

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 MOTION AS TO HAMED CLAIM H-17:
THE UNREIMBURSED FEE PAYMENT OF \$332,900.42 BY HAMED --
MADE PURSUANT TO THE CRIMINAL CASE JOINT DEFENSE AGREEMENT**

I. Introduction

Hamed has raised as one of his claims, designated as H-17, \$332,900.42 of fees paid by Hamed pursuant to the *Joint Defense Agreement* ("JDA") in *USA v United Corp., et. al.*, V.I. D. Ct. 2005-CR-015 (the "Criminal Action"), but not reimbursed by the Partnership—although Yusuf reimbursed all of his own pre-September 25, 2014 professional fees to himself. There can be no dispute that: (1) **a Court has explicitly held** that Hamed *did* pay the amount at issue here in these specific checks as fees under the JDA in that case, (2) that he did pay those fees *prior* to the September 25, 2014, end of the *JDA*, (3) that a CPA review has shown that the Partnership—at the direction of Fathi Yusuf—has not reimbursed the amount, or (4) this motion is timely filed.¹

¹ First, the stipulated *Joint Discovery Plan* of January 29, 2018, states that a party may file any of his claims motions "at *anytime*, without regard for the discovery schedule, and [they] need not be held until the end of this process." Second, as the Special Master noted in his Order dated May 8, 2018, at page 7, footnote 7:

On December 13, 2017, Yusuf and United filed a bench memo for status conference, wherein they submitted that "items 2, 3, 5, **10 [the instant claim]**, and 12 listed on page 1 of the Master's December 4, 2017 Order should be removed from that list because further discovery is required for each of the matters described in those items." (Yusuf's Bench Memo for Status Conference, dated December 13, 2017) In his response thereto, Hamed **stated that it is fine to proceed with discovery on the aforementioned items.** (Hamed's Response to Yusuf's Bench Memo, dated December 14, 2017). (Emphasis added.)

The H-17 claim is a Hamed claim. It is covered by "Section B" of the Plan. As such, it has *not* been subject to any delays while the Special Master has had to address Yusuf's many "Section A" *issues*. Thus, he has had *months* to take depositions of the counsel who did the H-17 claim work, although Judge Barnard took evidence *and decided the sole factual issue in an order that is res judicata on Fathi Yusuf and United*, as they were parties there as well. Third, Yusuf has served all of his extensive written discovery requests as to all claims other than H-41 to H-141 and H-3 now. To further ease time concerns, as Hamed will supply his even more extensive written responses to all of Yusuf/United's written discovery on May 15, 2018—by agreement of the parties—he **hereby agrees to additional time** for Yusuf to review those responses, to May 29, 2018, for Yusuf's opposition hereto.

Fourth, Hamed could argue that non-payment is actually more in the nature of contempt, than non-reimbursement; though he will avoid doing so to avoid further complicating matters.

Hamed submits only two items of proof: (1) an April 17, 2014 Order issued in the *Criminal Action* by United States Magistrate Judge Geoffrey Barnard (after soliciting evidence) finding that **these**, specific "subject invoices were reviewed *in camera* and the **work performed by counsel and the accountants" was explicitly found to be "in furtherance of the object of the Joint Defense Agreement**[²]....Accordingly, the sum of \$332,900.42 is directed to be released...for distribution to counsel and experts in the sums approved pursuant to the Joint Defense Agreement." (Emphasis added.) **Exhibit 1**, Judge Barnard's *Opinion*, with the subject checks added, and (2) an email sent to counsel for Yusuf today, containing a relevant stipulation *by Hamed*.

II. Facts

On May 8, 2018, the Special Master held that fees paid by Defendants prior to the end of the Joint Defense Agreement in *United States of America v United Corp., et. al.*, V.I. D.Ct. 2005-CR-015 on September 25, 2014, are per se³ valid Partnership expenses. Thus, Hamed's concession of May 11, 2018 (**Exhibit 2**) that:

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.

² There was no successful reconsideration or appeal by Yusuf/United of that Order within the time allowed by that court's rules.

³ I.e., payment of fees that are both, by order of the Special Master and under the prior order of Judge Barnard, due and owing *without further discussion, discovery or dispute*—just as Attorney DiRuzzo's pre-September 25, 2014 fees are.

On March 11, 2018, Hamed sent the following request to Yusuf based on that holding:

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

H-17 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**

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.

Thereafter, Hamed provided Yusuf's counsel with a full draft of this motion with a copy of Judge Barnard's order and the described checks—as well as a request:

Greg & Charlotte:

I really hope that you decide to concede this claim based on this. However, attached is the draft motion we intend to file by the end of the day today unless you provide some basis for believing that you need additional discovery.

Frankly, I cannot imagine what discovery would be appropriate – but you have your chance to speak up. . . .

I believe your analysis will be faster if you read the (short) exhibit first.

Carl

Ps. I apologize for the need to do this quickly, but as we have to conclude the discovery on H-3 and this is directly applicable, we only have until June 1st to act.

Attached to the Hamed's *Revised Claim* H-17, filed October 17, 2017, (Exhibit 3) is the description of what was then claim 265. with supporting documents, now Claim H-17.⁴

Waleed Hamed paid from his personal Banco Popular account the criminal attorneys' fees in United States of America v United Corp., et. al., VI D.Ct. 2005-cr-015. The accountant and attomeys' fees were incurred when all of the defendants were represented under the joint defense agreement. That joint defense agreement provided for the payment of attorneys' fees by the United Corporation, which subsequently was recognized as the Partnership (Exhibit 265-a).

⁴ See *Exhibit B-2 thereto*, Expert Report of Jackson, Vizcaino Zomerfeld, LLP, Certified Public Accountants.

Work performed:

We interviewed Waleed Hamed regarding his payments of the criminal attorneys' fees which benefited the Partnership. Waleed advised he made these payments and was never reimbursed. We also provided John Gaffney a query dated February 15, 2016 (see Attachment VII) asking whether these fees were reimbursed. Finally, we were provided a copy of the canceled checks for the payment (Exhibit 265-b).

We reviewed the general ledgers from 2012 to present provided by John Gaffney for any reimbursements to Waleed for these payments or payments made by the Partnership directly to Waleed Hamed for the same period. None were found. **We also reviewed the April 17, 2014 Order by United States Magistrate Judge Geoffrey Barnard finding that "the subject invoices were reviewed in camera and the work performed by counsel and the accountants was in furtherance of the object of the Joint Defense Agreement. . . . Accordingly, the sum of \$332,900.42 is directed to be released . . . for distribution to counsel and experts in the sums approved pursuant to the Joint Defense Agreement."**

Gaffney's response

John Gaffney did not respond to our request.

Opinion as to the laws identified.

The work performed and documentation provided was sufficient and reliable audit evidence to conclude that the payment made by Waleed served a business purpose relating to the Partnership, as it dealt with the payment of legal and accounting fees in the criminal case against the Partnership (VI D. Ct, 2005-cr-015). As such, we concluded the payment should be reimbursed to the Hameds to satisfy ourselves of management's assertions: I. Completeness as described in AU-C 315.4128. The total amount of the claim is \$332,900.42. (Emphasis added.)

Attached hereto (Exhibit 1) are the documents in those Exhibits—265a (the Order) and 265b (the checks), repeatedly supplied to Yusuf and his counsel.

III. Applicable Law

The Special Master has stated that payments under the Joint Defense Agreement are valid Partnership expenses. That is the law of the case. Also, Judge Barnard ordered that the specific amounts in these checks are due as proper amounts under the JDA.

IV. Argument

There is no basis for Fathi Yusuf refusing to pay this claim—moreover his refusal violates both Judge Brady's April 25th, 2013 Memorandum and Order placing the funds into joint hands, and Judge Barnard's Order.

V. Conclusion

There is no valid basis for refusal to pay this claim—nor has there ever been. The amount of \$332,900.42 (plus 9% interest from the date of Judge Barnard's Order) must be paid to Hamed.

Dated: May 9, 2018



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 9th day of May, 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

Gregory H. Hodges
Stefan Herpel
Charlotte Perrell
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
ghodges@dtflaw.com

Mark W. Eckard
Hamm, Eckard, LLP
5030 Anchor Way
Christiansted, VI 00820
mark@markeckard.com

Jeffrey B. C. Moorhead
CRT Brow Building
1132 King Street, Suite 3
Christiansted, VI 00820
jeffreymlaw@yahoo.com



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

To

Hamed's 5/11/18 Motion
as to Hamed Claim H-17

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

THE UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Crim. No. 1:05-15
v.)	
)	
UNITED CORPORATION, et al.,)	
)	
Defendants.)	

MEMORANDUM, ORDERS, AND RECOMMENDATION

By agreement of counsel and the parties the sentencing phase of the captioned matter was mediated on June 19 and 20, 2013, before the undersigned.

Pursuant to the understandings to the achieved at the mediation, and the payment of certain funds to the V.I. Bureau of Internal Revenue, a Second Addendum to the Plea Agreement and Sentencing Memorandum was executed. The matter was thereafter scheduled for sentencing on July 16, 2013 before the Honorable Wilma Lewis, Chief Judge of the District Court.

At the hearing Judge Lewis considered the matters presented, including whether the parties had complied with the conditions precedent for the Rule 11(c)1C plan and whether the Temporary Restraining Order should be extended.

After a thorough consideration of the matters presented the sentencing hearing was continued without date.

At the mediation counsel advised that they had represented the defendant, as well as dismissed defendants, pursuant to a joint defense agreement which had been negotiated early in the litigation.

Ex. 1

Exhibit: 265-a

USA, et al. v. United Corp., et al.
Criminal No. 1:05-15
Page 2

Because of a substitution of counsel and divergence in trial strategy the Joint Defense Agreement was concluded on September 19, 2012.

At the close of the mediation the attorneys' billing statements were requested for in camera review. After a thorough review of the invoices presented by counsel and the retained accounting experts, the mediator concluded that because of the termination of the Joint Defense Agreement the invoices should be resubmitted *in camera* for consideration of work performed prior to September 19, 2012.

Invoices were received from the Law Offices of Pamela Lynn Colon, LLC., Gordon C. Rhea, P.C., Andreozzi, Bluestein, Fickess, Muhlbauner Weber, Brown LLP, and Freed Maxick, CPA PC. Invoices were not received form Feurst, Ittleman, David, and Joseph, P.L. nor from Nizar Dewood, Esq.

The subject invoices were reviewed in camera and the work performed by counsel and the accountants was in furtherance of the object of the Joint Defense Agreement. The invoices submitted are approved as follows:

Pamela Lynn Colon, LLC	\$46,393.95
Gordon C. Rhea, PC.	16,737.90
Andreozzi, Bluestein LLP	118,418.57
Freed Maxick CPA, PC	151,350.00

Accordingly, the sum of \$332,900.42 is directed to be released for the restrained assets of the defendant to the Escrow Account of Andreozzi, Bluestein, in accordance with prior protocol established by Judge Raymond Finch, for distribution to counsel and experts in the sums approved pursuant to the Joint Defense Agreement.

USA, et al. v. United Corp., et al.
Criminal No. 1:05-15
Page 3

At the initial sentencing hearing before Chief Judge Lewis it was noted that the agreement with respect to identification and engagement of a monitor had not been concluded.

On August 15, 2013 the firm of Kaufman, Rossin and Co. of Miami, Florida entered into an agreement with the defendant to perform the subject services. The mediator is advised that they have commenced their duties, and with the concurrence and agreement of the United States, United Corp. is directed to make timely payment of their invoices in accordance with the accompanying order.

With respect to storage of and access to the voluminous documents generated by the litigation and currently in the custody of the Federal Bureau of Investigations, the mediator is advised that Joyce Bailey has been engaged to undertake the responsibility and her expenses will also be paid by the defendant United Corp.

The mediator is further advised that former defendants Waheed Mohammad Hamed and Waleed Mohammad Mahed have made full payment of their tax obligations for the years 2002 through 2012 pursuant to the terms of the plea agreement.

The premises considered, it is hereby

ORDERED, that disbursement be made from the restrained assets of the defendant for professional services in accordance with the accompanying Order; and it is further

ORDERED, that the CPA/monitor be compensated in accordance with the accompanying Order; and it is further

ORDERED, that the custodian of the documents and discovery be compensated in accordance with the accompanying Order; and it is further

HAMD599943

JVZ-001213

USA, et al. v. United Corp., et al.

Criminal No. 1:05-15

Page 4

RECOMMENDED, that the matter be restored to the sentencing calendar of Chief Judge Lewis for her determination with respect to whether the conditions precedent for sentencing pursuant to Rule 11(c)1C have been fully completed.

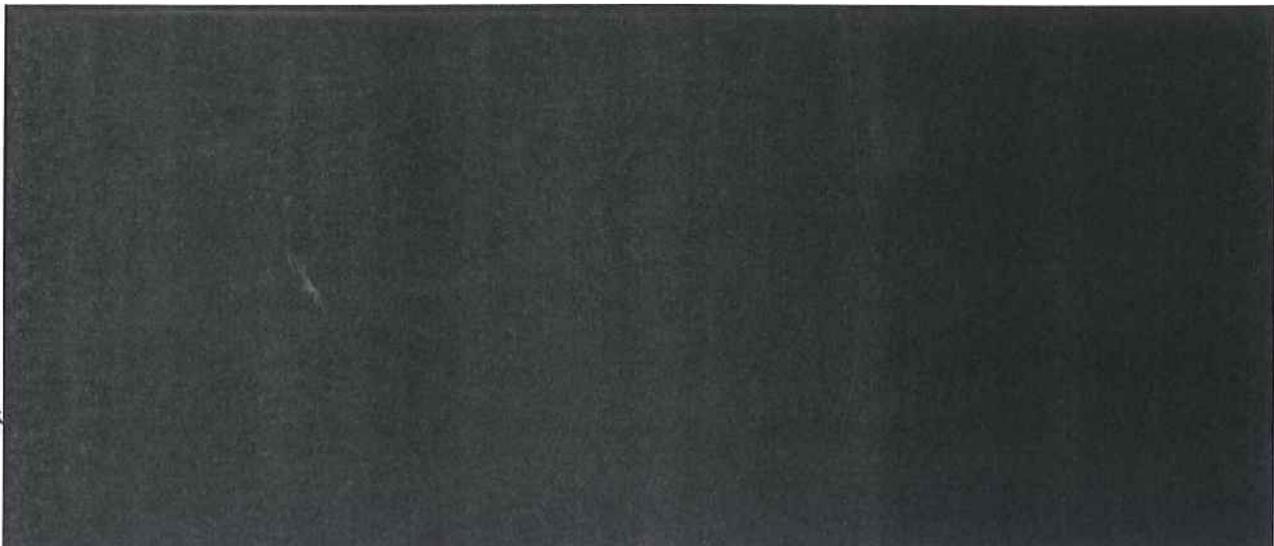
ENTERED: S\ _____
GEOFFREY W. BARNARD
UNITED STATES MAGISTRATE JUDGE

HAMD599944

JVZ-001214



We certify that these are true copies of your checks and other items paid during this statement.



MOHAMMAD A. HAMED
TEL. # (952) 772-2450
PO BOX 2224 P STED 02041

Aug 17, 2014

Pamela L. Colon, Inc. \$16,393.95
Forty Six Thousand Three Hundred Ninety Three and 95/100

BANCO POPULAR

Legal Fees

08/19/14 46,393.95

MOHAMMAD A. HAMED
TEL. # (952) 772-2450
PO BOX 2224 P STED 02041

Aug 17, 2014

Gordon C. Rhea, PC \$16,737.90
Sixteen Thousand Seven Hundred Thirty Seven and 90/100

BANCO POPULAR

Legal Fees

08/27/14 16,737.90

MOHAMMAD A. HAMED
TEL. # (952) 772-2450
PO BOX 2224 P STED 02041

Aug 17, 2014

Androzzzi, Bluestein LLP \$118,418.57
One hundred Eighteen Thousand Four Hundred Eighteen and 57/100

BANCO POPULAR

Legal Fees

08/25/14 118,418.57

MOHAMMAD A. HAMED
TEL. # (952) 772-2450
PO BOX 2224 P STED 02041

Aug 17, 2014

Freed, Mexico CPA, PC \$151,350.00
One hundred Fifty One Thousand Three Hundred Fifty

BANCO POPULAR

Legal Fees

08/25/14 151,350.00

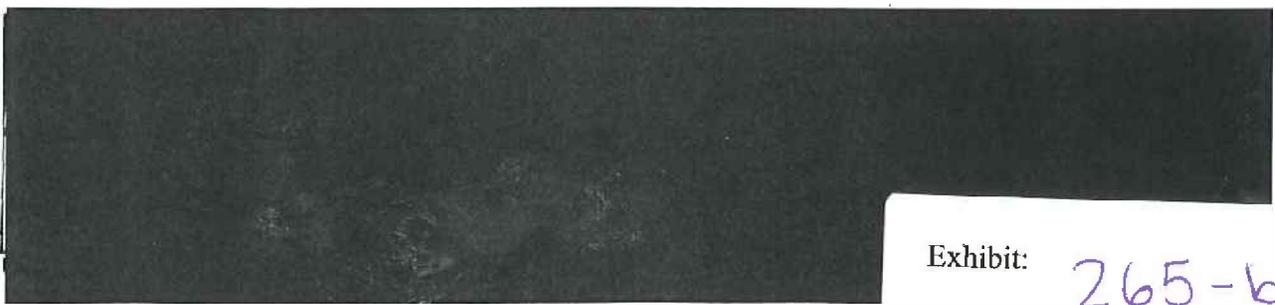


Exhibit:

265-b

Exhibit 2

To

Hamed's 5/11/18 Motion
as to Hamed Claim H-17

Carl Hartmann

From: Carl Hartmann
Sent: Thursday, May 10, 2018 6:56 PM
To: 'Charlotte Perrell'; 'Gregory Hodges'
Cc: 'Joel Holt'; 'Kim Japinga'; 'Stefan Herpel'
Subject: DTF Deposition - Our Stipulations in Response to Attorney Perrell's concerns of this date

Charlotte & Greg:

As you seem to have abandoned the concept of confidential settlement/negotiation discussions during this claims discovery and I weary of seeing my negotiating emails to/from you appear in motions without either permission or notice, I want to preemptively acknowledge that this email is not intended as a negotiation or settlement document and may be attached to any motion or other filing in the future – as may your response. I would also ask that you respond in writing rather than by telephone.

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.

That having been dealt with, we are left with the two issues raised by Charlotte's email today: Is the Hamed subpoena to DTF either (1) "extremely overbroad", or (2) "not in compliance with the requirements of *V.I. R. Civ. P. 45(d)(1)* to avoid undue burden and expense"? Allow me to address these in reverse order.

- 1. Undue Burden/Expense.** To eliminate this contention, Hamed agrees pay your costs to duplicate any of the described DiRuzzo communications, emails, texts, drafts, work product or other such documents DTF obtained (other than documents already supplied to Hamed in discovery -- i.e., you need not 're-produce' prior discovery productions): in the transfer of the case to you. It is unclear why this would be either expensive or time-consuming – as it is effectively all documents from August 2012 to April 2013, other than those EXCLUSIVELY to/from Nizar DeWood, between September 2012 and April 2013. (Documents to/from DeWood that were copied to DiRuzzo while he was being paid by the Partnership DO need to be produced as that was a communication to a Partnership-paid attorney clearly destroyed the privilege. I am sure you have a computer retention system similar to ours and can generate this material in a couple of hours, as none of it is privileged and thus there is no sorting or analysis required other than by the date. In addition, Hamed will also pay your paralegal to do a date-dump of the materials from September 2012 to April of 2013. Moreover, to the extent that actual physical files were supplied by DiRuzzo or his firm during the transition, we would want all of that for work after September 2012 -- without anything removed, thus, no sorting is necessary.
- 2. Extremely Overbroad.** Hamed is being asked accept *partnership invoices* for a half-million dollars predicated solely on the asserted fact that ALL of the work done by DiRuzzo *et al.* (as all of it was charged to the Partnership and paid by a Partnership account) was for the Partnership -- either civilly or as to criminal matters. Whether the work was civil or criminal, the Court has said that Hamed may take discovery to determine the truth of that factual

assertion. There are only three ways to do so that I know of – look at the bills (which we have requested), ask Yusuf/United to explain what the work in the bills was done for (which we have requested) and to then compare those two responses to the physical evidence of the work done – the normal lodestar analysis.

If your client takes the position that this is work properly paid for by the Partnership and will not refund the money used to pay counsel – the partner gets to see all of the bills and all of the work charged to the Partnership in a RUPA winding-up.....black letter law since the early days of the UPA. To be honest, I don't think privilege could be asserted now even if Yusuf tries to reverse his oft-stated position, as the Partnership did pay for all of that work.

I will look forward to hearing from you about this at your earliest convenience. If you do not wish to cooperate in working to accommodate your concerns regarding this deposition, I will look forward, instead, to the deposition itself or your motion for a protective order. However, if it to be the latter, I would very much like to understand your thoughts, as if you are correct in your views we can certainly reach some accommodation rather than go through another series of motions.

Carl

Carl J. Hartmann III, Attorney

5000 Estate Coakley Bay, L6

Christiansted, VI 00820

Website: www.CarlHartmann.com

Email: Carl@Hartmann.Attorney

Telephone: (340) 642-4422

Facsimile: (212) 202-3733