of Joel H. Holt.  
2132 Company Street, Suite 2  
St. Croix, VI 00820  
(340) 773-8709  
***holtvi@aol.com***

CARL J. HARTMANN, III, ESQ.  
5000 Estate Coakley Bay, L6  
St. Croix, VI 00820  
340-642-4422  
***Carl@carlhartmann.com***

ON BEHALF OF THE DEFENDANT:

CHRISTOPHER M. DAVID, ESQ.  
Fuerst Ittleman David & Joseph, PL  
1001 Brickell Bay Drive, 32nd Floor  
Miami, FL 33131  
305-350-5690  
***cdavid@fuerstlaw.com***

JOSEPH A. DIRUZZO, III, ESQ.  
Fuerst Ittleman David & Joseph, PL  
1001 Brickell Bay Drive, 32nd Floor  
Miami, FL 33131  
305-350-5690  
***jdiruzzo@fuerstlaw.com***

Also present:

K. GLENDA CAMERON, ESQ.  
Law Offices of K. G. Cameron  
2006 Eastern Suburb, Suite 101  
Christiansted, VI 00820  
340-773-3444  
***kglenda@cameronlawvi.com***

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1 S-O-E-F-F-I-N-G.

2 **JOHN GAFFNEY,**

3 having been called as a witness, and having been first  
4 duly sworn by the clerk of the court, was examined and  
5 testified, as follows:

6 **DIRECT EXAMINATION**

7 BY MR. DIRUZZO:

8 Q Good morning, sir.

9 A Good morning.

10 Q Could you please state your name spelling your  
11 last name?

12 A John Gaffney. G-A-F-F-N-E-Y.

13 Q And, sir, what is your current job occupation?

14 A I work for United Corporation. I am kind of a  
15 controller.

16 Q Okay. Sir, why don't we start off with your  
17 education. Could you briefly tell us about your  
18 education?

19 A I have a BSBA in accounting from University of  
20 Florida, 1973.

21 Q Okay. And what about your professional  
22 experience?

23 A When I graduated, I went to work for a Big  
24 Eight accounting firm called Haskins & Sells.

25 Q And, sir, could you spell that for the court

1 reporter?

2 A Haskins & Sells, H-A-S-K-I-N-S & S-E-L-L-S.  
3 Our international name was Delloitte Haskins & Sells  
4 and they merged.

5 Q And, sir, is that accounting firm currently  
6 known at Delloitte & Touche?

7 A Yes, it is.

8 Q Okay. And how long did you spend at Haskins &  
9 Sells?

10 A Three years in the audit department, three and  
11 a half years.

12 Q And after your tenure there, what did you do  
13 next?

14 A I went out and began a practice of my own in  
15 the late 70s.

16 Q And your practice consisted of?

17 A It was primarily geared to tax work.

18 Q Okay. And, sir, how many years have you spent  
19 in public accounting?

20 A Well, I've been in an out of private  
21 accounting, but I've spent probably about 15 to 20  
22 years in public.

23 Q What about the private accounting?

24 A Private accounting another 15 years.

25 Q And do you have experience as -- well, are you

1 currently a certified public accountant?

2 A No. I let my license expire. I went inactive  
3 in the mid-80s.

4 Q And were you previously a certified public  
5 accounting?

6 A Yes, I was. I got certified in 1975.

7 Q And you held a license -- or what jurisdiction  
8 issued you that license as a certified public  
9 accountant?

10 A Florida.

11 Q And how long was that license active for?

12 A It was active for six years.

13 Q Sir, do you have any experience in retail  
14 accounting?

15 A Yes, I do.

16 Q Why don't you tell us about that experience?

17 A For about ten years I was part owner of a  
18 retail operation in Florida. We had sixteen stores;  
19 fifteen stores in Florida, one in Georgia.

20 Q Okay. Now, sir, have you ever worked for a  
21 company known as Kazi Management?

22 A Yes, I have.

23 Q And what was your capacity? What were you  
24 doing for Kazi Management?

25 A I was the director of finance for them.

1 Q And just briefly, what were your job duties?

2 A Well, I managed an office of approximately 11  
3 controllers. We had markets throughout the U.S. and  
4 some overseas. It was 275 fast food restaurants,  
5 mostly KFCs, Pizza Huts, Taco Bells, etc.

6 Q Do you know an individual by the name of Ayman  
7 Al-Khaled?

8 A I sure do.

9 Q How do you know him?

10 A He applied for a position as controller in May  
11 of 2010 and I hired him.

12 Q Is that Kazi Management?

13 A Yes, it was; 2011, it was.

14 Q And how would you characterize Mr. Ayman  
15 Al-Khaled's performance as controller?

16 A I characterize it as very good.

17 Q Okay. Sir, let's fast forward to your current  
18 employment with United Corporation. Do you remember  
19 when you were hired?

20 A Yes.

21 Q When was that?

22 A It was late September and I arrived on October  
23 7th.

24 Q And in what capacity were you hired? What  
25 were your job duties supposed to be?



1 sheet and income statement, with all balance sheet  
2 items reconciled every month, it will also produce a  
3 good statement of cash flows because I found that to be  
4 a financial statement that businessmen and  
5 entrepreneurs understand well. They understand that  
6 better than even income statements. And I designed the  
7 chart of accounts to accomplish that.

8 I can actually prove, I can actually prove it  
9 and have. I have run preliminary financial statements  
10 mid-January and the statement of cash flows balance is  
11 perfectly -- and it's really quite an accomplishment.  
12 Because 90 percent of the businesses that C.P.A. firms  
13 go in to audit can't produce a statement of cash flows.

14 MR. DIRUZZO: Nothing further at this  
15 time.

16 THE WITNESS: Okay.

17 THE COURT: Thank you. Mr. Holt.

18 **CROSS EXAMINATION**

19 BY MR. HOLT:

20 Q Let me start off with Wadda Charriez?

21 A Yes.

22 Q You've worked with her?

23 A Yes.

24 Q You've worked with the person in her position  
25 in all three of the stores, correct?

1 A Yes.

2 Q And you would describe her work as excellent,  
3 wouldn't you?

4 A I would.

5 Q She's a very good worker, isn't she?

6 A I think she is.

7 Q She's better than the ones in her position in  
8 the others stores, isn't she?

9 A I wouldn't say. Perhaps one of them she is;  
10 the one that I most recently worked with, yes.

11 Q And you've never had any problems in the  
12 performance of her job, have you?

13 A No.

14 Q Now, you started work in this store -- you  
15 started working for Plaza in September of 2012?

16 A October 8th was my first day.

17 Q Okay. 2012?

18 A 2012.

19 Q Okay. And you knew Ayman before you came to  
20 work there?

21 A Yes, I did.

22 Q Was he the one who actually introduced you to  
23 Mr. Yusuf to get you the job?

24 A I was introduced -- I actually was introduced  
25 to them back in 2012 when I was still on the island

1 before I moved back to Florida.

2 Q And who introduced you to them?

3 A Ayman did.

4 Q So your contact with the store came through  
5 Ayman, is that correct?

6 A Yes.

7 Q Okay. And did you, when you started work in  
8 October of 2012, did you actually have a formal  
9 engagement letter which listed what you would do?

10 A No, I didn't.

11 Q And then you've talked here about all the work  
12 you've done. Am I correct in understanding that there  
13 is an accounting system for each of the Plaza Extra  
14 stores?

15 A Yes.

16 Q Okay. And then, is there an accounting system  
17 for the United Shopping Center?

18 A There is going to be, yes. It hasn't been set  
19 up yet.

20 Q Okay. Have you done any work on the accounts  
21 for the United Shopping Center?

22 A Other than I have segregated the department I  
23 referred to earlier as with the suffix 30. I've  
24 segregated those numbers as they exist in 2012. As I  
25 said, they're not complete yet, but I've segregated

1       them, and because there is not too much activity in  
2       that I have kind of put that to the side because the  
3       Plaza stores and, you know, departments 10 and 20 are  
4       so much more important.

5           Q           So you have some familiarity with the United  
6       Shopping Center financial bank accounts, but you've  
7       concentrated primarily on the three stores?

8           A           Correct.

9           Q           Okay. And when we say the three stores, I  
10      take it then there is a separate bank account system,  
11      payrolls, invoicing, purchasing, separate system for  
12      the Sion Farm east store -- I mean -- excuse me -- the  
13      Plaza Extra East store, the Plaza Extra West store and  
14      the St. Thomas store?

15          A           Yes, that's what we're putting in now.

16          Q           And you've done nothing to merge any of these  
17      together, correct?

18          A           The intention is when the accounting is being  
19      done in all three on a monthly basis, we will combine  
20      all three.

21          Q           But during the day as they are working, they  
22      still work as three separate stores?

23          A           Exactly.

24          Q           And even when you merge them, will you also  
25      merge them with the United Shopping Center account?

1 A Yes.

2 Q So right now they're totally separate?

3 A Correct.

4 Q Okay. Now, which account are you paid from?  
5 Are you paid from one of the Plaza Extra accounts?

6 A Yeah, I'm paid from Plaza West.

7 Q The store that's located in Plaza Extra West?

8 A Yes.

9 MR. HOLT: Let me have the witness shown  
10 Exhibit 7, 9, 13, 15.

11 THE COURT: This is plaintiff's?

12 MR. HOLT: Yeah, Plaintiff's Exhibit 7,  
13 9, 13 and 15.

14 (The documents were marked Plaintiff's  
15 Exhibit Numbers 7, 9, 13 and 15 for identification.)

16 MR. DIRUZZO: Your Honor, we object;  
17 beyond the scope.

18 MR. HOLT: They talked about the  
19 accounting. I'm going to ask him how he books these  
20 accounts.

21 THE COURT: I'll permit it, at least at  
22 this stage.

23 Q (MR. HOLT) Looking at Exhibit Number 7,  
24 you'll see that these are statement of rents due for  
25 Plaza Extra East from United Corporation. Are you





**APPEARANCES****A-P-P-E-A-R-A-N-C-E-S****For the Plaintiff/Counterclaim Defendant:**

Law Offices of  
Joel H. Holt  
2132 Company Street  
Suite 2  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

By: Joel H. Holt

and

Law Offices of  
Carl Hartmann, III  
5000 Estate Coakley Bay, #L6  
Christiansted, U.S. Virgin Islands 00820

By: Carl Hartmann, III

**For the Defendant/Counterclaimants**

Law Offices of  
Dudley, Topper & Feuerzeig  
P.O. Box 756  
Charlotte Amalie, St. Thomas  
U.S. Virgin Islands 00804

By: Gregory H. Hodges



**APPEARANCES**

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**For Waleed Hamed:**

Law Offices of  
Eckard, P.C.  
P.O. Box 24849  
Christiansted, VI 00824

By: Mark W. Eckard

**For Fathi Yusuf:**

Law Offices of  
K. Glenda Cameron  
2006 Eastern Suburb, Suite 101  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

By: K. Glenda Cameron

**Also Present:**

Josiah Wynans, Videographer  
Hatim Yusuf, Interpreter  
Kim Japinga  
Waleed Hamed  
Hisham Hamed  
Mufeed Hamed  
Maher Yusuf  
Fathi Yusuf

## COLLOQUY

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## E-X-A-M-I-N-A-T-I-O-N

<b>Description</b>	<b>Counsel</b>	<b>Page</b>
Direct	by Mr. Hartmann	6

## E-X-H-I-B-I-T-S

<b>Exhibit</b>	<b>Description</b>	<b>Page</b>
6	Documents previously marked in the deposition of Maher Yusuf	10
7	October 5th, 2013 letter from Carl Hartmann III to Attorneys Nizar DeWood and Joseph DiRuzzo	58

**JOHN GAFFNEY -- DIRECT**

1                   **THE VIDEOGRAPHER:** In the matter of Mohammad  
2 Hamed v. Fathi Yusuf and United Corporation v. Waleed Hamed,  
3 Waheed Hamed, Mufeed Hamed, Hisham Hamed and Plessen  
4 Enterprises, Inc., in the Superior Court of the Virgin  
5 Islands, Division of St. Croix, Civil Action No.  
6 SX-12-CV-370.

7                   My name is Josiah Wynans. I am the  
8 videographer for today's proceedings. Our court reporter is  
9 Cheryl Haase. Today's date is April 3rd. The deponent is  
10 John Gaffney. And the time is --

11                   **MS. CAMERON:** 3:14.

12                   **THE VIDEOGRAPHER:** -- 3:14.

13                   For the purpose of voice identification, I am  
14 requesting that the attorneys present identify themselves at  
15 this time.

16                   **MR. HARTMANN:** Carl Hartmann for the  
17 plaintiff.

18                   **MR. HODGES:** Greg Hodges for the defendants.

19                   **MS. CAMERON:** K. Glenda Cameron for  
20 defendants.

21                   **THE VIDEOGRAPHER:** Please swear the witness.

22                   **THE REPORTER:** Would you raise your right  
23 hand, please?  
24  
25

Cheryl L. Haase  
(340) 773-8161



**JOHN GAFFNEY -- DIRECT**

1           **A.**    I'm employed with United Corporation Plaza Extra.

2           **Q.**    Okay.  And are you a -- are you an employee of  
3 United Corporation, or Plaza Extra Supermarkets?

4           **A.**    It's the same thing.

5           **Q.**    Okay.  And -- and do you do the financial and  
6 accounting work for Plaza Extra?

7           **A.**    Yes, I do.

8           **Q.**    Okay.  And do you -- do you claim any privilege,  
9 legal privilege, with regard to testimony about your  
10 communications with -- with officials of Plaza Extra  
11 corporation?

12                               Plaza Extra Supermarkets?  I'm sorry.

13           **A.**    Would you repeat that?

14           **Q.**    Yes.  Will you allow me to examine you with regard  
15 to your communications with, for instance, Mr. Fathi Yusuf,  
16 the head of -- of Plaza Extra Supermarkets in the presence  
17 of his counsel?

18           **A.**    I'm going to say yes.

19           **Q.**    Okay.  Did -- did you and counsel for Plaza Extra  
20 Supermarkets have a discussion today before you came here?

21           **A.**    Not today.

22           **Q.**    No?

23           **A.**    No.

24           **Q.**    You didn't --

25           **A.**    I mean, there was talk next door, but there was no

**JOHN GAFFNEY -- DIRECT**

1           **A.**    This is exactly it.

2           **Q.**    And -- and what -- can you tell me just generally  
3 what Exhibit 6 is?

4           **A.**    Exhibit 6 is the --

5           **Q.**    Take a second to look through all of that?

6           **A.**    Okay.  These are the copies of the tax returns for  
7 the years 2002, '3, '4, '5, '6, '7, '8, '9, '10, '11 and  
8 '12.

9           **Q.**    And your -- your job position is what again?  I'm  
10 sorry.

11          **A.**    I'm currently the controller.

12          **Q.**    And tell me briefly what a comptroller (sic) does?

13          **A.**    Controller essentially safeguards the assets,  
14 and -- and, with integrity, puts in controls, and, you know,  
15 presents financial statements to management that fairly  
16 represents --

17          **Q.**    Okay.  And could you spell the name of your title?

18          **A.**    C-O-N-T-R-O-L-L-E-R.

19          **Q.**    Controller?

20          **A.**    Controller.

21          **Q.**    Okay.

22          **A.**    It has optional spellings.  There's a British  
23 spelling that puts a P in there.

24          **Q.**    Okay.  And when were you hired for this position?

25          **A.**    October 7th, 2012.

**JOHN GAFFNEY -- DIRECT**

1           **Q.**   And very briefly, what is your academic  
2 preparation for your position?

3           **A.**   Well, I graduate from University of Florida with a  
4 major in accounting in 1973, minored in computer science.  
5 Went to work for Haskins & Sells, which is currently Deloitte  
6 & Touche. I worked in the audit department for three-and-  
7 a-half years, then I went out on my own. And I primarily  
8 practiced in small business, and with a pretty heavy  
9 emphasis on taxation.

10          **Q.**   And you testified, did you not, in a preliminary  
11 hearing in this case earlier this year?

12          **A.**   Yes, in 2000 --

13          **Q.**   I'm sorry. In 2013?

14          **A.**   2013.

15          **Q.**   I'm sorry.

16                   And the information with regard to your prior  
17 employment that you gave there was all correct?

18          **A.**   Yes.

19          **Q.**   Yes. Okay.

20                   And when you were -- when you were retained  
21 to -- in the present position, were you hired to do  
22 financial -- any financial work for United Corporation,  
23 the -- the corporate entity, or were you hired to work on  
24 the books and records of Plaza Extra Supermarkets?

25          **A.**   As I said in a previous answer, it's really one in

**JOHN GAFFNEY -- DIRECT**

1 the same, because it's United Corporation doing business as  
2 Plaza Extra.

3 Q. Okay. I believe in your -- your preliminary --

4 A. I think -- I think I need to interrupt at this  
5 point, because I need to dispel a lie. I mean, there's --  
6 there's a lie going around that there's a separate  
7 partnership. There is no federal I.D. number for Plaza  
8 Extra.

9 Q. Actually, there is.

10 A. It does business -- well, maybe there is now, but  
11 when was it gotten? Okay?

12 The fact of the matter is, is that there's no  
13 order stating that Plaza Extra is a partnership. All there  
14 is is an opinion that gives rise to, you know, further  
15 litigation. Fact of the matter is, is if you've gotten a  
16 federal I.D. number now for Plaza Extra, you've done that  
17 yourself, and I think it's a violation. I think it's a -- I  
18 think it's unlawful.

19 Q. Okay. And -- and the --

20 So if, in prior testimony this week, Fathi  
21 Yusuf testified there was a partnership, he would be  
22 incorrect, is that correct?

23 A. No, it just depends on the definition that he uses  
24 and -- when he says that to -- there's a partner involved.  
25 Okay?



**JOHN GAFFNEY -- DIRECT**

1           **Q.**   Okay.

2           **A.**   But it's certainly not what's being rumored as  
3 going around.

4           **Q.**   But -- but the Judge also said that there was a  
5 partnership, as well, didn't he?

6           **A.**   He gave an opinion that there was, and I didn't  
7 have to read beyond the first page of that to know that it  
8 was an opinion that basically allowed for litigation to  
9 continue. It was not an order.

10          **Q.**   I see. And so you think that the Judge was wrong  
11 in his opinion that there was a partnership?

12          **A.**   No, I think there's some merits about a  
13 partnership, but I -- I don't think it's the way it's  
14 defined.

15          **Q.**   Okay. I guess the question is this: We agree  
16 that Plaza Extra Supermarkets sells grocery stores (sic) and  
17 takes in money, do we not?

18          **A.**   Sells groceries, yes.

19          **Q.**   Yes. Groceries. Takes in money.

20                         And that it has expenses, does it not?

21          **A.**   Yes.

22          **Q.**   Distinct and separate from that,  
23 United Corporation rents property, does it not?

24          **A.**   (Witness nods head.) Yes, that's one of its  
25 functions.

**JOHN GAFFNEY -- DIRECT**

1           **Q.** Do you do the books, do you work on the financials  
2 of United Corporation? For instance, when you were asked at  
3 the preliminary injunction if you knew where the money from  
4 a \$2.7 million withdrawal were, you said you had no idea;  
5 that you hadn't worked -- you didn't work on the United  
6 books.

7                           Do you recall that testimony?

8           **A.** No, I do. I do see the United books, and in fact  
9 they're incorporated into the overall financial statements.

10           **Q.** In the Sage 50 system that's -- that's used by the  
11 company, are -- are the United financial -- the United  
12 tenant account, for instance, referenced in that?

13           **A.** They are now.

14           **Q.** As of what date?

15           **A.** I don't know. Let me see when I put them in. I  
16 know that what happened was -- oh, actually, I take that  
17 back. I take that back.

18                           They are in a combination company now,  
19 because what I did was I set up separate accounting  
20 departments in St. Thomas, at Plaza East and at Plaza West.  
21 Then Iman was doing -- Iman did the, basically, the bank  
22 analysis to come up with the journal entries to be able to  
23 include the effects of the --

24           **Q.** But that's something new you've done now.

25           **A.** Yeah, I put that into a combination company.





1. I am currently the controller of United Corporation and was formally the accountant engaged by Fathi Yusuf, as the Liquidating Partner, to collect, supervise and update accounting data and financial information concerning the Partnership that is the subject of the "Final Wind Up Plan of the Plaza Extra Partnership" (the "Plan") approved by the Order adopting Final Wind Up Plan dated January 7, 2015. I was hired in October of 2012 to serve as the controller of United Corporation d/b/a Plaza Extra.

2. From my first day of work as an employee of United, October 7, 2012, until April 25, 2013, I devoted effectively all of my working days on matters involving the Partnership, as defined in the Plan. Such work included a small portion of time working on matters involving Plessen Enterprises, Inc., Sixteen Plus Corporation, and Peter's Farm Investment Corporation, companies equally owed by the Hamed and Yusuf families. It is my understanding that the accounting work for these three jointly owned companies had traditionally been performed by employees of United Corporation d/b/a the Partnership.

3. From April 25, 2013 through the end of 2015, substantially all of my working time was devoted to Partnership matters, which again included a small portion of my time devoted to matters involving the three jointly owned companies.

4. From January through July of 2016, roughly 80% of my working time was devoted to Partnership matters or matters involving the jointly owned companies. After discussions I had with the Honorable Edgar D. Ross, beginning in August of 2016 through the end of 2016, the Partnership paid for only 50% of my salary because at that time I was devoting approximately 50% of my time to Partnership matters and matters involving the jointly owned companies. Beginning in January of 2017, the Partnership paid no portion of my salary.

5. The statements contained in my letter to Joel H. Holt dated May 17, 2016 and supporting documents, portions of which are attached as Exhibit 1 to Hamed's motion seeking to recover portions of my salary, particularly page no. JVZ-00000533 describing my typical workweek, are true and accurate.

6. From October 2012 through July 2016, I devoted at least 40 to 50 hours per week working on Partnership matters. From August 2016 through December 2016, I devoted at least 50% of my workweek to Partnership matters.

7. After the March 8, 2015 and April 30, 2015 disposition of the three Plaza Extra Stores, United Corporation provided me with a vehicle, copy machine, and other overhead items, all of which benefitted the Partnership without any cost to the Partnership.

Dated: December 27, 2017

  
\_\_\_\_\_  
John Gaffney



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

**MOHAMMAD HAMED**, by his )  
authorized agent **WALEED HAMED**, )  
 )  
Plaintiff/Counterclaim Defendant, )  
 )  
vs. )  
 )  
**FATHI YUSUF and UNITED CORPORATION**, )  
 )  
Defendants/Counterclaimants, )  
 )  
vs. )  
 )  
**WALEED HAMED, WAHEED HAMED,** )  
**MUFEED HAMED, HISHAM HAMED, and** )  
**PLESSEN ENTERPRISES,** )  
 )  
Additional Counterclaim Defendants. )  
 )  
 )

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

**DECLARATION OF JOHN GAFFNEY**

I, John Gaffney, pursuant to 28 USC § 1746 and Super. Ct. R. 18, under the penalties of perjury, state and affirm that the following is true and correct:

1. I am the Senior Controller of United Corporation d/b/a Plaza Extra. As such, my duties include the collection, supervision and updating of accounting data and financial information concerning, among other things, the three supermarket stores known as Plaza Extra-East, Plaza Extra-Tutu Park, and Plaza Extra-West.

2. I have been shown a declaration of Joel H. Holt dated January 28, 2016 attached as Exhibit 8 to "Plaintiff's Motion and Memorandum In Support Thereof To Remove The Liquidating Partner" (the "Motion"). I prepared the "Summary of Remaining Partnership Items For the Period From Jan 1, 2013 to Sept 30, 2015" (the "Summary") that was included as a part of the Partnership accounting provided to the Partners, Mohammad Hamed and Fathi Yusuf,



and the Master on November 16, 2015 and which was attached as Exhibit 6 to the Motion. The purpose of the Summary was to explain the Partnership debits and credits for the period from January 1, 2013 to September 30, 2015 with respect to the three Plaza Extra stores. The Summary was delivered to Attorney Holt on or about November 16, 2015 when I delivered a check payable to Mr. Hamed in the amount of \$183,381.91 to Attorney Holt. While I did not provide the "back up" for the Summary at that time, I did inform Attorney Holt that I would do so in connection with the next bi-monthly report that was due at the end of November. Furthermore, I told him I would be happy to answer any questions and provide whatever support was needed immediately, if he so desired. Attorney Holt did not ask to meet with me until we met on January 25, 2016.

3. The \$119,529.01 entry reflected on the Summary represents the cumulative total of gross receipts taxes and insurance paid by the Partnership, through Plaza Extra-East, from January 1, 2013 through March 8, 2015 on behalf of the United Shopping Center. Mr. Yusuf has steadfastly objected to any effort to claim that United Corporation owed this to Plaza Extra-East because he contends his original agreement with Mr. Hamed was that Plaza Extra-East would pay all gross receipts taxes and insurance on behalf of the United Shopping Center. Since I began providing accounting services with respect to the Plaza Extra Stores, I have never found any evidence that the United Shopping Center ever previously paid or reimbursed Plaza Extra-East for such gross receipts taxes and insurance.

4. The \$72,984.02 "discrepancy" addressed in ¶ 4 of the declaration of Attorney Holt relates to two invoices in the amount of \$59,867.02 (for condensers ordered for Plaza Extra-East in 2014) and \$13,117 (for shopping carts ordered for Plaza Extra-East). At an initial meeting between Judge Ross, Attorney Holt, and me, I was instructed by Judge Ross to credit


the Partnership for these two invoices. While I informed Judge Ross that Mr. Yusuf would object, I did in fact credit the Partnership as instructed. Later, after much back and forth between the Partners and their representatives, at a meeting between Judge Ross, Mr. Yusuf and me on October 1, 2015, Judge Ross instructed me to take out the credits previously provided to the Partnership for the condensers and shopping carts. I informed Judge Ross that I would maintain visibility of this disputed transaction by simply posting offsetting charges.

5. When we met on January 25, 2016, Attorney Holt appeared to be confused over the \$186,819.33 entry reflected on the Summary. This entry is a stated liability from United Corporation to the shareholders on the books of Plaza Extra-Tutu Park. I did not say to Attorney Holt that I “had no idea why this amount was on this ledger.” I know why it was reflected on the ledger because it was carried over from the previous books and records of the corporation. What I did say was that no audit trail exists to validate the transactions giving rise to this liability as they occurred many years ago. I went on to say that it is not uncommon for audit trails to disappear over long periods of time and accountants generally except the validity of such items since they are reported on tax returns, as was this entry. The accounting records of United Corporation originally reflected the account as “Due to/from Shareholders.” After the retroactive establishment of the Partnership, I added an account called “Due to/from Hamed” and changed the “Shareholders” reference to Yusuf to avoid confusion over the shareholders versus partners.

6. Attorney Holt’s confusion over the balance of \$186,819.33 reported on the balance of sheet of Plaza Extra-Tutu Park on December 31, 2012 appeared to be due, in part, to his comparison of the balance sheet of Plaza Extra-Tutu Park with the Combined balance sheets of all three stores. I told him not to compare the “St. Thomas” and “Combined” balance sheets

as it was tantamount to comparing balance sheets of different companies. The fact that the balance on the combined balance sheet was \$117,644.33 on December 31, 2013 was very clear to me, but unfortunately, not for Attorney Holt. The difference of \$69,175.00 is simply an offsetting amount on the Plaza Extra-West balance sheet. Even after I pointed out to Attorney Holt that the \$186,819.33 had not changed on the Plaza Extra-Tutu Park balance sheet, he remained confused. Attached as Exhibits A, B, and C are balance sheets I have produced for Plaza Extra-Tutu Park, Plaza Extra-West, and Combined. The \$69,175 shown on Plaza Extra-West balance sheet relates to money Mr. Yusuf owed to the Partnership for 2012 tax extension payments originally charged to shareholder distributions. If you look at the Summary (Exhibit 6 to the Motion), there is an "A/C 14000" settlement amount for Plaza Extra-West. By the reconciliation date in 2015, other transactions obscured the \$69,175 from the earlier year. One such transaction was the reporting of the ByOrder Investments series of transactions. When I started to explain this, it appeared that Attorney Holt was even further confused. I then asked him to allow me to explain it to Mr. Hamed's accountants to eliminate any confusion and resulting suspicion. Although Attorney Holt appeared to be satisfied with this suggestion, I have never been asked to provide any further explanation. The ByOrder monies were received in 2014 and 2015. With each cash receipt, Mr. Hamed was issued a check for his 31% interest, while Mr. Yusuf was not issued a check for his percentage interest. Therefore, the \$69,175 Mr. Yusuf originally owed to Plaza Extra-West eventually became the \$120,167.33 Plaza Extra-West owed to Mr. Yusuf, as reflected in the Summary.

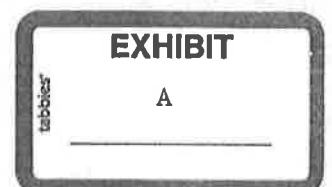
Dated: February 16, 2016

  
John Gaffney

**United Corporation STT (Pship)**  
**Balance Sheet**  
As of December 31, 2013 and Prior Year

		<u>As of 12/31/13</u>		<u>As of 12/31/12</u>
<b>ASSETS</b>				
<b>Current Assets</b>				
10000	Cash - Petty	\$ 10,000.00	\$	10,000.00
10100	Cash - Registers	5,000.00		5,000.00
10200	Cash - Safe	61,000.00		61,000.00
10300	Cash - Bank Op'g 2010	325,585.62		20,106.91
10350	Cash - Bank Payroll 0640	18,894.76		10,523.05
10400	Cash - Bank CC 6143	53,203.15		306,646.08
10500	Cash - Bank Telchk 6719	116,760.40		107,890.35
11000	Accounts Receivable - Trade	14,083.33		0.00
12000	Inventory	2,184,104.30		2,008,308.64
13100	Prepaid Insurance	119,989.70		63,398.58
14000	Due from (to) SH's Yusuf	(186,819.33)		(186,819.33)
14100	Due from (to) Plaza East	(126,480.79)		0.00
14300	Due from (to) Plaza West	117,689.46		0.00
	<b>Total Current Assets</b>	<b>2,713,010.60</b>		<b>2,406,054.28</b>
<b>Property and Equipment</b>				
16100	Leasehold Improvements	4,188,558.00		4,188,558.00
16200	Fixtures & Store Equipment	2,253,883.85		2,247,158.00
16400	Security Equipment	99,335.60		95,180.00
16500	Vehicles & Transport Equipment	25,800.00		25,800.00
16900	Accum Depreciation	(4,201,529.00)		(4,092,580.00)
	<b>Total Property and Equipment</b>	<b>2,366,048.45</b>		<b>2,464,116.00</b>
<b>Other Assets</b>				
17000	Land	330,000.00		330,000.00
19000	Deposits	37,962.40		37,962.40
	<b>Total Other Assets</b>	<b>367,962.40</b>		<b>367,962.40</b>
	<b>Total Assets</b>	<b>\$ 5,447,021.45</b>	\$	<b>5,238,132.68</b>

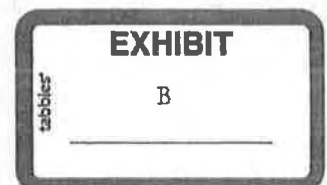
Unaudited - For Management Purposes Only



United Corporation West (Pship)  
Balance Sheet  
As of December 31, 2013 and Prior Year

	<u>As of 12/31/13</u>	<u>As of 12/31/12</u>
<b>ASSETS</b>		
<b>Current Assets</b>		
10000 Cash - Petty	\$ 10,000.00	\$ 10,000.00
10100 Cash - Registers	14,435.00	14,435.00
10200 Cash - Safe	36,032.00	80,000.00
10300 Cash - Bank Op'g 6269	(672,207.87)	(613,302.06)
10400 Cash - Bank CC 3789	351,196.21	583,059.33
10500 Cash - Bank Telchk 2918	2,343,033.13	2,246,391.86
11000 Accounts Receivable - Trade	21,738.20	0.00
12000 Inventory	4,259,525.49	4,242,815.36
13100 Prepaid Insurance	83,679.76	73,059.38
13400 Due from Employees - Loans	62,561.39	0.00
14000 Due from (to) Yusuf	69,175.00	0.00
14100 Due from (to) Plaza East	(365,262.10)	0.00
14400 Due from (to) Plaza STT	(117,689.46)	0.00
14500 Due from (to) Shopping Ctr	900,000.00	0.00
15100 Marketable Securities - BPPR	37,767,429.03	43,069,015.83
15150 Unrealized (Gain) Loss - BPPR	(2,324,369.86)	(3,778,720.41)
15200 Marketable Securities - ML	336,378.45	201,293.74
15250 Unrealized (Gain) Loss - ML	0.00	1,611,901.72
	42,775,654.37	47,739,949.75
<b>Property and Equipment</b>		
16000 Buildings	3,478,103.00	3,478,103.00
16200 Fixtures & Store Equipment	2,977,514.00	2,977,514.00
16400 Security Equipment	109,333.00	109,333.00
16900 Accum Depreciation	(4,272,215.00)	(4,183,036.00)
	2,292,735.00	2,381,914.00
<b>Other Assets</b>		
19000 Deposits	10,000.50	10,000.50
19200 Due from (to) Peter's Farm	1,598,689.00	1,527,708.00
19300 Due from (to) Plessen	5,004,610.00	5,089,018.00
19400 Due from (to) Sixteen Plus	140,719.62	87,004.26
19500 Due from (to) DAAS Corp	0.00	327,500.00
	6,754,019.12	7,041,230.76
<b>Total Assets</b>	<b>\$ 51,822,408.49</b>	<b>\$ 57,163,094.51</b>

Unaudited - For Management Purposes Only



Plaza Extra Supermarkets  
Combined Balance Sheet  
As of December 31, 2013 and Prior Year

	<u>As of 12/31/13</u>	<u>As of 12/31/12</u>
<b>ASSETS</b>		
<b>Current Assets</b>		
10000	Cash - Petty \$ 30,000.00	\$ 30,000.00
10100	Cash - Registers 33,870.00	33,870.00
10200	Cash - Safe 177,032.00	221,000.00
10300	Cash in Bank - Operating (923,160.09)	(1,519,575.21)
10350	Cash in Bank - Payroll 18,894.76	10,523.05
10400	Cash in Bank - CC Deposit 932,533.54	1,454,852.93
10500	Cash in Bank - Telecheck 7,703,852.96	4,171,924.43
10900	Cash Clearing - Transfers 4,450.00	0.00
11000	Accounts Receivable - Trade 43,528.26	0.00
12000	Inventory 9,553,982.58	9,443,569.48
13100	Prepaid Insurance 278,216.83	200,320.86
13400	Due from Employees - Loans 75,006.39	(0.04)
14000	Due from (to) Shareholders (117,644.33)	(186,819.33)
14100	Due from (to) Plaza East (491,742.89)	0.00
14300	Due from (to) Plaza West 482,951.56	0.00
14400	Due from (to) Plaza STT 8,791.33	0.00
14500	Due from (to) Shopping Ctr (391,409.69)	0.00
15100	Marketable Securities - BPPR 37,767,429.03	43,069,015.83
15150	Unrealized (Gain) Loss - BPPR (2,324,369.86)	(3,778,720.41)
15200	Marketable Securities - ML 336,378.45	201,293.74
15250	Unrealized (Gain) Loss - ML 0.00	1,611,901.72
	Total Current Assets 53,198,590.83	54,963,157.05
<b>Property and Equipment</b>		
16000	Buildings 3,478,103.00	3,478,103.00
16100	Leasehold Improvements 4,214,919.00	4,214,919.00
16200	Fixtures & Store Equipment 7,377,032.21	7,293,445.00
16400	Security Equipment 298,600.60	294,445.00
16500	Vehicles & Transport Equipment 57,050.50	57,050.50
16900	Accum Depreciation (10,677,021.00)	(10,465,458.00)
	Total Property and Equipment 4,748,684.31	4,872,504.50
<b>Other Assets</b>		
17000	Land 330,000.00	330,000.00
19000	Deposits 57,963.40	57,963.40
19100	Investment - Laundromat 0.00	0.00
19150	Investment - Mattress Pal LLC 0.00	0.00
19200	Due from (to) Peter's Farm 1,598,689.00	1,527,708.00
19300	Due from (to) Plessen 5,004,610.00	5,089,018.00
19400	Due from (to) Sixteen Plus 140,719.62	87,004.26
19500	Due from (to) DAAS Corp 0.00	327,500.00
19600	Due from (to) Royal Furniture 0.00	0.00
	Total Other Assets 7,131,982.02	7,419,193.66
	Total Assets \$ 65,079,257.16	\$ 67,254,855.21

Unaudited - For Management Purposes Only





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

WALEED HAMED, as Executor of the  
Estate of MOHAMMAD HAMED,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and UNITED CORPORATION,

Defendants/Counterclaimants,

vs.

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

Additional Counterclaim Defendants.

WALEED HAMED, as Executor of the  
Estate of MOHAMMAD HAMED,

Plaintiff,

v.

UNITED CORPORATION,

Defendant.

WALEED HAMED, as Executor of the  
Estate of MOHMMED HAMED,

Plaintiff,

v.

FATHI YUSUF,

Defendant.

CIVIL NO. SX-12-CV-370

ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF  
AND DECLARATORY RELIEF

**Consolidated With**

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES  
AND DECLARATORY RELIEF

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT  
AND CONVERSION

JURY TRIAL DEMANDED

DECLARATION OF JOHN GAFFNEY



I, John Gaffney, pursuant to 28 U.S.C. § 1746, Super. Ct. R. 18, and under the penalties of perjury, declare that the following is true and correct:

1. I am the accountant engaged by Fathi Yusuf, as the Liquidating Partner, to collect, supervise and update accounting data and financial information concerning the Partnership that is the subject of the "Final Wind Up Plan of the Plaza Extra Partnership" approved by the Order Adopting Final Wind Up Plan dated January 7, 2015.

2. I have been shown a Declaration of Attorney Joel H. Holt ("Holt") dated March 15, 2017 attached as Exhibit 1 to Plaintiff's Motion to Terminate the Role of the Special Master (the "Holt Declaration"). Paragraph 5 of the Holt Declaration states: "While some general accounting information had been provided by Gaffney, my client was finally allowed to seek specifically needed financial information as to the Partnership accounting records from Gaffney." This statement incorrectly suggests that Holt's client had previously been denied access to Partnership accounting records. In addition to complete access to all physical records of the Partnership business, since 2013, Plaintiff or his representatives have had real time access to current data and records, including the Sage50 Accounting System, as well as unfettered access to the Partnership's bank account information.

3. In March of 2015, I met for the first time with CPAs from Vizcaino Zomerfeld, LLP ("VZ") at the offices of David Jackson, CPA. Present at that meeting were Armando Vizcaino (VZ Partner), Beatriz Martin (VZ Manager), and Abigail Adams (David Jackson's Associate). Although Holt and David Jackson were present at the outset of the meeting, they left the meeting shortly thereafter. Discussion topics included accounting controls and how accounting was being accomplished and reported for the Partnership. Subsequent correspondence and meetings with VZ personnel occurred throughout 2015 as they planned

their field work. Discussions always included what records we had verses what records we did not have. Discussions also included my recommendation that VZ start out by reviewing the extensive work already done by Kauffman Rosin CPAs ("KR") in connection with its 2014 Department of Justice review of the operations of the supermarkets. These documents were the result of hundreds of hours of work performed by personnel only available prior to the store ownership changes on March 8, 2015 (East and West) and April 30, 2015 (Tutu Park). Curiously, VZ ignored the suggestion to first review the 2014 records compiled for the KR review, insisting upon making their own document request.

4. Holt states at ¶ 5 of his declaration that the VZ Manager sent a "very standard request for information (Exhibit A) to Gaffney on September 21, 2015." The actual information request referenced in the letter of September 21, 2015, which was omitted from Exhibit A to the declaration, was not a "very standard" request for information. In fact, it was an extraordinarily broad request even for an audit, which VZ stated it was not performing. A copy of the request for information omitted from Exhibit A to the Holt Declaration is attached as Exhibit 1. Notably, the request sought information that VZ knew that I could not readily provide. For example, the request sought copies of cancelled checks and bank statements even though I had already informed VZ that beginning in 2013, Banco Popular stopped providing copies of cancelled checks and Scotia Bank had a long history of not providing cancelled checks or even monthly bank statements. By way of further example, the request sought extraordinarily detailed information for all three supermarket stores. In an email I sent to Beatriz Martin on August 18, 2015, I told her that after the Yusufs vacated Plaza West and St. Thomas, access to the records in those stores became very limited. Plaintiff's sons refused to allow anyone to retrieve information from the two stores controlled by Plaintiff after the stores

were split in March and April of 2015. A great deal of Partnership records were palletized and had been warehoused due to lack of space, often crammed into spaces that no one can get to without a forklift. The records that I personally had custody of were the daily sales journals for Plaza Extra West along with duplicate sales journals for Plaza Extra East. These records have always been available for review by VZ.

5. At ¶ 6 of the Holt Declaration, he refers to his email to me of October 21, 2015, attached as Exhibit B. That same day, I provided a response to Holt, a copy of which is attached as Exhibit 2.

6. At ¶ 13 of the Holt Declaration, he refers to a May 17, 2016 "partial response" and then quotes a single phrase from my more than two page letter to him of May 17, 2016. A copy of my May 17, 2016 email to Attorney Holt along with my letter to him, which Judge Ross reviewed and approved, is attached as Exhibit 3. I have never received a response to that letter. Attached as collective Exhibit 4 are a few examples of my responses to the VZ information requests that I provided the Master and counsel for the Partners on May 17, 2016.

7. At ¶ 17 of the Holt Declaration, he refers to his email to Attorney Hodges dated June 23, 2016, attached as Exhibit H to his declaration. I received Attorney Hodges' response to that email, a copy of which is attached as Exhibit 5. In the second paragraph of Attorney Hodges' June 23, 2016 email at 8:26 p.m., he refers to the offer set forth in my letter of May 17, 2016 as follows:

[I]f Hamed wanted access, he could send someone from VZ down "who can work on premises (Plaza East) with original records to avoid the burdensome task of providing electronic copies." In other words, if the VZ accountant cannot find the information on her own, John will be available to point her in the right direction to get the information herself.

This accurately set forth the offer made in my letter of May 17, 2016, which was approved by the Master and Mr. Yusuf, as the Liquidating Partner.

8. In the next paragraph of the June 23, 2016 email from Attorney Hodges at 8:26 p.m., he states the following:

Mr. Yusuf's experts never propounded a bunch of questions to John. In fact, I encourage you and Judge Ross to ask John how much time he has spent compiling information for or meeting with our experts compared with VZ. You will learn that it is a tiny fraction.

This statement is true. I would estimate that the amount of time I spent compiling information for or meeting with Plaintiff's CPAs was at least fifty times longer than the time I spent compiling information for or meeting with Defendants' CPAs.

9. On June 23, 2016, I received a copy of Attorney Hodges' email to Judge Ross, a copy of which is attached as Exhibit 6. I am also aware that on July 5, 2016, Mr. Yusuf, as Liquidating Partner, filed a Reply to Plaintiff's Notice of Objection to Liquidating Partner's Eighth Bi-Monthly Report in which he elaborated on his position that the hundreds of questions or information requests VZ propounded were improper and that I had no obligation to respond to them.

10. After the June 23, 2016 email exchange between counsel and the Master, I received no directive from the Master to spend further time answering VZ's information requests.

Dated: April 3, 2017

  
John Gaffney

PLAZA EXTRA  
DOCUMENTATION/INFORMATION REQUEST UPDATE  
AS OF 9/21/2015

Item #	Description	Status	Initial Request Date	Response Date	Comments
<b>General</b>					
1	All company procedural and/or internal control documents	Pending	8/17/2015		
2	Copy of employee handbook/manual	Pending	8/17/2015		
3	2013 Employee listing	Pending	8/17/2015		
4	2014 Employee listing	Pending	8/17/2015		
5	2015 Employee listing	Pending	9/21/2015		
6	Accounting personnel listing (including job titles and/or descriptions)	Pending	8/17/2015		
7	Organizational management chart	Pending	8/17/2015		
8	Any company management or ownership meeting minutes	Pending	8/17/2015		
9	List of any related parties that the company transacted with during 2013	Pending	8/17/2015		
10	List of any related parties that the company transacted with during 2014	Pending	8/17/2015		
11	List of any related parties that the company transacted with during 2015	Pending	9/21/2015		
<b>2013 Accounting (please provide items electronically in MS Excel or other data format, when possible):</b>					
1	Balance Sheet as of December 31, 2013 (with 2012 comparative) - Combined all stores	Pending	8/17/2015		
2	Balance Sheet as of December 31, 2013 (with 2012 comparative) - Plaza Extra East	Pending	8/17/2015		
3	Balance Sheet as of December 31, 2013 (with 2012 comparative) - Plaza Extra West	Pending	8/17/2015		
4	Balance Sheet as of December 31, 2013 (with 2012 comparative) - Plaza Extra St. Thomas	Pending	8/17/2015		
5	Income Statement for the year ended December 31, 2013 (with 2012 comparative) - Combined all stores	Pending	8/17/2015		
6	Income Statement for the year ended December 31, 2013 (with 2012 comparative) - Plaza Extra East	Pending	8/17/2015		
7	Income Statement for the year ended December 31, 2013 (with 2012 comparative) - Plaza Extra West	Pending	8/17/2015		
8	Income Statement for the year ended December 31, 2013 (with 2012 comparative) - Plaza Extra St. Thomas	Pending	8/17/2015		
9	General Ledger detail for the year ended December 31, 2013 - Combined all stores	Pending	8/17/2015		
10	General Ledger detail for the year ended December 31, 2013 - Plaza Extra East	Pending	8/17/2015		
11	General Ledger detail for the year ended December 31, 2013 - Plaza Extra West	Pending	8/17/2015		
12	General Ledger detail for the year ended December 31, 2013 - Plaza Extra St. Thomas	Pending	8/17/2015		
13	Accounts Receivable Aging detail as of December 31, 2013 - Combined all stores	Pending	8/17/2015		
14	Accounts Receivable Aging detail as of December 31, 2013 - Plaza Extra East	Pending	8/17/2015		
15	Accounts Receivable Aging detail as of December 31, 2013 - Plaza Extra West	Pending	8/17/2015		
16	Accounts Receivable Aging detail as of December 31, 2013 - Plaza Extra St. Thomas	Pending	8/17/2015		
17	Detailed Cash Receipts and Sales Journals for the year ended December 31, 2013 - Plaza Extra East	Pending	8/17/2015		
18	Detailed Cash Receipts and Sales Journals for the year ended December 31, 2013 - Plaza Extra West	Pending	8/17/2015		
19	Detailed Cash Receipts and Sales Journals for the year ended December 31, 2013 - Plaza Extra St. Thomas	Pending	8/17/2015		
20	Account Payable Aging detail as of December 31, 2013 - Combined all stores	Pending	8/17/2015		
21	Account Payable Aging detail as of December 31, 2013 - Plaza Extra East	Pending	8/17/2015		
22	Account Payable Aging detail as of December 31, 2013 - Plaza Extra West	Pending	8/17/2015		
23	Account Payable Aging detail as of December 31, 2013 - St. Thomas	Pending	8/17/2015		
24	Detailed Check or Disbursement Register for the year ended December 31, 2013 - Plaza Extra East	Pending	8/17/2015		
25	Detailed Check or Disbursement Register for the year ended December 31, 2013 - Plaza Extra West	Pending	8/17/2015		
26	Detailed Check or Disbursement Register for the year ended December 31, 2013 - Plaza Extra St. Thomas	Pending	8/17/2015		
27	Copies of December 2012 bank statements - All accounts	Pending	8/17/2015		
28	Copies of December 2012 bank reconciliations - All accounts	Pending	8/17/2015		
29	Copies of monthly bank statements for 2013 - All accounts	Pending	8/17/2015		
30	Copies of monthly bank reconciliations for 2013 - All accounts	Pending	8/17/2015		
31	All canceled checks and deposit slips for 2013	Pending	8/17/2015		
32	Copies of all monthly investment statements for 2013	Pending	8/17/2015		
33	Payroll journal for the year ended December 31, 2013	Pending	8/17/2015		
34	Payroll tax returns for the year ended December 31, 2013	Pending	8/17/2015		





PLAZA EXTRA  
DOCUMENTATION/INFORMATION REQUEST UPDATE  
AS OF 9/21/2015

10	General Ledger detail for the 5 months ended May 31, 2015 - Plaza Extra East	Pending	9/21/2015	
11	General Ledger detail for the 5 months ended May 31, 2015 - Plaza Extra West	Pending	9/21/2015	
12	General Ledger detail for the 5 months ended May 31, 2015 - Plaza Extra St. Thomas	Pending	9/21/2015	
13	Accounts Receivable Aging detail as of May 31, 2015 - Combined all stores	Pending	9/21/2015	
14	Accounts Receivable Aging detail as of May 31, 2015 - Plaza Extra East	Pending	9/21/2015	Only received for June 30, 2015
15	Accounts Receivable Aging detail as of May 31, 2015 - Plaza Extra West	Pending	9/21/2015	Only received for June 30, 2015
16	Accounts Receivable Aging detail as of May 31, 2015 - Plaza Extra St. Thomas	Pending	9/21/2015	
17	Detailed Cash Receipts and Sales Journals for the 5 months ended May 31, 2015 - Plaza Extra East	Pending	9/21/2015	
18	Detailed Cash Receipts and Sales Journals for the 5 months ended May 31, 2015 - Plaza Extra West	Pending	9/21/2015	
19	Detailed Cash Receipts and Sales Journals for the 5 months ended May 31, 2015 - Plaza Extra St. Thomas	Pending	9/21/2015	
20	Account Payable Aging detail as of May 31, 2015 - Combined all stores	Pending	9/21/2015	
21	Account Payable Aging detail as of May 31, 2015 - Plaza Extra East	Pending	9/21/2015	Only received for June 30, 2015
22	Account Payable Aging detail as of May 31, 2015 - Plaza Extra West	Received	9/21/2015	
23	Account Payable Aging detail as of May 31, 2015 - St. Thomas	Received	9/21/2015	
24	Detailed Check or Disbursement Register for the 5 months ended May 31, 2015 - Plaza Extra East	Pending	9/21/2015	Partially received, still missing certain months
25	Detailed Check or Disbursement Register for the 5 months ended May 31, 2015 - Plaza Extra West	Pending	9/21/2015	Partially received, still missing certain months
26	Detailed Check or Disbursement Register for the 5 months ended May 31, 2015 - Plaza Extra St. Thomas	Pending	9/21/2015	Partially received, still missing certain months
27	Copies of monthly bank reconciliations for 2015 - All accounts	Pending	9/21/2015	Partially received, still missing certain months and accounts
28	All canceled checks and deposit slips for 2015	Pending	9/21/2015	
29	Copies of all monthly investment statements for 2015	Pending	9/21/2015	
30	Payroll journal for the 5 months ended May 31, 2015	Pending	9/21/2015	
31	Payroll tax returns for the 5 months ended May 31, 2015	Pending	9/21/2015	
32	Payroll reconciliations to tax returns for the 5 months ended May 31, 2015	Pending	9/21/2015	
33	All supporting documentation related to sales during the months of January and April 2015 (including daily and monthly receipts, register logs, sales reports, etc.)	Pending	9/21/2015	

Other Items

- 1 All documents related to the other CPA firm's analysis of the Partnership this year (reports and workpapers)
- 2 All records documenting the transfer and accounting of the Partnership assets to the partners in 2015

**Gregory H. Hodges**

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**From:** John Gaffney [<mailto:johngaffney@tampabay.rr.com>]  
**Sent:** Wednesday, October 21, 2015 6:25 PM  
**To:** 'Joel Holt' <[holtvi@aol.com](mailto:holtvi@aol.com)>  
**Subject:** RE: Plaza/Plessen

Hello Joel,

Sorry for the delay in responding. I just read your email a few moments ago. Our network went down earlier today and we had an IT support rep working on it all morning and afternoon. As if that wasn't enough, a decision was made to change the accounting server name while IP addresses were being changed. In the rush to do so, it was done while accounting updates were pending. The result was accounting system corruption that took several hours on a support call this afternoon to repair.

As mentioned in my last response, I currently have access to everything only for East. I no longer have such access at West and STT. That was lost in transition. What I do have is the detailed general ledgers which have already been provided. I also have the daily sales journals for West for all of 2013, 2014 and 2015 through March 8<sup>th</sup>. I tried to get the sales journals for St. Thomas from Willie after the sale, but was blocked from doing so.

What I suggest is that someone (Betty Martin or Mr. Patton) make a preliminary visit to actually see the records I do have. The sales journals are probably the most important records and are not something that are easily scanned. It took countless hours (weeks) to do that for Kaufman Rossin just for their selections in 2014. Fortunately, I do at least have the days records in 2014 for St. Thomas as they were done by Humphrey before the sale. I don't mind letting them have access to these original records rather than making copies for a blanket request. That's just too time consuming.

I think that once either Betty or Mr. Patton view the records I do have, their confidence will improve and they'll be able to work with what we have for East and West. Maybe they can secure the sales journals from St. Thomas once they see what they look like. The truth is the sales journals actually belong to United Corporation and really serve no purpose for KAC357.

Lastly, I'll be off island from Oct 28<sup>th</sup> through Nov 3<sup>rd</sup>. Any time after that can be arranged.

Regards...John

**From:** Joel Holt [<mailto:holtvi@aol.com>]  
**Sent:** Wednesday, October 21, 2015 10:59 AM





**To:** [john.gaffney@tampabay.rr.com](mailto:john.gaffney@tampabay.rr.com)

**Subject:** Plaza/Plessen

John—please see the attached letter. My apologies, as I did not know you prepared the returns, nor did I recall our conversation. Had I realized this, I would have just called you, as opposed to sending a letter to Greg.

On another note, I know you have been busy, so I have not followed up on Hamed's need to have Betty Martin and Mr. Patton conduct their own due diligence on the partnership's records. However, as November is approaching, which is when I understand you will be done with finalizing the current partnership accounting deadline we need to revisit this issue again. Indeed, in light of the time constraints with which we have agreed to get this done, as well as because of the intervening holidays, we need to set a schedule now that works for everyone.

I should note before going further that we have reviewed the Kaufmann Rossin report, which we appreciate you sending. However, it only covers 2014, while we have tasked out accountants to look at the entire 2013-2015 time period — as per Judge Brady's order. Moreover, while our accountants are not conducting an audit, they cannot completely rely upon the work of other accountants, particularly accountants retained for a different purpose, as you know.

I want to assure you that I am not trying to make your life more complicated or create more work than absolutely necessary, but the Hameds need this documentation in order for our accountants to begin this process. I reviewed the accountant's request and I am sure that most of the items requested could be easily extracted from the accounting system and emailed without the need for extra manpower, such as items like the general ledgers, check registers and cash receipts. It would also be helpful to see items like the point of sales reports and accounting summary schedules that Kaufman utilized in their testing, although for the entire 2013-2015 time period.

I also think this process will move quickly once the initial work gets started, as it always harder to get started than anything else. Can you tell me how you want to proceed—emailing items first or having another meeting on St. Croix, with access to some of the records starting right after that meeting?

Give me a call after reviewing this email so we can make this as smooth as possible.

Joel H. Holt, Esq.  
2132 Company Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
(340) 773-8709

**Gregory H. Hodges**

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**From:** John Gaffney <johngaffney@tampabay.rr.com>  
**Sent:** Tuesday, May 17, 2016 5:01 PM  
**To:** Joel Holt  
**Cc:** Edgar Ross; Gregory H. Hodges; Nizar A. DeWood, Esq.; 'Carl Hartmann'; fathiyusuf@yahoo.com  
**Subject:** Document Request from Vizcaino Zomerfeld  
**Attachments:** 0000 Gaffney Ltr to Holt 05.17.16.pdf

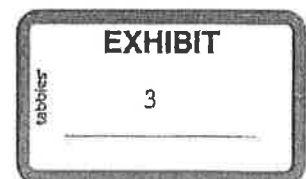
Joel,

This is the first of several emails related to document requests by Vizcaino Zomerfeld. Attached above is a letter to you with a recommendation that Judge Ross reviewed and approves of. The emails that follow will contain file attachments with specific responses to the document requests that have been completed so far. There will also be additional file attachments that show ongoing work related to the partnership.

Regards,

John Gaffney

(305)332-7094





P.O. Box 763  
Christiansted, VI 00821

May 17, 2016

Joel Holt, Esq. P.C.  
2132 Company Street, Suite 2  
Christiansted, VI 00820

Dear Joel,

This letter accompanies my first submission of responses to document requests and questions from Vizcaino Zomerfeld (VZ). At this point I must point out the burdensome, time-consuming and expensive nature of these document requests. After reviewing my responses, you can decide yourself whether any of them serve in winding up the Partnership.

In our very first meeting with VZ in your office, I challenged the very extensive nature of the initial document request. Betty Martin, VZ Partner verbally backed off the initial request some. When I asked her about the scope of VZ's review, the answer was vague and you even questioned that scope in a later conversation with me in your office. We did establish that the scope did not include a full audit as I made it clear we did not have the resources for such work.

I suggested a less burdensome and more productive approach that Betty and her team thought could be implemented. The suggestion was to assign a junior level auditor who would work along with me. That was before the St. Thomas store auction. After the auction our challenge was overwhelming and would have likely crashed except for the assistance from Humphrey Caswell, former PE St. Thomas Controller.

Admittedly, there was a long gap between our initial meeting in March 2015 and beginning VZ field work in January 2016. During that gap, we completed the Kauffman Rossin DOJ review while I continued receiving extensive accounting record requests from VZ. But due to the extended time between the first and second meetings, I was able to provide most of the records. But doing so was so burdensome, time-consuming and expensive that I recommended again that I provide all accounting databases augmented with 6 month increments of original records. In other words, I would deliver 6 months of original records and upon review completion I would deliver the next 6 months and pick up the first 6 months.

To date the first 6 months of original records have not been returned nor have you requested the next 6 months. During our meeting in January 2016, I suggested again that someone be assigned to work closely with me, especially in response to VZ's request for detailed till stat reports. Instead of requesting the provision hundreds of detailed till stat reports, have someone from your team work with me to review a handful of such reports. Once done, I was confident VZ would conclude that reviewing hundreds was unnecessary just as Kauffman Rossin did during their review.

Keep in mind, the Hameds controlled the cash rooms and managed the cash registers in all three stores during my entire time with the company. The Yusufs were much less involved in this area and although I implemented the "sales journal" system, I had no indication that there were any weaknesses or other issues in the Hameds' management of the cash rooms and registers. Once someone from VZ duplicates the documents contained in the daily sales journals and the integrity therein, I'm confident they would see that a document request for hundreds of till stat detail reports is non-productive and unnecessarily time-consuming and expensive.

Similarly, the extensive requests for documents supporting expenditures including cancelled checks are questionable knowing that no payments were made without signatures from a member of each family. If the Hameds disputed an item, they simply refused to sign the check. Admittedly, we aren't able to provide many cancelled checks. Once you review my responses, you should clearly understand why. In view of the extent to which I've provided original bank records though, I question the intent behind continued requests for cancelled checks or bank statements that VZ knows we don't have, either because the Hameds retained possession or banks refused to provide them.

Your recent document requests and inquiries submitted last week appear to be legitimate as VZ has challenged or questioned some of my accounting decisions in winding up the Partnership. While I don't object to being challenged, I would like to say that I put off having to make some decisions as long as possible. I mentioned this in my meetings with VZ as well. The very request for VZ to assign someone to work with me was so we could discuss and make joint decisions on nominal issues.

For instance, after the March 8, 2015 East/West split there were employee loans that were extremely difficult to track and collect. Employees who owed money at PE East transferred to PE West and vice versa. While I offered to provide and may have even sent details to PE West, I assumed that some loans simply would not be collected. Or that if they were collected, I might not be informed of it as in the case of 3 payments by one employee at PE West who we followed up on a few months ago. Therefore, I made the decision to write them off with the plan of revisiting them when time allowed. There are adjustments (credits) however small that are due to the Partnership. But the time it takes to research these credits is being consumed in otherwise burdensome, time-consuming and expensive document requests.

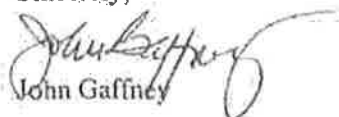
With the provision of what I've done so far, I plan to take a leave of absence from any other work for the Partnership related to these document requests for at least one month in order to tend to other emergencies, many of which relate to the Partnership. Refer to my documents of ongoing PE challenges with taxing authorities which are being ignored due to VZ document requests.

Also, I request for VZ to return the original records consisting of the sales journals for PE East and West for the first 6 months of 2013 and after one month for VZ to assign someone who can work on premises (Plaza East) with original records to avoid the burdensome task of providing electronic copies. As you know, Section 9, Step 4 of the Plan simply provides that "Hamed's accountant shall be allowed to view all partnership accounting information from January 2012 to

present..." To date, no one has been denied access to original records that we possess. Under the pending VZ requests, instead of being "allowed to view" the relevant partnership accounting information, I am being effectively requested to gather and spoon feed that information to VZ. I respectfully submit that my proposal to have a VZ accountant work on premises with the original records is much more consistent with the information access contemplated by the Plan than the process of my responding to the myriad information requests submitted by VZ.

The Master has reviewed and approves the process I have recommended.

Sincerely,

  
John Gaffney

# Item No. 3002

**Description:** Plaza Extra (PE) partnership funds were used to pay for the gross receipt taxes (GRT) for the United Shopping Center.

**General Ledger-Store, Date, Entry No. & Description [as an example]** (if applicable):

East Store GL Acct #14500 – SJE23

West Store, 1/30/15, 9584, BANK OF AMERICA - Invoice: 002194 - VIBIR - GROSS TAX, \$4,346.59

**Question/Request for Info:**

Is there any reason or basis for using PE partnership funds to pay for the operational GRT of non-PE businesses operated by United Corporation?

Regardless of your answer, for *each* month in the years 2012-2015, please provide the following:

- Monthly Form 720VI stamped by the VIBIR
- Monthly "23100 Accrued GRT" calculation schedule used to prepare Form 720VI
- Supporting documentation (credit card receipts or canceled checks) showing payments of GRT for each month

**Response:**

Section 9, Step 4 of the Final Wind Up Plan approved by the Court ("Plan") provides: "Hamed's accountant shall be allowed to view all partnership accounting information from January 2012 to present and to submit his findings to the Master." I object to this inquiry and all subsequent inquiries to the extent they request me to create information by answering questions as opposed to facilitating your review of existing partnership accounting information during the relevant period. Without waiving that objection, I refer you to my declaration dated 2/16/16 attached as an exhibit to Mr. Yusuf's opposition to remove him as Liquidating Partner, particularly paragraph 3.

This document request is excessive and appears to have the intent of overwhelming the resources of the Liquidating Partner. A standard audit selection is based upon a small ratio of items in a population. You were provided with all the records to make appropriate selections. Only exceptions should justify an expanded request. To date, there have been no exceptions. Also, you already have in your possession all of the original records for the first 6 months of 2013 that include copies of GRT returns and records you request herein. Original records were provided to avoid the time-consuming process of making copies and with the promise that you would receive the next 6 months' records with the return of the prior 6 months, which has not occurred.

Included herein are Forms 720VI (not date-stamped) prepared from January 2013 through April 2015 along with detailed "23100 Accrued GRT" calculation schedules. Scanning of date-stamped documents was not performed until 2015 due to equipment constraints. Vizcaino Zomerfeld LLP (VZ) has been repeatedly told that 2012 records were prepared and maintained in St. Thomas by the previous Controller and that Waheed Hamed prevented us from securing these and other records after the auction. For the record, there is evidence that the Hameds already possess the 2012 GRT returns and most of the returns you are being supplied herein. Again, original copies of date-stamped GRT returns for the first six months of 2013 are currently in Hamed's possession in conjunction with a previous document request by VZ.

Regarding supporting documentation (credit card receipts or cancelled checks) showing payments of GRT for each month, again a statistical sampling is appropriated. Keep in mind that ALL checks from 2012 through 2015 were signed by a member of each family. Also keep in mind that we do not receive cancelled checks and in fact beginning in August of 2013 Banco Popular stopped providing electronic images entirely due to the new burden of a court order requiring dual signatures from a member of each

family. ScotiaBank repeatedly refused supplying us with even monthly operating account statements.

List of documents provided:

2013 – 23100 Accrued GRT calculations for all months  
2013 – Form 720VI for all months (not date stamped).  
2014 – 23100 Accrued GRT calculations for all months.  
2014 – Form 720VI for all months (not date-stamped). Includes some date-stamped amended returns.  
2015 – 23100 Accrued GRT calculations for January through April.  
2015 – Form 720VI for January through April (date stamped).

## Item No. 3003

Description: A WAPA deposit was established for each store.

General Ledger-Store, Date, Entry No. & Description [as an example] (if applicable):

STT – 12/31/14 – XJE31-02 – ADJUST DEPOSITS TO SCH FR WAPA \$25,592  
East store – 12/31/14 – ZJE05 – ADJUST DEPOSITS TO SCH FR WAPA \$30,799  
West store – 12/31/14 – XJE31-07 – ADJUST DEPOSITS TO SCH FR WAPA \$52,815

Question/Request for Info:

Please provide detail of all deposit transactions (deposits made and refunds of deposits) with WAPA from 2012-2015 for each store. If the WAPA deposit was credited to the account or refunded, please identify where on the general ledger this credit was recorded and details of the credit/refund.

Response:

In anticipation of receiving the liquidation orders in early March 2015, I requested the status of utility deposits with WAPA. We received WAPA statements dated 3/05/15 – see copies herein.

There was no audit trail nor previous outside documentation supporting the existing balances for STT and STX deposit balances in GL account 19000. The carryover balance from the prior accounting records showed a balance of \$37,962.40 for STT and a balance of \$20,001.00 for STX. In the conversion on January 1, 2013, I allocated 50% to each STX location. This was arbitrary in the absence of any other evidence. Upon receiving the outside statements from WAPA, I adjusted the deposit account balances to the principal retroactively on 12/31/14.

The disposition of deposits in each location was as follows:

1. Plaza East – since there was no refund or other event and since the deposits are in favor of United Corporation without change, the balance was treated as a capital distribution.
2. Plaza West – since the deposits are in the name of Plessen Enterprises, Inc. which is owned 50/50 consistent with Plaza ownership, these deposits were distributed to the partners consistent with the elimination of inter-company debt on 12/31/14. This adjustment was made after recognizing the accrued interest in the partnership.
3. Plaza STT – the deposits and accrued interest were offset against the final WAPA Invoice.

I am unable to locate a copy of the final WAOA invoice in STT. However, see the screen print that recorded the final invoice on 5/31/15 and CRA check 241 dated 10/01/15 in payment of the balance due.

List of documents provided:

1. Prepaid Insurance Schedules from 2013 to 2015.
2. Copies of three PE East Banco a/c 8830 statements matching 3 payments made in 2013 and 2014 covering insurance through the store-split dates. Copies of cancelled checks are not available as these payments were made after the banks were threatened by liability and began refusing to supply copies of enclosures as of August 2013. Again, I have no copies of bank records for the STT operating accounts as those records were withheld by Willie Hamed after the STT auction. The Hameds obviously have copies of cancelled checks paying for insurance since the five checks included as Exhibit 8 to Yusuf's opposition to the motion to remove him as Liquidating Partner have Hamed Bates numbers. These checks date from July 2002 through May 2014 and all were signed by a Hamed.

## Item No. 3010

Description: Vendor rebates (e.g., West Indies, Frito Lay/Pepsico, BJs, Associated Grocers, Tropical Shipping, Bellows and Hunter Foods)

General Ledger-Store, Date, Entry No. & Description [as an example] (if applicable)

GL Acct #58000

Question/Request for Info:

See attached requested vendor rebates previously emailed to you on 1/21/16 by VZ (see last page for the list). Please provide statements or invoices from vendor for items in list.

Response:

See objection to Item No. 3002. Without waiving that objection, researching this list of vendor rebates was very tedious challenge that took two full days with very little to be gained. I made this point when you originally asked for these documents. I asked what your reason was for making the request and further informed you that any evidence of the vendor rebates was contained in the original sales journal records which you had in your possession. Furthermore, I described how the cash room clerks handle a tremendous volume of daily items and it is likely that even if details were given to them along with the check, they likely just discarded it. The greater likelihood is that they rarely go vendor rebate details as most checks were forwarded to them by management or whoever opened the daily mail – often the Hameds.

Our agreement was that when you returned the first 6 months of original sales journal records, I would deliver the next 6 months. At this date, you still have in your possession all of the sales journals from January 2013 through June 2013 for PE East and PE West.

In our last meeting in Joel Holt's office, you asked if you could take some of the files back to your office in Miami which I agreed to as long as the files were returned intact. When I inquired with Joel Holt last week (April 11, 2016) if I could get the sales journals back, he responded vaguely that he didn't have them. So I assumed you must have taken them back to Miami.



Having spent a considerable amount of time just fulfilling this one item out of the many requests I still have unfinished, it appears that a new budget might be needed to continue the process. Your very first request for documents was so broad that it was obvious to me as a seasoned auditor that it was nothing more than an attempt to overwhelm our resources. When I stated this, you backed off some and we struck a compromise.

In our first meeting in Joel Holt's office when I questioned the scope of your review, we established that it didn't include the issuance of audited financial statements. That was after I emphasized that I did not have the resources to either undergo a full audit or to provide every report in your initial request. I offered instead to install Sage 50 with complete data backups for years 2012 to present. I also suggested that rather than have you give me a 100 page list of requests, that you instead assign someone to me for a period of time who could request an item and have it fulfilled one request at a time. In this way, an auditor could better evaluate if lengthy document requests are really warranted.

This was exactly the case when Kauffman Rossin CPA's conducted their review of 2014. Although they too first requested considerable details of general ledgers, etc., they finally conducted their field work in such a way that they realized after examining 10 of 100 documents that the results were the same with no exceptions making it unnecessary to continue examining the remaining 90 documents. It's easy to pick up problem area starting with financial statements. Any issues were transparent just as I had promised.

Keep in mind there's a cost-benefit ration that affects the quality of accounting and the manner in which documents are stored. Unfortunately before I arrived in October 2012, Margie Soeffing was the only accounting professional in the company. She was persistently overwhelmed and the status of her accounting reflected that condition. Also realize that the company was doing approximately \$100 million in business and the accounting department prior to my arrival consisted of one Controller and roughly three clerks in each store.

Having said all of the above, included herein with Item 3010 are as many documents as I am able to provide at this time. But at this point I must challenge what possible benefit any of this has towards the end of winding up the Partnership.

List of documents provided:

**John Gaffney**

---

**From:** Bracey Alexander <bracey.alexander@vz-cpa.com>  
**Sent:** Thursday, January 21, 2016 5:16 PM  
**To:** John Gaffney  
**Cc:** James Patton  
**Subject:** RE: Plaza Extra

Hi John,

Here a couple of things I hope you can get to me before we leave tomorrow:

- Scotia bank statements for 2013 (they were not included in the documents you provided today)
- Can you provide supporting documentation (invoice or statement from vendor) for the following vendor rebates:

Tropical Shipping	3/13/2013	West	163,172.88
Tropical Shipping	10/27/2015	West	293,614.74
Associated Grocers	4/6/2015	West	35,238.65
Associated Grocers	4/6/2015	West	35,238.65 (this was in the accounting twice for the sa
Associated Grocers	12/29/2014	West	35,238.65
Food Warehouse	7/8/2014	West	30,663.76
Tropical Shipping	3/6/2013	STT	153,803.70
Tropical Shipping	3/27/2014	STT	166,553.64
Tropical Shipping	3/31/2013	East	163,172.88
Associated Grocers	3/20/2013	East	35,319.51

- Also we noted a few entries in Sage in the vendor rebate account without detail of the vendor, labeled "Daily POS Entry". Can you please provide support for these as well so we can ensure these were really vendor rebates and not misclassified.

DAILY POS ENTRY	3/7/2013	West	79,982.38
DAILY POS ENTRY	2/2/2014	West	34,456.56
DAILY POS ENTRY	4/7/2014	West	36,368.16
DAILY POS ENTRY	4/15/2014	West	329,423.79
DAILY POS ENTRY	7/10/2014	East	22,754.00
DAILY POS ENTRY	10/23/2014	East	18,000.00
DAILY POS ENTRY	5/9/2013	STT	26,902.00

Please note, the store indicated above is the store which we extracted the information from the accounting, not necessarily the store which the rebate may have been for

Thanks,

**Bracey Alexander, CPA**  
Audit Manager

*Vizcaino Zomerfeld, LLP*  
Certified Public Accountants

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---

**From:** James Patton  
**Sent:** Wednesday, January 20, 2016 11:44 AM  
**To:** John Gaffney  
**Cc:** Beatriz Martin; 'Joel Holt'; Bracey Alexander  
**Subject:** RE: Plaza Extra

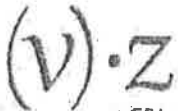
John,

We are at Joel's office if you want to drop off the drive so we can test it out before our meeting on Friday.

Let me know when you plan to stop by as we are heading to the Plaza West later.

Regards,

**H. James Patton, CPA, CFF**  
Audit Manager



= CPAs & CONSULTANTS

Vizenina Zumerfeld, LLP  
Certified Public Accountants

**From:** John Gaffney [<mailto:johngaffney@tampabay.rr.com>]  
**Sent:** Tuesday, January 19, 2016 8:33 PM  
**To:** James Patton <[james.patton@vz-cpa.com](mailto:james.patton@vz-cpa.com)>  
**Cc:** Beatriz Martin <[betty.martin@vz-cpa.com](mailto:betty.martin@vz-cpa.com)>; 'Joel Holt' <[hohivi@aol.com](mailto:hohivi@aol.com)>; Bracey Alexander <[bracey.alexander@vz-cpa.com](mailto:bracey.alexander@vz-cpa.com)>  
**Subject:** RE: Plaza Extra

Hello James,

I sent you an email earlier today to suggest that we test restoring one or two backups before I spend the time making them. Since I didn't hear back, I went ahead this evening and made all the backups for all the stores and all the years. I also copied the bank statements, reconciliations, etc. for 2015 onto the same flash drive that I'd like to deliver to you.

My hope is that you are able to restore all the backups. That way you'll be able to print all bank reconciliations and all you'll need are the past years' bank statement to check them against. This will certainly save a lot of work for both of us.

Call me at your earliest convenience and I'll be happy to deliver the flash drive to you. My cell number is (305)332-7094

Regards...John

**From:** James Patton [<mailto:james.patton@vz-cpa.com>]  
**Sent:** Monday, January 18, 2016 6:32 PM  
**To:** John Gaffney  
**Cc:** Beatriz Martin; 'Joel Holt'; Bracey Alexander  
**Subject:** RE: Plaza Extra

John,

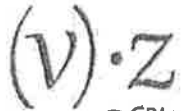
The Sage backups from 2012 - 2015 will do fine, assuming we can restore the files this time. Please email those to us before Friday, if possible, so we can make sure we don't have any problems restoring them.

I understand you weren't there in 2012, but any information regarding the bank statements and reconciliations you can send us would be appreciated.

We will see you Friday morning.

Thank you for your assistance.

**H. James Patton, CPA, CFF**  
Audit Manager



Vizenina Zomerfeld, LLP  
*Certified Public Accountants*

**From:** John Gaffney [<mailto:johngaffney@tampabay.rr.com>]  
**Sent:** Monday, January 18, 2016 4:43 PM  
**To:** James Patton <[james.patton@vz-cpa.com](mailto:james.patton@vz-cpa.com)>  
**Cc:** Beatriz Martin <[betty.martin@vz-cpa.com](mailto:betty.martin@vz-cpa.com)>; 'Joel Holt' <[holtvi@aol.com](mailto:holtvi@aol.com)>; Bracey Alexander <[bracey.alexander@vz-cpa.com](mailto:bracey.alexander@vz-cpa.com)>  
**Subject:** RE: Plaza Extra

Hello James,

Yes, Friday morning meeting is fine.

As for the 2012 general ledger, I haven't exported it to excel and that process was very time consuming when I did it for 2013, 2014 and 2015. Since I also just read your email requesting replacement backups, can you work with 2012 Sage backups as well? That'll save me some time.

More to your 2012 request, realize that year was before my time and all of the St. Croix store activity was rolled up into about 10 monthly journal entries. So the only transaction detail you'll find is for St. Thomas. I'll send the databases for East and West, but there's no value whatsoever to the GL output as the systems were being used like word processors to produce payroll checks and payments to vendors. I do have the binders from which the journal entries were prepared which also contain the bank statements for 2012. You can decide whether these qualify as bank reconciliations. I call them bank analyses.

By the way, all 2011 and prior years' records including journal entries and bank statements remain in St. Thomas.

I'll make the Sage backups you requested including 2012 if you approve.

Regards...John

**From:** James Patton [<mailto:james.patton@vz.cpa.com>]  
**Sent:** Monday, January 18, 2016 3:51 PM  
**To:** John Gaffney  
**Cc:** Beatriz Martin; Joel Holt ([holtvr@aol.com](mailto:holtvr@aol.com)); Bracey Alexander  
**Subject:** Plaza Extra

John,

As you know we're back in St. Croix this week. We would like to meet with you again while we are here to go over a few things. Are you available to meet with us Friday morning?

Also, can you provide us with the general ledger for all stores for 2012 as well as the monthly bank statements and reconciliations for all accounts for the year.

Thank you,

**H. James Patton, CPA, CFF**  
Audit Manager



Vizeaino Zomerfeld, LLP  
*Certified Public Accountants*  
999 Ponce de Leon Boulevard, Suite 1045  
Coral Gables, Florida 33134  
Tel: + 1 305 444 8288 | Fax: + 1 305 444 8280  
[james.patton@vz-cpa.com](mailto:james.patton@vz-cpa.com) | [www.vz-cpa.com](http://www.vz-cpa.com)

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## Gregory H. Hodges

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**From:** Gregory H. Hodges  
**Sent:** Thursday, June 23, 2016 8:38 PM  
**To:** Fathi Yusuf; John Gaffney (johngaffney@tampabay.rr.com)  
**Cc:** 'Nizar Dewood'  
**Subject:** FW: Subpoenas To BNS and BPPR

FYI,

---

**From:** Gregory H. Hodges  
**Sent:** Thursday, June 23, 2016 8:37 PM  
**To:** 'Joel Holt'  
**Cc:** edgarrossjudge@hotmail.com; nizar@dewood-law.com; carl@carlhartmann.com  
**Subject:** RE: Subpoenas To BNS and BPPR

Stock response for someone who can't answer the hard questions.

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksberg Gade  
St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400  
Web: [www.DTFLaw.com](http://www.DTFLaw.com)

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**From:** Joel Holt [<mailto:holtvi@aol.com>]  
**Sent:** Thursday, June 23, 2016 8:35 PM  
**To:** Gregory H. Hodges  
**Cc:** [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com); [nizar@dewood-law.com](mailto:nizar@dewood-law.com); [carl@carlhartmann.com](mailto:carl@carlhartmann.com)  
**Subject:** Re: Subpoenas To BNS and BPPR

If there is nothing to hide, why not just let this process get done?

Joel H Holt  
2132 Company St.  
Christiansted, VI 00820



340-773-8709

On Jun 23, 2016, at 8:26 PM, Gregory H. Hodges <[ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)> wrote:

You say "access to partnership accounting information is all we are seeking now." Who is "we"? The right to access or view existing information does not give you, an attorney currently without a client, the right to propound "130 very specific questions" to John Gaffney or anyone else.

The offer John made, with Mr. Yusuf's permission, is memorialized in his letter to you of May 17 (Exhibit 3 to the last bi-monthly report). As far as I am aware, you have never responded to that letter. Despite your effort to mangle the terms of the offer, I think it was clear, if Hamed wanted access, he could send someone from VZ down "who can work on premises (Plaza East) with original records to avoid the burdensome task of providing electronic copies." In other words, if the VZ accountant cannot find the information on her own, John will be available to point her in the right direction to get the information herself.

The 130 questions do not "need" to be answered in order for VZ to be "allowed to view all partnership accounting information from January 2012 to present." Mr. Yusuf's experts never propounded a bunch of questions to John. In fact, I encourage you and Judge Ross to ask John how much time he has spent compiling information for or meeting with our experts compared with VZ. You will learn that it is a tiny fraction. The Plan does not say that Hamed's accountants "shall be allowed to conduct such inquiries as they see fit to reach an understanding of the partnership accounting." Rather, it simply provides that they "shall be allowed to view" the partnership accounting information for a specific period. That access was offered to VZ long ago and it has squandered the opportunity.

Finally, John did not say he was "taking 30 days off from the partnership accounting." His May 17 letter said "I plan to take a leave of absence from any other work for the Partnership related to these document requests for at least one month in order to tend to other emergencies, many of which relate to the Partnership."

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, L.P.  
Law House, 1000 Frederiksberg Gade  
St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400  
Web: [www.DTFLaw.com](http://www.DTFLaw.com)

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**From:** Joel Holt [<mailto:holtvi@aol.com>]  
**Sent:** Thursday, June 23, 2016 2:03 PM  
**To:** Gregory H. Hodges  
**Cc:** [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com); [nizar@dewood-law.com](mailto:nizar@dewood-law.com); [carl@carthartmann.com](mailto:carl@carthartmann.com)  
**Subject:** Re: Subpoenas To BNS and BPPR

Several quick comments are in order to this email.

First, "access to partnership accounting information" is all we are seeking now, which we have been seeking since the beginning of this year, as you know.

Second, John never offered to let these accountants work side by side—I was there when he made a much more limited suggestion, asking if they would give him some manpower to do specific, needed accounting tasks he would assign to them to speed up his work. If your client wants to revise that offer and have VZ actually come into the Plaza offices to do general accounting work with John (not sure there is anything left to do), just let me know.

Third, the 130 questions still need to be answered in order to understand the accounting. However, we agreed to (1) revise the list to eliminate the request for documents (as we agreed to get the documents through the subpoena process) and (2) we agreed to wait 30 days before submitting the revised list, as John said he was taking 30 days off from the partnership accounting (a well deserved rest).

In this regard, the revised list is being sent now attached by separate email since that 30 day period just ended.

Joel H. Holt, Esq.  
2132 Company Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
(340) 773-8709

-----Original Message-----

From: Gregory H. Hodges <[ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)>  
To: 'Joel Holt' <[holtvi@aol.com](mailto:holtvi@aol.com)>  
Cc: edgarrossjudge <[edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)>; nizar <[nizar@dewood-law.com](mailto:nizar@dewood-law.com)>; carl <[carl@carlhartmann.com](mailto:carl@carlhartmann.com)>  
Sent: Thu, Jun 23, 2016 11:08 am  
Subject: RE: Subpoenas To BNS and BPPR

Good morning,  
I will be equally brief. The Plan most certainly did not give your former client a "right to a full accounting." Rather, it gave his accountants a right of access "to view all partnership accounting information from January 2012 to present." (Plan, § 9, Step 4) In March 2015, John Gaffney proposed to provide that access by allowing a VZ accountant to work on the premises with him and the original documents. See Exhibit 3 to the last bi-monthly report. Instead of accepting that proffered access, VZ first propounded 81 "Questions/Requests for Info," which has now grown to "130 very specific questions." These unauthorized discovery requests would not only require John to answer a host of questions, but gather and spoon feed information to VZ. Now, without moving for or obtaining relief from the discovery stay, you have issued 2 subpoenas that seek far more than "partnership accounting information from January 2012 to present." If the subpoenas are not limited as requested, they should be quashed altogether. If VZ still claims a need to review accounting information during the applicable 4 ½ year period, it should be ordered to immediately accept the offer of access made 15 months ago or be foreclosed from further access.

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP



Law House, 1000 Frederiksberg Gade  
St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400  
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<image001.jpg>

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**From:** Joel Holt [<mailto:holtvi@aol.com>]  
**Sent:** Thursday, June 23, 2016 10:03 AM  
**To:** Gregory H. Hodges  
**Cc:** [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com); [nizar@dewood-law.com](mailto:nizar@dewood-law.com); [carl@carlhartmann.com](mailto:carl@carlhartmann.com)  
**Subject:** Re: Subpoenas To BNS and BPPR

I am not sure that a long response to this email is really needed. The liquidation order gave my client right to a full accounting. That process began, but was stalled for reasons already documented. The request to issue subpoenas was made after trying to get the requested information from Mr. Gaffney. In short, how we got here in no mystery. We hope this process, which is now taking place, can be completed in short order.

Joel H Holt  
2132 Company St.  
Christiansted, VI 00820  
340-773-8709

On Jun 21, 2016, at 6:59 PM, Gregory H. Hodges <[ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)> wrote:

Dear Judge Ross,

Before addressing the responses below, as I suspect you already know, Mohammad Hamed died in Jordan on June 16<sup>th</sup>. Since the POA given to Waleed Hamed does not survive his father's death, it appears that Joel does not have a client in this matter for the time being.

If issuing two subpoenas is not re-opening discovery, why did Joel go to you on an *ex parte* basis for permission to issue the subpoenas instead of working out a stipulation, as proposed by me, that would apply equally to all parties? Everyone has known for years about BNS' failure/refusal to provide cancelled check images for the STT operating account ending in #2010 or to provide monthly bank statements, and that this caused the accounting department to resort to using online activity printouts that were not saved to PDF files until 2015. (VZ has been repeatedly told by John Gaffney that these activity printouts for account #2010 exist only in the monthly work files located at the Tutu Park store, which Waheed has refused to turn over to the Liquidating Partner to date.) Likewise, everyone has known that BPPR stopped providing cancelled check images in July 2013 shortly after the Hameds served it with the Order requiring dual signatories. Although everyone would no doubt prefer to have the check images from the outset,

there is nothing to support Joel's claim that "no credible accounting could be done without them." According to John, one can readily trace general ledger entries to items cleared in the bank statements. A simple test selection could then be used by VZ to test the validity of the accounting. It must be kept in mind that the Hameds co-signed every check from 2013 forward, so the absence of check images is hardly a big deal.

Despite the fact this case has been pending almost 4 years, the \$2.7M transfer is the only "unauthorized" transfer identified in Hamed's pleadings, and the inability to identify **any** other "unauthorized" transfers, Joel suggests his former client should be allowed to rummage through the United tenant account, which everyone has always acknowledged has nothing to do with the Partnership. Mere curiosity cannot serve as a valid basis for exposing United's tenant account to discovery for the first time in this case.

John Gaffney categorically denies that he ever stated that he guessed at the accounting for 2012 or that the "2012 accounting is a bunch of guesswork," as claimed below. The accounting for 2012 was done by Margie Soeffing for the most part from bank analysis. According to John, VZ already has all the bank statements for all months except 2012. As explained below and in John's letter to Joel attached as Exhibit 3 to the last bi-monthly report, the information for 2012 is in binders that John suggested VZ get in 6 month increments as they return each previously provided 6 month set of original documents. VZ chose the original documents for the first 6 months of 2013, which were provided in January 2016. There is no dispute that these documents have never been returned by VZ or that VZ never asked for the next 6 month increment of 2012 documents, so I am at a loss to understand what Joel claims is "utter nonsense." There has certainly been no effort to explain why the baseless "lost records" claim justifies discovery with respect to United's tenant account.

Although Joel understandably backs off his original claim that the "Hameds were excluded from the stores for a large part of the time," he now claims that they "**were** excluded from the accounting, access to bank accounts and the accounting system. That is the information we are seeking-not premises access." (Emphasis supplied) Although Mr. Yusuf disputes that Hamed was ever denied access to Partnership bank accounts and financial information, there is simply no question that since Judge Brady's May 31, 2013 and April 2, 2014 Orders, the Hameds have had unfettered access to all Partnership financial data and records, including the Sage5 accounting system. Since Joel must effectively concede complete access for years, how does an earlier, disputed denial of access possibly justify the contemplated fishing expedition now, particularly with respect to the United tenant account?

My arguments why Plessen should be removed from the subpoenas have been completely ignored. I stand on those arguments.

In response to my argument that discovery should be a two way street, Joel states that his former client "has no problem with this," as long as it "is limited to financial and bank records from third parties that impinge on the accounting[.]" My argument that mutual discovery should also be allowed if it directly relates to Plan implementation was completely ignored. May the parties proceed to engage in discovery if it is limited, as proposed by Joel, as well as to issues concerning Plan implementation?

As you know, in the untimely Objection to the Liquidating Partner's Eighth Bi-Monthly Report, the following is stated: "Hamed's CPA's have withdrawn the request for documents [presumably the 81 "Questions/Requests for Info" addressed at page 10 of that bi-monthly report] at this time and simply asked him [John Gaffney] to answer 130 very specific questions about the accounting methods and decisions." Although I have yet to see these "130 very specific questions" and Mr. Yusuf intends to file a timely Reply to the Objection in which he will object to this new process, it underscores the need to address the timing of the parties' submission of their competing accountings and distribution plans. John's letter to Joel, attached as Exhibit 3 to the last report, concludes with the sentence: "The Master has reviewed and approves the process I have recommended." That process-to have a VZ accountant work on premises with John and the original records- appears at odds with the process contemplated by the "130 very

specific questions." While Mr. Hamed's death will no doubt involve some delays in this matter, I respectfully submit that it is important for the parties to understand what the process (and related timing) will be that results in the submission of the accountings and distribution plans. I suggest that we convene a conference call to discuss these issues.

Regards,

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksberg Gade  
St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400  
Web: [www.DTFLaw.com](http://www.DTFLaw.com)

<image001.jpg>

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**From:** Joel Holt [<mailto:holtvi@aol.com>]  
**Sent:** Thursday, June 16, 2016 9:02 AM  
**To:** Gregory H. Hodges; [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)  
**Cc:** [nizar@dewood-law.com](mailto:nizar@dewood-law.com); [carl@carlhartmann.com](mailto:carl@carlhartmann.com)  
**Subject:** Re: Subpoenas To BNS and BPPR

Judge Ross-here are my brief responses to these new comments sent by Greg Hodges:

1. Attorney Hodges says:  
"Instead, he apparently chose to approach you to get informal relief from the discovery stay for his client alone."

This has nothing to do with re-opening discovery. In a meeting with our CPAs, you were told that it looked like there were almost no underlying checks or invoices – and that no credible accounting could be done without them. Instead of further pestering Gaffney for this, we suggested we could just get them from the source. That is what this is.

2. Attorney Hodges says:

"There is only one transfer from the Partnership accounts to the United "tenant account" that occurred without Hamed's permission, namely, a check in the amount of \$2,784,706.25 issued in August 2012 and deposited into the tenant account."

and,

"Again, there is only one disputed transfer at issue. Why does this acknowledged transfer "need to be reviewed.""

How can we possibly know that? This is what Yusuf says. A review of the tenant account and other United Corp. accounts at that time will show any "unexpected" or unexplained deposits prior to the Hameds challenging what was going on.

3. Attorney Hodges says:

"Please note that Hamed alleged the following in his first amended complaint (paragraph 17): "United has always had completely separate accounting records and separate bank accounts for its operations of the 'non-supermarket' shopping center and business operations that were unrelated to the three Plaza Extra supermarket stores. Neither Mohammad Hamed nor his agents have access to these separate 'non-supermarket' United bank accounts used by United for its shopping center and other businesses unrelated to the three Plaza Extra supermarkets.""

This is exactly the problem. Those accounts were suppose to be separate – but as we know, they were not. United had accounts that the Hameds cannot see. Did large amounts go into them in either cash or partnership funds beyond the \$2.7 million? The only way to determine that is to look at the accounts.

4. Attorney Hodges says:

"Why did Joel wait until March 31, 2016 to cause subpoenas to issue?"

As you know, we were repeatedly told that we would be getting all of the information in time for a May report to the Court. As it turns out, when the CPAs finally were able to look and discuss this stuff, there are almost no underlying checks, no underlying invoices, and no real accounting for 2012 (even Gaffney says he pretty much guessed at all of that.) We are being asked to reconstruct what was supposed to be used for accounting but is not there. **We are now sending subpoenas because the information cannot be supplied.**

5. Attorney Hodges says:

"Joel attempts to justify his fishing expedition concerning United's tenant account by claiming that "all Plaza

accounting records for this time period have been lost." Of course, he offers no proof in support of this claim. John Gaffney has informed Hamed's accountants, Vizcaino Zomerfeld ("VZ), that he has the accounting records for this time period."

Utter nonsense. The Gaffney openly states that any 2012 accounting is a bunch of guesswork with no underlying documents at all. As for all of the rest, post-2012, there are no cancelled checks or invoices for almost all of these accounts.

6. Attorney Hodges says:

"Joel next attempts to justify his fishing expedition by claiming that the "Hameds were excluded from the stores for a large part of this time...."

They were excluded from the accounting, access to bank accounts and the accounting system. That is the information we are seeking – not premises access. That is why we had to file several motions in 2013 to open that access back up. That is why the Court ordered the Yusuf to stop blocking the Hameds' access.

7. Attorney Hodges says:

"No justification has been provided for including Plessen's records in the subpoenas. Plessen is not even mentioned in the Plan approved by the Court and its financial records have no relation to the Partnership wind up. While Partnership funds may have been used to purchase the parcel in question, the Partners chose to take title to the property in the name of Plessen in 2006. From that point forward, the Partnership had nothing to do with the property."

Attorney Hodges starts out with the statement "Partnership funds may have been used to purchase the parcel in question". Then they refuse to even put it on the schedule of contested assets. That's certainly enough for us to look at Plessen's own bank records.

8. Attorney Hodges says:

"Finally, if your are going to allow Hamed to engage in discovery despite the flimsy justifications provided for lifting the discovery stay, Mr. Yusuf submits that he should likewise be allowed to do the same. There are a number of issues that directly relate to the Partnership accounting and Plan implementation that Mr. Yusuf would like to pursue."

As long as any new discovery filed by the Yusufs is limited to financial and bank records from third parties that impinge on the accounting, Hamed has no problem with this.

Joel H. Holt, Esq.  
2132 Company Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
(340) 773-8709

-----Original Message-----

From: Gregory H. Hodges <[ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)>  
To: edgarrossjudge <[edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)>  
Cc: nizar <[nizar@dewood-law.com](mailto:nizar@dewood-law.com)>; carl <[carl@carlhartmann.com](mailto:carl@carlhartmann.com)>; 'Joel Holt' <[holtvi@aol.com](mailto:holtvi@aol.com)>  
Sent: Wed, Jun 15, 2016 4:40 pm  
Subject: RE: Subpoenas To BNS and BPPR

Dear Judge Ross,

While Joel addresses two of the three specific objections identified at page two of my letter, he ignores the third objection (i.e., the information gathering process involved with the subpoenas should not be allowed to delay the submission of the Partners' accounting and distribution plans per Section 9, Step 6 of the Plan) and the general objection concerning the *ex parte* and unauthorized process that led to the issuance of the subpoenas in the first place. You should be aware that on March 9, 2016, I emailed Joel suggesting that "after the competing accountings and distribution plans are submitted on May 2, 2016, we stipulate to the lifting of the discovery stay in the consolidated cases and to a discovery schedule on all remaining claims." Although Joel said he would get back to me, he never did. Instead, he apparently chose to approach you to get informal relief from the discovery stay for his client alone.

There is only one transfer from the Partnership accounts to the United "tenant account" that occurred without Hamed's permission, namely, a check in the amount of \$2,784,706.25 issued in August 2012 and deposited into the tenant account. As explained in his letter dated 8/15/12 to Hamed, Mr. Yusuf claimed that he was entitled to these funds in order to match previous withdrawals by Hamed and his sons. Hamed obviously disagrees and will claim that this amount must be charged against Mr. Yusuf in the Partnership accounting. Joel claims: "so these transfers from the Plaza account to United need to be reviewed, particularly during the last part of 2012 and the first six months of 2013, as all Plaza accounting records for this time period have been lost. As the Hameds were excluded from the stores for a large part of this time period, it is critical to look at these United bank accounts to see what funds were transferred from Plaza to United's accounts." Please note that Hamed alleged the following in his first amended complaint (paragraph 17): "United has always had completely separate accounting records and separate bank accounts for its operations of the 'non-supermarket' shopping center and business operations that were unrelated to the three Plaza Extra supermarket stores. Neither Mohammad Hamed nor his agents have access to these separate 'non-supermarket' United bank accounts used by United for its shopping center and other businesses unrelated to the three Plaza Extra supermarkets." In your email of March 31, 2016 to Joel, the scope of discovery was limited to the "financial information relating to the Plaza partnership." In his own pleading, Hamed effectively concedes United's tenant account has nothing to do with the Partnership.

Again, there is only one disputed transfer at issue. Why does this acknowledged transfer "need to be reviewed" at all, as Joel claims, much less serve as a basis for reviewing all

non-payroll cancelled checks from July 1, 2012 through June 30, 2013? See paragraph 1 to Exhibit A of the BNS subpoena. Incredibly, paragraphs 2 and 3 of Exhibit A to the BNS subpoena essentially seek all other documents relating to the tenant account from inception through 2015. If it was so "critical [for Hamed] to look at these United bank accounts," why did Joel wait until March 31, 2016 to cause subpoenas to issue? I suspect you were not informed that similar subpoenas were issued more than two years ago on March 11, 2014 and subsequently withdrawn after we filed a motion to quash and for sanctions.

Joel attempts to justify his fishing expedition concerning United's tenant account by claiming that "all Plaza accounting records for this time period have been lost." Of course, he offers no proof in support of this claim. John Gaffney has informed Hamed's accountants, Vizcaino Zomerfeld ("VZ), that he has the accounting records for this time period. As explained at length in John's letter to Joel dated May 17, 2016, attached as Exhibit 3 to the Liquidating Partner's Eighth Bi-Monthly Report, these records were part of the records that John suggested would be provided to VZ in 6 month increments so he did not have to spend time scanning and copying them. VZ chose to start with the first 6 months of 2013 and never requested the previous 6 months, presumably because they have not returned the 6 months of records they were given. Despite Mr. Yusuf's demand, these records still have not been returned. Nor has John received a response to his May 17 letter. Accordingly, this "lost records" justification for the subpoenas is clearly bogus.

Joel next attempts to justify his fishing expedition by claiming that the "Hameds were excluded from the stores for a large part of this time." The Hameds were never excluded from the stores for a single day and I challenge Joel to prove otherwise. The Hameds had unfettered access to every record in all the stores during this period, including check registers. They co-signed each and every check and regularly challenged expenditures. They were also the active managers in the cash rooms right up to the East/West split. This "exclusion" justification is also bogus. Accordingly, the subpoenas should be modified to omit any information concerning United's tenant account.

No justification has been provided for including Plessen's records in the subpoenas. Plessen is not even mentioned in the Plan approved by the Court and its financial records have no relation to the Partnership wind up. While Partnership funds may have been used to purchase the parcel in question, the Partners chose to take title to the property in the name of Plessen in 2006. From that point forward, the Partnership had nothing to do with the property. The fact that Plessen decided in 2008 to convey the property to United via a Deed In Lieu of Foreclosure (signed by Hamed as President) also has nothing to do with the Partnership. If the mere fact that Partnership funds may have been used to originally purchase the property somehow makes Plessen's financial records germane to an accounting of the Partnership, as argued by Joel, then the financial records of the other jointly owned companies (i.e. Peters Farm and Sixteen Plus) are no less germane since all of their assets were also purchased with Partnership funds. An accounting for the Partnership alone is already a broad ranging and difficult project. Neither the Plan nor the Order approving the Plan contemplate expanding that project as suggested by Joel below. Plessen should be removed from the subpoenas.

Finally, if you are going to allow Hamed to engage in discovery despite the flimsy justifications provided for lifting the discovery stay, Mr. Yusuf submits that he should likewise be allowed to do the same. There are a number of issues that directly relate to the Partnership accounting and Plan implementation that Mr. Yusuf would like to pursue, not the least of which is why, after more than a year, Hamed has failed to provide the releases required by the Plan and your Order transferring the Tutu Park store. If discovery is to be reopened for Hamed, it must be a two way street.  
Regards,

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksberg Gade

St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400  
Web: [www.DTFLaw.com](http://www.DTFLaw.com)

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**From:** Joel Holt [<mailto:holtvi@aol.com>]  
**Sent:** Tuesday, June 14, 2016 11:15 AM  
**To:** [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)  
**Cc:** [nizar@dewood-law.com](mailto:nizar@dewood-law.com); [carl@carlhartmann.com](mailto:carl@carlhartmann.com); Gregory H. Hodges  
**Subject:** Re: Subpoenas To BNS and BPPR

Dear Judge Ross:

I read the letter from Greg Hodges re his two specific objections to the subpoenas we have issued to Scotiabank and Banco Popular. I have a brief response.

As for his objection regarding the subpoena that includes United's "tenant account," there are multiple reasons why this "tenant account" is appropriate for my client to review. First, funds were transferred by the Yusufs from the Plaza Accounts to this United account without the Hameds' permission – a finding already made by Judge Brady—so these transfers from the Plaza account to United need to be reviewed, particularly during the last part of 2012 and the first six months of 2013, as all Plaza accounting records for this time period have been lost. As the Hameds were excluded from the stores for a large part of this time period, it is critical to look at these United bank accounts to see what funds were transferred from Plaza to United's accounts. Second, United has paid supermarket expenses from this account and then obtained reimbursement from the Plaza account—indeed, it is currently is paying for partnership expenses and then reimbursing itself with partnership funds, as noted the General Ledger submitted with the Liquidating Partner's Seventh and Eighth Bi-Monthly report shows. Third, it is critical to see if other amounts were similarly obtained or used, as well as understand what all of the partnership checks reimbursing United actually



cover. As you know, our accountants have stated that they need to be able to follow where the money came into and left the partnership in order to perform their audit, as well as review the underlying support for those expenditures. United is a party in this case so there is no prejudice to it.

As for the objection regarding the Lessen bank records, if you read the last bi-monthly report you will see that a \$500,000 piece of land that was purchased solely with supermarket proceeds now rests in United's name rather than in Plessen's name, which the Liquidating Partner will not even put it on the partnership's schedule, much less provide an accounting of those funds. Indeed, once again, the Yusufs and Plessen are already parties in this case, so this information is part of the accounting of that claim as well. Indeed, these records involving Plessen, who is a party here as well, are not voluminous.

Thus, I believe both objections raised by Attorney Hodges are without merit.

Joel H. Holt, Esq.  
2132 Company Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
(340) 773-8709

-----Original Message-----

From: Gregory H. Hodges <[ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)>  
To: 'Edgar Ross' <[edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)>  
Cc: Nizar DeWood <[nizar@dewood-law.com](mailto:nizar@dewood-law.com)>; 'Joel Holt' <[holtvi@aol.com](mailto:holtvi@aol.com)>;  
'Carl@carlhartmann.com' <[carl@carlhartmann.com](mailto:carl@carlhartmann.com)>  
Sent: Mon, Jun 13, 2016 12:13 pm  
Subject: Subpoenas To BNS and BPPR

Dear Judge Ross,  
Please see the attached letter.  
Regards,

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksberg Gade  
St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400  
Web: [www.DTFLaw.com](http://www.DTFLaw.com)

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**Gregory H. Hodges**

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**From:** Gregory H. Hodges  
**Sent:** Thursday, June 23, 2016 8:59 PM  
**To:** Fathi Yusuf; John Gaffney (johngaffney@tampabay.rr.com)  
**Cc:** 'Nizar Dewood'  
**Subject:** FW: Plaza  
**Attachments:** REVISED FINAL - All Request to J Gaffney re items.docx

FYI.

---

**From:** Gregory H. Hodges  
**Sent:** Thursday, June 23, 2016 8:55 PM  
**To:** 'Edgar Ross'  
**Cc:** 'Nizar DeWood, Esq.'; Joel Holt; [carl@carlhartmann.com](mailto:carl@carlhartmann.com)  
**Subject:** FW: Plaza

Dear Judge Ross,

For the reasons set forth in my email earlier this evening, we object to the attached discovery requests because they are propounded by an attorney who currently has no client, they are not authorized or contemplated under the Plan, and they violate the discovery stay.

Please do not allow Attorney Holt and his experts to waste any more of John Gaffney's time.

Gregory H. Hodges  
Dudley, Topper and Feuerzeig, LLP  
Law House, 1000 Frederiksberg Gade  
St. Thomas, VI 00802  
Direct: (340) 715-4405  
Fax: (340) 715-4400  
Web: [www.DTFLaw.com](http://www.DTFLaw.com)

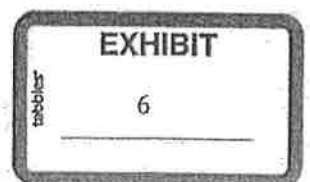
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**From:** Joel Holt [<mailto:holtvi@aol.com>]  
**Sent:** Thursday, June 23, 2016 2:18 PM  
**To:** [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)  
**Cc:** Gregory H. Hodges; [dewoodlaw@gmail.com](mailto:dewoodlaw@gmail.com); [dewoodlaw@me.com](mailto:dewoodlaw@me.com); [carl@carlhartmann.com](mailto:carl@carlhartmann.com)  
**Subject:** Plaza

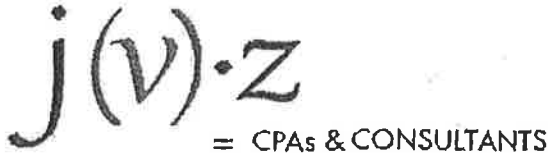


Dear Judge Ross:

As we have agreed, since we are independently pursuing the bank and vendor records, we have removed the document demands to Gaffney. Attached is a revised set of our CPA's questions which remove those demands. This will, hopefully, end the complaints about the burden on his time. The questions themselves should be answerable in under one week according to our CPA's and are necessary to their doing the review the Court has allowed. Please forward them to Mr. Gaffney and ask that he respond to them at his convenience, as he is being paid full-time to do such work for the Partnership.

Joel H. Holt, Esq.  
2132 Company Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
(340) 773-8709





5001 Chandler's Wharf  
P.O. Box 24390 GBS  
Christiansted, VI 00824  
T. 340-719-8261  
F. 340-719-2775  
www.jvz-cpa.com

September 28, 2016

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

Re: Mohammad Hamed, et.al v. Fathi Yusuf and United Corporation

Dear Attorney Holt:

Jackson Vizcaino Zomerfeld, LLP (JVZ or we) is a licensed Certified Public Accountant firm in the U.S. Virgin Islands.

You have retained us to render an expert opinion in the litigation captioned Hamed v. Yusuf et al., docket number Civ. No. SX-12-CV-370. Attached is our analysis of the financial accounting for January 1, 2012 through June 30, 2016 as per Fathi Yusuf.

A handwritten signature in dark ink, appearing to be 'B. C.', written over a horizontal line.

For the Firm

JACKSON, VIZCAINO ZOMERFELD, LLP

MEMBERS OF:  
American Institute of Certified Public Accountants  
Florida Institute of Certified Public Accountants  
National Association of Certified Valuation Analysts  
Texas State Board of Public Accountancy  
Virgin Islands Board of Accountancy

The Carribbean's full-service accounting firm

JVZ-000002

**Betty Martin**, the Engagement Partner, is the Firm's senior assurance partner and has over 20 years of experience in public accounting. As the Engagement Partner, Betty is responsible for the planning and execution of this engagement.

**Ray Zomerfeld**, a founding partner, has over 25 years of experience in servicing individuals and companies as a Certified Public Accountant and Certified Valuation Analyst. Ray is a specialist in litigation support; ~~insurance~~ **casualty**, and economic loss.

As a Certified Valuation Analyst, Ray is a highly regarded specialist on claims involving business litigation, windstorm, fire, and economic loss. Ray is currently serving as an expert witness in a civil case in the Superior Court of the Virgin Islands, Division of Saint Thomas and Saint John.

Ray serves as the Consulting Partner on this engagement by providing oversight and guidance using his knowledge and experience in litigation support.

**Armando Vizcaino** has over 35 years of experience in public accounting and will serve as the technical partner on this engagement.

**Ileana Alvarez** as the Firm's Quality Control Director reviews all the assurance reports issued by the Firm. Ileana is responsible for the research of all technical issues and performs the quality review on reports. Ileana is responsible for the quality of this engagement and as such she will take responsibility for the pre-issuance review of the engagement report.

**Bracey Alexander** has over 10 years of experience in accounting and auditing and will serve as the engagement manager under the supervision of Betty.

For more information on our qualifications, see Attachment I.

#### **COMPENSATION**

We are being compensated at our normal hourly rate for this type of work ranging from \$50 - \$350 per hour. Our compensation is not contingent on the outcome of this litigation.

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

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )

Plaintiff/Counterclaim Defendant, )

v. )

FATHI YUSUF and UNITED CORPORATION, )

Defendants/Counterclaimants, )

v. )

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

Additional Counterclaim Defendants. )

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )

Plaintiff, )

v. )

UNITED CORPORATION, )

Defendant. )

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )

Plaintiff, )

v. )

FATHI YUSUF, )

Defendant. )

CIVIL NO. SX-12-CV-370

ACTION FOR INJUNCTIVE  
RELIEF, DECLARATORY  
JUDGMENT, AND  
PARTNERSHIP DISSOLUTION,  
WIND UP, AND ACCOUNTING

Consolidated With

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND  
DECLARATORY JUDGMENT

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND  
CONVERSION

**EXHIBIT G**

**JONATHAN DAVID JACKSON, CPA**  
**P. O. Box 24831 Christiansted, St. Croix, VI 00824**  
**Work (340) 719-8261      Cell (340) 690-7040**

I am a licensed CPA in both the USVI and Texas. Currently I practice under J. David Jackson, PC in the USVI and under J. David Jackson, LC in Texas. In addition, I am the President and managing member of Territory East Asset Management, LLC.

**PERSONAL**

DOB: February 7, 1953, Galveston, Texas

**EDUCATION**

1993 Bachelor of Science in Business Administration: West Texas A&M University, Canyon, TX  
Major: Accounting. Graduated Cum Laude

1991 Associate of Science in Business Administration: Amarillo College, Amarillo, TX Major:  
Business Administration. Graduated Magna Cum Laude

1971 Cal Farley's Boys Ranch High School, Amarillo, TX

**PROFESSIONAL CERTIFICATIONS**

Certified Public Accountant - Texas: 1996-Present

Certified Public Accountant - United States Virgin Islands: June 2005- Present

**PROFESSIONAL AFFILIATIONS**

Texas State Board of Public Accountancy

American Institute of Certified Public Accountants

Virgin Islands Board of Public Accountancy

Virgin Islands Society of Certified Public Accountants

**COMMUNITY SERVICE**

Bank of St. Croix – Board member

St Croix Foundation For Community Development: Finance Chair: 2001 to 2009.

St Croix VI's Joyful Voices Community Choir, Inc.: Founding member: 2001 to 2009.

**STATEMENT OF FEES**

Court room appearance      \$500.00 per hour

Consulting      \$250.00 per hour

Tax preparation      \$225.00 per hour

**I have not testified at trial and have no publications.**

**I have not been retained as an expert in any depositions.**





2014 WL 1239985 (V.I.Super.)  
Only the Westlaw citation is currently available.  
Superior Court of the Virgin Islands,  
Division of St. Thomas and St. John.

V.I. PORT AUTHORITY, Plaintiff,  
v.  
Justine CALLWOOD and Shanna James d/b/a  
Barefoot Buddha, Defendants.

CASE NO. ST-11-CV-305

|  
March 17, 2014

#### ACTION FOR ACCOUNTING AND DEBT

#### MEMORANDUM OPINION

MICHAEL C. DUNSTON, JUDGE OF THE SUPERIOR  
COURT OF THE VIRGIN ISLANDS

\*1 Defendants filed a Motion to Require Payments of Deposition Fees on February 27, 2014, to which the Plaintiff filed an Opposition on March 10, 2014.

Defendants seek \$4,130.00 from Plaintiff as “payment of the deposition costs and fees of John Foley, CPA ... incurred during the deposition taken in New York by Attorney King”.<sup>1</sup> Plaintiff has refused to pay the deposition costs and fees on the grounds that “the invoice and the charges contained therein are unreasonable and not properly chargeable.”<sup>2</sup>

The Court finds that the charges for office staff and overhead fees, the hourly charges, and the amount of preparation time are all unreasonable. Therefore, Defendants’ motion is granted in part and denied in part.

#### FACTUAL<sup>3</sup> AND PROCEDURAL HISTORY

On November 29, 2009, Defendant Justine Callwood entered into an Agreement with VIPA for a term of 10 months to open and run a daiquiri bar and barbecue

restaurant called Jumbies Barbecue Joint (“Jumbies”). Callwood signed the Agreement as owner of Barefoot Buddha, a partnership she shares equally with Defendant Shanna James. James never gave Callwood consent to use James’s name to enter into an Agreement with VIPA to operate Jumbies, nor was James aware that Callwood was making representations to VIPA that Jumbies would be owned by Callwood and James d/b/a Barefoot Buddha.

Sixty-six thousand six hundred dollars (\$66,600.00) in depreciation expenses were to be paid within the term of the Agreement.<sup>4</sup> Defendants were allowed to deduct certain expenses, including depreciation expenses and utilities, from Gross Revenues to calculate Net Revenues. Under the terms of the Agreement, every 60 day period VIPA was to be paid a portion of the Net Revenues realized over \$30,000.00, but if the Defendants did not make Net Revenues of \$30,000.00 during the 60 day period the Defendants owed nothing to VIPA for that term.

\*2 On February 09, 2010, VIPA wrote a letter to the Defendants in which VIPA revised the revenue sharing terms of the Agreement to allow Defendants to keep Net Revenues for 14 days after all capital improvements were completed, with the revenue sharing becoming effective on February 15, 2010. VIPA billed the Defendants for both utilities and depreciation costs, but VIPA does not know exactly how much the Defendants owe, if anything, in Net Revenues.

The Plaintiff and the Defendants agree that the Agreement was poorly drafted.

Plaintiff’s June 26, 2013, Amended Complaint alleged debt, fraudulent misrepresentation and unjust enrichment. Defendants’ counterclaimed for breach of contract, unjust enrichment, and intentional and negligent misrepresentation.

Defendants retained John Foley, a partner with a forensic accounting firm located in New York, to offer his expert opinion concerning “ ‘in Lieu of Rent, Utilities and Depreciation’ owed [by Defendants] based on the [Agreement].”<sup>5</sup>

This matter came on for jury selection on February 18, 2014, and for jury trial from March 03, 2014, through March 06, 2014. Plaintiff’s unjust enrichment claim was dismissed with prejudice on Defendant’s motion for judgment as a matter of law at the close of Plaintiff’s case. After deliberations on March 06, 2014, the jury returned a verdict in favor of Defendants and against

Plaintiff on Plaintiff's claims for breach of contract and fraud in the inducement and a verdict in favor of Plaintiff and against Defendants on Defendants' counterclaims for breach of contract and fraud in the inducement. The Court found in favor of Plaintiff and against Defendants on Defendants' counterclaims for unjust enrichment. Further, based on the verdict of the jury and the Court's determination of the matters tried to the bench, the Court found that neither party was a prevailing party for the purpose of an award of attorneys' fees and costs.

#### STANDARD OF REVIEW—EXPERT DEPOSITION FEES

"A party may depose any person who has been identified as an expert whose opinions may be presented at trial."<sup>6</sup> Under FED.R.CIV.P. 26(b)(4)(E), "[u]nless manifest injustice would result, the court must require the party seeking discovery to pay the expert [who may testify or is employed only for trial preparation] a reasonable fee for time spent responding to discovery". "It is well-settled that deposition time is compensable under Rule 26(b)(4)(E) as time spent in responding to discovery."<sup>7</sup> Thus the rule "requires that the party who requests the discovery deposition bear the expenses incurred therewith."<sup>8</sup>

When deposition fees are challenged, the Court must consider: whether "a manifest injustice would result" by requiring payment of expert fees; and whether the fees are "reasonable."<sup>9</sup> There is no clear definition of "manifest injustice,"<sup>10</sup> and the standard is applied stringently.<sup>11</sup> The Court reviews whether a manifest injustice would result by "weighing the possible hardships imposed on the respective parties and balancing the need for doing justice on the merits."<sup>12</sup> The party requesting a deposition bears the burden of demonstrating that shifting the cost of discovery to the other party would prevent manifest injustice.<sup>13</sup>

\*3 The retaining party bears the burden of establishing that the requested fees are reasonable. In determining whether a fee request pursuant to Rule 26(b)(4)(E) is reasonable, the Court considers seven criteria:

- (1) the witness's area of expertise;
- (2) the education and training required to provide the expert insight that is sought;
- (3) the prevailing rates of other comparably respected available experts;

(4) the nature, quality, and complexity of the discovery responses provided;

(5) the fee actually charged to the party who retained the expert;

(6) fees traditionally charged by the expert on related matters; and

(7) any other factor likely to assist the court in balancing the interest implicated by Rule 26.<sup>14</sup>

These factors guide the Court in its determination of reasonableness and "ensure that the deposing party will not be unfairly burdened by excessive ransoms which produce windfalls for the retaining party or its experts."<sup>15</sup>

The Court will consider **compensation** for time "spent preparing for deposition ... when it [actually] involves 'time in responding to discovery' "<sup>16</sup> because "[p]reparation is in both the deposing and retaining parties' interest, given the expectation that 'good preparation will lead to a more efficient deposition.' "<sup>17</sup> This "approach takes into account the complexity of the case and the temporal relationship between the filing of the expert report and the deposition."<sup>18</sup> However, the amount of **compensation** is significantly tempered by the tenant that "one party need not pay for the other's trial preparation" because "an expert's deposition is in part a dress rehearsal for his testimony at trial and thus his preparation is part of trial preparation."<sup>19</sup> Additionally, the Court addresses the rate charged and balances the amount of time spent preparing for deposition against the amount of time in deposition.<sup>20</sup>

"Ultimately, however, it is in the court's discretion to set an amount [of reimbursable expert's fees] that it deems reasonable."<sup>21</sup>

#### DISCUSSION

##### I. THE PLAINTIFF HAS NOT MET ITS BURDEN OF ESTABLISHING THAT A MANIFEST INJUSTICE WOULD RESULT FROM REQUIRING PAYMENT OF EXPERT FEES.

A Court's evaluation of whether a manifest injustice would result by requiring payment of expert fees often involves a review of whether the opposing party is "indigent or that requiring him to pay a deposition fee incurred in litigation that he voluntarily initiated would create an undue hardship."<sup>22</sup> There is no evidence that Plaintiff is indigent or otherwise cannot afford to pay for

Foley's deposition,

**II. DEFENDANTS HAVE NOT MET THEIR BURDEN OF ESTABLISHING THAT THE FEE CHARGED TO THE PLAINTIFF FOR ACTUAL DEPOSITION TIME IS REASONABLE IN EITHER AMOUNT OR LENGTH OF TIME.**

\*4 Plaintiff states that Defendants' "unreasonable request for fees is literally the catalyst for Plaintiff's refusal to pay the invoice billed."<sup>23</sup> Foley's deposition was "limited by Mr. Foley's schedule and [by] order of this Court to two (2) hours."<sup>24</sup> The deposition occurred at Foley's place of employment in New York, and there is no accusation by the Defendants that the deposition began or ran late because of the fault of the Plaintiff. Although the deposition took exactly 95 minutes, Foley has billed his "pre-trial examination" time as 2.20 hours at the rate of \$350.00 per hour.

The Court considers the expert's area of expertise, education and training under reasonableness criteria 1 and 2. Plaintiff argues that the fees should be reduced because Foley "has neither a master's degree nor a doctorate degree," and "no formal education" beyond "pass[ing] the certified public **accountants** exam."<sup>25</sup> However, Foley states that he also "has the credential of Certified in Financial Forensics" and "[f]or the past 30 years [has] worked almost exclusively on engagements involving the measurement of economic damage quantifications."<sup>26</sup> Therefore, the Court is unmoved that the first two factors require a reduction of Foley's fees.

The fifth criteria involves a review of the fee charged to the party who retained the expert versus the fee charged to the party deposing the expert. Foley states that his "**compensation** for ... deposition ... is \$340 an hour."<sup>27</sup> However, he seeks to charge Plaintiff \$350 per hour for his time. Because the deposing party has little to no say in the hiring selection, let alone the hourly fee of the other party's expert, the expert cannot then use the deposing party's lack of bargaining power as a ransom. Therefore, the Court will not allow for hourly fees higher than what is charged to the retaining party.

Neither party has submitted evidence regarding the prevailing rates of other comparably respected available experts (criteria 3) or fees traditionally charged by the expert on related matters (criteria 6). Nor have the parties addressed the nature, quality, and complexity of the discovery responses provided (criteria 4). Thus, the Court holds that these factors are not in dispute.

The Court may consider any other factor to determine the

reasonableness of the expert's fees and addresses these particularities below.

**III. DEFENDANTS HAVE NOT MET THEIR BURDEN OF ESTABLISHING THAT THE FEE CHARGED TO THE PLAINTIFF FOR DEPOSITION PREPARATION IS REASONABLE IN EITHER AMOUNT OR LENGTH OF TIME.**

Plaintiff alleges that "the Three Hundred Fifty (\$350.00) Dollars per hour charged by Mr. Foley is excessive and that the amount of hours charged at this rate are likewise excessive,"<sup>28</sup> but Plaintiff does not propose an alternative hourly rate or acceptable hourly amount.

\*5 Foley charged for 7.8 hours of work at a rate of \$350.00, 5.6 hours of which was "[p]reparation for testimony" and a "conference with [Defendants' attorney]".<sup>29</sup> The actual deposition lasted one hour and thirty-five minutes.<sup>30</sup> "While time spent preparing for depositions can and should be reimbursed, the number of hours spent preparing and the rate at which it is charged still must be reasonable."<sup>31</sup>

"[S]ome limitation upon the reimbursement of preparation time takes into account the need for the expenditure of such time where (1) the report, issues, or records are complex or lengthy; or (2) there has been a considerable lapse of time between the completion of the expert report and the deposition."<sup>32</sup> The expert report was completed on November 18, 2013, and deposition commenced less than three later on February 10, 2014. The Court finds that the report, which was already prepared, was not exceedingly long or complex to review, especially considering how closely to the date of deposition it was completed. Therefore, Defendants have not met their burden under these factors to establish that 5.6 hours of preparation time is reasonable.

The Court also balances the amount of time charged for deposition preparation versus the length of deposition.<sup>33</sup> Although the burden is on the Defendants to demonstrate that the fees are reasonable, they have failed to provide a detailed description of why Foley's time spent preparing for the deposition was so lengthy.

Considering the complexity and relatively recent submission of the report and the time spent preparing for the deposition relative to the amount of time spent in deposition, the Court finds that preparation time of 2 times that of the actual deposition is reasonable,<sup>34</sup> especially when balanced with the considerations discussed below.<sup>35</sup>

\*6 Additionally, “while an expert may consult with retaining counsel to prepare for a deposition, the deposing party should not be compelled to pay for this time”.<sup>36</sup>

**IV. DEFENDANTS HAVE NOT MET THEIR BURDEN OF ESTABLISHING THAT THE FEE CHARGED TO THE PLAINTIFF FOR DEPOSITION PREPARATION BY NON-DEPOSED STAFF IS REASONABLE.**

Plaintiff argues that “Foley then has the temerity to charge fees for persons who were not deposed by the Port Authority claiming additional fees in the amount of One Thousand Four Hundred (\$1,400.00) Dollars.”<sup>37</sup> Foley’s bill reflects seven hours of work performed by a Senior Manager (\$1,100.00) and Para Professional (\$300.00).

Of particular concern to the Court is the amount of time and money charged for assistant staff fees.

Although the Court is aware of the cost-saving benefits of having office staff perform some of the deposition preparation as opposed to the actual expert, this factor is weighed heavily against the fact that normal overhead costs associated with running a business should not be reimbursed.<sup>38</sup> Because Court will not require the Plaintiff to bear the costs of either administrative fees for normal office tasks or overhead costs, the time charged for non-deposed non-expert staff is disallowed.

**CONCLUSION**

The court finds that some of Foley’s expenses are unreasonable. In particular, 13.2 hours is excessive to prepare for a 95 minute deposition regarding a 11 page expert report that was issued only 3 months earlier. It is also unreasonable to charge the deposing party an hourly fee in excess of what is charged to the retaining party, and a deposing party is not responsible for the expert’s overhead costs.

Therefore the Court will allow expert deposition fees for 1.7 hours at the rate of \$340.00 per hour; and 3.4 hours of preparation time for the expert only at \$340.00 per hour. An appropriate Order is issued simultaneously herewith.

**Footnotes**

1 Defendants’ February 27, 2014, Motion to Require Payments of Deposition Fees.

**ORDER**

Plaintiff having filed a Renewed Motion for Judgment as a Matter of Law on March 12, 2014; it is

ORDERED that Defendants shall respond to Plaintiff’s Motion by April 1, 2014, and Defendant may reply by April 11, 2014; and it is

ORDERED that copies of this Order shall be directed to counsel of record.

**ORDER**

The Court having issued a Memorandum Opinion on this date, it is

**ORDERED** that Defendants’ February 27, 2014, Motion to Require Payments of Deposition Fees is **DENIED IN PART** and **GRANTED IN PART**; and it is

**ORDERED** that Plaintiff’s March 10, 2014, Opposition to Motion to Require Payment of Deposition Fees is **DENIED IN PART** and **GRANTED IN PART**; and it is

**ORDERED** that the Defendants **SHALL** be reimbursed for their expert deposition fees for John Foley in the amount of \$578.00, representing 1.7 hours at the rate of \$340.00 per hour; and it is

**ORDERED** that the Defendants **SHALL** be reimbursed for their expert deposition preparation fees for John Foley in the amount of \$1,156.00, representing 3.4 hours at the rate of \$340.00 per hour; and it is

\*7 **ORDERED** that the Defendants’ charges for expert deposition preparation fees for administration fees and overhead costs are **DISALLOWED**; and it is

**ORDERED** that copies of this Order shall be directed to counsel of record.

**All Citations**

2014 WL 1239985

- 2 Plaintiff's March 10, 2014, Opposition to Motion to Require Payment of Deposition Fees.
- 3 Facts were taken from Defendants' December 31, 2013, Statement of Undisputed Facts in Support of Their Motion for Summary Judgment; Plaintiff's February 03, 2014, Opposition to Defendants' Statement of the Undisputed Facts; Plaintiff's February 03, 2014, Statement of Additional Facts; and Defendants' February 11, 2014, Response to Plaintiff's Statement of Additional Facts.
- 4 The Court found that the Agreement was ambiguous as to which party is responsible for depreciation costs. February 21, 2014, Memorandum Opinion. See also Plaintiff's June 26, 2013, First Amended Complaint, paras. 13 and 16 ("Defendants were required to pay Plaintiff ... a Depreciation expense equal to Six Thousand Six Hundred Sixty Dollars (\$6,600.00) per month"); Defendants' December 31, 2013, Memorandum of Law in Support of its Motion for Summary Judgment, pp. 9 and 10 (Defendants argue that nothing in the Agreement holds the Defendants responsible for these costs).
- 5 John Foley's November 18, 2013, Expert Report, p. 3.
- 6 FED. R. CIV. P. 26(b)(4)(A).
- 7 *Ndubizu v. Drexel Univ.*, CIV.A. 07-3068, 2011 WL 6046816, at \*2 (E.D.Pa. Nov. 16, 2011) report and recommendation adopted, CIV.A. 07-3068, 2011 WL 6058009 (E.D.Pa. Dec. 6, 2011) (quoting *Fisher v. Accor Hotels, Inc.*, No. 02-8576, 2004 WL 73727, at \*1 (E.D.Pa. Jan. 12, 2004)).
- 8 *McLaughlin v. Dover Downs, Inc.*, CIV.A. 04C-03-013JTV, 2008 WL 795311, at \*3 (Del.Super.Mar. 26, 2008).
- 9 FED.R.CIV.P. 26(b)(4)(E)(i).
- 10 *Delgado v. Sweeney*, CIV.A. 01-3092, 2004 WL 228962, at \*2 (E.D.Pa. Jan. 6, 2004) (citing *Reed v. Binder*, 165 F.R.D. 424, 425 (D.N.J.1996)). Although *Delgado* invoked FED. R. CIV. P. 26(b)(4)(C), former Rule 26(b)(4)(B)(C) was renumbered (E) in 2010.
- 11 *Delgado*, CIV.A. 01-3092, 2004 WL 228962, at \*2 (citing *Fisher-Price, Inc. v. Safety 1st, Inc.*, 217 F.R.D. 329, 330 (D.DE 2003)).
- 12 *Delgado*, CIV.A. 01-3092, 2004 WL 228962, at \*2.
- 13 *Delgado*, CIV.A. 01-3092, 2004 WL 228962, at \*2.
- 14 *Delgado*, Civ.A. 01-3092, 2004 WL 228962, at \*2 (citing *Fisher-Price*, 217 F.R.D. at 333).
- 15 *Ndubizu*, 2011 WL 6046816, at \*2 (quoting *Cabana v. Forcier*, 200 F.R.D. 9, 16 (D.Mass.2001)).
- 16 *Ndubizu*, 2011 WL 6046816, at \*2 (citing FED. R. CIV. P. 26(b)(4)(E) and quoting *Boos v. Prison Health Servs.*, 212 F.R.D. 578, 580 (D.Kan.2002)).
- 17 *Ndubizu*, 2011 WL 6046816, at \*2 (quoting *Cabana v. Forcier*, 200 F.R.D. 9, 16 (D.Mass.2001)).
- 18 *Durkin v. Wabash Nat.*, CIV.A. 10-2013, 2013 WL 5466930, at \*3 (D.N.J. Sept. 30, 2013) (citing *Ndubizu*, 2011 WL 6046816, at \*2).
- 19 *Durkin*, 2013 WL 5466930, at \*2 (quoting *Rhee v. Witco Chem. Corp.*, 126 F.R.D. 45, 47 (N.D.Ill.1989)).
- 20 *Ndubizu*, 2011 WL 6046816, at \*3.

- 21 *Fisher-Price*, 217 F.R.D. at 333.
- 22 *Harris v. San Jose Mercury News, Inc.*, 235 F.R.D. 471, 473 (N.D.Cal.2006) (quoting *Edin v. The Paul Revere Life Insurance Co.*, 188 F.R.D. 543, 547 (D.Ariz.1999)).
- 23 Plaintiff's March 10, 2014, Opposition to Motion to Require Payment of Deposition Fees, p. 2.
- 24 Plaintiff's March 10, 2014, Opposition to Motion to Require Payment of Deposition Fees, p. 1.
- 25 Plaintiff's March 10, 2014, Opposition to Motion to Require Payment of Deposition Fees, p. 2.
- 26 John Foley's November 18, 2013, Expert Report, p. 3.
- 27 John Foley's November 18, 2013, Expert Report, p. 3.
- 28 Plaintiff's March 10, 2014, Opposition to Motion to Require Payment of Deposition Fees, p. 3.
- 29 Defendants' February 27, 2014, Motion to Require Payments of Deposition Fees, Exhibit A.
- 30 Plaintiff's March 10, 2014, Opposition to Motion to Require Payment of Deposition Fees, Exhibit 1.
- 31 *Ndubizu*, 2011 WL 6046816, at \*3 (citing *Cabana*, 200 F.R.D. at 16 and *Boos*, 212 F.R.D. at 580).
- 32 *Ndubizu*, 2011 WL 6046816, at \*2 (citing *Rhee v. Witco Chem. Corp.*, 126 F.R.D. 45, 47-48 (N.D.Ill.1989); *Fisher*, 2004 WL 73727, at \*2; *Boos*, 212 F.R.D. at 579; *M.T. McBrian, Inc. v. Liebert Corp.*, 173 F.R.D. 491, 493 (N.D.Ill.1997)).
- 33 *Ndubizu*, 2011 WL 6046816, at \*3.
- 34 See *Ndubizu*, 2011 WL 6046816 (finding that reimbursement for preparation time of less than 1 times and up to slightly more than 1 times the amount of deposition time to be reasonable); *Mannarino v. United States*, 218 F.R.D. 372, 376 (E.D.N.Y.2003) (reducing preparation time from eight hours to four hours for a one-hour deposition); *Collins v. Vill. of Woodridge*, 197 F.R.D. 354, 358 (N.D.Ill.1999) ("Having reviewed the experts' reports and their listings of the materials that they were required to review, we think that in the particular circumstances of this case, a ratio of one and one-half times the length of the deposition is reasonable"); *Abundiz v. Explorer Pipeline Co.*, CIV. 300-CV-2029-H, 2004 WL 1161402 (N.D.Tex. May 24, 2004) report and recommendation adopted, CIV.A. 3:00-CV2029-H, 2004 WL 1373216 (N.D. Tex. June 18, 2004) (finding that reimbursement for preparation time of less than 1 times and up to almost times the amount of deposition time to be reasonable); see also "*McCulloch v. Hartford Life and Accident Insurance Co.*, 2004 WL 2601134, \*2 (D.Conn.2004) (allowed reimbursement for two hours of preparation time, rather than the 20.7 hours requested, in a case where the expert reviewed 12,000 documents and 14 deposition transcripts as part of her deposition preparation); *New York v. Solvent Chemical Co., Inc.*, 210 F.R.D. at 471-72 (reduced reimbursable preparation time from 17.75 hours to three hours); *Kemke v. Menninger Clinic, Inc.*, 2002 WL 334901, \*1-2 (required reimbursement for four hours of deposition preparation rather than the 16 hours allegedly spent by each expert); *EEOC v. Johnson & Higgin, Inc.*, 1999 WL 32909, \*2 (S.D.N.Y.1999) (reducing an expert's billed preparation time from 23 hours to 13 hours, where the expert was deposed for 13 hours over two days); *S.A. Healy Co. v. Milwaukee Metro. Sewerage Dist.*, 154 F.R.D. 212, 213-14 (E.D.Wis.1994) (allowing reimbursement for five hours of deposition preparation, rather than the requested 10-15 hours, in a case where the expert prepared a thirty-six page, single spaced report plus one hundred supporting schedules and the deposition was conducted four to five months after the report had been prepared)," *Fiber Optic Designs, Inc. v. New England Pottery, LLC*, 262 F.R.D. 586, 593 (D.Colo.2009).
- 35 There may be situations where no amount of preparation fees is reasonable.

- 36 *Ndubizu*, 2011 WL 6046816, at \*3 (citing *Cabana*, 200 F.R.D. at 47 and *Boos*, 212 F.R.D. at 580).
- 37 Plaintiff's March 10, 2014, Opposition to Motion to Require Payment of Deposition Fees, p. 3.
- 38 *Rainey v. Hermon*, 55 V.I. 875 (V.I.2011).

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

<p>WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,</p>	)	
	)	
Plaintiff/Counterclaim Defendant,	)	CIVIL NO. SX-12-CV-370
v.	)	
	)	ACTION FOR INJUNCTIVE
FATHI YUSUF and UNITED CORPORATION,	)	RELIEF, DECLARATORY
	)	JUDGMENT, AND
Defendants/Counterclaimants,	)	PARTNERSHIP DISSOLUTION,
v.	)	WIND UP, AND ACCOUNTING
	)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,	)	
	)	
<u>Additional Counterclaim Defendants.</u>	)	Consolidated With
	)	
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	
	)	CIVIL NO. SX-14-CV-287
Plaintiff,	)	
v.	)	ACTION FOR DAMAGES AND
	)	DECLARATORY JUDGMENT
UNITED CORPORATION,	)	
	)	
<u>Defendant.</u>	)	
	)	
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	CIVIL NO. SX-14-CV-278
	)	
Plaintiff,	)	ACTION FOR DEBT AND
v.	)	CONVERSION
	)	
FATHI YUSUF,	)	
	)	
<u>Defendant.</u>	)	

**EXHIBIT I**

2008 WL 3876048  
United States Bankruptcy Court, D. Virgin Islands,  
Division of St. Thomas and St. John.

In re Jeffrey J. PROSSER, Debtor.

No. 06-30009.

Aug. 19, 2008.

**Attorneys and Law Firms**

A. Jeffrey Weiss, Alex M. Moskowitz, A.J. Weiss & Associates, St. Thomas, VI, Kevin A. Rames, K.A. Rames, P.C., St. Croix, VI, Lisa C. McLaughlin, Phillips, Goldman & Spence, P.A., Wilmington, DE, Michael J. Lichtenstein, Shulman, Rogers, Gandal Prody & Ecker PA, Rockville, MD, Robert F. Craig, Robert F. Craig, P.C., Omaha, NE, Thomas Alkon, Thomas Alkon, PC, St. Croix, VI, for Debtor.

Jeffrey J. Prosser, Christiansted, VI, pro se.

Tropical Shipping and Construction Company Limited, Riviera Beach, FL, pro se.

AIG Private Client Group, A Member Company of American International Group, Inc., West Palm Beach, FL, pro se.

Bernard C. Pattie, The Law Offices of Bernard C. Pattie, PC, Christiansted, VI, Fred Stevens, Yann Geron, Fox Rothschild LLP, Jeffrey K. Cymbler, Gazes LLC, New York, NY, William H. Stassen, Fox Rothschild LLP, Philadelphia, PA, for Trustees.

Leroy Culton, Office of the U.S. Trustee, Atlanta, GA, for U.S. Trustees.

Adam G. Christian, Law Office of Hodge & Francois, St. Thomas, VI, for Intervenor.

**Related to Doc. No. 1607, Debtor's Objection to Fee Application of Stutzman, Bromberg, Esserman & Plifka, A Professional Corporation**

**Doc. No. 1609, Debtor's Objection to Fee Application of Gazes LLC**

**Doc. No. 1610, Debtor's Objection to Fee Application of Litzler, Segner, Shaw & McKenney, LLP**

**MEMORANDUM ORDER WITH RESPECT TO THE DEBTOR'S OBJECTION TO THE FIRST AND FINAL FEE APPLICATION OF STUTZMAN, BROMBERG, ESSERMAN & PLIFKA PC; GAZES LLC; AND LITZLER, SEGNER, SHAW & MCKENNEY, LLP.<sup>1</sup>**

JUDITH K. FITZGERALD, Bankruptcy Judge.

**\*1 AND NOW**, this 19th day of **August, 2008**, **WHEREAS** pending before this court is Jeffrey J. Prosser's (Debtor) objection to the first and final fee application of Stutzman, Bromberg, Esserman & Plifka, PC; Gazes LLC; and Litzler, Segner, Shaw & McKenney, LLP. The Debtor objected to the fee applications on the basis that the fee applications contained entries that were unreasonable, duplicative, and/or vague;<sup>2</sup> and

**WHEREAS** Stutzman Bromberg was counsel to John Ellis, the interim Chapter 7 trustee. Litzler Segner served as **accountants** to John Ellis, interim Chapter 7 trustee. Gazes LLC represented James P. Carroll, who was appointed Chapter 7 trustee on October 31, 2007; and

**WHEREAS** a trustee's professionals are entitled to claim "reasonable **compensation** for actual, necessary services rendered by the ... professional person[ ] or attorney and by any paraprofessional person employed by any such person." 11 U.S.C. S. § 330(a)(1)(A). The court may, in its discretion, "award **compensation** that is less than the amount of **compensation** that is required [by the fee application]." § 330(a)(2). The Court of Appeals for the Third Circuit held that courts not only have the power to review fee applications, but have a duty to do so as well. *Zolfo, Cooper & Co. v. Sunbeam-Oster Co., Inc.*, 50 F.3d 253, 258 (3d Cir.1995) (citing *In re Busy Beaver Bldg. Ctrs., Inc.*, 19 F.3d 833, 841 (3d Cir.1994)); and

**WHEREAS** the professional seeking **compensation** and reimbursement of expenses under § 330(a) must submit a fee application. Fed.R.Bankr.P.2016. The fee application is a "detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested." Fed.R.Bankr.P.2016(a); and

**WHEREAS**, in addition to the standards set by

Fed.R.Bankr.P.2016(a), Virgin Islands Local Bankruptcy Rule (“Local Rule”) 2016–1 provides additional standards for the “detailed statement” of the fee application. The Local Rule provides in part:

C. Requirements of Entries: All entries shall:

1. list each service or task separately and state the amount of time expended in its performance;
2. identify the subject matter of any correspondence or phone call and the party with whom the professional or other timekeeper has communicated if the service involves telephone and/or written correspondence;
3. identify where appropriate, and in the interest of clarity, the subject matter of any hearing or trial with specificity including the case, or adversary number if the service involved is attendance at a hearing or trial;
4. identify any pleading with specificity if the service involves preparation of a pleading; and
5. include all other information necessary to a full understanding of the services performed and the person and time involved.

LR 2016–1; and

**WHEREAS** the fee application must also satisfy a reasonableness standard. 11 U.S.C.A. § 330(a)(3). In relevant part, the statute provides:

\*2 (3) In determining the amount of reasonable **compensation** to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated

skill and experience in the bankruptcy field; and

(F) whether the **compensation** is reasonable based on the customary **compensation** charged by comparably skilled practitioners in cases other than cases under this title; and

**WHEREAS** the Court of Appeals for the Third Circuit addressed the issues of the reviewability of a fee application and the standards that a fee application must meet in the case of *In re Busy Beaver Building Centers, Inc.*, 19 F.3d 833 (3d Cir.1994). In *In re Busy Beaver*, the Chapter 11 debtor’s counsel submitted a fee application that was reviewed *sua sponte* by the bankruptcy court. *Id.* at 838. The bankruptcy court denied **compensation** for certain services for two reasons: (1) certain entries on the fee application pertained to noncompensable services and, (2) the entries on the fee application did not meet the specificity requirements set by Western District of Pennsylvania LR 9016.1 applicable at that time in the Bankruptcy Court of the Western District of Pennsylvania.

The Court of Appeals held that the bankruptcy court must find that the applicant made a good faith effort to comply with 11 U.S.C.A. § 330, Fed.R.Bankr.P.2016, and the applicable local rules. *In re Busy Beaver*, 19 F.3d at 847. If the court finds that the fee application does not satisfy the specificity requirements because it “is too vague or otherwise,” *id.*, the court may allow the applicant the opportunity to supplement the fee application with a “more detailed description of the questionable services.” *Id.* If the court denies some of the fees or expenses, the court must provide particular reasons for doing so and must also provide the applicant the opportunity to defend its fee application at a hearing. *Id.*

In *In re Busy Beaver* the Court of Appeals also addressed the review of a fee application for reasonableness. The Court of Appeals found that the reasonableness of a rate of **compensation** sought by a professional must be evaluated according to § 330(a). *Id.* at 848–49. The court stated that of the factors listed in § 330(a), “the cost of comparable services factor has an overarching role to act as a guide to the value of the services rendered given their nature and extent.” *Id.* at 849. The cost of comparable services, i.e., the market rate or market approach, provides the basis for determining a reasonable hourly rate. The market approach requires the court to determine what nonbankruptcy attorneys “typically charge and collect from their clients fees for that particular service ... and the rates charged and collected therefor.” *Id.*

\*3 The court articulated how the bankruptcy court should evaluate an issue under the market approach, stating that

“a bankruptcy judge should use his or her experience and expertise to locate the questionable charges and fees, and once having questioned a charge or fee may properly require the applicant to meet the burden to prove the market would recompense him or her for that charge.” *Id.* at 854. It is not, however, the responsibility of this bankruptcy court to “pin down to the nearest dollar the precise fee to which the [applicant] is ideally entitled” and is only required to “correct reasonably discernible abuses.” *Id.* at 845; and

**WHEREAS** the Bankruptcy Court for the Western District of Pennsylvania has also addressed the issue of reasonableness and held that the court must evaluate reasonableness based on the factors in § 330(a)(3). In *In re Younger*, 360 B.R. 89, 95 (Bankr.W.D.Pa.2006), this court recognized that the “fee applicant has the burden of demonstrating that the fees requested were earned and are reasonable.” *Id.* at 97. In *Younger*, counsel for the Chapter 13 debtor submitted a fee application that was objected to by the Chapter 13 trustee. *Id.* at 92. The applicant charged 47 hours for research and writing with respect to the Truth in Lending (“TILA”) action. *Id.* at 91. Inasmuch as he had held himself out to the court and Chapter 13 Trustee as a TILA expert, the court held 47 hours to be excessive and awarded counsel **compensation** for 35 hours, a 25 percent reduction. *Id.* at 97. Second, the applicant charged 1.5 hours for a § 341 hearing he did not attend which required the § 341 hearing to be rescheduled. *Id.* Counsel charged 3.5 hours for attending the rescheduled hearing. *Id.* The court disallowed the fees charged for the first § 341 hearing because the rescheduled hearing was necessitated by the failure of counsel to appear at the first hearing. *Id.* Furthermore, this court reduced the 3.5 hours charged for the second hearing to 1 hour, a 70 percent reduction, because the second meeting would have been unnecessary had counsel attended the first meeting. *Id.*

In addition, the court found entries such as “Conference Pgh,” “Update letter to Youngers,” and “Brief Preparation” to be vague and not acceptable. Based on the facts, the court in *Younger* found that the fee application contained “unnecessary, excessive and inappropriate fees” and reduced the amount of the fee application accordingly. *Id.* at 97. The court also found that the factors in § 330(a)(3) are not all inclusive and listed twelve additional factors that may be considered:

- (1) the time and labor required;
- (2) the novelty and difficulty of the questions;
- (3) the skill requisite to perform the legal service properly;

(4) the preclusion of other employment by the attorney due to acceptance of the case;

(5) the customary fee;

(6) whether the fee is fixed or contingent;

\*4 (7) time limitations imposed by the client or the circumstances;

(8) the amount involved and the results obtained;

(9) the experience, reputation, and ability of the attorneys;

(10) the undesirability of the case;

(11) the nature and length of the professional relationship with the client;

(12) awards in similar cases.

*Id.* at 95. We now apply the above principles to the fee applications before us.

***Re: Fee Application of Stutzman, Bromberg, Esserman & Plifka, PC***

The Debtor objected to the Stutzman Bromberg fee application claiming that it was excessive. Debtor failed to provide specific examples. This court therefore reviewed the fee application in accordance with *In re Busy Beaver* and we find that Stutzman Bromberg made a good faith effort to satisfy the Local Rule regarding the specificity of the individual entries. In light of the complexity and overall amount of dollars involved in this Chapter 7 proceeding, we find that the hourly rates and hours charged were reasonable and necessary. Debtor’s objection to the Stutzman Bromberg fee application is denied and it is ordered that the fees and expenses are allowed.

***Re: Fee Application of Gazes LLC***

The Debtor objected to the Gazes LLC fee application asserting that it was excessive, contained duplicative entries, and was vague. The Debtor highlighted certain entries contained in the Gazes LLC fee application that were the subject of his objection. The Debtor, however, did not provide an explanation as to how the highlighted entries supported his objection. Consequently, after reviewing the Gazes LLC fee application in accordance with *In re Busy Beaver*, we find that, although Gazes LLC made a good faith effort to satisfy the Local Rule

regarding the specificity of the entries, there are entries that do not meet the applicable standards.

We find two entries that do not meet the applicable standards because their descriptions are vague and therefore shall be supplemented and clarified in accordance with applicable rules:

(1) 11/9/2007, JOC charged 0.6 hours at \$230/hr for "Letter to Courts"

(2) 3/10/2008, JKC charged 0.8 hours at \$550/hr for "file organization"

We find two entries (the first is the same entry as the March 10, 2008, entry mentioned above) that do not meet the applicable standards because they are excessive with respect to the hourly rate charged for clerical tasks and therefore shall be required to be supplemented:

(1) 3/10/2008, JKC charged 0.8 hours at \$550/hr for "file organization"

(2) 12/20/2007, IJG charged 1.7 hours at \$675/hr for "Pull documents for January Hearing"

We find one entry that does not meet the applicable standards because it is excessive with respect to the number of hours charged for research of one issue by a seasoned attorney and therefore shall be supplemented to explain why nine hours were required at \$550 per hour for this research:

(1) 1/10/2008, IJG charged 9 hours at \$550/hr for "research case law re issues re time to file objections to discharge and debtor's claiming of both federal and VI exemptions"

\*5 We find six entries that do not meet the applicable standards because they are excessive when the hours charged, all for the same task, are added together (33.6 total hours):

(1) 3/20/2008 JKC charged 3 hours at \$550/hr for "began drafting fee application"

(2) 3/21/2008 JKC charged 6 hours at \$550/hr for "drafting fee application"

(3) 3/24/2008 JKC charged 9 hours at \$550/hr for "preparation of fee app"

(4) 3/25/2008 JKC charged 8 hours at \$550/hr for "continued drafting fee application"

(5) 3/26/2008 JKC charged 6.2 hours at \$550/hr for

"continued drafting fee application and conf S Krawiecki re preparing schedules for fee app"

(6) 4/1/2008 JKC charged 1.4 hours at \$550/hr for "continued preparation of fee application"

The Court finds that 15 hours are reasonable for fee application preparation and only 15 hours at \$550 are approved.

We find one entry that does not meet the applicable standards because it is vague and may be unnecessary:

(1) 1/3/2008 Gazes charged \$304.39 for "Towncar to and from airport re: Pittsburgh hearing"

To properly evaluate this expense, the description must state which airport the transportation was used for, duration and length of the trip, and counsel must explain why a standard taxi charge should not apply.

Gazes LLC shall have the opportunity to supplement the entries noted above with additional details. If requested by Gazes LLC, a hearing with respect to the amended fee application will be scheduled. Otherwise, the Court will take the matter under advisement in chambers and enter an appropriate order upon receipt of the supplements submitted by the applicant. Further, applicant shall submit an order on a Certification of Counsel approving the fees and expenses not addressed in this Memorandum Order.

**Re: Fee Application of Litzler, Segner, Shaw & McKenney, LLP**

The Debtor objected to the Litzler fee application claiming that it was excessive and/or vague. The Debtor highlighted certain entries contained in the Litzler fee application that were the subject of his objection. The Debtor, however, did not provide an explanation as to how the highlighted entries supported his objection. Consequently, after reviewing the Litzler fee application in accordance with *In re Busy Beaver*, we find that although Litzler made a good faith effort to satisfy the Local Rule regarding the specificity of the individual entries, there are entries that do not comply with the applicable standards.

We find two entries that do not meet the applicable standards because their descriptions are vague and therefore shall require supplementation:

(1) 10/9/2007 MHS charged 8.1 hours at \$395/hr for "Asset Disposition—Personal Property: Meeting with Virgin Island team (7.1); meeting at VICB (1.0)"

(2) 10/10/2007 MHS charged 8.1 hours at \$395/hr for "Asset Disposition-Real Estate: Meeting with VI team (6.0); inspection of Prosser properties (2.1)"

\*6 The descriptions must identify the persons involved and the purpose of the meetings.

We find three entries that do not meet the applicable standards because they are vague and excessive and therefore must be supplemented:

(1) 2/19/2008 JB charged 0.9 hours at \$135/hr for "Document & Computer Data Review: Attend meeting with supervisor regarding turning records over and review records."

(2) 2/20/2008 JB charged 3.6 hours at \$135/hr for "Document & Computer Data Review: Meeting with supervisor regarding records and review records per Jim Carroll."

(3) 2/21/2008 JB charged 4.1 hours at \$135/hr for "Document & Computer Data Review: Beginning scanning records to produce to Jim Carroll."

These entries must provide a detailed description of the records involved. Also, the 4.7 hours charged to meetings concerning the same subject matter appears to be excessive. An hourly rate of \$135 for the scanning of records appears to be excessive when the lower paraprofessional hourly rate of \$85, as listed in Litzler's fee application, was available for such clerical duties. An explanation of the need for the higher rate must be provided.

Litzler shall have the opportunity to supplement its fee application with additional details and, if Litzler requests, a hearing with respect to the amended fee application will be scheduled. Otherwise, the Court will take the matter under advisement upon receipt of the supplements and enter an appropriate order. Further, applicant shall submit an order on a Certification of Counsel approving the fees and expenses not addressed in this Memorandum Order.

**AND NOW** this 19th day of August, 2008, in accordance

#### Footnotes

- 1 The court's jurisdiction was not at issue. This Memorandum Order constitutes our findings of fact and conclusions of law.
- 2 The Debtor's objections also contained other issues not addressed in this memorandum because they were ruled on and addressed from the bench.

with the foregoing, it is **ORDERED** that the Stutzman Bromberg fees and expenses are allowed in full and the objections thereto are **OVERRULED**.

It is **FURTHER ORDERED** that Gazes LLC's fee application is **ALLOWED IN PART** and Gazes LLC shall submit an appropriate order on a Certification of Counsel forthwith. Gazes LLC shall have the opportunity to provide additional details by filing a supplemental application within 30 days hereof and to request a hearing on the supplement. If requested, a telephonic hearing will be scheduled, and Gazes LLC's representative may appear telephonically in accordance with the Case Management Order.

It is **FURTHER ORDERED** that Litzler's fee application is **ALLOWED IN PART** and Litzler shall submit an appropriate order on a Certification of Counsel forthwith. Litzler shall have the opportunity to provide additional details by filing a supplemental application within 30 days hereof and to request a hearing scheduled on the supplement. If requested, a telephonic hearing will be scheduled. Litzler's representative may appear telephonically in accordance with the Case Management Order.

It is **FURTHER ORDERED** that all applicants shall review their fee applications for entries that are of a clerical nature, for example, copying, scanning, filing, printing, etc. These entries, and any future clerical entries, shall be charged at the lowest paraprofessional hourly rate. If the fee application contains entries that do not comply with this Order, counsel must file a detailed report explaining why there is a deviation and, for each such deviation, list the entry, timekeeper, hours charged, hourly rate, and the total amount thereof.

#### All Citations

Not Reported in B.R., 2008 WL 3876048, 60 Collier Bankr.Cas.2d 259

In re Prosser, Not Reported in B.R. (2008)

60 Collier Bankr.Cas.2d 259

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