

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,

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.

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,

Defendant.

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

Consolidated with

Case No.: ST-18-CV-219

**HAMED'S NOTICE RE CLAIM B(2) EXPERT WITNESSES AND REPORTS --
PER THE ORDERS OF THE SPECIAL MASTER
DATED JUNE 14, 2021 AND NOVEMBER 16, 2021**

On June 14, 2021, the Special Master issued the *Second Amended Joint Discovery and Scheduling Plan*. At page 5 it required the following with regard to the six (6) remaining "B(2)" claims (non-Gaffney claims):

The party asserting the claim(s) shall serve notices identifying all of his expert witnesses, and said expert witnesses' curriculum vitae and written reports, not later than February 15, 2022.

The party defending the claim(s) shall serve notices identifying all of their expert witnesses, and said expert witnesses' curriculum vitae and written reports, not later than March 15, 2022.

Thereafter, on November 16, 2021, the Special Master issued the *Third Amended Joint Discovery and Scheduling Plan*. It provided a 60-day extension of the dates for filing of that expert information as follows:

ORDERED that a 60-day enlargement of the deadlines set forth in the second amended scheduling order is GRANTED.

Those six remaining "B(2)" claims are:

- Y-10 Past Partnership Withdrawals
- Y-11 Lifestyle Analysis
- Y-12 Foreign Accounts and Jordanian Property
- H-146 Imbalance in Credit Card Points
- H-151 Checks written to Fathi Yusuf for personal use
- H-162 Claims based on monitoring reports/accounting 2007-2012

However, as part of the ongoing efforts of the parties to reduce the number of outstanding claims—both "A" and "B" claims—they have settled or otherwise withdrawn many of the "A" claims and it is anticipated that another "B" claim, H-162, will similarly be dealt with. If this does not occur, no expert report will be utilized. Thus, only five claims remain subject to the order at issue in this Notice.

Hamed provides the following notice for his two remaining B(2) claims: H-146 (Credit Card Points) and H-151 (Checks written to Fathi Yusuf).

1. Notice as to H-146 Credit Card Points

On September 30, 2016, Hamed filed his *Notice of Partnership Claims and Objections to Yusuf's Post-January 1, 2012 Accounting*. It was re-filed to redact certain information, with the Master's permission on October 17, 2016. Attached as Exhibit B-2 to that filing was the expert opinion of Hamed's expert CPA firm. This claim is specifically addressed. Included therein are the curriculum vitae of Beatriz Martin, the project lead, as well of the other project members. (Note: the firm has altered and changed names since, but CPA Martin remains with the successor firm.) Hamed gives notice that the Expert Report as originally filed will be used with regard to this issue. An additional copy is not attached as per the Court's directions on duplication of exhibits.

However, Hamed notes that Yusuf has repeatedly failed to provide critical information with regard to this specific topic. Thus, on **July 28, 2021**, Hamed filed his timely *Motion to Compel Re Revised Claim H-146 – Imbalance in Credit Card Points*. In that motion, Hamed detailed the following facts about Yusuf's refusal:

On February 21, 2018, Hamed propounded the following interrogatory:

Interrogatory 22 of 50

Interrogatory 22 of 50 relates to Claim No. H-146 (old Claim No. 3007): "Imbalance in credit card points," as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master, Exhibit 3 and the September 28, 2016 JVZ Engagement Report and Exhibits.

With respect to H-146, state the approximate value of these credit card points, by describing: the approximate number of points in each of the years 2008-the date of the splitting of the East and West stores³; the present value of that many points if negotiated on the date of these answers at the point-to-dollar value now -- and show all of your calculations, sources of information and support for this approximation. (Exhibit 3)

On May 15, 2018, Yusuf refused to respond to Hamed's interrogatory:

Defendants object to this interrogatory as vague, ambiguous, and compound such that the total number of interrogatories together with their sub parts and other discovery exceeds the maximum allowable number of interrogatories under the JDSP and violates both the spirit and the terms of the JDSP limiting the number of interrogatory questions.

Defendants further object on the grounds that the responsive information cannot be readily obtained by making reasonable inquiries as these inquiries require the skilled and detailed attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers. Yusuf is no longer being paid to function as the Liquidating Partner to answer questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role as Partnership accountant. To respond to these questions, the expertise and knowledge of John Gaffney is necessary, which diverts him away from his employment with United. Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses. Furthermore, many of these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at or near the time that the transactions took place. Reorienting now as to transactions from years ago constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost.

Without waiving any objection, Defendants submit that information relating to this request was previously provided to Hamed by John Gaffney in his correspondence dated May 17, 2016 and Defendants incorporate that response as this response as if fully set forth herein verbatim. (Exhibit 4)

On February 16, 2016, per Judge Ross's request, Hamed prepared questions regarding specific general ledger entries it questioned or did not understand for response by John Gaffney. This item related to the imbalance in credit card points between the Hameds and Yusufs.

Description: There is an imbalance in credit card points between Yusuf Yusuf and Mafi Hamed, NejeH Yusuf and Willie Hamed and Mike Yusuf and Shawn Hamed.

General Ledger - Store, Date, Entry No. & Description [as an example] (if applicable): East, 4/30/13, 29900, V.I.B.I.R - GROSS RECEIPT 3/30/13 PAID W/YUSUF 6073/3791 MIKE C/C 3940 NEJEH C/C5222, \$158,381.20

Question /Request for info: Are the credit card points reflected in the general ledger and if so, please provide that information. If the credit card points are not reflected on the general ledger, for the years 2012 -2015,

would you please account for the amounts paid to each of the following individual's credit cards - Fathi Yusuf, Yusuf Yusuf, Mike Yusuf, NejeH Yusuf, Wally Hamed, Willie Hamed, Mafi Hamed and Shawn Hamed.

Please provide the canceled checks showing payment of Fathi Yusuf, Yusuf Yusuf, Mike Yusuf, NejeH Yusuf, Wally Hamed, Willie Hamed, Mafi Hamed and Shawn Hamed credit cards. (Exhibit 5)

On May 17, 2016, John Gaffney provided the following response to this question, which Yusuf incorporated by reference in its response to interrogatory 22 of 50 on May 15, 2018. Gaffney noted "This request to identify credit card points creates significant new work such that is its (sic.) completely impractical":

See objection to Item No. 3002. Without waiving that objection, credit card points are not reflected in the general ledger. You already know that because you were provided complete backups of Plaza accounting systems for all years and you loaded them into Sage software on your computers. You were given all rights to run not only complete general ledgers, but you also have the ability to run vendor reports showing all payments with credit cards.

This request to identify credit card points creates significant new work such that is its (sic) completely impractical.

* * *

Included herein are copies of vendor reports for credit cards used at Plaza East. These reports reflect all activity since January 1, 2013 (the accounting conversion date). Prior to 2013, it is impractical if not impossible to provide all credit card activity as vendor accounts for credit cards never reflected activity properly. Sample general ledgers for the months of December 2012 and January 2013 are provided to demonstrate the deficiencies prior to my employment. Note that in 2012 all freight activity was rolled into single journal entries for St. Croix and in one account for both stores. Note also that in St. Thomas most of the freight was paid using Banco Popular credit cards. However, these payments are not associated with a vendor account for the corresponding Banco Popular credit cards. Instead, the AP clerk would simply change the name on the true vendor's account (probably Tropical Freight) when he or she was making the payment. So while a vendor account might have first been created at Tropical Freight, there were countless payments to the various credit cards actually used to pay Tropical Freight. Add to this the confusion of constantly changing addresses so that

a payment to Banco Popular didn't get mailed to Tropical Freight. This was complete circumvention of controls.

Note the difference beginning in 2013. There are no payments in Freight Expense with a description of "Banco Popular." In 2013 a true system of controls was implemented to show WHO the vender is. Furthermore, the control system was designed to ensure that any credit card payments appearing in the general ledger expense accounts were conspicuous. This assures system integrity and guards against the likelihood of payment of non- business items by anyone. Simple stated, if I see a Banco credit card voucher in the general leger (sic) account for freight expense, I immediately know it's a posting error. And if the control account used to clear business expenses against payments with credit cards is anything other than zero, I am immediately alerted to a posting error. . . . (Exhibit 6)

On July 7, 2021, Hamed sent a letter to Yusuf's counsel requesting a Rule 37 conference on Interrogatory 22 of 50. (Exhibit 7) Since that date, Hamed has not received a letter, email or phone call from Yusuf's counsel responding to his request for a Rule 37 conference.

Seven months later, on February 3, 2022, Yusuf filed his opposition. Immediately thereafter, on February 22, 2022, Hamed filed his timely reply. That motion remains pending. As Hamed has never gotten any factual response in the 4 years this discovery has been outstanding, it is hoped that some will be forthcoming based on an anticipated Order from the Special Master. It is possible that, at that time, Ms. Martin or another team member will have to supplement the Report *with regard only to that new information*.

2. Notice as to H-151 Checks written to Fathi Yusuf for personal use

This issue is the same as point 1 above. The timely motion to compel was filed on August 8, 2021, the opposition, five months later on February 3, 2022, and the timely reply on February 22, 2022. Similarly, the original Report will be utilized,

Similarly, Yusuf has declined to provide the information. Thus, the Report may have to be similarly supplemented. However, there is one critical difference, On March 17, 2022, the Special Master granted Hamed's motion to compel with regard to certain

financial information—and it is also expected that production based on that order will be applicable here.

Dated: April 8, 2022



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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of April 2022, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross
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).

A handwritten signature in blue ink, appearing to read "Carl J. Hamel", with a long horizontal flourish extending to the right.

Dated: April 8, 2022