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ADMITTED: USVI, NM & DC

June 13, 2018

Charlotte Perrell, Esq.
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By Email Only

RE: Request for Rule 37.1 Conference re Interrogatory 12 of 50

Dear Attorney Perrell:

I write regarding one of the Yusuf/United 'claims discovery responses' served on May 15, 2018. It is Hamed's intention to file a motion to compel directed to the Special Master. Pursuant to Rule 37.1, I request a conference to discuss the basis of the proposed motion and seek amendment to the Yusuf response. I would appreciate a date and time convenient for you or your co-counsel within a week. The item at issue is: Interrogatory 12 of 50 - New Claim Number H-156, regarding General Ledger entries as to miscellaneous adjustments to employee loans.

ANALYSIS OF DEFICIENCIES IN THIS INTERROGATORY

1. The discovery request and response

The original Interrogatory 12, and Yusuf's response are set forth below:

**Interrogatory 12 of 50 - New Claim Number H-156 –
Old Claim #: 372/379**

Unclear General Ledger entries regarding miscellaneous adjustments to employee loans

For the following transactions, please explain what "misc adj's to empl lns per analysis" means, what "restore emp loan to GL per analysis" means, what analysis was conducted for each transaction, describe in detail

when, how and why each transaction was made, who approved it and describe all documents related to these three transactions:

-West, 7/31/13, XJE31-2, GENJ, RECORD MISC ADJ'S TO EMP LNS PER ANALYSIS, \$48,968.00

-West 2/28/13, JE32-02, GENJ, Restore Emp Loans to GL per Analysis, \$36,975.26

-West 2/28/13, JE32-02, GENJ, Restore Emp Loans to GL per Analysis, \$36,961.40

RESPONSE:

Defendants object to this Interrogatory because it is 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 terms of the JDSP limiting the number of interrogatory questions. Each one of the questions relate to a separate transaction and cannot be combined into a single interrogatory so as to circumvent the limitation on the number of interrogatories allowed.

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.

2. Parsing the “objections”

Below, Hamed sets out each of the Yusuf objections *verbatim*. Only emphasis and headings have been added.

a. Yusuf Objection #1 of 3 - This must be directed to Mr. Gaffney, not Yusuf Defendants. . .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. (Emphasis added).

The parties have been over this before -- it is not applicable here.

b. Yusuf Objection #2 of 3 - This was too long ago to bother with

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. (Emphasis added).

This is a non-sensical objection. Two of the transactions occurred in February 2013, during the time period when the Yusufs locked the Hameds out of the financials, so John Gaffney was not responding to questions during that time frame. Further, all three transactions appear to involve changes to the general ledger, something Mr. Gaffney could and did do without discussion or consent by the Hameds. Finally, all of these similar transactions are within the timeframe Judge Brady allowed for the consideration of claims:

ORDERED that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26

V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006.

Hamed v. Yusuf, Civ. No. SX-12-CV-370, 2017 WL 3168458, at *29 (V.I.Super. July 21, 2017).

c. Yusuf Objection #3 of 3 - It is compound

Defendants object to this Interrogatory because it is **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 terms of the JDSP limiting the number of interrogatory questions. (Emphasis added).

This is an inquiry about three similar transactions and the focus of the inquiry concerns an explanation of what the language of the general ledger entries means. Moreover, as set forth below, even if the Hamed question is compound, the first part of the inquiry must be answered—this objection does not allow the respondent to skip the entire question.

3. Applicable Law

**Rule 26. Duty to Disclose; General Provisions Governing Discovery
(b) Discovery Scope and Limits.**

(1) Scope in General. Unless otherwise limited by court order, **the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense.** Information within this scope of discovery need not be admissible in evidence to be discoverable (emphasis added).

(2) Limitations on Frequency and Extent.

* * * *

(C) When Required. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:

- (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
- (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
- (iii) the proposed discovery is not relevant to any party's claim or defense.

(D) Duplicative discovery. Duplicative disclosure is not required, and if all information and materials responsive to a request for disclosure has already been made available to the discovery party, the responding party

may, for its response, state specifically how and in what form such prior disclosure has been made. Where only part of the information has previously been provided to the discovering party, the response may so state and must then further make available the remaining discoverable information or materials.

* * * *

(c) Protective Orders.

(1) In General. **A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending** — or as an alternative on matters relating to a deposition, in the court where the deposition will be taken. **The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action** (emphasis added). The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (A) forbidding the disclosure or discovery;
- (B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery;
- (C) prescribing a discovery method other than the one selected by the party seeking discovery;
- (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;
- (E) designating the persons who may be present while the discovery is conducted;
- (F) requiring that a deposition be sealed and opened only on court order;
- (G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and
- (H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) Ordering Discovery. If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) Awarding Expenses. Rule 37(a)(5) applies to the award of expenses in motions relating to protective orders.

* * * *

(3) Sanction for Improper Certification. If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation.

In addition, the revision notes provide:

NOTE. Rule 26 is the foundational provision regarding mandatory early disclosures and the scope of discoverable information throughout the action.

* * * *

Subpart (b) is the general "scope" provision governing discovery in the Virgin Islands. It defines discoverable materials as "any nonprivileged matter that is relevant to any party's claim or defense."

Rule 33 controls as to interrogatories (emphasis added).

Rule 33. Interrogatories to Parties

(a) In General.

* * * *

(2) Scope. An interrogatory **may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact. . . .**

* * * *

(b) Answers and Objections.

(1) Responding Party. The interrogatories **must be answered:**

(A) by the party to whom they are directed; or

3. Application of the Law to Yusuf's Objections

a. Yusuf Objection #1 of 3—This must be directed to Mr. Gaffney, not Yusuf

Yusuf's first objection is *identical* to the same argument advanced (and rejected by the Special Master) with regard to the three RFAs. Thus, Hamed will re-state his counter-argument from that prior motion.

Deficiency. First, the Discovery Plan as to the "Section B" claims absolutely does not either allow or require diversion to Mr. Gaffney—[Claim H-144] is in **Section B** of the Plan. Yusuf stipulated to that Plan—he *fully agreed* to these definitions and these procedures. The Master then Ordered the Plan based on this agreement. **Yusuf now seeks to say that other claims must go to Gaffney—despite the clear language. Yusuf cannot change it unilaterally now**—he knew when he stipulated which claims would and would not be diverted to Mr. Gaffney, and which were in "B" **and would be answered by Yusuf.**

Second, Mr. Gaffney is not a party here. **Interrogatories cannot [under Rule 33] be directed to non-parties.** See the applicable portion of the rule (emphasis added):

(b) Answers and Objections.

(1) Responding Party. The interrogatories must be answered:

(A) by the party to whom they are directed;

Third, nor would Mr. Gaffney's responses be interrogatory responses that can be used like interrogatories against United and Yusuf.¹

Fourth, Yusuf IS a party. Thus, pursuant to Rule 26(b)(1) any potentially relevant question can reasonably be put to him. He is both the defendant and he was the Liquidating Partner.

Fifth, the fact that it could also be put to another witness is totally irrelevant for interrogatories. Any actions of the defendants or of the Partnership that occurred while he was in those two roles, are answerable by him. It is not a proper response to an interrogatory to state that "the Plaintiff already knows this" or "someone else can also testify."

b. Yusuf Objection #2 of 3 - This was too long ago to bother with

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 (emphasis added).

These are general ledger entries from 2013. There is no such "too long ago" objection for such activities under the rule. The relevant time period has been defined by Judge Brady. These are unclear adjustments to the Partnership accounts that Hamed has tried repeatedly to get an explanation of what the entries are and the methodology that led to the entries.

b. Yusuf Objection #3 of 3 - Compound

First, it isn't compound. Second, even if it is allegedly compound and thus that part is objectionable, you must answer the first part—you do not get to skip the whole interrogatory. Rule 33 provides (emphasis added):

(b) Answers and Objections.

(1) Responding Party. The interrogatories must be answered:

¹ Rule 33(c) has a specific provision regarding this point: "(c) Use. An answer to an interrogatory may be used to the extent allowed by the Virgin Islands Rules of Evidence." A discovery response by a non-party witness would not have the same evidentiary effect as an interrogatory response by the party.

(A) by the party to whom they are directed; or
(B) if that party is the Government of the Virgin Islands, a public corporation, an autonomous or semi-autonomous agency or board, a private corporation, a partnership, an association or other entity, by any officer, employee or agent, who must furnish the information available to the party.

(2) Time to Respond. The responding party must serve its answers and any objections within 30 days after being served with the interrogatories. A shorter or longer time may be agreed by the parties under Rule 29 or be ordered by the court.

(3) Answering Each Interrogatory. Each interrogatory must, **to the extent it is not objected to, be answered** separately and fully in writing under oath.

Thus, Yusuf failed to answer the non-compound portion: "For the following transactions, please explain what "misc adj's to empl lns per analysis" means."

I will await your response with dates/times.

Sincerely,

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

Carl J. Hartmann