

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**

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

vs.

**UNITED CORPORATION**, *Defendant.*

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

vs.

**FATHI YUSUF**, *Defendant.*

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**FATHI YUSUF**, *Plaintiff,*

vs.

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

**HAMED'S OBJECTION  
TO THE YUSUF/UNITED MOTION FOR LETTER ROGATORY**

To avoid any unnecessary delays in the claims discovery process, Hamed provides this opposition on a very expedited basis. Hamed objects to the issuance of the requested Letter Rogatory at this time on four independently sufficient bases.

**1. Movants have not specified which claim(s) this discovery relates to**

The Special Master entered an order on May 21, 2018, which stayed several claims pending the disposition of his referral of delineated matters to Judge Brady. Despite Hamed's repeated requests, Yusuf again fails to describe which claims the discovery requested here applies to. As addressed in the following section, this makes it impossible for Hamed to adequately respond to the instant motion. Thus, Hamed makes the preliminary request that the motion be amended so an adequate response can be made.

**2. Hamed suspects that the proposed Letter deals with a claim involving Yusuf's alleged "special benefits" and is, therefore, stayed**

As the Special Master is aware, Yusuf has alleged certain "special benefits" under the *1986 Oral Partnership Agreement*. By the Special Master's Order dated May 21, 2018, it was clearly:

ORDERED that **all claims that assert special benefits to United and its shareholders or Yusuf** and all claims that assert a right to equal treatment for Hamed or his family members as Yusuf or his family members received **shall be stayed until further notice**. (Emphasis added.)

The issue before the Court in that Order was Yusuf's "refusal to pay 2002-2012 Taxes for Waleed and Waheed Hamed--despite having paid the identical taxes for Yusuf family members." (Emphasis added.) **In the exact same manner, and apparently for the exact same alleged "reasons"** Yusuf/United have paid their own attorney and professional fees and/or refused to pay a number of Hameds' identical attorney and other professional fees. Thus, such disparities are specifically subject to the stay. Nor do the Yusuf/United discovery responses shed any extra light on all of this other than to suggest it has to do with the division of profits rather than the division of management somehow. See, e.g., the

Yusuf/United response to *Request to Admit 27* (Yusuf/United refuse to properly answer a valid RFA as to Hamed's pursuit of similar professional fees for wrongful dissolution. Like the underlying basis for a lot of the special benefits, in his response Yusuf again raises the issue of Hamed only having an interest in "half of the profits" not other aspects of the Partnership.)

Request to admit number 27 of 50 relates to Claim H-163 (old Claim No. Exhibit A-M) as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master as "Loss of assets due to wrongful dissolution - **attorney's fees.**"

Admit or Deny that at the time in 2012 when Yusuf unilaterally removed \$2.7 million from a bank account to which Hamed had access, **there was a Partnership between Hamed and Yusuf as to the funds in that account** and that Yusuf asserted that there was no such Partnership. [Which funds were used to pay the Yusuf attorney and professional fees and not pay those of Hamed.]

Admitted that in an Order dated November 7, 2014, the Court declared there was a partnership between Hamed and Yusuf beginning in 1986. Denied that Mohammad Hamed had "access" to the bank account upon which the \$2.7 million was drawn at that time in 2012. It is further admitted that at the time of the \$2.7 million withdrawal, **Yusuf maintained that Hamed was entitled to half of the net profits from the grocery store operations of the Plaza Extra stores but that Yusuf did not characterize that arrangement as a partnership.** (Emphasis added.)

First, what does that answer mean?<sup>1</sup> Second, how is it an answer to the question that is posed? Third, if the Special Master can determine which of the claims Yusuf alleges as subject to which special benefits and which are not, he apparently has a far clearer understanding than Hamed<sup>2</sup> -- but what IS clear, is that differential payment of professional fees are such claims. . .and it appears that that such fees are the subject of this motion. Hamed strongly suggests the parties simply wait for clarification from Judge Brady.

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<sup>1</sup> This "net profits" argument seems central to Yusuf's assertion of these special benefits.

<sup>2</sup> Hamed has attempted to ascertain this from Yusuf.

**3. Even if the requested discovery may deal with one non-stayed motion, It impinges of several stayed motions and asymmetrical discovery is not allowed.**

If Yusuf takes discovery on an issue such as fees that impinges on stayed claims, Hamed is simultaneously stayed from discovery as to the same points on other claims. This allows one party to be conducting discovery while the other cannot. Again, Yusuf proposes no basis for needing such discovery immediately, *before* Judge Brady's ruling. As Yusuf will be submitting his opposition to the motion before Judge Brady tomorrow, June 19th, there is no compelling reason that this subpoena need be prosecuted before that decision will level the playing field.

**4. The requested discovery is not limited to avoid violating privilege**

Hamed has explicitly, by his noticed stipulation of record filed on the *CaseAnywhere* docket June 4, 2018,<sup>3</sup> stated that he asserts no privilege as to professional fees under the Joint Defense Agreement ("JDA") up to September 20, 2012. He made it clear there that no such waiver was given for fees during the pendency of the civil litigation which began after the termination of the JDA. The proposed Letter and subpoena are unclear as to whether such privileged material is requested. Hamed notes he is not raising an issue that the parties have not addressed.<sup>4</sup> To the extent that Yusuf seeks information for periods after the JDA, or does not specify in his motion, Hamed objects to issuance. Providing a Letter Rogatory to a foreign jurisdiction (because it is not a participant in the Intrastate

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<sup>3</sup> See Hamed's *Notice of "No Privilege" Assertion Regarding the Yusuf Deposition Notices/Subpoenae to Criminal Counsel as to 'Joint Defense Agreement' Fees.*

<sup>4</sup> Hamed does not yet object on the basis of privilege, because the papers are insufficiently clear to allow him to do so. Although Yusuf asked for such an agreement by email less than two business days ago (**Exhibit 1**) and despite the fact that Hamed had not yet responded, Yusuf has proceeded at his own risk with regard to this objection. By this filing, and because this motion was filed in such a manner, Hamed gives notice that he does not agree to such a proposal.

Agreement) creates the possibility that a violation of the USVI privilege will occur if the proposed Letter is executed in that jurisdiction.

**Dated:** June 18, 2018



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#### **CERTIFICATE OF SERVICE**

I hereby certify that on this 18th 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](mailto:edgarrossjudge@hotmail.com)

**Gregory H. Hodges**  
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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).



# EXHIBIT 1

## EMAIL FROM HODGES TO HARTMANN DATED

**From:** Gregory Hodges <Ghodges@dtflaw.com>  
**Sent:** Thursday, June 14, 2018 2:11 PM  
**To:** carl@hartmann.attorney  
**Cc:** Pamela Bayless <Pbayless@dtflaw.com>; 'Joel Holt' <holtvi.plaza@gmail.com>; kim@japinga.com; Stefan Herpel <sherpel@dtflaw.com>; Charlotte Perrell <Cperrell@dtflaw.com>  
**Subject:** RE: Open Issues  
**Importance:** Low

Carl,

I am replying to your response to item 1 below. We cannot allow this issue to await Charlotte's return. The subpoenas need to be promptly issued and served. I think our position is clear. **We will agree to your proposed cutoff date of 9/20/12**, if you confirm that Hamed will not claim entitlement to recover for any professional fees paid in the criminal case after that date. Obviously, if he claims entitlement to recover post-9/20/12 fees, we are entitled to discovery regarding those fees. If you are unwilling to confirm, we will simply leave the period covered by the proposed subpoenas unchanged. Please advise at your earliest convenience.

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**From:** carl@hartmann.attorney <carl@hartmann.attorney>  
**Sent:** Wednesday, June 13, 2018 10:22 AM  
**To:** Charlotte Perrell <Cperrell@dtflaw.com>  
**Cc:** Pamela Bayless <Pbayless@dtflaw.com>; 'Joel Holt' <holtvi.plaza@gmail.com>; kim@japinga.com; Gregory Hodges <Ghodges@dtflaw.com>; Stefan Herpel <sherpel@dtflaw.com>  
**Subject:** RE: Open Issues  
**Importance:** Low

Charlotte:

See responses below in **Blue**

Carl,

Good evening. I will be off-island beginning tomorrow and have been discussing the various open items with Greg. In my absence, feel free to communicate with either Greg or Stefan.

To keep things moving forward, below are my responses to certain open items:

1. As to the subpoenas to the various attorneys in the criminal case, you proposed limiting the time frame to September 20, 2012. We would be agreeable to that limitation so long as you can confirm that no attorneys' fees are being sought by Hamed for fees paid in the criminal case after September 20, 2012. If so, please advise and we will amend the Exhibit A to the subpoenas to reflect that change. (Please "Reply All" so everyone is aware of the status).

**I'm not sure I understand this. I will wait until you return to discuss.**

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