

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

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants,

Case No.: SX-2012-CV-370

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

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

Consolidated with

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-17-CV-384

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

vs.

UNITED CORPORATION, *Defendant.*

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

vs.

FATHI YUSUF, *Defendant.*

FATHI YUSUF, *Plaintiff,*

vs.

MOHAMMAD A. HAMED TRUST, *et al,*
Defendants.

**HAMED'S NOTICE OF "NO PRIVILEGE" ASSERTION
REGARDING THE YUSUF DEPOSITION NOTICES/SUBPOENAE
TO CRIMINAL COUNSEL AS TO 'JOINT DEFENSE AGREEMENT' FEES**

To reduce motions, clarify matters and make the discovery easier on the Court and counsel, Hamed provides notice that he does not assert certain privileges.

In response to Hamed's First Motion as to H-3, on January 9, 2018 Yusuf responded that all attorneys fees in the parallel "criminal action" were not subject to recovery by the Partnership:

The reason Defendants have submitted that discovery is necessary with respect to this claim is the fact that the actual invoices reflect that much of the \$504,591.03 was paid for Fuerst Littleman's defense of the "Criminal Action" referenced in the Court finding quoted above. Indeed, the very first payment listed on Group Exhibit 3 to the Motion in the amount of \$15,067.26 paid by check no. 3979 **was for work performed from August 6, 2012 through September 28, 2013 exclusively in the Criminal Action.** See invoices attached as Exhibit 2. Defendants submit that substantially all of the other payments listed in Group Exhibit 3 to the Motion include work performed in the Criminal Action. (Emphasis added.)

Id. at 3. And:

In their Bench Memo, Defendants argued that Hamed's claims **regarding accounting and attorneys' fees paid in the Criminal Action** (identified as items 10 and 12 on the list set forth on page 2 of the Master's Order of December 4, 2017) "should be removed from that list because further discovery is required for each of the matters described in those items." (Emphasis added.)

As a result, the Special Master issued his Order of May 8, 2018 -- in which he stated:

Furthermore, Yusuf and United pointed out that the Partnership was not a defendant in the criminal case, and thus, Attorney Gordon Rhea's declaration cannot verify that "neither DiRuzzo nor his firm did any criminal work on behalf of the Partnership under the Joint Defense Agreement" as alleged by Hamed. (*Id.*) In fact, Yusuf and United pointed out that, "[o]n September 7, 2012, Attorney DiRuzzo noticed his appearance in the criminal action on behalf of United Corporation." (*Id.*; Exhibit A: Notice of Appearance of Attorney Joseph A. DiRuzzo, III for United Corporation in *The United States of America v. United Corporation, et al.*, dated September 7, 2012) Yusuf and Hamed v. Yusuf, et al. SX-12-CV-370; SX-14-CV-278; SX-14-CV-287 ORDER Page 6 of 9. United further pointed out that, "[w]hile the Partnership was not a named defendant in the criminal case and was not even recognized as a partnership until this Court's Order of November 7, 2014, there is no dispute that the Partnership operated under the corporate umbrella of United and that work performed on behalf of United in the criminal case redounded to the benefit of the Partnership." (*Id.*, at p. 2-3) As such,

Yusuf and Hamed requested the Master to deny Hamed's motion and allow for discovery with regards to this claim. (Emphasis added.)

Id. at 5-6. And:

Based on the joint motion to vacate the criminal temporary restraining orders submitted in the criminal case, *The United States of America v. United Corporation, et al.*, case no. 1:05-cr-15, United was named as a defendant as "United Corporation d/b/a Plaza Extra" (hereinafter "Joint Motion"). (Yusuf's Sur-response, Exhibit C: *The United States of America and Defendant United Corporation d/b/a Plaza Extra's Joint Motion to Vacate the Criminal Temporary Restraining Orders*) Moreover, the Joint Motion was filed to vacate the restraining orders that had frozen the assets of the Partnership. Thus, it is disingenuous for Hamed to argue that Yusuf was trying to confuse the Master by arguing that United—and not the Partnership—was named as a defendant in the criminal case. **As such, the Master finds Hamed's argument that all of these funds paid to DiRuzzo's firm— counsel for United in the criminal case—were for the personal legal fees of Fathi Yusuf, and not for the Partnership to be unpersuasive.** At this juncture, the Master will deny Hamed's motion and allow for Parties to proceed with discovery as to the \$504,591.03 paid to Fuerst Ittleman David & Joseph, PL to determine whether the fees charged was for work performed in this instant lawsuit, in the criminal lawsuit, and for whom. (Emphasis added.)

Id. at 8.

Thus, on May 11, 2018, Hamed was forced to concede to Yusuf, that

Based on the Special Master's *Order* of May 8, 2018 re Claim H-3, it seems that **the law of the case is now that any criminal fees paid by the Yusuf or Hamed Defendants in *United States of America v United Corp., et. al.*, VI D.Ct. 2005-cr-015, up to the end of the Joint Defense Agreement** (September 25, 2012), are *per se* allowable Partnership expenses. Thus, Hamed's recent concession:

To simplify the following discussion, Hamed stipulates, without pre-condition or negotiation, that **he will not pursue DiRuzzo's or his firm's ("DiRuzzo's") billings for any period prior to the end date of the Joint Defense Agreement** – despite the fact that they were, on the face of the document, not participants in that agreement. (Emphasis added.)

See **Exhibit 1**, Hartmann email to Hodges and Perrell dated May 11, 2018. Moreover, Yusuf relied on this position and language in his May 23, 2018 "Objection" to the subpoena for '*pre-JDA termination*' documents.

DTF objects to having to give any testimony or produce any documents regarding invoices for legal work performed by Fuerst Ittleman David &

Joseph, PL ("Fuerst Ittleman") in connection with the above payments on the grounds that the **payments and related invoices include both legal work performed for United Corporation and Fathi Yusuf in the criminal case (no. 1:05-cr-15) and legal work performed in this civil case and other matters unrelated to the criminal case.** Because United Corporation and Fathi Yusuf will agree that any amounts from the \$504,590.50 that paid for legal work on the civil case and other matters unrelated to the criminal case was not for the benefit of the partnership, that amount is not in dispute and any discovery regarding it is irrelevant or overbroad.

In addition, Plaintiff has conceded that any work performed in the criminal case prior to September 20, 2012 was properly paid from Plaza Extra accounts maintained by United (i.e., from partnership funds). DTF objects to having to give any testimony or produce any documents for such work because it is irrelevant to any issues in this case.

Id. at 2-3.

Thus, Hamed and Yusuf have both asserted and *relied* on that position, as stated in Yusuf's *Objection*, that funds paid for "any work performed in the criminal case prior to September 20, 2012 [the date the JDA was terminated] was properly paid from Plaza Extra accounts maintained by United (*i.e.*, from partnership funds) and thus, these being the Partnership's invoices, there is no privilege.)

Hamed does note that Yusuf's subpoena reads "**for the period September 17, 2006 to the present**". Obviously the period involved in this waiver is for the JDA, "**for the period September 17, 2006 to September 20, 2012**", and Hamed has made that correction [in square brackets] to the requests listed below to make clear what he does not assert privilege for work under the JDA.

Conclusion

Because Yusuf seeks them as documents for which the Partnership "properly paid" and thus they are the Partnership's, Hamed asserts no privilege with regard to the materials for work done **during the pendency of the Joint Defense Agreement** set forth in Yusuf's *Notice of Intent to Serve [Deposition] Subpoenas*, dated May 31, 2018, described in Exhibit A thereto:

1. Produce all invoices and any documents evidencing, referencing or relating to the payment of such invoices for any and all services rendered by any of the following attorneys or law firms:

- a. Gordon Rhea,
- b. Richardson, Patrick, Westbrook & Brickman, LLC,
- c. Randall Andreozzi,
- d. Andreozzi Fickless, LLP,
- e. Andreozzi, Bluestein, Fickess, Muhlbauer, Weber, Brown LLP,
- f. Andreozzi Bluestein, LLP, and
- g. Pamela Colon,

for the attorney's or law firm's representation of Waleed Mohammed Hamed or Waheed Mohammed Hamed, including all associated costs, expenses, expert fees and consultant fees, including but not limited to fees paid to any of the following persons or entities:

- h. FreedMaxick, CPA' s,
- i. RSM McGladrey,
- j. Leon Freidman,
- k. MR W Consulting Group,
- l. Pratts -Thomas Walker, and
- m. Eugene Benton,

for the period September 17, 2006 **[to September 20, 2012]** ~~to the present~~, which were paid, directly or indirectly, by United Corporation or through escrow accounts or other accounts controlled or directed by Andreozzi Fickless, LLP, Andreozzi, Bluestein, Fickess, Muhlbauer Weber, Brown LLP, Andreozzi Bluestein, LLP, Richardson, Patrick, Westbrook & Brickman, LLC or any other person or entity (collectively hereafter, the "United Payments") in connection with United States v. Yusuf et al, District Court of the U.S. Virgin Islands, 2005-15 and any other matters.

2. Produce all fee agreements, contracts for services, retainer agreements, escrow agent service agreements and any other agreements reflecting an obligation to pay invoices for any and all services performed by any of the following attorneys or law firms **[for the period September 17, 2006 [to September 20, 2012]:**

- a. Gordon Rhea,
- b. Richardson, Patrick, Westbrook & Brickman, LLC,
- c. Randall Andreozzi,
- d. Andreozzi Fickless, LLP,
- e. Andreozzi, Bluestein, Fickess, Muhlbauer, Weber, Brown LLP,
- f. Andreozzi Bluestein, LLP, and
- g. Pamela Colon,

for representation of Waleed Mohammed Hamed and Waheed Mohammed Hamed **[for the period September 17, 2006 [to September 20, 2012]:**

in connection with United States v. Yusuf et al, District Court of the U.S. Virgin Islands, 2005-15 and any other matters.

3. Produce all documents evidencing, referencing or relating to any increase in the hourly rates during the course of the representation from the initial rate charged for any and all services performed by any of the following attorneys or law firms:

- a. Gordon Rhea,
- b. Richardson, Patrick, Westbrook & Brickman, LLC,
- c. Randall Andreozzi,
- d. Andreozzi Fickless, LLP,
- e. Andreozzi, Bluestein, Fickess, Muhlbauer, Weber, Brown LLP,
- f. Andreozzi Bluestein, LLP, and
- g. Pamela Colon,

for representation of Waleed Mohammed Hamed and Waheed Mohammed Hamed **[for the period September 17, 2006 [to September 20, 2012]:**, in connection with United States v. Yusuf et al, District Court of the U.S. Virgin Islands, 2005-15 and any other matters.

4. Produce all documents evidencing, referencing or relating to any entries for "File management" for any and all services performed by any of the following attorneys or law firms:

- a. Gordon Rhea,
- b. Richardson, Patrick, Westbrook & Brickman, LLC,
- c. Randall Andreozzi,
- d. Andreozzi Fickless, LLP,
- e. Andreozzi, Bluestein, Fickess, Muhlbauer, Weber, Brown LLP,
- f. Andreozzi Bluestein, LLP, and
- g. Pamela Colon,

for representation of Waleed Mohammed Hamed and W heed Mohammed Hamed **for the period September 17, 2006 to the present**, in connection with United States v. Yusuf et al, District Court of the U.S. Virgin Islands, 2005-15 and any other matters.

5. Produce all notations, notes, drafts, attorney work product or other writings created by any of the attorneys or law firms referred to in Paragraph I(a-g) above, or their respective staff, in the course of the law firm's or attorney's representation of Waleed Mohammed Hamed or Waheed Mohammed Hamed **for the period September 17, 2006 to the present**, in connection with United States v. Yusuf et al, District Court of the U.S. Virgin Islands, 2005-15 and any other matters paid with United Payments, as that term is defined in Paragraph 1.

6. Produce all written correspondence (including emails) to or from any of the attorneys or law firms referred to in Paragraph I(a-g) above, or their

respective staff, that relate to the attorney's or law firm's representation of Waleed Mohammed Hamed and Waheed **for the period September 17, 2006 to the present**, in connection with United States v. Yusuf et al, District Court of the U.S. Virgin Islands, 2005-15 and any other matters paid with United Payments, as that term is defined in Paragraph 1.

7. Produce all work product included by not limited to notations, notes, drafts, work papers, compilations or other writings created by any person or entity referred to in Paragraph 1(h-m) for any of the attorneys or law firms referred to in Paragraph 1(a-g) above, **for the period September 17, 2006 to the present**, in connection with United States v. Yusuf et al, District Court of the U.S. Virgin Islands, 2005-15 and any other matters paid with United Payments, as that term is defined in Paragraph 1 or by Gordan Rhea or Pam Colon.

8. Produce all written correspondence (including emails) to or from any person or entity referred to in Paragraph 1 (h-m) in connection with United States v. Yusuf et al, District Court of the U.S. Virgin Islands, 2005-15 and any other matters paid with United Payments, as that term is defined in Paragraph 1 or by Gordan Rhea or Pam Colon **[for the period September 17, 2006 [to September 20, 2012]:**

Dated: June 4, 2018

A handwritten signature in blue ink, appearing to read "Carl J. Hartmann III". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Carl J. Hartmann III, Esq.

Co-Counsel for Plaintiff

5000 Estate Coakley Bay, L6

Christiansted, VI 00820

Email: carl@carlhartmann.com

Tele: (340) 719-8941

Joel H. Holt, Esq.

Counsel for Plaintiff

Law Offices of Joel H. Holt

2132 Company Street,

Christiansted, VI 00820

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of June, 2018, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross (w/ 2 Mailed Copies)
Special Master
edgarrossjudge@hotmail.com

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CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

This document complies with the page or word limitation set forth in Rule 6-1(e).



From: Carl Hartmann <carl@carlhartmann.com>
Sent: Friday, May 11, 2018 8:34 AM
To: 'Gregory Hodges' <Ghodges@dtflaw.com>; 'Charlotte Perrell' <Cperrell@dtflaw.com>
Cc: 'Joel Holt' <holtvi@aol.com>; 'Kim Japinga' <kim@japinga.com>
Subject: Request for Yusuf to Concede Claim H-17 or to end Discovery and Proceed to Motion

Greg & Charlotte:

This is partially a Rule 37.1(b) request that pertains to a discovery issue. We are required to contact you pursuant to Rule 37.1(a) prior to filing a motion. We are willing to discuss the issue raised before that filing if you respond in a timely manner as to a conference.

Based on the Special Master's Order of May 8, 2018 re Claim H-3, it seems that the law of the case is now that any criminal fees paid by the Yusuf or Hamed Defendants in United States of America v United Corp., et. al., VI D.Ct. 2005-cr-015, up to the end of the Joint Defense Agreement (September 25, 2012), are per se allowable Partnership expenses. Thus, Hamed's recent concession:

To simplify the following discussion, Hamed stipulates, without pre-condition or negotiation, that he will not pursue DiRuzzo's or his firm's ("DiRuzzo's") billings for any period prior to the end date of the Joint Defense Agreement – despite the fact that they were, on the face of the document, not participants in that agreement.

Thus, we would ask that your client stipulate to owing the amount shown in the claims documents regarding Claim H-17:

H-017	Wally Hamed's personal payment of accounting and attorneys' fees in United States of America v United Corp., et. al., VI D.Ct. 2005-cr-015	\$332,900.42
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There is no dispute this amount was paid, that it was not reimbursed, and more to the point, that all work was prior to the end of the Joint Defense Agreement. If you will not concede this point, please let me know if you feel any additional discovery is necessary before Hamed files a bald motion on this with only those three assertions and the documentary support for them.

Carl

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Exhibit 1