

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THE ATTORNEY GENERAL OF
THE BRITISH VIRGIN ISLANDS

Applicant

for Judicial Assistance to Obtain Evidence
for Use in a Foreign Proceeding Pursuant to
28 U.S.C. § 1782

V.

LESTER S. HYMAN, ESQ.

Defendant-Intervenor

Misc. Case No. 1:19-mc-00164-RCL

APPLICANT'S MOTION TO AMEND RELIEF SOUGHT

I. INTRODUCTION

1. This Motion to Amend Relief Sought (“Motion to Amend”) is solely to narrow the scope of two requests for discovery of the Defendant-Intervenor that were denied without prejudice, Order, ECF No. 10, to accord with the parameters indicated by the Court, Mem. Op. 18, ECF No. 9. Consistent with the Court’s opinion, the Applicant respectfully seeks to amend in one respect the Relief Sought as requested in paragraph 45(a)(iii) of the initial Application for Judicial Assistance to Obtain Evidence for Use in a Foreign Proceeding Pursuant to 28 U.S.C. § 1782 (“Application”), ECF No. 1. For the sake of clarity, while not a waiver of any other motion that the Applicant may make at a future time, this Motion to Amend is not a motion for reconsideration of the Court’s Order nor a motion to amend any other portion of the Application other than paragraph 45(a)(iii).

2. The Applicant understands the Memorandum Opinion to grant him leave to file this Motion to Amend. The Memorandum Opinion states:

The Court will deny the two specific requests at issue but allow the applicant to refile a more narrowly tailored request for financial and/or tax information that is *directly relevant* to the airline venture and the contemplated lawsuit. At this time, the Court believes that the applicant is entitled to financial information specifically pertaining to the airline venture and the contemplated civil suit, but not to financial information extending beyond those matters. Therefore, the applicant will need to reword its requests to ask only for information that is relevant to its contemplated lawsuit.

Mem. Op. 18., ECF no. 9.

3. In support of this Motion to Amend Relief Sought, the Applicant submits a Second Declaration of Martin S. Kenney (“Declaration MSK-2”) and accompanying Exhibit MSK-2 thereto.

II. DEVELOPMENTS SINCE THE APPLICANT’S LAST FILING

4. Since the Applicant’s last filing with the Court on December 29, 2019, The Applicant’s Reply to the Mem. in Opp’n to the Applicant’s Mot. for Leave to File a Sur-reply, ECF No. 7, a disciplinary complaint dated January 15, 2020, was filed with the Office of Disciplinary Counsel at the D.C. Court of Appeals. Decl. MSK-2 ¶ 7. Pursuant to that complaint, the Defendant-Intervenor’s counsel filed a response (“Disciplinary Response”) on March 19, 2020. Id. That Response was supported by a declaration under penalty of perjury by Bruce Bradley (“Bradley Declaration”), where he declared that he was presently “Managing Member/President of Castleton Holdings, LLC,” Decl. MSK-2, at 3 n.1, (notwithstanding Castleton Holdings, LLC was, in fact, revoked on September 12, 2019, which Mr. Bradley did not mention and would contradict him being presently “Managing Member/President of Castleton Holdings, LLC,” Id.) and Vice Chairman of BV Airways, Inc., Id., all of which are Operator Parties, Mem. Op. 4 n.3, ECF no. 9. Both the

Disciplinary Response and the Bradley Declaration acknowledged that, in relation to the failed airline venture, \$100,000 was paid to the Defendant-Intervenor after “the formal agreement was ratified,” Decl. MSK-2 ¶ 7, and that another \$100,000 would have been due “once the airline was up and running.” Id. Also, according to both the Response and the Bradley Declaration, the Defendant-Intervenor received \$2500 for his presence at the sole Director’s meeting of BVI Airways, for a total reported compensation to Disciplinary Counsel of \$102,500 with the promise of an additional \$100,000 that was unpaid.¹ Id.

5. Additionally, the Defendant-Intervenor was served on June 11, 2020, with a subpoena duces tecum, Id. ¶ 11, in line with the Court’s Order, ECF No. 10. He has been producing documents on a rolling basis. Id. Those documents reveal that in 2014 the Defendant-Intervenor first performed “legal services,” Id. ¶ 31, on behalf of BV Airways, Inc. The Defendant-Intervenor invoiced BV Airways, Inc. for \$8850 for those services. Id. ¶ 37. He instead received, however, payment in the amount of \$5000 specifically related to his role in resolving a dispute between BV Airways, Inc. and the British Virgin Islands Airports Authority (“BVIAA”), an instrumentality of the British Virgin Islands Government (“BVG”). Id. ¶ 31. The failure to disclose this invoice and payment received by Mr. Hyman thereon is not minor, and he had motive to continue to conceal for as long as possible his representation of BV Airways, Inc. with respect to the dispute between BV Airways, Inc. and BVIAA. By Mr. Hyman’s calculations, this purported legal representation of BV Airways, Inc. caused \$94,000 in harm to his client, the BVIG. Id. ¶ 38. It

¹ Notwithstanding Mr. Bradley’s declaration under penalty of perjury that states that the second \$100,000 was contingent on “once the airline was up and running,” Id., Mr. Hyman’s document production suggests that the second \$100,000 was due at the beginning of 2017 without any contingency, and BV Airways, Inc. simply failed to pay this second \$100,000 that had been promised to Mr. Hyman. Id. ¶ 23.

remains unclear to what extent the Defendant-Intervenor invoiced and/or was paid for other legal services provided on behalf of the Operator Parties. See Id. ¶ 39.

6. As stated in paragraph 4, supra, the Defendant-Intervenor reported to Disciplinary Counsel that he received only \$2500 for attending the sole meeting of the BV Airways, Inc.'s Board of Directors. However, as noted in the Declaration of Martin Kenney in Support of the Application for Judicial Assistance to Obtain Evidence for Use in a Foreign Proceeding Pursuant to 28 U.S.C. § 1782 ("Declaration MSK-1"), counsel for the Applicant has obtained correspondence from another director, whom the BVIG was entitled to place on that same board. Decl. MSK-1 ¶ 60, ECF no. 1-1. That correspondence disclosed the compensation scheme for each director, which included not just a \$2500 payment per in-person meeting attended but also \$10,000 cash and stock options. Id.

7. It is patently clear that the Defendant-Intervenor is prone to misrepresentations that are not simply minor, immaterial, and/or subject to reasonable forgetful error. When asked by Applicant's counsel in July 2019 about the total amount of payments he received, if any, from BV Airways, Inc. and/or related parties in relation to the failed airline venture, the Defendant-Intervenor responded in writing that he believed that he had been \$500. Decl. MSK-2 ¶ 9. Given an opportunity to correct that statement in his Disciplinary Response, the Defendant-Intervenor admitted to having received a total of \$102,500. Id. ¶ 7. Setting aside the incomprehensible possibility that in July 2019 the Defendant-Intervenor simply forgot that he received over \$100,000 in compensation related to the failed airline venture (particularly given that he appears to have coordinated his response to MKS with Mr. Bradley, Id. ¶ 9), even the "corrected" amount that he reported to Disciplinary Counsel is unbelievably still inaccurate. In the Response, the Defendant-Intervenor omitted the \$10,000 and stock options received by each director, as well as at least

\$5000 received for other legal work from BVI Airways Inc., a party adverse to his client in the matter. Id. ¶ 31. These repeated material misrepresentations underscore the Applicant's need for a sworn declaration from the Defendant-Intervenor detailing all payments made to or from any of the Operator Parties, as requested in paragraph 8(a)(i), infra.

III. AMENDED RELIEF SOUGHT

8. The Applicant respectfully requests an order from the Court modifying the relief sought, Appl. ¶ 45(a)(iii), ECF no. 1, to compel instead the statement and production of:

a. From the Defendant-Intervenor:

- i. For the period from September 1, 2013, to the present, a sworn written declaration, in the form of responses to the Applicant's interrogatories, detailing each and every payment that the Defendant-Intervenor (including also any party acting on his behalf or any party, in which the Defendant-Intervenor has a 50% or greater beneficial, financial, legal, voting, and/or other controlling interest, whether directly or indirectly) made to, received from, and/or offered by and/or promised to any of the Operator Parties² including the date, amount, method (e.g., cash, check, wire transfer, etc.), and purpose of the payment (or offer or promise thereof) as well as whether the Defendant-Intervenor made or received (or offered or promised, or was offered or promised) the payment and the identities of the Defendant-

² The "Operator Parties" include (1) BV Airways Inc.; (2) Castleton Holdings LLC; (3) Colchester Aviation LLC; (4) Colchester Aviation Ltd.; (5) Raptor Aviation Ltd.; (6) any shareholders (whether indirect or direct, corporate or individual, legal or beneficial), directors, officers, or any other related party or affiliate of, or acting on behalf of or in conjunction with, any of the enumerated five legal entities; (7) Mr. Bradley; (8) Jamaal Brown; (9) Adam Frieman; (10) Scott Weisman; (11) Jerry Willoughby; and/or (12) any party acting on behalf of or in conjunction with any of the five enumerated individuals.

Intervenor's counterparty and the financial institutions involved in the transaction. The sworn declaration shall also include a statement that all responsive payments (or offers or promises thereof) have been disclosed. The sworn statement shall also be accompanied with copies of all documentary evidence in relation to payments (or offers or promises thereof) detailed in the sworn statement, including, but not limited to, any and all deposit confirmations, payment advice slips, canceled checks, wire transfer confirmations, cash receipt slips, or any other financial document (all of which whether in electronic or hard copy form) as well as all correspondence in relation with the payments (whether with financial institutions, any of the Operator Parties, or otherwise).

9. The Applicant's intended interrogatories are appended as Appendix "1" of the Proposed Order.

IV. SECTION 1782 AUTHORIZES THIS COURT BROAD DISCRETION AND FLEXIBILITY IN GRANTING DISCOVERY REQUESTS

10. Neither the Supreme Court nor any circuit court has ruled specifically on the issue of whether § 1782 authorizes discovery via interrogatory or requests for admissions. This District, however, has recently found in absolute favor of granting such discovery. See Islamic Republic of Pakistan v. Arnold & Porter Kaye Scholer LLP, No. MC 18-103 (RMC), 2019 WL 1559433, at *9 (D.D.C. Apr. 10, 2019). Numerous other district courts have agreed. See Pfaff v. Deutsche Bank AG, No. 20 Misc. 25 (KPF), 2020 WL 3994824, at *13-15 (S.D.N.Y. July 15, 2020) (granting in part petitioner's request for discovery, including interrogatories, pursuant to § 1782); In re Local Ct. of Wetzlar, No. 1:17-MC-00078-SKO, 2018 WL 2183966, at *2 (E.D. Cal. May 11, 2018) (finding that petitioner's request, including discovery by interrogatory, met the § 1782

statutory requirements); In re Hallmark Capital Corp., 534 F. Supp. 2d 951, 957-58 (D. Minn. 2007) (holding that petitioner's § 1782 request for discovery consisting of nine document requests and nine interrogatories was not unduly burdensome). To the extent that District Courts have held otherwise since the Supreme Court's ruling in Intel Corp. v. Advanced Micro Devices, Inc., 542 U.S. 241 (2004), such opposing opinions have only emanated from the Northern and Central Districts of California, along with one 2006 case in the Northern District of Illinois. See In re Dist. Ct. of Lugano, No. 19-MC-80208-VKD, 2019 WL 4040552 (N.D. Cal. Aug. 26, 2019); Ct. of First Instance of Macau - 2nd Civil Ct. v. LVS (Nevada) Int'l (In re Ct. of First Instance of Macau - 2nd Civil Ct.), No. 19-MC-80041-VKD, 2019 WL 884097 (N.D. Cal. Feb. 22, 2019); Siemens AG v. W. Digital Corp., No. 8:13-CV-01407-CAS, 2013 WL 5947973 (C.D. Cal. Nov. 4, 2013); Labor Ct. of Braz. v. McDonald's Corp. (In re Labor Ct. of Braz.), 466 F. Supp. 2d 1020 (N.D. Ill. 2006).

11. Section 1782(a) does not "place formalistic strictures on the district court." Edelman v. Taittinger (In re Edelman), 295 F.3d 171, 180 (2d Cir. 2002). Rather, it grants this Court broad discretion that permits bespoke discovery requests. 28 U.S.C. § 1782(a) ("The district court . . . may order him to give his testimony or statement or to produce a document or other thing The order may prescribe the practice and procedure . . . for taking the testimony or statement or producing the document or other thing."); cf. Edelman, 295 F.3d, at 180 ("Congress has expressed as its aim that the statute be interpreted broadly and that courts exercise discretion in deciding whether, and in what manner, to order discovery in particular cases. *See* S.Rep. No. 88-1580, § 9, *reprinted in* 1964 U.S.C.C.A.N. at 3788 (noting that § 1782(a) 'leaves the issuance of an appropriate order to the discretion of the court which, in proper cases, may refuse to issue an order or may impose conditions it deems desirable'). To construe § 1782(a) broadly is consistent with that aim."). The statute plainly allows for discovery by testimony or statement or document

production. Basic principles of statutory construction compel the inference that, by explicitly listing both testimony and statements, the authorized modes of discovery include both depositions and interrogatories.

12. Compelling the Defendant-Intervenor to provide a sworn declaration as described in paragraph 8(a)(i), supra, not only would be consistent with the broad discretion § 1782 grants this Court to determine the way, in which a statement may be taken from a § 1782 respondent, and the precedent established by this District in Islamic Republic of Pakistan, but also would be an efficient and narrowly tailored manner to obtain the Defendant-Intervenor's banking and payment records that are directly relevant to the failed airline venture and not any other unrelated records. Interrogatories are even more clearly the appropriate tool given the Defendant-Intervenor's repeated inability to provide consistent and straightforward answers on a simple, and very material, issue.

13. Additionally, rather than seeking authorization from the Court to issue a subpoena duces tecum to the Defendant-Intervenor, the Applicant also respectfully requests that the Order of the Court directly compel the production of the relief sought herein, namely responses to the Applicant's interrogatories as attached in Appendix "1" of the Proposed Order hereto as well as the accompanying document production demand contained therein, by the Defendant-Intervenor to the Applicant within fourteen days of the Order's entry. Section 1782(a) in relevant part reads:

The order may prescribe the practice and procedure, which may be in whole or in part the practice and procedure of the foreign country or the international tribunal, for . . . producing the document or other thing. To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure.

The statute grants courts broad discretion to determine the appropriate means of ordering production. The Court is not bound by the requirements of the Federal Rules of Civil Procedure

(§ 1782 even permitting courts to order production in accordance with foreign procedures). Although § 1782 respondents are often served subpoenas, § 1782 applications are typically filed ex parte where the respondent is without notice of the application. Now that the Defendant-Intervenor is a party to this Application, he is fully on notice of all of the Court's orders. The underlying rationale of issuing a subpoena pursuant to Fed. R. Civ. P. 45 that applies when serving a without notice third party is not applicable in this instance where the Defendant-Intervenor has been granted intervention as a party. In the spirit of efficiency, the Applicant, therefore, respectfully requests that the Court's order on its own be sufficient to compel the production of the evidence sought in this Motion to Amend. Further, the Applicant also respectfully requests that the requested evidence be produced in electronic form; with respect to any evidence that, due to its nature, cannot be produced in electronic form, the Applicant requests that such evidence be sent by courier to the Applicant's attorney with postage costs borne by the Applicant.

14. In the alternative, the Applicant seeks authorization from this Court to serve the Defendant-Intervenor with a subpoena duces tecum compelling the responses to the Applicant's interrogatories as attached in Appendix "1" of the Proposed Order hereto as well as the production of documents demanded therein.

V. COMPLIANCE WITH LCvR 7(M)

15. In accordance with the requirements of LCvR 7(m), the Applicant's counsel first conferred on June 16, 2020, with the Defendant-Intervenor's counsel regarding the voluntary production of tax and bank/payment documentation, redacted to exclude anything not relevant to the Defendant-Intervenor's representation of the BVI, the BVI Airways matter, and/or payments to/from any, some, or all of the Operator Parties. Counsel for the Parties have since discussed over the telephone and via email the underlying substance of this Motion. The Defendant-Intervenor

has agreed to produce voluntarily redacted tax filings, although, to date, the Defendant-Intervenor has only voluntarily produced a single, heavily redacted, page from his 2016 personal federal income tax return. The Defendant-Intervenor has not agreed, however, to produce objective bank/payment information and, as stated in paragraph 8(a)(i), supra, a sworn statement in which the Defendant-Intervenor states each and every payment made to or from any, some, or all of the Operator Parties. The Defendant-Intervenor's position is that § 1782 does not permit the compelling of testimony in writing by way of an interrogatory, and thus, the Defendant-Intervenor opposes this Motion. The Applicant, based on statutory interpretation and precedent established by this District and other district courts, believes that § 1782 plainly authorizes discovery by way of interrogatories and that interrogatories are wholly appropriate in this instance.

August 21, 2020

Respectfully submitted,

/s/ Markus A. Stadler

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D.C. Bar No. 1046805

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of August, 2020, I will electronically file the foregoing, as well as accompanying exhibits thereto, with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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v.)
LESTER S. HYMAN, ESQ.)
Defendant-Intervenor)

SECOND DECLARATION OF MARTIN S. KENNEY IN SUPPORT OF THE
APPLICANT'S MOTION TO AMEND RELIEF SOUGHT

I, Martin S. Kenney, declare as follows:

I. INTRODUCTION

1. I am the managing partner of the law firm of Martin Kenney & Co., Solicitors ("MKS") in the British Virgin Islands ("BVI"). I am admitted to practice as a Legal Practitioner before the Eastern Caribbean Supreme Court at the BVI ("BVI High Court") and as a Solicitor-advocate before the Senior Courts of England and Wales. MKS acts as legal practitioners for the Attorney General of the BVI (the "Attorney General"), and I am duly authorized to make this declaration on his behalf.
2. I respectfully submit this declaration in support of the Attorney General's Motion to Amend Relief Sought ("Motion") pursuant to the Attorney General's Application for Judicial Assistance to Obtain Evidence for Use in a Foreign Proceeding Pursuant to 28 U.S.C. § 1782

(“Application”), ECF No. 1. The Court granted in part and denied in part the Application on May 23, 2020, Order, ECF No. 10. The Attorney General submits the Motion to narrow the scope of two requests for discovery of Lester Hyman that were denied without prejudice, Order, ECF No. 10, to accord with the parameters indicated by the Court, Mem. Op. 18, ECF No. 9.

3. The matters, to which I refer, in this second declaration (“Declaration MSK-2”) are, unless stated otherwise, within my personal knowledge and true.
4. I signed under penalty of perjury a declaration (“Declaration MSK-1”) dated September 19, 2019, in support of the Application, ECF No. 1-1. My knowledge of the facts in both Declaration MSK-1 and this Declaration MSK-2 derives from my work, and MKS’ legal and investigative work under my supervision, regarding the background and subsequent actions to the BVIIG entering into a certain Framework Agreement dated December 7, 2015 (the “Framework Agreement”) with certain corporate entities based in the BVI and the United States for the purpose of establishing a nonstop passenger jet air link between the BVI and Miami (“BVI Airways”), Ex. MSK-1, at 72-87, ECF no. 1-2. The relevant background details of the Framework Agreement and BVI Airways were disclosed in the Application, Appl., ECF no. 1, and Declaration MSK-1, Decl. MSK-1, ECF no. 1-1. This Declaration MSK-2 assumes familiarity with those documents and the underlying facts and circumstances as stated in the filings of this case to date.
5. Since my signing of Declaration MSK-1, there have been several developments in the case, most notably a complaint filed with the Office of Disciplinary Counsel of the D.C. Court of Appeals with respect to Mr. Hyman, document production pursuant to a subpoena duces tecum in connection with the Application and the Court’s Order, and

additional work completed by MKS' legal practitioners and investigators under my supervision.

6. Now produced, shown to me, and marked "Exhibit MSK-2" is a paginated bundle of documents that make up the exhibits to this Declaration MSK-2.

II. RECENT DEVELOPMENTS SINCE THE APPLICANT'S LAST FILING

a. Disciplinary Complaint Filing with the Office of Disciplinary Counsel at the D.C. Court of Appeals

7. The Applicant last filed with the Court on December 29, 2019, Applicant's Reply to the Mem. in Opp'n to the Applicant's Mot. for Leave to File a Sur-reply, ECF No. 7. Subsequently, a disciplinary complaint dated January 15, 2020, was filed with the Office of Disciplinary Counsel at the D.C. Court of Appeals against Mr. Hyman. Ex. MSK-2, at 2-6. Pursuant to that complaint, counsel for Mr. Hyman filed a response ("Disciplinary Response") on March 19, 2020. Id. at 7-56. The Disciplinary Response was supported by a declaration under penalty of perjury by Bruce Bradley (the "Bradley Declaration"), purported Managing Member/President of Castleton Holdings LLC¹ and Vice Chairman of BV Airways, Inc. Id. at 21-24. Both the Disciplinary Response and the Bradley Declaration acknowledged that, in relation to the failed airline venture, BV Airways, Inc. paid \$100,000 to Mr. Hyman after "the formal agreement was ratified," Id. at 23, (referring to the Framework Agreement of December 7, 2015) and that another \$100,000 would have been due "once the airline was up and running." Id. Also, according to both the

¹ I note that Castleton Holdings, LLC was revoked on September 12, 2019, Ex. MSK-2 at 57, six months prior to the Bradley Declaration, where Mr. Bradley declares under penalty of perjury in the present tense, "I am the Managing Member/President of Castleton Holdings, LLC." Ex. MSK-2, at 21. This statement in the Bradley Declaration appears to be inaccurate.

Response and the Bradley Declaration, Mr. Hyman received \$2500 for his presence at the sole Director's meeting of BVI Airways, Id. at 22, for a reported total of payments of \$102,500.

8. The Disciplinary Response was internally conflicting. In summary, it appeared to argue that (a) Mr. Hyman was not the BVIG's attorney on the BVI Airways matter, (b) he was also not BV Airways, Inc.'s attorney, but (c) if he was both the BVIG's and BV Airways, Inc.'s attorney on the matter, it was not a conflicted representation, and (d) even if it was a conflicted representation, he obtained each party's informed consent (without any detail or evidence as to how it was obtained). A detailed 22-page reply ("Disciplinary Reply") addressing these inconsistent positions and accompanied by contemporaneous evidence refuting them (including, inter alia, an invoice for legal services issued by Mr. Hyman to the BVIG and accompanying email that noted his hours on the BVI Airways' matter) was filed on May 31, 2020, Id. at 58-140, (prior to Mr. Hyman's document production having begun pursuant to the subpoena duces tecum that was served on June 11, 2020, that further undermined Mr. Hyman's counsel's positions in the Disciplinary Response).
9. The Disciplinary Response also sought to excuse Mr. Hyman's misrepresentation on July 8, 2019, to MKS as a memory lapse and not having "the aid of documents," Id. at 12, when in response to "Did you receive any payments from any of BV Airways, Colchester Aviation LLC, Castleton LLC or Raptor Aviation or any affiliate or principal thereof whether directly or indirectly in relation to this project? If so, in what amount(s) and for what reason?," Ex. MSK-1, at 157, ECF no. 1-2, Mr. Hyman responded that he believed that he had been paid \$500, Id. at 158. Document production pursuant to the subpoena duces tecum served on him has undermined this assertion. Not only did he have on July 8, 2019, a plethora of documents (which he appears to have had the habit of printing contemporaneously

as evidenced not only by what he sent to Disciplinary Counsel in support of the Disciplinary Response, Ex. MSK-2, at 29-32, 40-43, 48-49, 55-56, but also by the documents produced to the Attorney General that indicate the dates when they were printed and often have apparently contemporaneous handwritten notes), but he also apparently coordinated his response to MKS with Mr. Bradley, Id. at 141-42.

10. Additionally, as discussed in relevant part in this Declaration MSK-2 and the Disciplinary Reply, the Bradley Declaration is riddled with inaccuracies. From document production, of which MKS did not have the benefit at the time of the Disciplinary Reply, it further appears that these inaccurate statements under penalty of perjury were made knowingly because Mr. Bradley forwarded the emails, on which he based much of the Bradley Declaration, to Mr. Hyman's counsel on March 10, 2020, the day prior to signing the Bradley Declaration, indicating that Mr. Bradley had refreshed his memory prior to signing. Id. at 143-53.

b. Service of a Subpoena Duces Tecum and Document Production

11. Mr. Hyman was served on June 11, 2020, with a subpoena duces tecum in line with the Court's Order, Order, ECF No. 10. Ex. MSK-2, at 154-62. He has produced documents on a rolling basis, and, to date, he has produced 1154 pages of responsive documents, all of which are properly considered to be part of the BVIG's client file spanning thirty years and some of which are directly related to the failed airline venture, undermining his initial assertion that there was no client file and that everything "was done telephonically or in person." Ex. MSK-1, at 153, ECF no. 1-2. He has also produced on a voluntary basis a single, heavily redacted, page of his 2016 personal federal tax return that shows the \$100,000 in income that he received in that year from BV Airways, Inc. Ex. MSK-2, at 163. Many of the documents produced

directly contradict the assertions made in the Disciplinary Response and Bradley Declaration and over the years to his client, the BVIG.

12. The documents produced that are most relevant to the Motion are included in Exhibit MSK-2 and discussed in this Declaration MSK-2, infra.

III. THE EVIDENCE SHOWS THAT IN ADDITION TO BEING PAID \$12,500 AS A PAID DIRECTOR OF BV AIRWAYS, INC., MR. HYMAN WAS SECRETLY PAID \$100,000 AND WAS PROMISED AN ADDITIONAL \$100,000, WHICH, HOWEVER, BV AIRWAYS, INC. FAILED TO PAY.

13. In Declaration MSK-1, I related how the Then-Premier recalled a conversation in the fall of 2015 that he had with Mr. Bradley after a meeting at the Maria's by the Sea Hotel in Tortola, out of earshot from anyone else. In that conversation, Mr. Bradley said that he thought that the BVIG should pay Mr. Hyman \$200,000 as a success fee for his role in the BVI Airways matter. The Then-Premier related to "me that (a) he was taken aback by this request and (b) the BVIG had no intention of paying any sum to Mr. Hyman beyond his flat annual retainer of \$100,000." Decl. MSK-1 ¶ 40, ECF 1-1. This conversation formed the basis at the time of the Application for the belief that Mr. Hyman must have been paid and/or promised that amount. Id. ¶ 41.

14. The Disciplinary Response and subsequent document production have proven that belief to be accurate. From the very beginning, on July 30, 2014, Mr. Hyman sent a draft email to Mr. Bradley that he would send to the Then-Premier; this email appears to have reflected a conversation between Messrs. Hyman and Bradley where Mr. Hyman must have sought a \$200,000 success fee payment from Mr. Bradley. Ex. MSK-2, at 145-46. Mr. Hyman then coordinated with Mr. Bradley an email to the Then-Premier to seek the BVIG's contribution to this arrangement whereby the BVIG would pay \$100,000 of this success fee. Id. The email to the Then-Premier was sent on July 31, 2014. Id. at 117. The proposal was not accepted by

the BVIG, and there was no further discussion between the BVIG and Mr. Hyman regarding any success fee.

15. I note that the Bradley Declaration inaccurately states, “There was no discussion of compensating Mr. Hyman for his role in bringing the parties together or for moving the idea to fruition,” Id. at 21, even though the day prior, on March 10, 2020, Mr. Bradley forwarded the July 30, 2014, draft email to Mr. Hyman’s counsel, Id. at 146-47, and presumably had the email fresh in his mind when signing the Bradley Declaration. This draft email, however, used precisely this language that the proposed compensation was “to bring such a project to fruition,” Id. at 146, and “I [Mr. Hyman] respectfully submit to you that I have been instrumental in bringing the parties together I respectfully submit that, but for my legal work on this matter, it would not have come to fruition,” Id. at 147. Mr. Bradley and Mr. Hyman had clearly discussed “compensating Mr. Hyman for his role in bringing the parties together or for moving the idea to fruition,” Id. at 21, notwithstanding the Bradley Declaration to the contrary. Id.

16. On August 5, 2014, Mr. Hyman wrote to Mr. Bradley,

On another front, I have e-mailed to the Premier the letter I shared with you regarding your suggestion of a 100/100 split (total of 200,000) between Government and Castleton for my services.

I want us to make it clear, however, that if, for any reason, Government declines to pay me 100,000 when the project comes to fruition, Castleton then will pay me the entire 200,000 at that time.

I would appreciate your assent to that arrangement.

Id. at 148 (emphasis added). Mr. Bradley responded, “Yes agreed, with the understanding that the second half (\$100,000) may need to be deferred for 12 months as we discussed at lunch.”

Id. This email, which also spoke to a success fee with the same language, “when the project

comes to fruition,” Id., was also forwarded by Mr. Bradley to Mr. Hyman’s counsel on March 10, 2020, the day prior to the Bradley Declaration.

17. On January 13, 2015,² the Then-Premier privately emailed Mr. Hyman to advise that the BVIG’s Cabinet had decided against pursuing the airline project, Id. at 164, and on January 15, 2015,³ the Then-Premier sent a substantially similar email advising Mr. Bradley (and Mr. Hyman again) of the same, Id. at 165.

18. In April 2015, the Operator Parties, Mem. Op. 4 n.3, ECF no. 9, sought to revive the airline project. On April 5, 2015, Mr. Hyman emails the Then-Premier saying that he has a new BVI Air proposal that “**would not cost the Government a cent.**” Ex. MSK-2, at 166. Mr. Hyman had cleared the draft of this email with Mr. Weisman the day prior. Id. at 167. Mr. Hyman also forwarded his email to the Then-Premier to the Then-Premier’s wife four minutes later, who responded ten minutes thereafter that she would make sure the Then-Premier would respond as soon as possible. Id. at 168. The next morning, in an email marked “LAWYER’S CONFIDENTIAL AND PRIVILEGED COMMUNICATION,” Id., directed to his purported client, Mr. Hyman forwards the Then-Premier’s wife’s response to Mr. Weisman and says, “As you undoubtedly know, there is no American who has as close relationship with both Lorna and Orlando as I. Accordingly, if this new proposal of yours comes to fruition, I would expect to be appropriately recompensed for my efforts in making that possible.” Id. There is no other way to interpret this email than to say that Mr. Hyman was selling his influence over

² Although the email in Exhibit MSK-2 shows the date and time as January 14, 2015, at 3:09 AM, the time zone was set to Greenwich Mean Time. The email was sent on January 13, 2015, at 10:09 PM, Eastern Standard Time.

³ Although the email in Exhibit MSK-2 shows the date and time as January 16, 2015, at 1:40 AM, the time zone was set to Greenwich Mean Time. The email was sent on January 15, 2015, at 8:40 PM, Eastern Standard Time.

his client, quite contrary to any assertion that this arrangement was in the open, let alone with the informed consent of his client.

19. On May 6, 2015, apparently having not heard back from Mr. Weisman on the topic of Mr. Hyman's secret compensation, Mr. Hyman again writes Mr. Weisman, "When you have a chance, I'd appreciate it if you would suggest a financial arrangement regarding my legal representation of that project. I suggest for your consideration that we work out both a fee schedule for the actual time I spend on this matter...and, in addition, a substantial amount as a bonus for a favorable result." Id. at 169 (emphasis added). Not only is Mr. Hyman persisting in securing his secret compensation, it is being classified as "legal representation," Id., directly contradicting the Bradley Declaration: "BVI Airways did not view Mr. Hyman, who it understood had an on-going relationship with the BVI Government, to be providing BVI Airways legal representation with respect to its dealings with the BVI Government in establishing an airline to provide direct service to the BVI." Id. at 23.
20. Apart from the many emails Mr. Hyman sent to Jerry Willoughby and Messrs. Bradley and Weisman marked "LAWYER'S PRIVILEGED AND CONFIDENTIAL COMMUNICATION" or similar (none of which Mr. Hyman's actual client had until Mr. Hyman produced them pursuant to the subpoena duces tecum served on him on June 11, 2020), in a July 10, 2015, declaration under penalty of perjury, Id. at 170-78, submitted in connection with a dispute with Luke Smith, the former majority owner of BV Airways, Inc., see ¶ 33, infra, Mr. Willoughby referred to Mr. Hyman as "BVIA's [BV Airways, Inc.'s] General Counsel," Ex. MSK-2, at 175. The overwhelming contemporaneous evidence would suggest that Mr. Bradley's declaration under penalty of perjury is inaccurate.

21. After the BVI General Election of June 8, 2015, where the Then-Premier's National Democratic Party again won a majority in the House of Assembly, in another "LAWYER'S PRIVILEGED AND CONFIDENTIAL MEMORANDUM," Id. at 150, to his purported client, Mr. Hyman emails Mr. Bradley on June 19, 2015:

Dear Bruce:

When you and I originally embarked upon our efforts to bring the AVRO planes to Tortola in order to provide non-stop flights between Miami and Beef Island, we spoke about a success fee of approximately \$200,000 for my making that possible. As you well know, I spent a tremendous amount of time on that project without any compensation. (Scott did pay \$5000 for my role in advising him re the dispute between the BVI Aviation [sic] Authority and BVI Air).

Am I correct in assuming that you and Scott now will be working together to revive the Avro project? Scott and Jerry Willoughby currently are engaged in conversations with me involving my resuming negotiations with the BVI Government.

Before my doing so, however, I respectfully request written assurance that 1) I will receive only out-of-pocket expenses as I pursue this result and then, once a contract is signed between you and Scott and the BVI, I would receive \$200,000 as my success fee.

Would you please be kind enough to discuss this matter with Scott and let me know the result before I begin my discussions with the BVI authorities (primarily Premier Orlando Smith, Lorna Smith and head of tourism Russell Harrigan)?

Id. (emphasis added). Mr. Hyman clearly is for sale for a price, which in this case was \$200,000 in order to negotiate against his own client, the BVIG.

22. On March 10, 2020, in connection with the Disciplinary Response, Mr. Bradley forwarded to Mr. Hyman's counsel with a note "Regarding Lester's fee and other work for BVI Airways," Id., the June 19, 2015, email marked "LAWYER'S PRIVILEGED AND CONFIDENTIAL MEMORANDUM," Id., referenced in paragraph 21, supra, that was sent by Mr. Hyman directly to Mr. Bradley, yet he nevertheless declared the following day under penalty of

perjury, “BVI Airways did not view Mr. Hyman, who it understood had an on-going relationship with the BVI Government, to be providing BVI Airways legal representation with respect to its dealings with the BVI Government in establishing an airline to provide direct service to the BVI.” Id. at 23.

23. In accordance with the agreement between Mr. Hyman and BVI Airways with respect to the secret payment, Mr. Hyman was paid the initial \$100,000. Id. In accordance with his agreement with Mr. Bradley of August 5, 2014, Mr. Hyman was due to be paid the second \$100,000 on December 7, 2016, twelve months after the execution of the Framework Agreement. Id. at 148. There appears to have been an agreement to extend the payment of this second \$100,000 to the beginning of 2017. Id. at 179. However, BV Airways, Inc. did not pay Mr. Hyman the second \$100,000 that he believed that he had been owed. Id.
24. In an email on March 19, 2017, with the subject “The rabbi needs some gelt!,” Id., where he is presumably the “rabbi,” Id., to which he refers, Mr. Hyman writes,

Dear Scott:

Just a brief note to request that, upon your return from Jamaica (where I hope you are enjoying a well earned, albeit brief, short vacation) you send me a check for \$100,000 as the remainder of the fee owed me for the AVRO project.

As you will recall, the agreed upon total amount of \$200,000 became due as of contract execution which took place in December of 2015.

Of that amount, \$100,000 already has been paid. The remaining \$100,000 became due in December of 2016, but we mutually agreed that it could be held over until the beginning of 2017.

That time now has come. Accordingly, I would be most appreciative if you would send me now a check in that amount (\$100,000) as full payment. Thanks, Scott.

Warmest regards,

Les

Id.

25. On March 21, 2017, Mr. Weisman responded,

Lester

Thank you for your latest note- as you know, funds are extremely limited – we are in the middle of attempting to source additional capital so we can continue and launch service – one we are recapitalized I see gelt in your future

Thank you again for your on going [sic] support

Best regards

Scott

Id.

26. Mr. Hyman forwards this email chain to Mr. Bradley on the same day with the note, “Bruce: I am really angered by this e-mail from Scott. What do you think I should do next? Les.” Id.

27. Although Mr. Hyman has not produced Mr. Bradley’s response to Mr. Hyman’s email, at 5:31 PM the next day, Mr. Hyman emails the Then-Premier with the subject “EXTREMELY URGENT!!!,” Id. at 180.

Dear Orlando:

It is extremely urgent that you resolve the guarantee issue tonight or first thing tomorrow morning. I am convinced that Mesrs. [sic] Bradley and Scott are not kidding when they say that, if nothing is resolved by close of business tomorrow, the whole BVI Air matter will be ended, **They are not bluffing**. As you know, once they have a guarantee, they will be able to acquire an even larger third plane that can go non-stop between Tortola and New York. Just imagine what a boost this would be to BVI tourism. They also need to be guaranteed that, if you decide to go ahead with the lengthening of the air strip, it will not interrupt their ability be able to take off for the Tortola/New York flight. Bruce and Scott need to discuss the above with you tonight or first thing tomorrow morning. Otherwise, the whole project will be over. I cannot imagine that that is what you want. CAN THEY ARRANGE A CONFERENCE CALL WITH YOU TONIGHT OR TOMORROW MORNING EARLY? Please let me know so I can help set up the call. Many thanks.

Les

Id.

28. I note that it is quite implausible that Messrs. Bradley and Weisman would walk away by the end of the following day from a project where they used the BVIG's money and did not invest their own despite having promised to do so. Against the backdrop of Mr. Hyman's email exchange referenced in paragraphs 24-26, supra, it would appear that the true "EXTREMELY URGENT!!!" Id., motive of this email was not Mr. Hyman's client's best interest but rather to secure Mr. Hyman's second \$100,000 secret payment from BV Airways, Inc. that it had failed to pay.
29. As further evidence of the concealed nature of Mr. Hyman's engagement by BV Airways, Inc., on April 6, 2017, Mr. Hyman sent the Then-Premier a "Confidential memo re meeting tomorrow morning," Id. at 136, 181, providing the Then-Premier with points to keep in mind in anticipation of a meeting the following day with Messrs. Bradley and Weisman. This email was collected by MKS from the Then-Premier. Id. at 136. However, Mr. Hyman's document production revealed that Mr. Hyman bcc'ed Mr. Bradley on that same confidential communication between Mr. Hyman and his client, the BVIG. Id. at 181.
30. In "A very personal letter," Id. at 140, email of June 18, 2017, Mr. Hyman assured the Then-Premier that Mr. Bradley "was (and is) a man of honesty," Id., despite knowing that Mr. Bradley had agreed to make (and made) corrupt payments to buy Mr. Hyman's influence to secure a \$7,000,000 public contract.

IV. MR. HYMAN FAILED TO DISCLOSE THE TOTAL AMOUNT OF COMPENSATION RECEIVED FROM BV AIRWAYS, INC. TO BOTH MKS AND THE OFFICE OF DISCIPLINARY COUNSEL.

31. As explained further, infra, as a result of MKS' investigations and documents produced by Mr. Hyman pursuant to the subpoena duces tecum served on him on June 11, 2020, it appears that not only was Mr. Hyman's written answer to MKS on July 8, 2019, that he believed that he was paid about \$500 inaccurate but the \$102,500 amount reported to the Office of Disciplinary Counsel was also inaccurate. At least \$15,000 in additional payments were made to Mr. Hyman by the Operator Parties. This \$15,000 arose from \$10,000 paid upon his acceptance of becoming a Director of BV Airways, Inc., Ex. MSK-1, at 160, ECF No. 1-2, and \$5000, Ex. MSK-2, at 150, was paid around September 2014 pursuant to a purported legal engagement by BV Airways, Inc. that appears to have begun (according to a September 2, 2014, invoice for legal services issued by Mr. Hyman) in mid-July 2014 in connection with a dispute with the BVI Airports Authority ("BVIAA"), an instrumentality of the BVIG, Mr. Hyman's client. Id. at 182-83. This "oversight" regarding his purported engagement by BV Airways, Inc. with respect to the BVIAA dispute was not minor, as explained further infra, and it was persistent throughout the course of his purported engagement by BV Airways, Inc.

V. MR. HYMAN'S CONFLICTED ENGAGEMENT WITH RESPECT TO THE BVIAA SUB-MATTER

a. Background to the Dispute with the BVIAA

32. I explain this section to provide an understanding of the contours of a dispute between BV Airways Inc. and the BVIAA for the purposes of framing the issue of Mr. Hyman's conflicted engagement in this sub-matter. MKS has not fully investigated this sub-matter, and I do not, and the Attorney General does not, stipulate to the specific facts, particularly as to the amounts due to the BVIAA. However, a basic framework of the dispute is sufficient to put Mr. Hyman's conflicted engagement into context.

33. BV Airways Inc. was not a newly formed company at the time Messrs. Weisman and Willoughby (and/or companies under their control) acquired a majority interest, with discussions beginning in mid-2013 and the sale finalizing on March 14, 2014.⁴ Id. at 171-73. The previous majority owner was Mr. Smith, who was ultimately squeezed out after the initial sale of the majority of his interest to Messrs. Weisman and Willoughby (or companies under their control). BV Airways, Inc. had a substantial debt to the BVIAA, largely for unpaid passenger, take-off and landing, and airport use fees and taxes incurred during BV Airways, Inc.'s previous ownership; the precise amount due was and is under dispute, apparently due to disputed calculations between the parties and the interest and late penalties thereon. There may have also been a compromise offer where an amount had been agreed if BV Airways, Inc. immediately paid, which did not occur. In any event, Mr. Smith appears to have represented to Messrs. Weisman and Willoughby prior to the sale of Mr. Smith's shares amounts ranging from \$45,000 to \$91,000 (the variation due to the fact that Mr. Smith believed that some amounts had been double or triple charged by BVIAA) and BVIAA's view that approximately \$169,000 was owed to it at the time. Id. at 174.
34. In approximately June 2013, BVIAA first sent a demand notice regarding this debt of BV Airways, Inc., to Mr. Smith. A year later, with BV Airways, Inc. under new ownership, the BVIAA pursued the matter, and in approximately July 2014, BV Airways, Inc. retained Mr. Hyman, unbeknownst to the BVIG. This engagement was conflicted because BVIAA was and is an instrumentality of the BVIG, Mr. Hyman's client, and, as shown infra, he knew it. Messrs. Willoughby and Hyman attended a meeting on August 28, 2014, with the BVIAA to

⁴ The declaration under penalty of perjury signed by Mr. Willoughby on July 10, 2015, erroneously states the date of closing of the sale of the shares in BV Airways, Inc. as March 4, 2014, Id. at 173.

discuss this matter. Id. at 175. Around this time or shortly thereafter, on Mr. Hyman's direction, BV Airways, Inc. engaged Gerard Farara, a BVI legal practitioner, to assist with the dispute. Id. at 120. On September 12, 2014, with a BV Airways, Inc. aircraft in the BVI, the BVIAA obtained an urgent ex parte injunction from the BVI High Court impounding the aircraft. Id. at 184-88. Ultimately, on September 25, 2014, BV Airways, Inc. and BVIAA reached a temporary agreement whereby BV Airways, Inc. would pay BVIAA \$75,000 as partial payment of the debt, the final amount to be determined by discussions between the parties. In exchange, BVIAA would apply to the BVI High Court to remove the injunction, all of which occurred. Id. at 189. I also note that, in an email exchange with Mr. Farara, Mr. Hyman congratulated Mr. Farara on "this terrific result," Id., that Mr. Farara achieved to the detriment of Mr. Hyman's client, the BVIG.

35. The agreed-to discussions appear never to have occurred. Id. at 190. Over a year later, on December 7, 2015, the BVIG on the one hand and BV Airways, Inc., Castleton Holdings LLC, and Colchester Aviation, LLC on the other hand enter into the Framework Agreement. Ex. MSK-1, at 72-87, ECF No. 1-2.

36. The following month, on January 26, 2016,⁵ in an email whose subject was "BVI Air vs. BVI Airport [sic] Authority," Ex. MSK-2, at 189, Mr. Hyman writes to the then-Premier with Messrs. Willoughby, Weisman, and Bradley in copy,

In response to our telephone conversation of a few hours ago, let me set forth, to the best of my knowledge, what the situation is in terms of BVI Air's dealings with the Airport Authority.

⁵ The email in the Exhibit states that the time and date that it was sent as 1:42 AM on January 27, 2016. The time zone setting, however, was set to Greenwich Mean Time, which was 8:42 PM on January 26, 2016, Eastern Standard Time; additionally, this email was not produced by Mr. Hyman and was collected from the Then-Premier.

About two years ago, one of the new owners of BVI Air (Jerry Willoughby) met with Ms. Maduro at the Airport Authority regarding monies allegedly owed by BVI Air to the Authority. Mr. Willoughby was told that that amount was \$77,000. Mr. Willoughby wanted some documentation as to what that amount of money consisted of. Apparently there were poor records on this subject.

Almost immediately thereafter, the Airport Authority, knowing that there was a new owner of BVI Air, said out of the blue that \$169,000 was owed instead of the \$77,000. As discussions between the parties were about to ensue, the Authority, without any prior notice, placed a lien on BVI Air's plane.

BVI Air then retained the legal services of Gerry Farara with regard to that matter. Upon his advice, BVI Air then paid the Authority \$75,000 with the understanding that the parties would work out their differences later on. However, to the best of my knowledge, those additional talk never took place.

Note, please that the Framework Agreement that you signed in December states: "Each of the Parties irrevocably and unconditionally...agrees that any and all obligations or amounts due to...the Government (including, without limitation, any Government agency, department, body, office or ministry) acting in any capacity, for any reason whatsoever, has been satisfied, waived, or otherwise discharged, in full."

Accordingly, it would appear to me that since BVI Air has paid \$75,000 to the Airport Authority, the Framework Agreement states clearly that no further funds are owed to the Authority.

Please do not hesitate to let me know if you seek any further information regarding this matter.

Best personal regards.

Always sincerely,

Lester S. Hyman

Id. (emphasis added). I note from this email that Mr. Hyman did not state that he had been retained by BV Airways, Inc. on this same matter, noting solely Mr. Farara's engagement. Id. Additionally, Mr. Hyman was fully aware that the BVIAA is an instrumentality of the BVIG and used this knowledge to advise his client, the BVIG, that, in his opinion, the BVIG had waived its right to pursue the unpaid fees owed to the BVIAA. Id. A logical inference is that

Mr. Hyman concealed his engagement by BV Airways, Inc.'s of his legal services from the BVIG and that he was fully aware that such a purported engagement by BV Airways, Inc. in a matter where the BVIAA (which Mr. Hyman knew was an instrumentality of the BVIG) was an adverse party obviously conflicted with his role as the BVIG's long-term legal counsel.

37. The September 2, 2014, invoice Mr. Hyman sent to Mr. Weisman with subject line "Bill for Legal Services," Id. at 182, shows that Mr. Hyman billed \$8850 for his work on this matter with the BVIAA, Id. at 183, although he appears to have only been paid \$5000, Id. at 150. The body of the email with the invoice contains "a breakdown of the legal work [Mr. Hyman] performed on behalf of BVI Air over the past month and a half," Id. at 182, and that Mr. Hyman would continue to "be of service to BVI Air in this important matter." Id. This invoice is especially problematic for Mr. Hyman's counsel's assertions in the Disciplinary Response, "Mr. Hyman was not providing legal advice to BVI Airways with respect to its negotiations with the BVI Government," Id. at 10, and "Mr. Hyman was simply acting as an honest broker between the parties." Id.

38. According to Mr. Hyman's own calculation, Mr. Hyman caused his client, the BVIG, \$94,000 in harm (\$169,000 less the \$75,000 that has been paid) in this sub-matter with respect to the BVIAA dispute through his conflicted purported representation of both BV Airways, Inc. on the one hand and his representation of the BVIG on the other hand, where the BVIG purportedly waived its right to pursue the unpaid fees to the BVIAA and Mr. Hyman advised the BVIG belatedly once he had secured \$200,000 in promised secret compensation by BV Airways, Inc. due to his "success" of obtaining the BVIG's signature of the Framework Agreement. Id. at 190.


VI. CONCLUSION: MR. HYMAN HAS YET TO PROVIDE A TOTAL ACCOUNTING OF THE AMOUNTS PAID TO HIM BY THE OPERATOR PARTIES

39. Upon review of (1) Mr. Hyman's answer of July 8, 2019, to MKS, where he believed that he had been paid \$500 by the Operator Parties, (2) Mr. Hyman's representation, through counsel, to Disciplinary Counsel that Mr. Hyman had been paid \$102,500, in total, and (3) evidence that, as a result of MKS' investigations and notwithstanding his representations to MKS and Disciplinary Counsel, Mr. Hyman was paid at least an additional \$15,000 (as well as stock options), it is fair to say that Mr. Hyman has not as of today's date affirmatively stated the full amount that he was paid by the Operator Parties.

40. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed: Road Town, Tortola, British Virgin Islands

August 21, 2020



MARTIN S. KENNEY

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THE ATTORNEY GENERAL OF)
THE BRITISH VIRGIN ISLANDS)
)
 Applicant)
)
 for Judicial Assistance to Obtain Evidence)
 for Use in a Foreign Proceeding Pursuant to)
 28 U.S.C. § 1782)

Misc. Case No. 1:19-mc-00164-RCL

v.)
)
 LESTER S. HYMAN, ESQ.)
)
 Defendant-Intervenor)
 _____)

EXHIBIT MSK-2

**TO THE SECOND DECLARATION OF MARTIN S. KENNEY IN SUPPORT OF THE
APPLICANT'S MOTION TO AMEND RELIEF SOUGHT**



Martin Kenney & Co.

Solicitors

PREFERRED AREA OF PRACTICE: *International Fraud and Asset Recovery*

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15 January 2020

Office of Disciplinary Counsel
Board of Professional Responsibility
District of Columbia Court of Appeals
515 5th St., N.W., Bldg. A, Ste. 117
Washington, DC 20001
United States

Dear Sirs,

Re: Attorney Complaint regarding Lester S. Hyman

Following up on my telephone call with Joe Bowman on 23 December 2019, I am writing to advise the Office of Disciplinary Counsel of alleged professional misconduct on the part of Lester S. Hyman, an attorney and member of the D.C. Bar, in connection with his representation of his former client, the Government of the British Virgin Islands ('BVI').

Background: BVI Airways

On 1 October 2018, the Attorney General of the British Virgin Islands retained Martin Kenney & Co., Solicitors ('MKS'), a private law and investigations firm specialised in asset recovery in fraud and corruption matters. This engagement is in relation to a local political scandal involving BV Airways Inc. ('BVI Airways') and associated companies and insiders where the BVI Government invested \$7.2 million into an airline that was supposed to provide nonstop air travel between the BVI and Miami, the first time that there would have been nonstop commercial service between the BVI and the continental United States. The airline never took off, and the BVI Government's investment disappeared.

The scope of MKS' engagement has been to conduct an investigation in support of the Attorney General's investigation into the affair and pursue civil claims against those parties that are identified as having liability in the affair to recover the BVI Government's investment.

Background: Mr Hyman's Representation of the BVI Government

Mr Hyman was a long-time private attorney representing the BVI Government in the United States. This relationship began in approx. 1987, when Mr Hyman was a partner at Swidler & Berlin in Washington, D.C. While the BVI Government was Swidler & Berlin's client, the fee agreements at the time were clear that


Martin Kenney & Co.

Solicitors

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the BVI Government's relationship was with Mr Hyman. From approx. 1997, Mr Hyman represented the BVI Government directly without a connection to a law firm. This relationship lasted until 30 July 2017, when the BVI Government terminated Mr Hyman's representation, largely due to having becoming aware of some of the facts contained herein. At all times, the fee arrangement was a fixed fee quarterly retainer; the final payment was made in August 2017, shortly after the BVI Government's termination of Mr Hyman, and Mr Hyman has acknowledged that his fees have been paid in full.

Mr Hyman's Involvement with BVI Airways

MKS' investigations into the BVI Airways affair have revealed very troubling facts with respect to Mr Hyman that amount to professional misconduct in violation of the D.C. Bar's Rules of Professional Conduct.

At the end of 2013 and beginning of 2014, Mr Hyman introduced the BVI Government to a group of certain U.S. business promoters that proposed what would become BVI Airways. However, by 2017, it became apparent that BVI Airways had run out of money and sought further funds from the BVI Government. BVI Airways could not properly account (and still has not accounted) for the \$7.2 million that the BVI Government invested, and the BVI Government refused to make any further investment beyond what it had been contractually required to make. The BVI Airways promoters did not invest any of their own capital, even though when the proposal had first been made by the promoters to Mr Hyman acting on behalf the BVI Government, the promoters' proposal was to invest \$6 million of their own capital.

Ostensibly the BVI Government's attorney during all relevant periods, Mr Hyman, however, took both a personal and financial interest in the transaction unbeknownst and adverse to his client. The tone of his correspondence with government officials (i.e. his client) reflected this adverse interest; instead of vigorously advocating the BVI Government's interests with the parties associated with BVI Airways, Mr Hyman browbeat BVI Government officials into ultimately agreeing to unsuitable terms. For instance, the ultimate Framework Agreement entered into on 7 December 2015 between the parties contained no provision that the promoters invest their own capital alongside the BVI Government. Additionally, during contract negotiations with the promoters, the BVI Government sought the removal of the promoters' proposed clauses that amounted to a sovereign immunity waiver and an anticompetitive restriction on the government's ability to provide subsidies to potential competitors of BVI Airways. Instead of vigorously advocating these legitimate positions of his client with zeal, Mr Hyman—clearly conflicted in his role—wrote that his client's proposed changes were unacceptable and dismissed them out of hand as if he were working for the other side.

Furthermore, the due diligence that he purportedly conducted on the parties associated with BVI Airways was wholly inadequate and failed to discover easy-to-discover red flags regarding the promoters that were readily available through an Internet search. In fact, in one email to the then-Premier of the BVI as he was being terminated in 2017, Mr Hyman acknowledged that the primary business promoter that he introduced was a long-term friend of his.

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Mr Hyman's actions can be explained because he acted in a conflict of interest position as he had a financial interest in the outcome of the transaction. Unbeknownst to his client, Mr Hyman was paid a \$200,000 'finder's fee' by parties associated with BVI Airways (i.e. adverse parties) that was contingent on the BVI Government's investment. Also, he was a paid director of BVI Airways and had fiduciary duties to BVI Airways that conflicted with his professional responsibilities as an attorney to his client, the BVI Government.

On 20 June 2019, MKS, on behalf of their client, the Attorney General, sent a written demand to Mr Hyman for his client file with respect to BVI Airways, including, but not limited to, all correspondence, whether in paper or electronic format. Mr Hyman responded that there was no file because all of his meetings were in person or over the telephone. That reason is manifestly false, for we are in possession of many emails and other correspondence in writing between Mr Hyman and the BVI Government.

As a follow-up, MKS sent a list of questions to Mr Hyman on 3 July 2019. Of note, one of the questions asked about Mr Hyman's remuneration from the parties adverse to his client, the BVI Government, in the matter. Mr Hyman responded that he believed that he had been paid \$500 in his role as director of BVI Airways. Leaving aside that Mr Hyman should not be accepting *any* payment from the other side, his answer is again false, for the directors of BVI Airways received \$10,000 + \$2,500 per in-person meeting + stock options. He also made no mention of the \$200,000 finder's fee that he had received.

28 U.S.C § 1782 Application

As a result of Mr Hyman's unsatisfactory and false responses to the demand for the client file and MKS' questions about Mr Hyman's representation, on 23 September 2019, the Attorney General filed an application for judicial assistance (in this case, discovery) in the U.S. District Court for the District of Columbia pursuant to 28 U.S.C. § 1782, a federal statute authorising U.S. federal courts to grant judicial assistance in support of foreign proceedings. Specifically, the Attorney General requests authorisation to subpoena Mr Hyman to produce specified documents and compel him to a deposition; the application also requests authorisation to serve subpoenas on disinterested parties such as banks, tax preparers, and IT service providers for the production of documents. The BVI Government client file is the first document requested of Mr Hyman, and rather than delivering the client file, Mr Hyman is opposing the application, which could be construed as continuing misconduct with respect to the request for the client file. A former client should not be forced to seek authorisation from federal court to serve a subpoena on its former attorney in order to obtain its client file. This application remains pending.

The application is enclosed with this complaint, and for the sake of completeness, all filings to date are included. However, the most relevant portion for the D.C. Bar that succinctly summarises Mr Hyman's misconduct is contained in paragraphs 1-12 and 39-42 of the initial 1782 application. The accompanying Exhibit MSK thereto, Martin Kenney's Declaration, provides the facts in more detail, and Exhibit MSK-1 is the primary documentary evidence produced by the Attorney General to support the application.

The 20 June 2019 demand for the client file is included in Ex. MSK-1 at p. 151, and Mr Hyman's response is at p. 153. MKS' questions of 3 July 2019 to Mr Hyman and his responses to them are in paragraph 58

**Martin Kenney & Co.**

Solicitors

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of Ex. MSK. Of particular note is his response to question 17 regarding payments received from adverse parties in the transaction, where he said that he believed that he had been paid \$500.

Mr Hyman's Violations of the D.C. Bar's Rules of Professional Conduct

Specifically, Mr Hyman has violated the following rules of professional conduct:

Rules 1.15 and 1.16: By not delivering the BVI Government client file to his former client's successor attorneys upon their written demand and/or not maintaining his client file on his former client for a presumptive period of five years, Mr Hyman has violated Rules 1.15 and 1.16. Rule 1.15 cmt. 1 specifically includes a client file as 'other client property' that must be safekept for a presumptive period of five years. See D.C. Bar Legal Ethics Comm., Formal Op. 283 (1998). Additionally, Rule 1.16(d) requires a lawyer to 'surrender[] papers and property to which the client is entitled' upon the termination of a relationship, and no client should have to ask more than once for its client file, *In re Thai*, 987 A.2d 428 (D.C. 2009).

Rule 8.4(c): By grossly misrepresenting to his former client's successor attorneys the amount of remuneration he earned from BVI Airways, an adverse party, Mr Hyman has misrepresented a material fact to his former client through its successor attorneys.

Rules 1.7 and 1.8: By (1) agreeing to and receiving financial remuneration from an adverse party and failing to disclose that remuneration (and then when asked, lying about the amount), see *In re Hager*, 812 A.2d 904 (D.C. 2002), and (2) accepting a role as a paid Director of an adverse party whereby Mr Hyman assumed fiduciary duties to the adverse party that conflicted with his professional obligations to his client as its attorney, Mr Hyman violated the rules prohibiting conflicts (Rule 1.7) and taking a business position adverse to his client (Rule 1.8(a)).

Rule 1.3: By (1) failing to advocate legitimate positions of his client with the requisite zeal and diligence and (2) advocating unsuitable positions to his client, Mr Hyman violated Rule 1.3.

Disciplinary Complaint to the Massachusetts Board of Bar Overseers

Mr Hyman and I are both admitted to practise in Massachusetts, and in parallel to this complaint to the D.C. Office of Disciplinary Counsel, I am also reporting the alleged misconduct contained herein to the Massachusetts Board of Bar Overseers.

Conclusion

MKS' investigations have revealed misconduct by Mr Hyman that is, unfortunately, both sustained with multiple violations over time and continuing with an ongoing failure to deliver his former client's file and recent material misrepresentations to his former client's current attorneys. I am available should the Office of Disciplinary Counsel have any questions or require any clarifications and am best reached by email at mstadler@mksolicitors.com or telephone at (284) 494-2444.



Martin Kenney & Co.

Solicitors

PREFERRED AREA OF PRACTICE:
International Fraud and Asset Recovery

Very truly yours,

Markus A. Stadler
Of Counsel
D.C. Bar no. 1046805

Barry J. Pollack

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March 19, 2020

Sean P. O'Brien
Assistant Disciplinary Counsel
515 5th Street NW, Building A, Room 117
Washington, DC 20001

Re: Hyman/Stadler
Disciplinary Docket No. 2020-D045

Dear Mr. O'Brien,

On February 14, 2020, you wrote to our client, Lester Hyman, a member in good standing of the D.C. Bar, asking that he respond to a complaint your Office received on February 5, 2020 from Markus A Stadler, a British Virgin Islands-based attorney. The Government of the British Virgin Islands ("BVI") in 2018 retained Mr. Stadler's firm, Martin Kenney & Co., a firm specializing in "asset recovery," to pursue civil claims on behalf of the Government related to its efforts to promote an airline that would provide direct passenger service between the United States and the British Virgin Islands in order to promote tourism in the British Virgin Islands. Martin Kenney & Co. has publicly announced its intention to pursue civil litigation in the British Virgin Islands against Mr. Hyman. In advance of filing any such suit, Mr. Stadler, acting on behalf of Martin Kenney & Co., filed a complaint with your Office alleging facts that presumably would be at issue in any civil suit Martin Kenney & Co. were to file on behalf of the BVI Government against Mr. Hyman. *See* ABA Model Rules of Professional Conduct, Preamble and Scope, cmt. 20. Mr. Stadler claims based on these allegations that Mr. Hyman violated myriad provisions of the D.C. Bar Rules of Professional Conduct. Please consider this letter and its enclosures the substantive response your Office requested Mr. Hyman to file in response to Mr. Stadler's

complaint, which we agreed would be filed by today's date. If you have any questions or require any additional information, please do not hesitate to contact me.

Factual Background

Lester Hyman is 88 years old. He practiced law for more than 50 years up until his retirement in 2017. During that time, Mr. Hyman developed an impeccable professional reputation. After serving in the federal government as an attorney with the United States Securities and Exchange Commission and later as Senior Consultant to the Secretary of United States Housing and Urban Development, Mr. Hyman returned to his home state of Massachusetts where, as a protege of John F. Kennedy, he was Chief Assistant to the Governor, Secretary of Commerce and Development, and Chairman of the Democratic Party of that State. He also has taught at the Kennedy School of Government at Harvard University. He then returned to Washington where he was a founder of the prominent law firm of Swidler Berlin. Mr. Hyman has been very active in international peace resolution work in Africa and Central America where he has worked closely with former President Jimmy Carter and the International Negotiating Network. He was President Clinton's representative at the signing of the Guatemala Peace Treaty as well as Clinton's appointee to the Franklin D. Roosevelt Memorial Commission. He is the author of the 2003 book "U.S. Policy Towards Liberia", as well as the 2019 book "JFK...the Kennedys...and Me." He has served on the Boards of the Truman Center for National Policy, the Center for Advanced Defense Studies (C4ADS), and the International Intellectual Property Institute (IIPi). While now fully retired, he remains a member in good standing of the D.C. Bar.

Mr. Hyman served as legal counsel in the United States for the British Virgin Islands Government from approximately 1987 until 2017. *See* Exhibit MSK-1, ECF 1-2 at 5. His work for the BVI Government involved providing legal and consulting services in the United States. *See* ECF 1-2 at 9, 19 (a sample of the Foreign Agent Registration Act forms filed by Mr. Hyman reflecting his work on behalf of the BVI Government). For his work on its behalf, the BVI Government paid Mr. Hyman a quarterly retainer of \$25,000. In 2017, at the age of 86, he ceased his representation of the British Virgin Islands Government when he retired from the practice of law. ECF 1-2 at 141. Mr. Hyman is not licensed to practice law in the BVI and did legal work for the BVI Government exclusively in Washington, DC.

In 2013, Mr. Hyman met Bruce Bradley, a hotel developer in Washington, D.C. Exhibit 1, Bradley Decl. ¶¶ 2-3. Mr. Hyman, knowing that the BVI Government was interested in promoting tourism and learning of Mr. Bradley's background in hotel development, asked Mr. Bradley if he had any interest in developing and growing the tourism sector in the BVI. Bradley

Decl. ¶ 4. Mr. Bradley was interested, and so in November 2013, Mr. Bradley and Mr. Hyman traveled to the BVI for Mr. Hyman to introduce Mr. Bradley to officials of the BVI Government, including Orlando Smith, who at that time was the Premier of the BVI, the highest government official in the BVI. Bradley Decl. ¶¶ 5-6. Mr. Bradley told Premier Smith that, although Mr. Bradley was interested in the prospect of developing the tourism industry in the BVI, he did not want to invest in a hotel project there until the BVI had better airline access to the mainland United States. Bradley Decl. ¶ 7. The runway of the BVI airport is just over 4,000 feet long and is too short for most commercial airplanes. Mr. Bradley knew of a specialty airplane that could take off and land on such short runways and proposed that, using this specialty aircraft, he could assist in forming a company that would bring direct non-stop air service between the BVI and Miami, Florida. Bradley Decl. ¶ 8.

Following this initial meeting, Mr. Hyman continued to facilitate communication between Mr. Bradley and Premier Smith, believing that it was in the mutual interest of the BVI Government and Mr. Smith to pursue the airline project. Ex. 2, Bradley Email; Ex. 3, Bradley Email; ECF 1-2 at 26, 99; Ex. 4, Hyman Email; Ex. 5, Hyman Email. Much of Mr. Hyman's involvement in this matter took place through in-person meetings in the BVI, where Mr. Hyman has a second home. The BVI Government was fully aware that Mr. Hyman was acting as a liaison between the parties to help move the project forward. Bradley Decl. ¶ 17; Ex. 2, Bradley Email; Ex. 3, Bradley Email; Ex. 5, Hyman Email; ECF 1-2 at 26, 49 ("I write to you with a new proposal from Messrs. Bradley and Weisman")

As the discussions between the parties progressed, the BVI Government and Castleton Holdings, LLC, Mr. Bradley's company, signed a Memorandum of Understanding to pursue the airline project. ECF 1-2 at 37. Mr. Bradley brought in an operating partner, Scott Weissman, CEO of Colchester Aviation. Bradley Decl. ¶ 11. Colchester Aviation purchased a BVI corporation called BVI Airways. In December of 2015, the BVI Government, Colchester Aviation, Castleton Holdings, LLC, and BVI Airways entered into a Framework Agreement to establish direct, non-stop air service between the BVI and Miami International Airport. ECF 1-2 at 72. In the Framework Agreement, the BVI Government agreed to provide a seven-million-dollar investment in BVI Airways. *Id.* at 75. If BVI Airways became profitable, the BVI Government would earn a return on its investment. Ex. 6, Statement by the Premier Dr. The Honourable D. Orlando Smith, OBE at the Sixth Sitting of the Fourth Session of the Third House of Assembly, The Virgin Islands, Tuesday, 15th January, 2019, regarding BVI Airways ("Statement by the Premier - BVI Airways"). Premier Smith knew that by investing in this project, the BVI Government was taking a risk, but it was a calculated risk that Premier Smith felt was plainly in the best interest of the BVI

Government to pursue. *Id.* (“[Y]our government entered into this project with full knowledge of the risks, but also a sincere belief that those risks were worth taking.”).

While Mr. Hyman continued to serve as legal counsel to the BVI Government in the United States, representing the interests of the BVI Government before agencies of the United States government, Mr. Hyman was not providing legal advice to the BVI Government with respect to its dealings with BVI Airways. The Attorney General of the BVI was involved in the discussions and available to provide legal advice to the BVI Government related to the transaction. *See* Ex. 7, Hyman Email. Likewise, Mr. Hyman was not providing legal advice to BVI Airways with respect to its negotiations with the BVI Government. BVI Airways had retained counsel both in the BVI and in the United States representing its interests in its negotiations with the BVI Government. Bradley Decl. ¶ 27. Rather than acting as legal counsel for either party, as both the BVI Government and BVI Airways understood, in facilitating the dialogue between the BVI Government and BVI Airways, Mr. Hyman was simply acting as an honest broker between the parties. Bradley Decl. ¶ 26.

BVI Airways established a Board of Directors. ECF 1-2 at 75. Pursuant to the Framework Agreement, one director of the BVI Board was appointed by the BVI Government as its official representative on the Board. Board members were compensated at \$2,500.00 per board meeting attended. The BVI Government chose Ryan Geluk to be its representative on the Board. *Id.* at 64. With full knowledge of the BVI Government, BVI Airways also appointed Mr. Hyman, who was respected by both BVI Airways and the BVI Government, to serve on the Board of BVI Airways.

The Board of Directors of BVI Airways only met once. Mr. Hyman, the BVI Government’s appointed board member, Mr. Geluk, and the finance secretary for the BVI Government, Neil Smith, all attended the meeting. Mr. Geluk and Mr. Smith, both representatives of the BVI Government, understood that Mr. Hyman was a member of the Board. Bradley Decl. ¶¶ 21-25; ECF 1-2 at 147.

Mr. Bradley understood that Mr. Hyman was being compensated by the BVI Government for representing its interests in the United States. Mr. Hyman, however, spent considerable time in his efforts helping the parties achieve the Framework Agreement, for which he had not been compensated. Mr. Bradley proposed to then-premier Orlando Smith that Mr. Hyman should be paid \$200,000 for his efforts, with each the BVI Government and BVI Airways paying half that amount. Bradley Decl. ¶ 33; *see also* ECF 1-1 at 20 (Mr. Kenney’s declaration describing Premier Smith recounting to him that Mr. Bradley personally told him about the proposal to compensate Mr. Hyman). Mr. Smith did not object to Mr. Bradley’s proposal that Mr. Hyman be compensated

\$200,000 for his efforts on the BVI Airways project, but did not wish to commit the BVI Government to pay any portion of that compensation. Accordingly, BVI Airways agreed to pay Mr. Hyman the entirety of the \$200,000. Bradley Decl. ¶ 34. BVI Airways made an initial payment of \$100,000 with an agreement that it would pay the remaining \$100,000 when BVI Airways was up and running. *Id.* Because the project ultimately failed, Mr. Hyman never received the remaining \$100,000. Bradley Decl. ¶ 36.

As the parties progressed towards bringing the airline project to fruition, the Operator Parties, at great cost, purchased airplanes and hired ground crews and flight crews. Ex. 6, Statement by the Premier - BVI Airways. BVI Airways obtained regulatory approval from the United States Department of Transportation and the Department of Homeland Security to fly to United States airports. *Id.* BVI Airways continued to seek investor funds to cover the substantial expenses associated with getting the airline up and running until the airline could generate revenue from ticket sales. Ex. 4, Hyman Email; Ex. 8, Hyman Email.

Despite making substantial progress towards the shared goal of bringing direct nonstop service between the BVI and Miami, the BVI Government announced that it had reached a deal with a company backed by the Chinese Government to lengthen the BVI airport runway so that most commercial carriers could take off and land at the BVI airport. Ex. 9, *Gov't chooses firm for airport project*, THE BVI BEACON, December 28, 2016. Not only would the runway expansion project mean that the BVI airport would be under construction for several years, possibly hindering BVI Airways' operations, but it also meant that BVI Airways no longer offered a competitive advantage of being the only airline that could service the BVI. ECF 1-2 at 131. Investors backed out or refused to invest. *Id.* BVI Airways ran out of money and was forced to halt operations in June 2017. Ex. 10, Hyman Email; Ex. 8, Hyman Email.

The opposition party was highly critical of BVI Airways. Ex. 11, *Fahie's no-confidence motion flops*, THE BVI BEACON, August 2, 2017. Because BVI Airways never became profitable, the BVI Government never recovered its seven million-dollar investment. In October 2018, the Attorney General of the British Virgin Islands hired Martin Kenney & Co., a firm specializing in "asset-recovery," to investigate the BVI venture and pursue any civil claims against anyone who might have liability. Premier Smith testified to the House of Assembly to the Virgin Islands, however, in January 2019, that the BVI "government entered into this project with full knowledge of the risks, but also a sincere belief that those risks were worth taking." Ex. 6, Statement by the Premier - BVI Airways. In February of 2019, Mr. Smith's party lost election and Andrew Fahie, leader of the opposition party, became the new premier.

On June 14, 2019, BVI Airways filed an arbitration action in New York. The BVI Government hired Martin Kenney & Co. to defend it in that action. On June 20, 2019, Martin Kenney & Co. wrote to Mr. Hyman and asked for his file regarding “BV Airways Inc and Associated Companies.” ECF 1-2 at 151. Mr. Hyman responded that, to the best of his recollection, he had no file for the BVI Air matter because his work was predominantly conducted through in-person meetings and telephone calls. He also explained that his role in the matter was as an honest broker between the two parties, first introducing them and then continuing to work with both the BVI Government and BVI Airways toward their shared goal of achieving nonstop air service from Miami to the BVI. ECF 1-2 at 153.

Mr. Hyman offered, however, to answer the law firm’s questions relating to the BVI Airways project. Martin Kenney & Co. sent him a list of 21 questions. Mr. Hyman answered each of these questions to the best of his recollection, without the aid of any documents, based on his memories of events that, at that point, had occurred several years ago. Mr. Hyman is 88 years old. His memory is simply not as accurate as it used to be. Plainly, in answering the questions, he had some failures in his recollections.

One of the questions asked by Martin Kenney & Co. was whether Mr. Hyman received any payments from BVI Airways or its affiliates and if so, what amounts and for what reason. Mr. Hyman responded, “Having become a member of the BVI Airways Board, I believe I was paid \$500 (I am not sure of that amount).” ECF 1-2 at 158. As outlined above, the actual compensation for his attendance at a single board meeting was \$2,500, not \$500. Mr. Hyman did not recall that he had also been promised \$200,000 in compensation, and paid \$100,000. As noted above, the BVI Government was contemporaneously well aware of both the \$2,500 board fee and the \$200,000 promised compensation (of which only \$100,000 was ever paid). Accordingly, Mr. Hyman, who was under no obligations to answer questions in the first place and was doing so voluntarily, had no motive whatsoever to intentionally fail to disclose his compensation accurately.

In September of 2019, Kenney & Co., on behalf of the BVI Government, filed an application in the U.S. District Court for the District of Columbia to take discovery under 28 U.S.C. § 1782. In that application, the BVI Government sought a court order requiring Mr. Hyman to produce, among other things, all financial statements relating to any financial account of any kind held by Mr. Hyman or any company in which he owns a majority share. ECF 1-3 at 2. The application asked the court to order a subpoena any of Mr. Hyman’s IT support, tax preparers, and financial institutions to produce documents relating to any of Mr. Hyman’s business or finances and asked the court to order that Mr. Hyman produce his client file for the BVI Government from

1987-2017. The application is still pending with the U.S. District Court. Prior to obtaining a ruling on the pending motion, Martin Kenney & Co. filed its complaint with your Office.

Bar Complaint

Mr. Stadler of Martin Kenney & Co. alleges that Mr. Hyman had a conflict of interest in his communications with the BVI Government and BVI Airways and that he failed to act with the requisite zeal and honesty in his interactions with the BVI Government. Specifically, Mr. Stadler claims that Mr. Hyman violated the following D.C. Bar Rules of Professional Conduct: Rules 1.3, 1.7, 1.8, 1.15, 1.16, and 8.4(c). As set forth below, Mr. Hyman was not providing legal advice to any party with respect to the transaction and his relationship with each party in the transaction was fully disclosed from the outset, as was his compensation. Accordingly, not only did Mr. Hyman not violate any of the Rules of Professional Conduct, at all times, Mr. Hyman operated with the utmost integrity and transparency in his communications with the BVI Government.

Rules 1.3, 1.7, 1.15, and 1.16 apply only when there is an attorney-client relationship with respect to the matter at issue. There is no evidence, much less clear and convincing evidence, that Mr. Hyman had an attorney-client relationship with either the BVI Government or BVI Airways with respect to the airline project. *See Matter of Lieber*, 442 A.2d 153, 156 (D.C. 1982) (in determining whether an attorney-client relationship exists, courts consider the totality of the circumstances, including whether “a client's perception of an attorney as his counsel is a consideration in determining whether a relationship exists.”). Mr. Bradley did not perceive Mr. Hyman as counsel for BVI Airways in the airline project with the BVI Government, *see* Bradley Decl. ¶¶ 26-27. The BVI Government likewise understood that Mr. Hyman was not providing it legal advice with respect to its dealings with BVI Airways. The BVI Government knew that Mr. Hyman’s was only its U.S. legal counsel and that he was not licensed to practice law in the BVI. *See* Stadler letter p. 1 (“Mr. Hyman was a long-time private attorney representing the BVI Government *in the United States*.”) (emphasis added). Each party to the contract had independent BVI-based counsel to advise it in the project and Mr. Hyman did not provide any party legal advice with respect to the transaction. Thus, Rules 1.3, 1.7, 1.15, and 1.16 do not apply. Further, even if Mr. Hyman did have an attorney-client relationship with the BVI Government with regards to the airline project, as set forth below, his actions would not have violated any of these Rules. Rules 1.8 and 8.4(c), on the other hand, are applicable even though Mr. Hyman was not providing legal advice with respect to the airline transaction. For the reasons set forth below, however, Mr. Hyman likewise violated neither of those Rules.

Rule 1.3

Mr. Stadler claims that Mr. Hyman violated Rule 1.3 based on the “tone of his correspondence with government officials.” Stadler Letter p. 4. Mr. Hyman was at times, in his own words, “blunt” in his correspondence with Orlando Smith, presenting his honest opinion and assessment of the Mr. Smith’s actions. *See, e.g.*, ECF 1-2 at 26 (“Frankly, I am embarrassed that this matter is not moving along in a businesslike manner. Mr. Bradley’s calls and emails go unanswered.”). A lawyer’s blunt honesty with a client, even if it involves telling a client things that the client may not want to hear, does not constitute a violation of Rule 1.3. *See, e.g.*, Rule 1.3 cmt. 4 (“In serving a client as adviser, a lawyer, in appropriate circumstances, should give a lawyer’s professional opinion as to what the ultimate decision of the courts would likely be as to the applicable law.”).

Rule 1.7

Rule 1.7 of the D.C. Rules of Professional Conduct does not prohibit a lawyer from communicating with multiple parties to a transaction in order to achieve a shared objective. This case does not involve one lawyer advancing two or more adverse positions in the same matter under Rule 1.7(a), because the parties were not adverse at the time and Mr. Hyman did not represent BVI Airways in the matter. Conflicts or potential conflicts under 1.7(b) can be consented to by the parties. Mr. Hyman followed “[t]he most cautious approach” and sought “the informed consent of both” BVI Airways and the BVI Government throughout the relationship. *See* DC Bar Ethics Opinion 301. Mr. Hyman’s relationship to Mr. Bradley and BVI Airways was fully disclosed from the very beginning when Mr. Hyman first introduced Mr. Bradley to BVI Government officials. *See* Ex. 2, Bradley Email; Ex. 3, Bradley Email. The BVI Government not only knew about Mr. Hyman’s relationship with BVI Airways, it appreciated Mr. Hyman’s role as a facilitator and mediator in the transaction. Ex. 3, Bradley Email. Informed consent need not be obtained in writing. *See* Rule 1.0(e). *See In re Szymkowicz*, 195 A.3d 785, 788 (D.C. 2018) (“If a respondent offers . . . evidence [of informed consent], then Disciplinary Counsel must prove by clear and convincing evidence that the respondent did not in fact obtain informed consent.”)

When BVI Airways paid Mr. Hyman for his service on the Board of Directors and his work helping the parties reach an agreement, his financial relationship to BVI Airways was fully disclosed to the BVI Government. *See, e.g.*, Rule 1.7 cmt. 27 (“Adequate disclosure requires such disclosure of the parties and their interests and positions as to enable each potential client to make a fully informed decision as to whether to proceed with the contemplated representation.”). The BVI Government, which continued to use Mr. Hyman as its U.S. counsel, plainly did not believe

that his role with respect to the airline matter, including his compensation by BVI Airways, interfered with his ability to serve its interest as its U.S. counsel.

Further, Mr. Hyman's professional judgment was not adversely affected by the payment he received from BVI Airways because during Mr. Hyman's involvement in BVI Airways, the BVI Airways and the BVI Government shared the same objective and worked towards the same goal. Communicating and maintaining personal relationships with parties whose relationship eventually breaks down and becomes adverse does not impute a conflict of interest to the intermediary under Rule 1.7(b)(4).¹

The BVI Government had a financial interest in BVI Airways and the interests of the BVI Government and BVI Airways were aligned in seeing BVI Airways become a profitable airline. The Rules of Professional Conduct expressly recognize that "a lawyer's interest in a related enterprise that may also serve the lawyer's clients" is not unethical, so long as the lawyer continues to follow other rules of professional conduct. *See* Rule 1.7 cmt 36. Any potential conflict that arises from a lawyer benefitting financially from a settlement agreement or, in this case, a successful joint business venture, can be cured by client consent. *See In re Hager*, 812 A.2d 904, 913 (D.C. 2002). In *In re Hager*, where a lawyer violated the Rules of Professional Conduct by accepting a secret payment in a settlement agreement, the Court of Appeals emphasized that "this conflict did not, by itself, preclude respondent . . . from continuing and concluding the settlement negotiations Rather, what was needed, and what was conspicuously lacking here, was client consent." *Id.* By contrast, here, BVI Airways' payments to Mr. Hyman were not secret and were contemporaneously disclosed and consented to by the BVI Government.

Rule 1.15 and 1.16

Because Mr. Hyman did not perform legal work for the BVI Government in the BVI Airways project, he maintained no "client file" for the BVI Airways project. Thus, when asked by the BVI Government's lawyers in June of 2019 to provide his file relating to BVI Airways, he responded that to the best of his recollection, he did not have a written file on BVI Airways. ECF 1-2 at 153. Mr. Hyman has never refused to produce his client file to the BVI Government. While he has a limited number of documents related to the BVI Airways transaction, he simply does not have a client file for the matter since he was not providing legal advice to the BVI Government

¹ At all times, Mr. Hyman believed that the success of the transaction was in the interests of all parties. There is no evidence that Mr. Hyman's role as a Board Member of BVI airways or the compensation he received from BVI Airways adversely affected his representation of the BVI Government on factually unrelated matters in the United States.

with respect to the BVI Airways transaction. Mr. Hyman does not possess any “items of intrinsic value” or “valuable property” of the BVI Government that would require prompt return under Rule 1.15. *See* D.C. Bar Ethics Opinion 283.

The BVI Government’s 28 U.S.C. § 1782 application asked the District Court to order, among many other things, that Mr. Hyman produce his “client file” for his representation of the BVI Government. Mr. Hyman has opposed the application as overly broad, unduly burdensome, and not authorized by statute.²

If the District Court determines that the BVI Government is entitled to discovery, he will, of course, comply with the Court’s order. His client file for his representation of the BVI Government, however, would relate to work he did on behalf of the BVI Government in the United States, wholly unrelated to the BVI Airways matter.

Rule 1.8

Mr. Hyman’s financial relationship to BVI Airways did not create a conflict of interest under Rule 1.8. The payment he received from BVI Airways was neither a business transaction with a client, nor a pecuniary interest adverse to a client. Mr. Hyman did not invest in, loan money to, or accept a loan from either BVI Airways or the BVI Government. *Cf. In re Nosal*, 112 A.3d 919, 923 (D.C. 2015) (finding a violation of Rule 1.8 when lawyer “acquired an ownership interest in [client company] of between eleven and fifteen percent without disclosure or informed consent.”); *In re McLain*, 671 A.2d 951, 953 (D.C. 1996) (finding a violation of Rule 1.8 when lawyer borrowed money from clients without offering clients an opportunity to consult with separate counsel on terms of promissory note).

To the extent that the \$100,000 payment that Mr. Hyman received from BVI Airways could be construed as a referral fee, the D.C. Bar has addressed this situation in its Ethics Opinion 361:

Where the lawyer has an ownership interest or management role in the other entity, such a transaction is present and the lawyer accordingly must comply with Rule 1.8(a) as well as with Rule 1.7(c). Where the lawyer has no such interest or role in the other entity, however, there is no “business transaction” between the lawyer and her client even if the lawyer is to receive a commission

² Additionally, Mr. Hyman is concerned that complying with some of the application’s requests, such as the request that he provide “a detailed breakdown of the sources, nature, and amounts of income realized by Mr. Hyman” for an extended time period could violate the duty of confidentiality he owes to his other clients under Rule 1.6. ECF 1-3 at 3.

or similar benefit from the other entity. In that circumstance, Rule 1.7(c) applies but Rule 1.8(a) does not.

D.C. Bar Ethics Opinion 361. Mr. Hyman’s service on the Board of Directors was not a “management role,” because as a member of the board who was not an officer of the corporation, he had no control over BVI Airways’ business or operations. *See id.* (“The D.C. Rules provide expressly that Rule 1.8(a) applies if the other entity is controlled by the lawyer—a criterion that includes the lawyer’s ability to direct the entity’s operation.”); *accord In re Brown*, 930 A.2d 249 (D.C. 2007). Even if service on the Board of Directors could be construed as a “management role” in BVI Airways, which it should not be, the BVI Government knew of and consented to Mr. Hyman’s payments from BVI Airways and the BVI Government had a reasonable opportunity to consult with its Attorney General on the matter. *See* Ex. 7, Hyman Email.

Mr. Hyman performed no legal work for the BVI Government in the BVI Airways project. Instead, he helped the parties understand each other by communicating, among other things, his opinion of how each party might react to various proposals or how to facilitate communication between the parties. *See* ECF 2-1 at 26, 49, 99; Ex. 12, Hyman Email. He also frequently reiterated to the parties the importance of their shared end goal of helping the BVI economy in order to bring them back to the table when negotiations were difficult. Ex. 5, Hyman Email.

Rule 8.4(c)

Mr. Stadler claims Mr. Hyman violated Rule 8.4(c) by inaccurately recalling the amount of payments he received from BVI Airways. In July of 2019, when Mr. Hyman answered Kenney & Co.’s questions about the BVI Airways project, he was 88 years old and was voluntarily responding to the best of his recollection about events that had happened over two years ago, without the benefit of having been able to review relevant documents. His shaky memory was acknowledged at the time, *see* ECF 1-2 at 158 (“I am not sure of that amount”).

In response to the complaint filed with your Office, undersigned counsel have obtained from Mr. Hyman a small number of documents related to the BVI Airways matter, have interviewed or attempted to interview third-party witnesses, and have obtained documents from a third-party witness to which Mr. Hyman did not have access when he responded to Martin Kenney & Co.’s questions in June 2019. Mr. Hyman did not act with an intent to deceive or mislead when he responded to Martin Kenney & Co.’s questions in 2019, failing to recall facts that were known to Martin Kenney & Co.’s client, the BVI Government, all along. *See In re Romansky*, 938 A.2d 733, 740 (D.C. 2007) (finding respondent had “no intent to act dishonestly” and thus “Bar Counsel

has failed to present sufficient facts to meet its burden of proof” that respondent acted knowingly or recklessly).

An honest failure of memory by an 88-year-old being asked about events several years earlier without having documents to refresh his recollection hardly constitutes dishonesty. *See e.g., United States v. Dunnigan*, 507 U.S. 87, 94 (1993) (not perjury if witness’s error was due to “confusion, mistake, or faulty memory”); *United States v. Thompson*, 962 F.2d 1069, 1071 (D.C. Cir. 1992) (perjury requires proof the defendant acted “willfully in order to obstruct justice, not merely inaccurately as the result of confusion or a faulty memory”); *Pyles v. HSBC Bank USA, N.A.*, 172 A.3d 903, 907 (D.C. 2017) (common-law fraud in the District of Columbia requires that an individual, with “the intent to deceive the plaintiff, knowingly made a false representation.”).

Conclusion

Mr. Hyman had a long and storied career as a lawyer and has for more than 50 years conducted himself as a lawyer beyond reproach. He became involved in the British Virgin Islands airline venture out of a sincere desire to assist the BVI Government in its efforts to promote tourism. He did so with no expectation of compensation for himself. He did not provide legal advice to any party with respect to the transaction. His on-going role as a legal advisor to the BVI Government (pursuant to which he was providing advice on factually unrelated matters) was known to all parties. The parties consented to Mr. Hyman’s role as a liaison between the parties facilitating communications in an effort to obtain shared goals because they viewed him as an honest broker, not because they believed they had retained him to provide legal advice with respect to the transaction. When BVI Airways decided to appoint him to its board of directors, with the modest compensation this role entailed, this was done so transparently and with the full knowledge of the BVI Government. Similarly, when the BVI Airways decided it wished to compensate Mr. Hyman for his considerable efforts, the highest official in the BVI Government consented to the proposal, agreeing that Mr. Hyman deserved to be compensated for his efforts.

At all times, Mr. Hyman acted with the transparency, professionalism, and integrity that were the hallmarks of his more than five-decade career. Mr. Hyman did not violate any of the D.C. Bar Rules of Professional Conduct. He appreciates the opportunity to respond to Mr. Stadler’s complaint.

Should you have any questions or desire additional information, please do not hesitate to contact us. Thank you.

Sincerely,

/s/ Barry J. Pollack

EXHIBIT 1

Declaration of Bruce Bradley

I, Bruce F. Bradley, hereby declare as follows:

1. I am the Managing Member/President of Castleton Holdings, LLC.
2. In 2013, I was introduced to Lester Hyman through a mutual friend.
3. At the time, I owned a 5-star hotel and restaurant in the Washington, D.C. area and Mr. Hyman frequented the hotel. During these visits, we became acquaintances and later became friends.
4. Because Mr. Hyman knew that I was a commercial developer and had developed and owned the hotel in Washington, D.C., he asked if I would be interested in developing a luxury hotel in the British Virgin Islands ("BVI"). I understood that Mr. Hyman represented the interests of the BVI Government in the United States and that the BVI Government was interested in promoting tourism to BVI.
5. In November of 2013, I traveled with Mr. Hyman to meet with government officials to discuss possible hotel and large scale mixed-use development on Beef Island in the BVI.
6. It was during this trip that Mr. Hyman introduced me to Orlando Smith, who was then the Premier of the BVI.
7. It became clear to me that the BVI had a significant air lift problem due to the airport's runway being too short for most commercial aircraft to take off and land on, and I believed that the Beef Island development was not economically feasible until such time the BVI had direct service to the United States.
8. At the same general time, I was involved with an aviation company that owned a unique British made commercial aircraft that could take off and land on short runways and had sufficient range.
9. I suggested to the Premier of the BVI that there was an opportunity to develop an airline that would provide direct flights to and from BVI without a runway expansion, which would be beneficial to BVI. Mr. Hyman was supportive of the idea, telling both myself and the Premier that he believed that the development of such an airline would benefit BVI. There was no discussion of compensating Mr. Hyman for his role in bringing the parties together or for moving the idea to fruition.
10. In June of 2014, a Memorandum of Understanding was signed between the Government of the British Virgin Islands and Castleton Holdings, LLC to enter into an agreement to develop a new commercial airline that would provide non-stop air service between the BVI and Miami, Florida.

11. I needed an airline operating partner, so I brought Scott Weissman, Chairman of Colchester Aviation, to the project. Mr. Weissman was referred to me by one of our advisors.
12. Colchester Aviation had recently acquired a small company called BVI Airways, which already held the local licenses and also possessed the UK regulatory approvals necessary to fly in the region.
13. Eventually, as part of our joint venture, I served as the Vice Chairman of BVI Airways.
14. In December, 2015, Castleton Holdings, Colchester Aviation, BVI Airways, and the BVI Government entered into a Framework Agreement to establish direct, non-stop air service between the BVI and Miami International Airport.
15. The Framework Agreement stated that a representative of the BVI Government would receive a seat on the board of directors of BVI Airways. It was agreed that Board members of BVI Airways would be compensated \$2,500.00 per board meeting attended.
16. BVI Airways also wanted Mr. Hyman to sit on the board of BVI Airways, as a party trusted by the BVI Government.
17. At every step of the process, the BVI Government was aware that Mr. Hyman was involved in helping the parties reach an agreement. Mr. Hyman was simply acting as a liaison between the parties and honest broker, attempting to assist both parties move the project forward.
18. The Premier of the BVI Government, as well as the BVI Government's official representative on the BVI Airways board of directors, were both fully aware that BVI Airways had appointed Mr. Hyman as a member of its board. Neither voiced any objection to Mr. Hyman serving on the board of BVI Airways.
19. I was present when the composition and compensation of the Board of Directors of BVI Airways was discussed with the BVI Government.
20. The Government of the BVI was entitled to appoint one member of the Board of Directors of BVI Airways. That individual was a Mr. Ryan Geluk of BDO Limited.
21. The Government understood that members of the BVI Airways Board of Directors would be compensated \$2,500 per board meeting.
22. I personally attended the first and only meeting of the BVI Airways Board of Directors.
23. Mr. Hyman attended the first and only meeting of the BVI Airways Board of Directors.
24. Mr. Ryan Geluk attended the first and only meeting of the BVI Airways Board of Directors.

25. Neil Smith, the former finance secretary for the BVI, also attended first and only meeting of the BVI Airways Board of Directors.
26. BVI Airways did not view Mr. Hyman, who it understood had an on-going relationship with the BVI Government, to be providing BVI Airways legal representation with respect to its dealings with the BVI Government in establishing an airline to provide direct service to BVI.
27. Rather, BVI Airways was represented in this venture by U.S.-based legal counsel from the law firms of Greenberg Traurig and Venable, and BVI-based legal counsel from BVI attorney Gerard Farara.
28. The BVI Government was aware that Mr. Hyman was communicating with both parties in order to help the parties reach an agreement and further the objective of bringing non-stop air service between the BVI and the United States.
29. To this end, Mr. Hyman was instrumental in bringing the parties together, explaining each to each other, and suggesting compromises that both sides could accept.
30. It was my understanding that Mr. Hyman's efforts in this regard fell outside of, and were in addition to, his work on behalf of the BVI Government in the United States for which he was being compensated by the BVI Government.
31. I believed that it was appropriate to compensate Mr. Hyman for his work regarding the airline venture and I spoke to the then-Premier Orlando Smith, about compensation for Mr. Hyman. I also urged Mr. Hyman to write the Premier directly to avoid any future claim of conflict or impropriety, which I understand he did.
32. I believed it would be fair for Mr. Hyman to be compensated \$100,000 by each BVI Airways and the BVI Government, totaling \$200,000 in compensation for the key role he played for both parties in this venture.
33. The Premier, Orlando Smith, was informed of this proposal. He agreed that it was appropriate for BVI Airways to compensate Mr. Hyman for his efforts, but was not willing to commit the BVI Government to share in this arrangement. Mr. Smith stated that he had no objection to BVI Airways compensating Mr. Hyman \$200,000.
34. Accordingly, BVI Airways, with the full knowledge of the BVI Government, agreed to pay Mr. Hyman \$200,000. It made an initial payment to Mr. Hyman of \$100,000, once the formal agreement was ratified, with the understanding that BVI Airways would pay the remaining \$100,000 once the airline was up and running.
35. After acquiring two commercial aircraft from Swissair, putting these planes through an extensive maintenance and improvement program, building and training a 50-person organization and obtaining all necessary regulatory approvals from both the US and British Governments, the BVI Government suddenly and unexpectedly breached our agreement by announcing to the media that it planned to move forward with a large-scale airport expansion project with the Chinese Government. This action was obviously

intended to invite competition from the large commercial airlines with more modern and efficient planes that could reach stronger geographic markets within the US and possibly Europe. As a result of this adverse action, funding for BVI Airways dried up and the project ultimately failed.

36. Because BVI Airways never successfully operated non-stop flights between Miami and the BVI, BVI Airways never paid Mr. Hyman the second half of the \$200,000 payment.
37. I am unaware of any material fact about Mr. Hyman's role in the BVI Airways project that was not fully disclosed to, and approved by, the then-Premier of the BVI Government.
38. At all times in my dealings with Mr. Hyman, he acted with the utmost honesty and integrity.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 11th, 2020

A handwritten signature in black ink, appearing to be "B. Bradley", written over a horizontal line.

Bruce F. Bradley

EXHIBIT 2

From: Lester Hyman <lshyman@aol.com>
Date: Sunday, December 29, 2013 at 8:31 AM
To: Bruce Bradley <bbradley@castletonholdings.com>
Subject: Fwd: Airport proposal

From: LSHyman@aol.com
To: bbradley@gmail.com
Sent: 12/28/2013 5:45:37 P.M. Eastern Standard Time
Subj: Fwd: Airport proposal

Here it is ²⁶

From: LSHyman@aol.com
To: orlsmith@hotmail.com
Sent: 12/28/2013 3:25:34 P.M. Eastern Standard Time
Subj: Airport proposal

Dear Orlando:

Attached please find our proposal for non-stop airline service from Tortola to Miami, as well as non-stop service from Tortola to San Juan. We trust that you will find it of great interest. We look forward to your reaction. I will be in Tortola from the 4th to the 10th of January. Perhaps we could have one of our 8am breakfasts to discuss the proposal further.

Warmest regards,

Les

EXHIBIT 3

From: Bruce Bradley <bbradley@eastcoastholdings.com>

Date: Friday, March 21, 2014 at 12:36 PM

To: Orlando Smith <osmith1@hotmail.com>

Cc: Lester Hyman <LHyman@aol.com>

Subject: Re: Proposal for direct flights between Miami and Tortola

Dear Premier,

I apologize for not being able to reach you earlier. I am in transit with my family to the Bahamas, but will try to call you upon my arrival.

I appreciate your concerns. However, I would argue that with the revenue guarantee, it would be in your government's interest to assure this exclusivity for this specific aircraft and routes. Moreover, any airport operator would want this revenue stream and understand that the runway expansion would provide for larger more efficient aircraft, hence eliminating any potential conflict. This ARO aircraft only makes sense because of current runway conditions.

Hence, I am willing to accept your proposal with one added clarification. That the BVI Government shall use "best efforts" to maintain this exclusivity.

If you can kindly add this clause, initial and return the executed document to me I would greatly appreciate.

We will then proceed in good faith with the feasibility study that will hopefully demonstrate to both parties that this enterprise is viable. At that juncture (roughly 60 days from now), if we are both comfortable, we then can sort through the complex details involved in the formal agreement. Getting there will require a relationship and trust and I am comforted by the good will and personal exchange we have experienced to date.

Lester has been a valuable role in keeping this project on course and I would like to acknowledge how fortunate we are to have him as intermediary.

Premier, I look forward to moving forward with you on this venture.

Respectfully,

 Bruce F. Bradley
Eastcoast Holdings, LLC

On Mar 21, 2014, at 7:37 AM, "Orlando Smith" <osmith1@hotmail.com> wrote:

Good morning Mr Hyman and Mr Bradley. I do agree that a direct flight between Miami and Tortola is critical to the improvement of the visitor arrivals to the RVI, and is an objective which we have been working on over the years.

The proposal which you have made would certainly do that and we are excited about it.

However we are also well into negotiations on the reorganization and expansion of the airport which will expand our capabilities greatly.

As we discussed, the two ideas are not mutually exclusive and an immediate direct flight remains an immediate objective.

The proposal that you have discussed with us provides for the covering of all costs as well as ten to twenty percent profit, and the likelihood of greater profitability. The chances of anyone else flying without a load factor guarantee is virtually nil.

We have had long and wide discussion about the exclusivity aspect and are not comfortable with the idea given the structure of the development of the airport.

We then propose that a clause be added to the proposal that exclusivity can be given provided that the persons, organizations who will be financing and building and running the airport are satisfied. If some such clause is not included we fear that the objective of expanding the airport will be impeded.

DO Smith

EXHIBIT 4

BVI Airways

From: Lester Hyman <lshyman@aol.com>
To: bfb Bradley <bfb Bradley@icloud.com>; swabella <swabella@aol.com>
Subject: Fwd: The determining factor
Date: Mon, May 1, 2017 8:07 am

Bruce and Scott: FYI, LSH

-----Original Message-----

From: Orlando Smith <orlsmith@hotmail.com>
To: Lester Hyman <lshyman@aol.com>
Sent: Sun, Apr 30, 2017 8:13 pm
Subject: Re: The determining factor

Dear Lester:

It would be true to say that nobody would wish to see BVI Airways in the air more than I. That is why we have been working with the group in advancing the payments. And that is why I have been working with the team to find investors (I am sure that Bruce has updated you on my efforts)

However I am also sure that you realize that the Premier in the BVI must get Cabinet approval before monies can be spent, and that in the present "political Milieu" this would not be easily forthcoming.

Currently there are promising signs of investor participation, but this will take a few weeks to organize.

In the meantime to continue operations there is a need for some \$350,000.

I would suggest that you assist in finding ways to realize this amount, appreciating the situation I described above, so that we can all go forward with a win win solution.

Thanks

Orlando Smith

From: Lester Hyman <lshyman@aol.com>
Sent: Friday, April 28, 2017 10:49:17 PM
To: orlsmith@hotmail.com
Subject: The determining factor

Dear Orlando:

It seems to me that today's decision by the American authorities to allow BVI Air to fly to and from the United States for an initial one year period conclusively changes the dynamics of the proposal before you. Nowhere in the world is there as severe and stringent aviation oversight as in the United States. Accordingly, the U.S. Government's action vis-a-vis the BVI today gives the lie to the many out-out-out misrepresentations by those few people who are determined to kill this proposal. Instead it will make the BVI a most desirable location for tourists and business people around the world. I hope that your government will join with BVI Air and go forward immediately.

Warmest regards.

Les

EXHIBIT 5

Subj: **Confidential memo re meeting tomorrow morning**
Date: 4/6/2017 4:27:54 P.M. Eastern Daylight Time
From: lsyman@aol.com
To: orlsmith@hotmail.com
BCC: bfb Bradley@icloud.com

Dear Orlando: Just a brief note before you and your colleagues have your meeting with Bruce and Scott tomorrow morning. The news a few days ago that American Airlines is ending its non-stop flights from New York to San Juan opens up a tremendous opportunity for the BVI. It comes at the same time that BVI Airways is prepared to fly non-stop from Tortola to New York, as well as non-stop service from the BVI to Miami on beautiful new planes that BVI Airways has purchased (not leased, as some opponents have wrongly claimed). This inevitably will result in a tremendous boost to BVI tourism, the second pillar in the BVI economy. I realize that a few officials are determined to kill the BVI Airways proposal. Nevertheless, for all the years I have had the privilege of knowing you, your decisions consistently have been based solely upon what is best for the BVI now and in the future. I would be very disappointed if a few government officials are allowed to deprive the people of the BVI of this wonderful direct air service to Miami and to New York. Let me add that I have known many American businessmen over the years, but never have I worked with as honorable and effective a business leader as Bruce. He cares deeply about the BVI and never would suggest any project that would be hurtful to your government or to the people of the BVI. When this airline proposal comes to fruition, the BVI not only will prosper but will have a great friend for the future in Bruce Bradley. Finally, despite the push and pull from all directions, I am convinced that you will make the right decision for the future of the British Virgin Islands. Thank you for allowing me to sound off, Orlando; I do it for no other reason than my love for the BVI, my second home for the past thirty years (and hopefully many more!). Your friend always, Les

EXHIBIT 6



GOVERNMENT OF THE
VIRGIN ISLANDS

(/)

□

Statement By The Premier - BVI Airways

Statement

□ Topic: Airports (/tags/airports) | □ Posted By: Istevens

15 January 2019 - 3:37pm



STATEMENT BY THE PREMIER
DR. THE HONOURABLE D. ORLANDO SMITH, OBE
AT THE SIXTH SITTING OF THE FOURTH SESSION OF THE THIRD
HOUSE OF ASSEMBLY THE VIRGIN ISLANDS

Tuesday, 15th January, 2019

BVI AIRWAYS

Madam Speaker, permit me to address the subject of BVI Airways. This subject has been one of the most difficult chapters in my years of public service: the failed effort to create a commercial airline to serve the BVI.

This project has been the topic of enormous discussion in our community for the past several years. That conversation has generally been well-intended. But much of it has been uninformed and that has allowed speculation, rumor and outright falsehoods to spread. The people of this Territory justifiably want to know what happened to the \$7 million allocated for this initiative.

They deserve an answer to that question. I have answered many questions on this matter in this House and in the media, but today I shall do my best to provide a comprehensive statement.

Madam Speaker, the idea for BVI Airways was born from the same belief that has been my Government's North Star since the day we took office; that, it is our duty to invest strategically today in order to build a more prosperous tomorrow. Nowhere is that more important than our tourism industry. The well-being of every soul in the BVI is connected – directly or indirectly – to tourism. When tourism suffers, it takes bread off all of our tables; it limits Government's ability to provide essential services; it puts people out of work. And when tourism thrives, it injects life into our community. It puts money in family's pockets; allows Government to do more for our people; and creates opportunities for each and every one of us. We cannot thrive if we cannot compete with other tourism destinations. And nothing threatens our competitiveness more than the lack of convenient and affordable air travel from the United States.

It is really quite simple. Go online and visit a travel site – Orbitz, or Travelocity, or Expedia, or Google. Search for travel options from New York, Chicago, Boston, or Los Angeles to Jamaica, or Turks and Caicos, or Bermuda, or Puerto Rico, or the Dominican Republic. You will see dozens of flight options from different competing airlines at all different price points – all with one easy connection or even direct flights. Now do the same search for the BVI. Your options disappear. Travelers must connect through different airlines. The prices are expensive. The times are inconvenient. The choices are few.

Travelers who don't know how spectacular the BVI is will choose our competitors. And each time that happens, it directly harms our economy – it directly harms our children's futures. That, to me, is intolerable. We cannot accept that our economy and our children's opportunities will be stifled due to a lack of air service to our islands.

It was on the basis of this conviction that my Government began exploring two projects aimed at improving air access to the Territory:

First, the expansion of the runway, which could open up the possibility for American Airlines, JetBlue or other major carriers returning to the BVI.

Second, we began pursuing the possibility of supporting the creation of a new BVI airline.

The possibility of creating a BVI airline emerged four years ago when Government was approached by a company called Castleton Holdings that had experience in the airline industry. Castleton was interested in exploring the commercial viability of establishing a non-stop BVI Airways service between the Beef Island and Miami. So Castleton undertook a feasibility study to determine whether a commercial service could be viable and what support it would need from Government.

Now, some might ask why Government would consider providing any benefits to a private business. The simple answer is that the airline business is fundamentally different from virtually any other business that operates in the BVI. To build and run an airline, a company must be prepared to invest millions of dollars to buy planes, hire pilots and flight attendants, keep the aircraft in safe working order, purchase fuel, keep up with vast regulatory requirements, and market the service to travelers. These are all fixed costs. If a plane is completely full with paying passengers or if a plane is half empty – it still costs the same amount of money to operate that service. Thus, the risk of running an airline is very high. That is why many other countries here in our region and around the world offer financial supports to their national air carriers. So I never questioned the need to provide some degree of support – both financial and logistical – to BVI Airways. It would simply be impossible to imagine a successful airline operating here without such incentives. Anyone who tells you such a thing is possible is peddling nonsense.

But I also understood that those incentives could not be endless. After all, the whole point of creating BVI Airways was to strengthen our economy – we would be doing ourselves no favors by pouring money into a project that had no hope of ever becoming financially independent.

With that in mind, we were pleased to receive the report in September of 2014 which predicted that over a three year term the venture would result in net cash flow of some 2.6 million dollars and over a longer five year term produce a net cash flow of approximately 10.5 million dollars. In other words, this study found that if Government was willing to provide initial financial support to BVI Airways to get up and running, then within a few short years the company would become profitable and could operate without further taxpayer funding. And most importantly, the report, which was conducted by a highly respected industry expert, projected an increase of roughly 450 thousand air passengers per year to the BVI – more than double the existing air passenger volume at the time.

Ladies and Gentlemen, it is impossible to overstate how meaningful it would be to our economy if we could double air travel to the BVI.

It would mean tens of millions of dollars in increased tax revenues to pay for health care, education, roads and public projects. It would mean jobs for our people and profits for our local businesses. It would have been irresponsible of Government not to pursue this opportunity further.

And so, through a series of negotiated agreements, Government secured an arrangement with Castleton under which Government would be willing to provide revenue support to the newly established BVI Airways. The agreed upon sum was 7 million dollars. In return for that commitment by Government, BVI Airways would use commercially reasonable efforts to begin service between Tortola and Miami.

Upon completion of that agreement, BVI Airways set to work and achieved important steps on the path to commencing operations.

Two well-maintained aircraft were acquired.

Certification from the Air Safety Support International was secured.

US Department of Transportation approvals were secured.

FAA approvals were secured.

TSA approvals were secured.

Ground crew and flight crews were hired and trained.

A robust corporate back office to handle accounting, legal, marketing and other functions was established.

All of this was done at considerable cost and effort from BVI Airways. And as we observed this progress we had good reason to believe that we were on the path to finally having the air service our country needs and deserves. Unfortunately, that is when troubles began to arise.

In 2016, BVI Airways submitted a complaint to Government regarding our plans to expand the runway at the airport. According to the complaint, our runway expansion plans undermined BVI Airways ability to raise capital from investors because a longer runway would mean competition from legacy carriers. BVI Airways claimed many of its potential investors were no longer interested in the venture if they had to compete with these larger airlines. From this point forward, the project began to slowly unravel.

BVI Airways still had to pay for flight and ground crews, service their debt and pay for other expenses – but had no revenue and no access to new investors. Put simply, the company was running out of money.

BVI Airways came to Government asking for additional money from us.

Government could see no path toward responsibly increasing our commitment. The best we could do was bring forward to payment schedule of the 7 million dollars we had committed to provide. We did so in the belief that it would be sufficient to get BVI Airways up and running, at which time we hoped that revenue from ticket sales combined with renewed investor interest would make the company viable.

As it turned out, that goal was never reached.

BVI Airways did not have the capital necessary to commence service. In June of 2017, it laid off its staff and shut down operations.

Since that time, Government has been working with our legal advisors to explore every possibility for recouping some or all of the 7 million dollars we invested with BVI Airways.

That effort continues. I cannot promise that it will be successful. For now, the truthful answer to the question: where is the 7 million is that the money was invested and the investment failed to deliver a return.

Now let me be perfectly clear, the money was not put into any person's pockets. Nobody got rich off this project. Rather, the money was spent paying salaries to pilots, flight attendants and ground crews. It was spent with consultants and lawyers to secure the complex regulatory approvals required to begin operations. It was spent paying off debts to banks that provided the financing to acquire the two aircrafts. That is not to say that there is not blame to go around.

There is, after all, one great unanswered question about this whole saga, which why BVI Airways began this project when they had to know that we intended to expand the runway, which would eventually mean competition from larger carriers.

In all honestly, I cannot answer that question. What I can tell you, the people of the BVI is simply this - your Government entered into this project with full knowledge of the risks, but also a sincere belief that those risks were worth taking. No Government can effectively serve the people of the BVI if it is not willing to take risks.

When we built the new cruise ship pier – it was a huge risk.

But had we not done so, then our cruise ship industry would have shrunk, our economy would have been harmed, and hundreds of our fellow citizens who now have opportunities to work and prosper would never had had those chances.

When we built the new hospital – it was a huge risk.

But had we not done so, then the people of this Territory would still be faced with the intolerable situation where necessary medical services would have been unavailable here in the BVI.

When Governments before ours established the Community College, when they built the airport, when they invested in infrastructure and education – all those investments carried risks.

And, of course, not all the risks Government taken on have worked out.

Sometimes projects fail. Certainly, that appears to be the case with BVI Airways.

But I also hope that no one takes from this experience the false lesson that risks must be avoided.

On the contrary, we must continue to do so. We must be bold. We must be prepared to try new things and take on big challenges because it is the only way to secure our future.

As the great American president Theodore Roosevelt, once said:

"It is not the critic who counts...The credit belongs to the man who is actually in the arena...who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds...who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly."

The BVI deserves nothing less from its leaders.

And God willing, so long as we remain willing to take risks, and to dare to achieve big things, then I am confident that we will succeed far more frequently than we will fail. I use the word fail guardedly as I repeat that we are still trying all legal means to recoup some of the monies lost. I can only hope that we will be successful.

Thank you Madam Speaker.

Author



(https://bvi.gov.vg/sites/default/files/field/image/1_-_dr_the_hon_d_orlando_smith_obes_-_premier_and_minister_of_finance_164.jpg)

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Tweets

@ BVIGovernment (<http://www.twitter.com/BVIGovernment>)

□Premier Fahie said, “Your Government’s objective it to make the BVI a financially and economically sustainable Terr...

<https://t.co/QZJSt4djMq> (<https://t.co/QZJSt4djMq>)

Nov 19 (<http://twitter.com/BVIGovernment/status/1196809006209216512>)

□Premier Fahie said, “This Budget Address is about us connecting what we need, with what is in our hands using green...

<https://t.co/D5ixMGuSYw> (<https://t.co/D5ixMGuSYw>)

Nov 19 (<http://twitter.com/BVIGovernment/status/1196806835736645632>)

Contact Us

Address: 33 Admin Drive, Wickhams Cay 1, Road Town, Tortola, Virgin Islands (British)

Phone: 1(284) 468-3701

Email: gis@gov.vg (<mailto:gis@gov.vg>)

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EXHIBIT 7

9 mo21

Scott: Well done! Les

In a message dated 11/26/2015 12:55:30 P.M. Eastern Standard Time, swabella@aol.com writes:

Dear Ms. Barry:

Thank you for your note. Given our positive discussions with the Financial Secretary and our understanding of the two remaining issues (the negative covenant regarding subsidies and the waiver of sovereign immunity), we were surprised by the tone and tenor of your e-mail. We have consistently advised the Government that the Project needed to proceed with alacrity and sense of urgency to ensure timely and professional execution. We have proceeded in good faith, expended significant time and resources and engaged sophisticated aviation counsel and other professionals to ensure that we would meet the time-lines. In our efforts to finalize the agreement, we have been besieged by attempts to renegotiate previously agreed to provisions (including, among other issues, the interline agreement) which would materially increase risk, as well as significant delays (turn-around times in excess of a week) and the failure to accurately and professionally 'mark' changes to the draft agreement bordering on bad faith. To dispel any notions to the contrary, it is in our collective best interests to obtain as many interline agreements as soon as commercially possible.

The economic model and the success of the Project requires close collaboration, coordination and cooperation to reduce costs and risks, accelerate the time lines and provide high quality cost effective service. We are perplexed that after close to two years of gestation and with long lead times for mission critical items, you do not believe time is of the essence-- we now understand the source of the delays. In light of the current developments and to mitigate losses, we have suspended any further efforts to move the Project towards closure which will imperil the negotiated launch date.

At the suggestion of the Financial Secretary, our outside counsel, Jeff Tenen, attempted to contacted the Attorney General to resolve the two remaining issues. I am available tomorrow (11.27.15) from 10:00 AM to 2:00 PM New York time to resolving the remaining two issues in a timely manner, or as suggested by the Financial Secretary, Mr. Tenen, is available as well. Prior to the call, kindly indicate in detail if there are any other issues other than the two previously identified that require discussion.

I look forward to your timely response

EXHIBIT 8

From: bruce bradley <bfb Bradley@icloud.com>

To: Lester Hyman <LSHyman@aol.com>

Subject: Latest from Scott per our call

Date: Wed, Mar 22, 2017 5:51 pm

Just spoke with the Premier - does not have the support for the guaranty - his team is balking - he has meeting with locals to bridge the cash requirements - I advised him that we cannot operate month to month , they caused the problem and as managers we need to start unwinding if they are going to spit the bit- we have a final call scheduled for tomorrow at 5:00 after his investor meetings - let me know when you are free - do not call



Bruce F. Bradley
Castleton Holdings, LLC

Sent from my iPhone

EXHIBIT 9



Local News > Gov't chooses firm for airport project

Gov't chooses firm for airport project

by The BVI Beacon | December 28, 2016

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Government announced on Tuesday that it has chosen China Communications Construction Company as its “preferred bidder” to undertake the Terrance B. Lettsome International Airport expansion project.

CCCC’s final bid on the development was \$153,432,572, while the consortium made up of the Canada-based IDL Group, the Cayman Islands-based McAlpine Limited and the Virgin Islands-based ADC Construction Company bid \$198,810,525, according to government’s announcement.

Officials now hope to reach a contractual agreement with the China-based construction company within the next three months, the announcement stated.

The announcement also touted the importance of an expanded airport for the territory, but did not provide further updates about the project – such as the status of government’s efforts to obtain funding for it, or whether its full business case has been completed.

See the upcoming Jan. 12 print edition for full coverage.

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EXHIBIT 10

8/28/2017

AOL Mail

**Re: The plan**

 **Bruce Bradley** (bbradley@castletonholdings.com)

To: you Details ▾

Sun, Aug 27, 2017 1:04 pm

I appreciate that. Unfortunately not much new. Jurecki backed out and Govt in last minute plea just confirmed that they are not willing to support in any way. A couple last minute investors, but I am not hopeful. This next week we will likely have to "pull the plug". Very disappointed with Orlando and his non-sensible position. His political imbalance and resulting actions have led to our demise. We may need to file a claim against the BVI Govt. which will not be a pleasant.

I am heading back Wednesday evening, but need to fly out the next morning for a multi city business trip. Back and available to get together anytime the following week. I hope you have had a restful and fun summer and I look forward to getting together and catching up.

Just let me know what day works best for you for lunch. I wish I had better news to share, but we can celebrate nevertheless.

My best regards,



Bruce F. Bradley
Castleton Holdings, LLC

Sent from my iPhone

On Aug 27, 2017, at 10:56 AM, Lester Hyman <lsyman@aol.com> wrote:

Dear Bruce:

I quite purposely have not contacted you recently about "the project" because I assume you're hopefully spending some good time with your family in Maine. When you do return to Washington, would you please contact me so we can arrange to get together?

Warmest regards.

Les



EXHIBIT 11



Local News > Fahie's no-confidence motion flops

Fahie's no-confidence motion flops

by The BVI Beacon | August 2, 2017

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Opposition Leader Andrew Fahie's motion of no confidence in the minister of finance failed to secure another member's support on Tuesday, leaving the effort without an official vote or debate.

Mr. Fahie (R-D1) called for Premier Dr. Orlando Smith's removal from the head of the Ministry of Finance due to his "failure to protect the public purse."

However, the opposition leader made it clear that he was not motioning for no confidence in the National Democratic Party government as a whole or Dr. Smith's capacity to lead it as premier.

In support of his motion, Mr. Fahie cited various issues, including the more than \$30 million of reported cost overruns at the Tortola Pier Park; government's \$7.2 million contract with BVI Airways that has yet to yield a commercial flight to Miami; and Cabinet's decision to shift an \$8 million loan earmarked for the East End/Long Look Sewerage Project to the TPP without House of Assembly approval.

He also criticised the minister for not paying suppliers and vendors on time and for failing to publicise audited financial statements covering the last six years of NDP governance.

After the opposition leader outlined these concerns and more, Speaker of the House Ingrid Moses Scatliffe asked if anyone would second the motion. No one did.

Last week, Third District Representative Julian Fraser — Mr. Fahie's sole partner in the opposition — declined to say whether he would support the motion or not, though he seemed less than enthused about the vote.

"I don't understand it," Mr. Fraser said.

The opposition member could not be reached for comment this week about his decision not to second the motion.

Despite its lack of success at the HOA sitting on Tuesday, Mr. Fahie did not regret his effort.

"I stand by my actions, ... which [were] solely aimed at getting what the people of these Virgin Islands urgently need: an improved economy and the restoration of our finances to reflect accountability, transparency, good governance and adherence to all financial laws, especially the Protocols for Effective Financial Management," he wrote in a statement to the Beacon.

The opposition leader blamed politics and accused lawmakers of valuing party loyalties over the interests of the people.

Dr. Smith could not be reached for comment on the matter, though he appeared on television on Tuesday night to defend himself from Mr. Fahie's allegations and reassure the public that he has the territory's finances under control.

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EXHIBIT 12

EXTREMELY URGENT!!!

From: Lester Hyman <lshyman@aol.com>
To: orsmith <orsmith@gov.vg>
Cc: nmsmith <nsmith@gov.vg>
Subject: EXTREMELY URGENT!!!
Date: Wed, Mar 22, 2017 5:31 pm

Dear Orlando:

It is extremely urgent that you resolve the guarantee issue tonight or first thing tomorrow morning. I am convinced that Mesrs. Bradley and Scott are not kidding when they say that, if nothing is resolved by close of business tomorrow, the whole BVI Air matter will be ended, **They are not bluffing**. As you know, once they have a guarantee, they will be able to acquire an even larger third plane that can go non-stop between Tortola and New York. Just imagine what a boost this would be to BVI tourism. They also need to be guaranteed that, if you decide to go ahead with the lengthening of the air strip, it will not interrupt their ability be able to take off for the Tortola/New York flight. Bruce and Scott need to discuss the above with you tonight or first thing tomorrow morning. Otherwise, the whole project will be over. I cannot imagine that that is what you want. CAN THEY ARRANGE A CONFERENCE CALL WITH YOU TONIGHT OR TOMORROW MORNING EARLY? Please let me know so I can help set up the call. Many thanks.

Les

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CASTLETON HOLDINGS LLC

Company Number

EXTUID_2860369

Native Company Number

L03894

Status

Revoked

Incorporation Date

1 June 1999 (about 21 years ago)

Dissolution Date

12 September 2019

Company Type

Limited Liability Company

Jurisdiction

District of Columbia (US)

Registered Address

- 2615 30th Street NW,
- Washington
- 20008
- District of Columbia
- United States

Agent Name

BRUCE F. BRADLEY

Agent Address

2615 30th Street NW, Washington, District of Columbia, 20008

Inactive Directors / Officers

- BRUCE F. BRADLEY, agent
- Bradley, Bruce, governor

Registry Page

<https://corponline.dcrd.dc.gov/BizEnt...>

Source District of Columbia Department of Consumer and Regulatory Affairs,

<https://corponline.dcrd.dc.gov/BizEnt...>, 16 Aug 2020

Add data (website, address, etc)



Martin Kenney & Co.

Solicitors

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31 May 2020

Mr S. P. O'Brien
Office of Disciplinary Counsel
Board of Professional Responsibility
District of Columbia Court of Appeals
515 5th St., N.W., Bldg. A, Ste 117
Washington, DC 20001
United States

By Email to: obriens@dcodc.org

Dear Mr O'Brien,

Re: Hyman/Stadler; Disciplinary Docket 2020-D045

In a letter dated 19 March 2020, Barry Pollack, counsel for Lester S. Hyman, submitted to the Office of Disciplinary Counsel a substantive response together with 12 exhibits (collectively, the 'Response') to a Disciplinary Complaint dated 15 January 2020 that I filed in respect of Mr Hyman and his representation of his former client, the Government of the Virgin Islands ('BVI Government'). Martin Kenney & Co., Solicitors ('MKS') currently represent the BVI Government in an investigation and legal proceedings in connection with what was BV Airways Inc. and associated companies (collectively, 'BVI Airways'), where the BVI Government invested, and lost, \$7.2 million. Mr Hyman represented the BVI Government for approximately 30 years from 1987 to 30 July 2017, and MKS' investigations have uncovered troubling aspects of his representation that appear to amount to multiple violations, some of which are ongoing, of the Rules of Professional Conduct of the D.C. Bar.

I appreciate the opportunity to reply to the Response and the extension to 1 June 2020 that was agreed, due to the ongoing COVID-19 pandemic, to submit this substantive reply.

Introduction

Broadly speaking, Mr Pollack's Response attempts to advance three internally conflicting factual scenarios: (1) Mr Hyman did not act as an attorney on the BVI Airways matter, (2) Mr Hyman represented the BVI Government in the BVI Airways matter and took a payment from the other side that did not violate the Rules of Professional Conduct, and (3) Mr Hyman represented both the BVI Government and BVI Airways on the same transaction, yet did not violate the Rules of Professional Conduct in so doing.

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These scenarios, which are either unsupported by evidence or directly contradicted by the available evidence, are incredulous as explained below.

Mr Hyman represented the BVI Government as their attorney whilst in a position of conflict as he (1) received payments from the other side without disclosing them (let alone obtaining informed consent from his client) and (2) may have also represented BVI Airways, an adverse party, as their attorney in the very same transaction. Nothing in the Response credibly excuses any of the alleged violations of the Rules of Professional Conduct laid out in the initial disciplinary complaint. In fact, the Response reveals new and additional violations of the Rules of Professional Conduct.

It is quite telling that Mr Hyman has not made any statement (just as he has not made any statement in *Att’y Gen. of the Virgin Is. v. Hyman (In re Att’y Gen. of the Virgin Is.)*, No. 1:19-mc-164-RCL, 2020 WL 2615519 (D.D.C. May 23, 2020)), curiously relying instead on a Declaration under Penalty of Perjury by Bruce Bradley, Vice Chairman of BVI Airways, a party adverse to the BVI Government. Resp. Ex. 1. More alarmingly, Mr Hyman has apparently allowed a Declaration under Penalty of Perjury to be submitted on his behalf in this disciplinary investigation with statements that Mr Hyman knows to be untrue based on the available evidence, much of it being his own words.

The acknowledgment that Mr Hyman received \$102,500 and was promised to receive another \$100,000 from an adverse party is remarkable. Fortifying the secret nature of these payments, MKS and our client have now been told for the very first time that Mr Hyman received \$100,000 and was to receive a further \$100,000 should BVI Airways literally have taken-off. Contrary to Mr Pollack’s assertion that all of these payments were fully disclosed (or more relevantly, that the BVI Government provided their ‘informed consent’ to the payments, Rule 1.0(e)), nothing could be further from the truth. This acknowledgment is the first time that the BVI Government have been made aware of the specifics. Previously, the BVI Government merely believed that \$200,000 had been paid because Mr Hyman had been so intent on receiving that amount, as described more fully below. In fact, the structure of this payment is actually worse than initially alleged, for Mr Hyman had a contingent pecuniary interest in his client’s transaction by way of a promise from an adverse party to receive \$100,000 ‘once the formal agreement was ratified’ (which occurred, so he was paid), Resp. Ex. 1 ¶ 34, and an additional \$100,000 ‘once the airline was up and running’,¹ *Id.*, (which did not occur, so he was not paid), *Id.* ¶ 36, regardless of whether the ‘success’ ultimately proved to be in his client’s interest. These success fee promises by an adverse party coloured Mr Hyman’s entire representation of the BVI Government with respect to the BVI Airways matter.

Additionally, Mr Hyman continues to violate Rules 1.15 and 1.16, for he has yet to turn over the BVI Government’s client file.

Update Regarding Att’y Gen. of the Virgin Is. v. Hyman

¹ Further underscoring its secret nature, the promise of the second success fee was based on an ‘understanding’, *Id.*, rather than a formal agreement, ‘that BVI Airways would pay the remaining \$100,000 once the airline was up and running.’ *Id.*



As noted in the initial complaint letter, the Attorney General of the Virgin Islands (the 'Attorney General') filed an application on 23 September 2019 with the US District Court for the District of Columbia (the 'Court') to conduct discovery on Mr Hyman and disinterested third-party banks, IT service providers, and tax return preparers, which are as of yet unidentified. *Hyman*.

On 21 May 2020, the Court issued a procedural Order, Ex. 1, and, on 23 May 2020, the Court issued a 23-page Memorandum Opinion, Ex. 2 (*Hyman*), and Order, Ex. 3, granting the request for discovery with respect to Mr Hyman and the BVI Government's client file² and any aspect of the failed airline venture. *Hyman*, 2020 WL 2615519, at *12. The Attorney General is authorised to issue subpoenas *duces tecum* for documentary evidence and *ad testificandum* to compel Mr Hyman to a deposition. *Id.*

The Court Denied Without Prejudice the request to conduct discovery on the unidentified third parties, allowing for the Attorney General to refile the request once Mr Hyman is deposed and the third parties are identified. *Id.* at *11.

The Court also Denied Without Prejudice two requests of Mr Hyman that it found to be overly broad at this stage: his complete (1) tax returns (for the period from 2014 to 2018) and (2) bank records (for the period from 1 September 2013 to the present). *Id.* The Court invited the Attorney General to file a narrower request or, if necessary, refile the current request at a later date upon 'a strong showing that such invasive discovery is warranted'. *Id.* at *10. The Court further explained:

For example, if the applicant rewords its request for financial records and the Court grants it, but the applicant can prove that Mr. Hyman withholds information covered by that narrowly tailored request, the Court would then consider requiring Mr. Hyman to turn over all of the financial records sought in this initial request.

Id. It is important to note that the Court found, 'Much of the case law that Mr. Hyman cites is presented in a misleading fashion, with quotes being selectively cherry-picked and holdings being taken out of context (or holdings being misstated altogether).' *Id.* at *8, n.7. Mr Pollack represents Mr Hyman in *Hyman*, and it would appear that this observation is equally applicable to Mr Pollack's Response to the D.C. Bar, as further shown below.

Mr Pollack's Factual Scenario No. 1: Mr Hyman Was Not the BVI Government's Attorney on the BVI Airways Matter

Mr Hyman Was the BVIG's Attorney in Relation to the BVI Airways Matter

As a preliminary matter that needs to be addressed, Mr Pollack has introduced in his Response the novel assertion that Mr Hyman was not counsel to the BVI Government in relation to the BVI Airways matter,

² The Court opined, 'With respect to any information that is in (or should be in) the client file, Mr. Hyman cannot credibly argue that turning over that information is unduly burdensome or intrusive. The BVIG has a right to this information, and regardless of whether Mr. Hyman failed to maintain a client file or is simply withholding it, Mr. Hyman cannot refuse to turn over information that should be in that file.' *Hyman*, 2020 WL 2615519, at *8.



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which contradicts not only Mr Hyman's contemporaneous correspondence during the matter (when he said that he was acting as US Legal Counsel to the BVI) but also his, at-the-time new, spin that he attempted to develop beginning on 18 June 2017 that he was both legal counsel and an honest broker working for both sides (first, in the 2017 version of this spin, because he presumed that the BVI Government was amenable to that role, *Hyman*, Appl. Ex. MSK-1, at 144, then in the 2019 version to MKS, because D. Orlando Smith (the 'then-Premier') had asked Mr Hyman to do so, *Id.* at 153).

This issue is material because Mr Pollack asserts in his Response that 'Rules 1.3, 1.7, 1.15, and 1.16 apply only when there is an attorney-client relationship with respect to the matter at issue'. Resp. 7. To support this assertion, the Response relies on an after-the-fact 11 March 2020 Declaration (prepared solely in support of this disciplinary investigation) by Bruce Bradley, Vice Chairman of an adverse party, Resp. Ex. 1 ¶ 13, who said, 'It was my understanding that Mr. Hyman's efforts in this regard fell outside of, and were in addition to, his work on behalf of the BVI Government in the United States for which he was being compensated by the BVI Government.' Resp. Ex. 1 ¶ 30. I fail to see how Mr Bradley has any competency to testify to facts concerning the scope of a privileged relationship between a third party and its attorney, and it is all the more remarkable that Mr Hyman is attempting to rely exclusively on Mr Bradley's 'understanding', which contradicts both contemporaneous documents produced by BVI Airways and Mr Hyman's own contemporaneous correspondence.

In this factual scenario, Mr Pollack not only denies that an attorney-client relationship existed between the BVI Government and Mr Hyman with respect to the BVI Airways matter but also states that '[t]here is *no* evidence, much less clear and convincing evidence, that Mr. Hyman had an attorney-client relationship with either the BVI Government or BVI Airways with respect to the airline project', Resp. 7 (emphasis added), which is peculiar because Mr Pollack is counsel to Mr Hyman in *Hyman* and undoubtedly aware that, far from there being *no* evidence, much evidence was entered in that proceeding supporting the existence of an attorney-client relationship with respect to the BVI Airways. Specifically, the Attorney General entered into evidence, *inter alia*:

- 5 December 2014 email from Mr Hyman to the then-Premier regarding the BVI Airways matter and proposed airport extension marked 'LAWYER'S PRIVILEGED AND CONFIDENTIAL COMMUNICATION', *Hyman*, Appl. Ex. MSK-1, at 26-27;
- Avro Project Meeting Agenda prepared by BVI Airways for a meeting initially scheduled to occur on 1 September 2015 that actually occurred on 26 August 2015 for the convenience of certain attendees that lists 'Lester Hyman, Esq., *US General Counsel, The BVI*', *Id.* at 50, as an attendee (this agenda, prepared by BVI Airways, where Mr Bradley was Vice Chairman, Resp. Ex. 1 ¶ 13, and a participant at the meeting, *Id.* ¶ 22, directly contradicts his Declaration under penalty of perjury that it was his understanding that Mr Hyman's work on BVI Airways 'fell outside of, and were in addition to, his work on behalf of the BVI Government', *Id.* ¶ 30);
- 26 August 2015 Meeting Report was prepared after the meeting referred to in the previous bullet point. In this Meeting Report, Mr Hyman was listed as one of the attendees from the 'Government of the Virgin Islands Team', *Hyman*, Appl. Ex. MSK-1, at 52;



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- 9 August 2017 email from Mr Hyman to the then-Premier marked 'LAWYER'S PRIVILEGED AND CONFIDENTIAL COMMUNICATION' regarding the BVI Airways matter, *Id.* at 144; and
- 23 June 2019 email from Mr Hyman to Andrew Gilliland of MKS, where Mr Hyman states, 'You are correct that I, for many, many years (through three BVI Administration beginning in the 1990's [sic]) provided advice to the Government of the British Virgin Islands as their U.S. Legal Counsel. *In that capacity* I introduced Mr. Bruce Bradley', *Id.* at 156 (emphasis added).

The BVI Government have never understood to have had, nor have they had, any relationship with Mr Hyman in a capacity other than as attorney-client. In support of this disciplinary complaint now before the Office of Disciplinary Counsel, the Attorney General submits the following additional contemporaneous correspondence as further evidence of the existence of an attorney-client relationship between the BVI Government and Mr Hyman with respect to the BVI Airways matter:

- 22 April 2014 email from Mr Hyman to the then-Premier attempting to cajole the BVI Government into signing a Memorandum of Understanding after 'Bruce has spent a huge amount of his time putting this project together.' Ex. 4. Mr Hyman affirms, 'As U.S. Legal Counsel for the BVI, I assure you that this step legally has no downside risk for the BVI whatsoever', *Id.*;
- 23 April 2014 email from Mr Hyman to the then-Premier including the email above: 'This is an April 22nd e-mail that never has been answered', Ex. 5;
- 31 July 2014 email from Mr Hyman to the then-Premier with the subject 'Legal Fee', Ex. 6. where Mr Hyman seeks a "'success fee" for my *legal* work', Ex. 6 (emphasis added), of \$200,000 because 'but for my *legal* work on this matter, it [the BVI Airways project] would not have come to fruition', *Id.* (emphasis added), and he 'believe[s] this work extends above and beyond my general duties as US Legal Counsel.' *Id.* He continues, 'Would you please let me know at your earliest convenience whether this arrangement would be satisfactory to the BVI Government?' *Id.* The BVI Government did not accept this request for supplemental compensation, and Mr Hyman nevertheless continued to represent the BVI Government under his fixed fee retainer;
- 23 September 2014 email from Mr Hyman to the then-Premier marked 'LAWYER'S PRIVILEGED AND CONFIDENTIAL COMMUNICATION' regarding BVI Airways and a dispute with the BVI Airports Authority, an agency of the BVI Government, Ex. 7;
- 2 December 2015 email from Mr Hyman to the then-Premier where Mr Hyman is pressuring the then-Premier to sign the Framework Agreement and says, 'I have done everything I can do as *BVI's United States legal counsel* to keep the investors on board', Ex. 8 (emphasis added);
- 10 December 2015 email from Mr Hyman to the then-Premier that is a chaser to another 10 December 2015 email that itself is a chaser to a 9 December 2015 email from Mr Hyman (signed by him as 'U.S. Legal Counsel for the British Virgin Islands', Ex. 9) to the then-Premier, with

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Scott Weisman, Mr Bradley, and Jerry Willoughby in copy, where Mr Hyman states 'As *U.S. Legal Counsel* to the BVI, I respectfully suggest that the proposal that both sides agreed to should stand so we can go forward with this essential matter', *Id.* (emphasis added), pressuring his client to sign the side letter and dismissing 'some anonymous local lawyer[s]', *Id.*, concern that the crown immunity waiver that Mr Hyman was advocating to the detriment of his client would be an *ultra vires* act of the territorial BVI Government³ (and also making no mention of the \$100,000 that he stood to receive from BVI Airways 'once the formal agreement was ratified', Resp. Ex. 1 ¶ 34, his multiple emails within a 24-hour period suggesting just how desperate and impatient Mr Hyman was to secure his secret payment);

- 21-22 December 2015 emails from Jeffrey Tenen of Greenberg Traurig (counsel to BVI Airways) in Miami to the then-Premier with Mr Hyman in copy; the BVI Government being a represented party, Mr Tenen appropriately copied Mr Hyman in his emails to the then-Premier, further evidencing that BVI Airways understood Mr Hyman to be counsel to the BVI Government on the BVI Airways matter, Ex. 10;
- 12 February 2016 email from Mr Hyman to Lorna Smith, wife of the then-Premier, where Mr Hyman requests her assistance in collecting two fixed fee payments that were overdue. In this email, Mr Hyman says:

During the third and fourth quarters of 20015 [sic], I devoted literally hundreds of hours of my time 1) to improving the U.S. Government's listing of the BVI as an offshore entity as well as obtaining acknowledgement of our successful efforts to combat drug-running, and 2) to creating the airline that will provide non-stop service from Tortola to Miami, as well as helping Government and private sector officials when they have problems in Washington.

I respectfully submit that the new airline never would have come into being without my efforts. If I were to have charged my usual legal fee for this matter alone for the six month period, it would have been \$378,000 plus out-of-pocket expenses. Instead all I ever have requested is a total of \$50,000. [sic] now long overdue, and have never even received the courtesy of a response to my many inquiries.

³ Not admitted as a legal practitioner in the Virgin Islands, Mr Hyman provided incorrect legal advice with respect to BVI law by saying 'Whoever crafted this language should be overruled by the Premier since it violates the agreements made by the parties. This is an issue that can only be ruled upon by the justices of a court of law and not by some anonymous local lawyer'. Ex. 8. He does not appear to know that BVI law is settled in this respect: the territorial government does not have the authority to waive crown immunity. Only the Governor of the Virgin Islands, who is the Monarch's representative in the territory and appointed upon the advice of the UK Government, has the requisite capacity to waive crown immunity with respect to the Virgin Islands beyond what is statutorily provided for in the Crown Proceedings Ordinance. Rather than deferring to the advice of a qualified BVI legal practitioner, Mr Hyman advises his client to dismiss it as being from 'some anonymous local lawyer', *Id.*, and that the then-Premier sign the side letter *ultra vires* with the waiver anyway.



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In all the years that I have been privileged to serve the BVI as its U.S. legal counsel, I never have asked for an increase in my \$25,000 per quarter fee which originally was set by [the] Hon. H. Lavity Stoutt. Also I never have asked for reimbursement of my expenses.⁴

I continue to devote many hours of my time to the airline matter.

Ex. 11;

- 27 December 2016 email from Mr Hyman to the then-Premier marked 'LAWYER'S CONFIDENTIAL AND PRIVILEGED COMMUNICATION', Ex. 12, where Mr Hyman writes regarding the BVI Airways matter and certain issues with Air Safety Support International, *Id.*;
- 6 April 2017 email from Mr Hyman to the then-Premier pushing the then-Premier to stick with the BVI Airways project, which Mr Hyman does 'for no other reason than my love for the BVI', Ex. 13;
- 18 April 2017 email from Mr Hyman to the then-Premier signed as 'your U.S. Legal Counsel', Ex. 14, pressuring the then-Premier when the BVI Government's money in BVI Airways is about to run out to take action in a project that is beginning to run counter to public opinion and is an emerging scandal. This pressure was being applied by Mr Hyman without disclosing to the then-Premier that Mr Hyman stood to receive a *second* \$100,000 payment from BVI Airways if the then failing project was rescued by the injection of additional public funds and BVI Airways' air travel service was launched; and
- 18 June 2017 email from Mr Hyman to the then-Premier, Mr Hyman states, 'Bruce knew from the beginning, and knows now, that I am involved in this project solely in my capacity as the United States legal counsel for the BVI', Ex. 15.

The 18 June 2017 email is particularly troubling. It contradicts what Mr Bradley said in his Declaration: 'Mr. Hyman was simply acting as a liaison between the parties and honest broker', Resp. Ex. 1 ¶ 17, and 'It was my understanding that Mr. Hyman's efforts in this regard fell outside of, and were in addition to, his work on behalf of the BVI Government in the United States for which he was being compensated by the BVI Government', Resp. Ex. 1 ¶ 30. If Mr Hyman was being truthful in his 18 June 2017 email, then he allowed a declaration under penalty of perjury that contained a statement that he knew to be not true to be submitted to the D.C. Bar on his behalf. If, however, Mr Bradley's declaration was, in fact, true, then

⁴ Mr Hyman misstates that he never asked for an increase or for reimbursement of expenses, a misstatement that he again repeats in a 19 July 2017 email to the then-Premier, *Hyman*, Appl. Ex. MSK-1, at 5. However, on 31 July 2014, he asked for a success fee of \$200,000. Ex. 6. Additionally, his fixed fee was originally \$15,000/quarter + reimbursement of expenses. This fixed fee was changed in 2002 to \$25,000/quarter with no reimbursement of expenses. *Hyman*, Appl. Ex. MSK-1, at 6-25 (Mr Hyman's 2002 filings pursuant to the Foreign Agents Registration Act evidencing the change in remuneration).



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Mr Hyman misrepresented the facts to his client in the 18 June 2017 email. Either way, Mr Hyman has committed at least one additional violation of Rule 8.1(a), Rule 8.4(c), or both.⁵

Through a display of faulty logic, Mr Pollack appears to wish that the reader of the Response infer that Mr Hyman was not acting for the BVI Government because the Attorney General was on the matter. Resp. 4 ('Mr. Hyman was not providing legal advice to the BVI Government with respect to its dealings with BVI Airways. The Attorney General of the BVI was involved in the discussions and available to provide legal advice to the BVI Government related to the transaction.'). The fact that one attorney was on the matter does not exclude that other attorneys were also on the matter. In fact, Mr Bradley states that two US law firms (Greenberg Traurig and Venable) and one BVI legal practitioner (Gerard Farara) represented BVI Airways. Resp. Ex. 1 ¶ 28. As this transaction involved both BVI and US legal issues, it is only logical that the BVI Government likewise had BVI (the Attorney General) and US (Mr Hyman) attorneys advising on the matter.

Mr Pollack also appears to wish that the reader of the Response infer that a complimentary comment to the then-Premier by Mr Bradley about Mr Hyman somehow defeats an adverse party's attorney-client relationship. Resp. Ex. 3 (highlighting 'Lester has played a valuable role in keeping this project on course and I would like to acknowledge how fortunate we are to have him as an intermediary'). It is a fairly common occurrence to commend participants in a matter, even adverse ones, particularly in commercial transactions. Accepting the inference that Mr Pollack seeks to make would introduce an entirely new tactic: to knock adverse counsel off of a matter, simply compliment to an adverse party that its counsel is a good interlocutor.

With overwhelming evidence to the contrary, it is blatantly misleading of Mr Hyman to permit his counsel to advance an argument to Disciplinary Counsel that Mr Hyman was anything other than the BVI Government's attorney on the BVI Airways matter when his own contemporaneous emails (many of which are marked by him as privileged or otherwise providing advice as US Legal Counsel to the Virgin Islands and at least one of which even specifies that the BVI Airways matter formed part of the work that he did in exchange for his fixed legal fee) contradict this new exculpatory assertion. The totality of this evidence belies the recharacterisation of his role that he first attempted to portray on 18 June 2017, at a time when the BVI Airways affair had already become a full-blown scandal consuming the BVI press and the public (and political opposition) were demanding to know how \$7.2 million of taxpayers' money had been squandered (of which at least \$102,500 Mr Bradley now admits under penalty of perjury ended up in Mr Hyman's pockets). In his email of that date, whilst on the one hand saying that he only served as US Legal Counsel on the matter (and that Mr Bradley knew that), Mr Hyman elsewhere says, 'I hope that you agree that I have served as an honest broker in the airline project.' Ex. 13. His client's response four days later, i.e. sending Mr Hyman a termination letter (effective 30 July 2017), is telling in that his

⁵ Mr Hyman faces an identical dilemma in respect of whether he made a misrepresentation in his 31 July 2014 email or he instead permitted a Declaration under penalty of perjury to be submitted on his behalf that had a statement that he knew to be untrue. In that email, he stated, 'Bruce has suggested that I should be appropriately compensated for my work on this project', Ex. 6, whereas Mr Bradley declared under penalty of perjury, 'There was no discussion of compensating Mr. Hyman for his role in bringing the parties together or for moving the idea to fruition', Resp. Ex. 1 ¶ 9.

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client did not share in Mr Hyman's self-assessment, either as being honest or being a broker, contrary to Mr Pollack's erroneous belief that the BVI Government 'appreciated Mr. Hyman's role as a facilitator and mediator in the transaction.' Resp. 8.

Mr Hyman further attempted to advance his novel, and inherently conflicted, dual legal counsel/honest mediator role in a 9 August 2017 email to the then-Premier, where, like on 18 June 2017, Mr Hyman again asserts in different places in the very same email that he was acting as legal counsel and then saying that he was an honest mediator,⁶ the latter being a role, with which Mr Hyman 'presumed' that the then-Premier was agreeable. *Hyman*, Appl. Ex. MSK-1, at 144. In other words, Mr Hyman never actually had the BVI Government's agreement to act in the role of mediator rather than attorney; all Mr Hyman had was his personal (after-the-fact and self-serving) presumption.

On 23 June 2019, Mr Hyman further embellished this lie when asked to turn over his client file. Although Mr Hyman had not been asked at that point anything other than to hand over the BVI Government client file, Mr Hyman volunteered, 'At Premier Smith's request, I worked with *both* the BVI Government and BVI Air'. *Id.* At 153. This statement, freely given and not in response to any question, is false; the then-Premier never requested that Mr Hyman work in any capacity other than as Legal Counsel to the BVI Government, and the then-Premier most definitely did not request that Mr Hyman work in any capacity for BVI Airways.

Mr Pollack's Response is now the newest incarnation of this misrepresentation. Mr Hyman now contends, contrary to the story that he began to weave in June 2017, that he was not, after all, some sort of dual legal counsel/honest broker. Today, he would like everyone to believe that he was not legal counsel at all. I respectfully submit to Disciplinary Counsel that not only was Mr Hyman the BVI Government's attorney with respect to the BVI Airways matter at all material times up to 30 July 2017 but it is also a further violation of the Rules of Professional Conduct, specifically Rules 8.1(a) and 8.4(c), for Mr Hyman to argue otherwise in this disciplinary investigation and mislead Disciplinary Counsel where the weight of the evidence (which includes his own contemporaneous correspondence) is so overwhelmingly to the contrary.

Even if this factual scenario that Mr Hyman was not counsel to the BVI Government on the BVI Airways matter was true, he nevertheless would have owed a duty of loyalty not to put his client in harm's way.

Mr Hyman Has Not Introduced Any Evidence that his Memory Is at Issue

It is correct that Mr Hyman is 88 years old. Resp. 2. Without introducing any evidence, expert or otherwise, to put Mr Hyman's memory when Mr Hyman responded to MKS' questions on 8 July 2019 at issue, Mr Pollack attempts to excuse Mr Hyman's false answers as not being in violation of Rule 8.4(c) by stating that Mr Hyman's 'memory is simply not as accurate as it used to be'. *Id.* at 6. However, as Mr Pollack also acknowledges, Mr Hyman authored a book in 2019 titled 'JFK...the Kennedys...and Me'.

⁶ I note that a mediator is generally used in alternative dispute resolution and not in commercial transactions, making the attempt to recharacterise Mr Hyman's role all the more suspect.

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Id. at 2. In connection with the promotion of that book, Mr Hyman conducted a number of public activities in 2019 where he had no problem recalling and answering questions about events that occurred 60 years ago. Recordings of two events are available online: one an interview and Q&A that occurred on 22 March 2019 at the Arts Club of Washington (available on YouTube)⁷ and the other a speech given on 16 May 2019 at the City Tavern Club in Georgetown (available on Mr Hyman's website).⁸ Far from manifesting any memory issues, I think virtually anyone is left with the impression after watching those videos that one could only hope to have a memory at the age of 87 as sharp as Mr Hyman's. The available evidence suggests that he should not be given any special deference beyond what would be given to anyone else with respect to innocent misstatements.

Representing that he was paid about \$500 is not a minor, immaterial misstatement that is subject to reasonable forgetful error; it is a gross misstatement given that Mr Hyman received, at a minimum, \$102,500 from a party adverse to his client. Further undermining Mr Pollack's assertion that Mr Hyman 'forgot' that he had been paid at least \$102,500, Mr Hyman only 'corrected' his answer once the issue was put to him through a disciplinary complaint from the D.C. Bar, of which he became aware in February 2020, over seven months after he made this material misstatement. He did not use the opportunity of his filings in *Hyman* to clarify the error or otherwise contact MKS during the intervening seven-month period. See, *In re Starnes*, 829. A2d 488, 493, 499 (D.C. 2003), finding that, together with other circumstantial evidence, a false statement of material fact that the attorney never corrected was made knowingly, rather than negligently, to the D.C. Bar whilst applying for admission.

In fact, Mr Hyman's acknowledgment (through counsel) to the Office of Disciplinary Counsel that he was paid \$100,000 + \$2,500 for attendance at a single BVI Airways board meeting is unbelievably yet another inaccurate answer as to the total sums of value paid to Mr Hyman by the other side, thereby engaging in another violation of Rules 8.1(a) and 8.4(c). At a minimum, Mr Hyman has failed to acknowledge the \$10,000 and stock options that he received upon becoming a paid Director of BVI Airways, *Hyman*, Appl. Ex. MSK-1, at 160, and even these additional amounts do not likely encapsulate the total sums of value he received from parties adverse to his client, the BVI Government. Quite contrary to Mr Pollack's belief that Mr Hyman 'had no motive whatsoever to intentionally fail to disclose his compensation accurately', Resp. 6, I would argue that as the recipient of a secret 'commission' contrary to his retainer as an agent of the BVI Government, Mr Hyman, as an attorney, fully appreciated the legal predicament, in which he now finds himself, and had every reason to lie to MKS in July 2019.

Mr Pollack states that, when Mr Hyman answered MKS' questions in 2019, he did so 'without the aid of any documents'. *Id.* However, the accompanying exhibits to the Response betray Mr Hyman and the assertion that he did not have any documents. The first two emails were sourced from Mr Bradley, as indicated by the citations in the Response. Resp. 3, 8. However, the remaining emails were sourced from Mr Hyman by Mr Pollack, which is evidenced not only by the references to 'Hyman Email', Resp. 3-5, 11, but also by the AOL footers in the emails, Resp. Ex. 4-5, 7-8, 10, 12, indicating that they were printed by the party with the AOL account, and Mr Hyman was the only party to the emails with an AOL account.

⁷ www.youtube.com/watch?v=wcwXQXcdO-M

⁸ www.lestershyman.com/about-us-1



Additionally, on the emails that were printed from AOL's email website (mail.aol.com), the date the emails were printed appears on the upper-left hand corner, Resp. Ex. 4, 8, 10, 12; on the emails that were printed from AOL's desktop application, the date that the emails were printed appear in the footer (and also further confirm that they were printed from 'LSHyman'), Resp. Ex. 5, 7. Mr Hyman appears to have had a habit of contemporaneously printing his emails as all of the emails that were submitted to the Office of Disciplinary Counsel in the Response were printed either on the day of or the day following the sending of the emails. In other words, Mr Hyman not only has had the documents available to him (which he said never existed in the first place because according to him everything was done telephonically or in-person), *Hyman*, Appl. Ex. MSK-1, at 153, but he also had them in paper format all along, including at the time he answered MKS' questions on 8 July 2019.

Mr Pollack argues, 'An honest failure of memory by an 88-year-old⁹ being asked about events several years earlier without having documents to refresh his recollection hardly constitutes dishonesty,' Resp. 12, and then cites two cases regarding the criminal standard for perjury (which is not the correct standard for an attorney disciplinary proceeding but the circumstances surrounding Mr Hyman's material misstatements would very likely meet even that high standard of proof). *Id.* I submit that when one is dishonest in the rationale for trying to excuse behaviour, to wit Mr Hyman allegedly having a memory failure due to not 'having documents to refresh his recollection', *Id.*, whilst at the same time producing some of those very same documents, with evidence that he had printed them contemporaneously years ago and therefore had them all along, the entire argument is contaminated, dishonest, and should not be given any weight except as evidence of yet another dishonest act in violation of Rule 8.4 warranting an enhanced disciplinary response.

It is also worth noting that the Response cherry-picks elements of, and misrepresents, certain cases, something, for which Mr Hyman was criticised by the Court in *Hyman*. *Hyman*, 2020 WL 2615519, at *8, n.7. For instance, in addressing Rule 8.4(c) and Mr Hyman's material misstatements of 8 July 2019 to MKS, Mr Pollack cites, '*In re Romansky*, 938 A.2d 733, 740 (D.C. 2007) (finding respondent "had *no intent* to act dishonestly" and *thus* "Bar Counsel has failed to present sufficient facts to meet its burden of proof" that respondent acted knowingly or *recklessly*)'. Resp. 11-12 (emphasis added). Mr Pollack elides a lack of intent with reckless dishonesty. The *Romansky* court did not find no intent; 'thus', Resp. 11, respondent was not recklessly dishonest. *Romansky* evaluated intentional and reckless (and no, i.e. negligence) dishonesty separately. Whilst the *Romansky* court found that two alleged violations of Rule 8.4(c) were negligent rather than reckless (and therefore not a violation of Rule 8.4(c)), Bar Counsel successfully met its burden with respect to two other violations of Rule 8.4(c) in a separate proceeding, *In re Romansky*, 825 A.2d 311 (D.C. 2003) ('*Romansky I*') that were implicitly confirmed in *Romansky II* with the application of a 30-day sanction for those two violations. In any event, I submit that the totality of Mr Hyman's conduct rises to the level of intentional dishonesty.

In another case, Mr Pollack included, 'common-law fraud in the District of Columbia requires that an individual, with "the intent to deceive the plaintiff, knowingly made a false representation."' *Pyles v. HSBC*

⁹ For the sake of having an accurate record, Mr Hyman answered MKS' questions last year when he was 87 years old.

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Bank USA, N.A., 172 A.3d 903, 907 (D.C. 2017). Mr Pollack, however, left out that that had been what the trial court held, but the case was remanded by the D.C. Court of Appeals because, *inter alia*, the trial court ‘overlook[ed] the principle that fraud may be committed by the omission of material facts, especially when a partial explanation has been rendered. A fiduciary or confidential relationship may require the furnishing of information beyond that required in a strictly commercial context.’ *Id.* at 908. It is surprising that Mr Pollack chose to cite this case because it is not an attorney discipline case, and the portion that he cites relates to establishing a common-law fraud claim in the District of Columbia. This case centres on the signing of documents based on a technically correct but misleading and incomplete representation. In effect, Mr Pollack curiously points out that a civil claim for common-law fraud can be sustained against Mr Hyman not only based on his misrepresentations but also because he owed a duty as a fiduciary to his client, the BVI Government, to furnish information (such as the red flags that he should have uncovered or that he had a pecuniary interest in having the 7 December 2015 Framework Agreement signed since it would be with that money provided by the BVI Government to BVI Airways that he would be paid the first \$100,000 to the detriment of his client) but did not, electing to inveigle his client into signing the Framework Agreement instead.

When evaluated in connection with the totality of the circumstances and evidence available (including, but not limited to, (1) Mr Hyman’s own contemporaneous statements that he never asked for more than his retainer, e.g. Ex. 10; (2) that he was so heavily invested in the BVI Airways project solely for his love for the BVI, Ex. 13; and (3) never mentioned to his client that he was being paid by the other side) the much more plausible explanation is that Mr Hyman’s misstatement to MKS with respect to the amount he was paid was simply a lie rather than Mr Pollack’s more fanciful conjectures that are directly contradicted by not only Mr Hyman’s contemporaneous correspondence but also the evidence submitted to the Office of Disciplinary Counsel in Mr Pollack’s Response.

Mr Pollack’s Factual Scenario No. 2: Mr Hyman Represented the BVI Government and Received and Was Promised Payment by BVI Airways

Mr Hyman Represented the BVI Government from an Undisclosed Position of Conflict of His Own Making

Mr Pollack’s Response sets forth numerous internally inconsistent positions that make it somewhat difficult to address them in an organised fashion. On one hand, according to Mr Pollack, Mr Hyman was not an attorney for the BVI Government, which I submit has been effectively refuted by the available objective evidence. Additionally, according to Mr Pollack (and Mr Bradley’s Declaration), Mr Hyman was not counsel to BVI Airways, yet, ‘Mr. Hyman followed “[t]he most cautious approach” and sought “the informed consent of both” BVI Airways and the BVI Government throughout the relationship’, Resp. 8, presumably to justify collecting his \$200,000 ‘success fee’ from an adverse party whilst still representing the BVI Government. Informed consent (as defined by Rule 1.0(e)) is necessary in order to carry on a representation that would otherwise violate Rule 1.7(b). What is unclear is why Mr Hyman sought the informed consent of BVI Airways if it is true that he has never acted as BVI Airways’ attorney. Whilst I cannot say at this stage whether Mr Hyman represented BVI Airways as their attorney and/or whether he



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obtained informed consent from them, I can say that Mr Hyman did not obtain informed consent from his client, the BVI Government, to represent them contrary to Rule 1.7(b)(4).

Mr Hyman Violated Rule 1.7(b)(4)

Mr Hyman was determined to get \$200,000 out of the BVI Airways matter, one way or the other. On 31 July 2014, in an email with the subject 'Legal fee', Ex. 6, he first approached the then-Premier with a proposal for a success fee, to be borne in equal shares by the BVI Government and Castleton Holdings LLC (Mr Bradley's company). *Id.* Mr Hyman 'respectfully submit[ted] that, but for my legal work on this matter, it would not have come to fruition', *Id.*, and that he 'believe[d] this work extends above and beyond my general duties as US Legal Counsel'. *Id.* This request for supplemental attorney compensation was not accepted by the BVI Government, and, in fact, a success fee in this matter (particularly one split 50%/50% with an adverse party) was inappropriate and arguably against the Rules of Professional Conduct absent informed consent. Rule 1.5 cmt. 6 ('And in any case, if there is a doubt whether a contingent fee is consistent with the client's best interests, the lawyer should explain any existing payment alternatives and their implications.'). A success fee in this matter had the potential for a conflict of interest (which ultimately occurred) where the client's and attorney's interests were not aligned, with the attorney strongly in favour of a deal at any cost (and regardless of the detriment to his client), since he would not otherwise receive his success fee.

On 16 January 2015, the then-Premier notified Mr Bradley that the BVI Government would not proceed with his initial airline proposal, and that project came to an end. On 30 June 2015, Mr Hyman emailed the then-Premier with a summary of a new proposal that he had received from Messrs Bradley and Weisman. Sometime thereafter, knowing from his experience the year prior that the then-Premier would not entertain the idea, Mr Hyman must have insisted on a total of \$200,000 in 'success fees' from BVI Airways. In the autumn of 2015 (and prior to the Framework Agreement having been signed and when Mr Hyman still had leverage to insist on 'success fees' from BVI Airways), after a meeting at the Maria-by-the-Sea Hotel in Tortola, Mr Bradley, out of earshot from others, presented his proposal for Mr Hyman's 'success fee' to the then-Premier. *Hyman*, Appl. Ex. MSK ¶ 40.

Mr Bradley's Declaration presents these events out of order. He declares:

I believed that it was appropriate to compensate Mr. Hyman for his work regarding the airline venture and I spoke to the then-Premier Orlando Smith, about compensation for Mr. Hyman. I also urged Mr. Hyman to write the Premier directly to avoid any future claim of conflict or impropriety, which I understand he did.

Resp. Ex. 1 ¶ 31. In fact, Mr Hyman wrote to the then-Premier on 31 July 2014, Ex. 6, in connection with the first of the two distinctly different airline proposals that was ultimately rejected. Mr Bradley spoke with the then-Premier about this topic over a year later in the autumn of 2015 in connection with the second of the two airline proposals. *Hyman*, Appl. Ex. MSK ¶ 40.

Mr Bradley further declares:



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I believed that it would be fair for Mr. Hyman to be compensated \$100,000 by each BVI Airways and the BVI Government, totaling \$200,000 in compensation for the key role he played for both parties in this venture.

The Premier, Orlando Smith, was informed of this proposal. He agreed that it was appropriate for BVI Airways to compensate Mr. Hyman for his efforts, but was not willing to commit the BVI Government to share in this arrangement. Mr. Smith stated that he had no objection to BVI Airways compensating Mr. Hyman \$200,000.

Resp. Ex. 1 ¶¶ 32-33. The then-Premier recalls this discussion in the autumn of 2015 very differently. There was no mention of BVI Airways paying anything. As stated in the Declaration of Martin Kenney, according to then-Premier, Mr Bradley's entire effort was to get the BVI Government to pay the total amount. *Hyman*, Appl. Ex-MSK, ECF No. 1-1 ¶ 40. Since there was no discussion about BVI Airways paying anything, it follows that there was also no discussion whereby the then-Premier stated that he had no objection to BVI Airways compensating Mr Hyman \$200,000. For the avoidance of doubt, the then-Premier strenuously rejects Mr Bradley's assertions, saying that he stood in astonished silence at Mr Bradley's proposal and that Mr Hyman would not be paid anything other than his official fixed fee as agreed to between Mr Hyman and his client, the BVI Government. *Id.*

The facts as admitted by Mr Bradley under penalty of perjury are astounding. I fail to see how these facts are distinguishable from a classical bribery scheme. Mr Hyman, in the public employ as an agent of the BVI Government, secretly seeking to profit beyond his official pay, at a moment where he has leverage and sufficient sway to scuttle a deal dependent on discretionary government action, *Id.* ¶ 41, either demands a 'success fee' from a private party trying to obtain a public contract or is offered one by the private party. Neither Mr Bradley reports the demand for a bribe or walks away from the deal nor does Mr Hyman likewise report the offer made to him (as the case may be). Instead, BVI Airways agree to pay and Mr Hyman agrees to receive the 'success fee' bribes. Resp. Ex. 1 ¶ 34. Additionally, it appears that Mr Bradley further sought to curry favour with Mr Hyman to influence (corruptly) the BVI Government by appointing Mr Hyman to the BVI Airways Board of Directors. Resp. Ex. 1 ¶ 16. To top it off, Mr Bradley brazenly tried to involve the then-Premier in this bribery scheme. *Hyman*, Appl. Ex. 1 ¶ 40. It would appear that Rules 8.4(a), 8.4(b), 8.4(c), and 8.4(e) are all engaged under these facts admitted to under penalty of perjury by the declarant that Mr Hyman submitted in support.

As if any further evidence was necessary of how conflicted Mr Hyman was and that he was acting in his own personal interest rather than in the best interests of his client, Mr Hyman misguidedly submits in support of the Response an email of 27 August 2017 with the subject 'The plan', Resp. Ex. 10, where Mr Hyman requests a meeting with Mr Bradley to discuss 'the project'. *Id.* Mr Hyman had absolutely no business whatsoever to set up a meeting with respect to BVI Airways after having being fired by his client.

Mr Hyman Has Not Presented any Evidence of Having Obtained Informed Consent; the Burden of Proof Has Not Shifted to Disciplinary Counsel to Prove Otherwise



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Under this set of Mr Pollack's many conflicting factual scenarios (i.e. that Mr Hyman was an attorney to the BVI Government in the BVI Airways matter and nevertheless received (and was promised) payment and other value from the other side) Mr Hyman would have had to have obtained, at a bare minimum, informed consent from his client, the BVI Government, which he failed to do.¹⁰

As noted in Mr Pollack's Response, in order for the burden of proof to shift to Disciplinary Counsel that Mr Hyman did not obtain informed consent from his client, the BVI Government, Mr Hyman must actually introduce evidence of such informed consent. *See*, Resp. 8, citing *In re Szymkowicz*, 195 A.3d 785, 788 (D.C. 2018). However, Mr Hyman has not introduced any evidence of having obtained the BVI Government's informed consent in order for Mr Hyman to represent the BVI Government without violating either Rule 1.7(b), particularly Rule 1.7(b)(4) whilst obtaining payment from the other side. Mr Pollack simply makes a conclusory assertion that 'Mr. Hyman followed "[t]he most cautious approach" and sought "the informed consent"'. *Id.* Mr Pollack does not even assert that Mr Hyman *obtained* the BVI Government's informed consent, only that Mr Hyman *sought* it. Since Mr Hyman neither sought nor obtained the BVI Government's informed consent, Mr Pollack is of course unable to provide any particulars, like when, where, or how Mr Hyman *sought* the BVI Government's informed consent, let alone any details about how Mr Hyman *obtained* it.

"Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.' Rule 1.0(e). Neither Mr Pollack nor Mr Hyman has presented *any* evidence that Mr Hyman, as the lawyer, 'has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct', *Id.* Not having entered evidence showing that he obtained informed consent, Mr Hyman has not shifted the burden of proof to the Office of Disciplinary Counsel on this issue.

For having successfully secured the BVI Government's signature on the Framework Agreement, Mr Hyman was paid the initial \$100,000 by BVI Airways out of the initial \$7,000,000 that was swindled from the BVI Government in connection with the 2015 Framework Agreement and in which the BVI Government maintain a proprietary interest due to the fraudulent scheme involving the corruption of their attorney Mr Hyman. He thus had a pecuniary interest adverse to his client the minute he agreed to receive value originating from his client (a.k.a., a kickback) and wrongfully taken by adverse parties, giving immediate rise to unjust enrichment claims for Mr Hyman's client to recover its property held in constructive trust by Mr Hyman, thereby engaging Rule 1.8(a), which specifically adds the heightened requirement that the informed consent be in writing. Rule 1.8(a)(3). As the notes explain:

The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be adversely affected by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the

¹⁰ The payments and other value received and/or promised must also not have been unlawful, e.g. bribes. Rules 1.5(f) and 8.4(b).

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lawyer must comply not only with the requirements of paragraph (a), but also with the requirements of Rule 1.7. Under that rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client.

Rule 1.8 cmt. 3. Both of these risks, of which the notes so wisely warn, occurred, with Mr Hyman pushing the BVI Government into a transaction that they should never have entered on terms that were fundamentally unsuitable. The evidence suggests that Mr Hyman did so because of the \$100,000 he was to receive secretly from BVI Airways 'once the formal agreement was ratified', Resp. Ex. 1 ¶ 34, and the promise of another \$100,000 if all went well. *Id.*

Mr Pollack attempts to rely on Ethics Opinion 361 to argue that the heightened Rule 1.8(a)(3) written informed consent requirement does not apply because the \$100,000 was merely a referral fee from BVI Airways, a company, in which Mr Pollack alleges that Mr Hyman did not have a management position or ownership interest. We do not necessarily agree with that assessment, for there is some evidence to suggest otherwise, which, however, can be left for another day. Mr Pollack, though, admittedly expresses some doubt that the \$100,000 could be considered a referral fee, which is a prerequisite for the reasoning in Ethics Opinion 361 to apply. Resp. 10 ('To the extent that the \$100,000 payment that Mr. Hyman received from BVI Airways could be construed as a referral fee. . . .'). It is my contention that in order for Mr Pollack to rely on Ethics Opinion 361, an intolerably broad definition of referral fee would have to be adopted, which runs counter to the Ethics Opinion itself. When addressing referrals to entities that are neither controlled nor owned in any way by the referring attorney, the discussion in Ethics Opinion 361 is limited to referrals to third-party non-lawyer *service providers* and implicitly not ones that are adverse parties to a client in a live transaction or litigation, and particularly not providing any service to the client. The Ethics Opinion 361 even notes Rule 1.8 cmt. 3 (quoted in the preceding paragraph) regarding the greatest risk is where an attorney is representing a client on a transaction and the client's interest could be adversely affected by 'the lawyer's financial interest in the transaction'. Ethics Opinion 361 also notes that D.C. lawyers 'may wish to take note of' ethics opinions in other jurisdictions, including Illinois and Michigan, both of which have ethics opinions to require that attorneys must advise that the attorney cannot represent either party in a dispute between the client and the entity paying the referral fee. The weight of Ethics Opinion 361 suggests that payments from an adverse party (that is not even a proposed service provider to the client) is not a referral fee, and, therefore, the guidance given in Ethics Opinion 361 with respect to referral fees is inapplicable to the payments received by and promised to Mr Hyman in connection with a transaction where he represented a party, the BVI Government.

The relevance of Ethics Opinion 361 is solely with respect to whether Rule 1.8(a)(3)'s heightened requirement that the informed consent be in writing applies. It does not affect at all the requirement that Mr Hyman obtain informed consent itself. Not having entered evidence showing that he obtained informed consent, whether in writing under Rule 1.8(a)(3)'s heightened requirement or otherwise, Mr Hyman has not shifted the burden of proof to the Office of Disciplinary Counsel on this issue.

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In fact, from the available record, Mr Hyman only communicated once about a possible success fee, which was on 31 July 2014 in connection with the first proposed airline project that was rejected by the BVI Government. Ex. 6. He never communicated anything about a success fee to his client even to this day in connection with the second airline project introduced on 30 June 2015. Instead, Mr Hyman appears to have outsourced his obligation to an adverse party (Mr Bradley) to obtain Mr Hyman's client's informed consent. See, Rule 1.0 cmt. 2 ('a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid.').¹¹ In the autumn of 2015, it was Mr Bradley who proposed that the BVI Government pay Mr Hyman a success fee (possibly to 'reimburse' BVI Airways for the one that Mr Hyman had already secured), and now in this disciplinary investigation, it is again Mr Bradley, and not Mr Hyman, who declares as to the 'success fee', to which BVI Airways and Mr Hyman had agreed. Resp. Ex. 1 ¶ 34. Furthermore, Mr Hyman implicitly denied that he received (or was to receive) a 'success fee' throughout his representation of the BVI Government in the BVI Airways matter when he variously (and repeatedly) said that all he was asking for was his flat \$100,000 annual retainer, e.g. Ex. 11, he was doing this project solely out of his love for the Virgin Islands, Ex. 13, and when he said that he believed that he had been paid only \$500 by adverse parties, *Hyman*, Appl. Ex. MSK-1, at 158.

Mr Pollack's Factual Scenario No. 3: Mr Hyman Represented Both the BVI Government and BVI Airways

Mr Pollack Presents a Highly Bizarre and Previously Unheard-of Argument to Excuse a Rule 1.7(a) Violation under His Factual Scenario whereby Mr Hyman Represented both the BVI Government and BVI Airways

In justifying that, if Mr Hyman represented both BVI Airways and the BVI Government, it would not have been a conflicted representation that advanced adverse interests in violation of Rule 1.7(a) (which cannot be waived by informed consent), Mr Pollack advances a bizarre theory that two parties are not adverse in a commercial transaction because both parties presumably would like the transaction to go ahead and, therefore, a single attorney can represent both parties and not be in violation of Rule 1.7(a). See generally, Resp. 8-9. Following Mr Pollack's logic, in any mergers and acquisition transaction, a single lawyer still complies with Rule 1.7(a) when he represents all parties because presumably all parties would want a deal to be closed. Likewise, the buyer and seller of a house could be represented by the same attorney in compliance with Rule 1.7(a) simply because both parties would prefer a deal. Of course, this misguided and hitherto unheard-of theory neglects to account for the myriad of adverse issues that arise in any such transaction and that a party only very rarely wants a deal consummated at any price.

To further his argument, Mr Pollack also puts the cart before the horse when he says:

Mr. Hyman's professional judgment was not adversely affected by the payment he received from BVI Airways because during Mr. Hyman's involvement in BVI Airways, the [sic] BVI Airways and the BVI Government share the same objective and worked towards the same goal. . . .

¹¹ Here, Mr Hyman did not have the BVI Government's informed consent, whether valid or invalid.

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The BVI Government had a financial interest in BVI Airways and the interests of the BVI Government and BVI Airways were aligned in seeing BVI Airways become a profitable airline.

Resp. 9. Mr Pollack apparently only considers an alignment of interests once the deal was closed and the Framework Agreement signed to be relevant. This assessment completely overlooks the divergent interests prior to closing the deal that would prevent such a dual representation, and even after the deal closed, the BVI Government had different exposure (largely due to the unsuitable Framework Agreement advocated by the BVI Government's counsel, Mr Hyman) than BVI Airways and its shareholders and therefore had divergent interests at that stage as well. At no point were the BVI Government's and BVI Airways' interests aligned such that a joint representation would have been appropriate.

Mr Hyman Has Still not Turned over His Client File for the BVI Government, Exhibiting an Ongoing Violation of Rules 1.15 and 1.16(d)

Mr Pollack claims, 'Mr. Hyman has never refused to produce his client file to the BVI Government', Resp. 9, apparently erroneously believing that an attorney merely does not have to refuse to turn over his client file rather than actually doing so, which Mr Hyman has not yet done, preferring instead to persist in violating Rules 1.15 and 1.16(d). Despite Mr Pollack's claim, I submit, however, that Mr Hyman, through his actions, has, in fact, refused to produce his client file to the BVI Government, and what Mr Hyman has done is much worse than merely refusing. He misrepresented to successor counsel that none existed because there never was one in the first place as there were no written communications, likely to mislead successor counsel regarding its existence. He now has turned over as part of the Response a few self-selected emails, directly refuting his initial claim that there was never any written correspondence. Additionally, Mr Pollack's Response now claims that Mr Hyman 'simply does not have a client file for the matter since he was not providing legal advice to the BVI Government with respect to the BVI Airways transaction'. Resp. 9-10. If that was the case (which I submit that there is overwhelming evidence to the contrary), why did Mr Hyman additionally mislead successor counsel by saying that he worked with both the BVI Government and BVI Airways on the same matter?

Instead, his former client has been forced to file the application in *Hyman* in order to be authorised to issue a subpoena for their client file, when all the while, the D.C. Bar is quite clear that no client should have to ask twice for its client file. *In re Thai*, 987 A.2d 428, 430 (D.C. 2009). To this date, almost a year after MKS requested the BVI Government's client file of Mr Hyman and Mr Hyman provided a blatantly false reason for why it did not exist (which was likely an attempt to divert attention away from him and continue concealing his improper activity in the BVI Airways matter), Mr Hyman still has not handed over his client file on the BVI Government. Shockingly, Mr Pollack affirms on one hand that '[i]f the District Court determines that the BVI Government is entitled to discovery, he will, of course, comply with the Court's order.' Resp. 10. On the other hand, Mr Pollack challenges that Mr Hyman, faced with a court order will only hand over 'work he did . . . wholly unrelated to the BVI Airways matter.' *Id.* As with the overall wildly conflicting factual scenarios in Mr Pollack's Response, it would appear that Mr Pollack would like it both ways: assert one thing, but back it up with a contradiction; in this instance, the contradiction

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is that Mr Hyman's files regarding the BVI Airways matter will not be handed over, regardless of what the Court orders.

Lastly, Mr Hyman Violated Rule 1.3

Mr Pollack asserts, 'A lawyer's blunt honesty with a client . . . does not constitute a violation of Rule 1.3'. Resp. 8. If only Mr Hyman was 'blunt[ly] honest[]', *Id.*, he would not be in his current predicament and the BVI Government would not have been conned out of \$7.2 million. The BVI Government thought that they had a bluntly honest attorney that they could trust; alas, in hindsight, they realise that they were duped.

Mr Hyman's communications and actions to barrage his client into accepting unsuitable positions adverse to their interests have to be looked at in the totality of the circumstances. Mr Hyman did not do so because he was 'blunt[ly] honest[]'. *Id.* He was far from that; he did so to pocket \$100,000 plus to have the opportunity to pocket another \$100,000. Resp. Ex. 1 ¶ 34.

An attorney's neglect to conduct his representation with requisite diligence rises to an intentional violation of Rule 1.3. *In re Dickens*, 174 A.3d 283, 297 (D.C. 2017), citing *In re Starnes*, 829 A.2d 488, 503. Thus, Mr Hyman also violated Rule 1.3 when he failed to conduct any (or any adequate) due diligence on the adverse parties, either prior to introducing them to his client or during the course of his representation on the matter. In the same 18 June 2017 email where he first introduces the concept of acting as an 'honest broker' (after which he was notified four days later that he was being fired), Mr Hyman also assured the then-Premier, 'I had checked out Bruce carefully and determined that he was (and is) a man of honesty with a track record of success.' Ex. 15. On 3 July 2019, MKS asked:

As you state in your email to MKS you introduced Mr. Bradley to the government. What due diligence did you carry out with regard to Mr. Bradley and the promoters [sic] of BV Airways before vouching for them? By way of example existing research reveals the following:

- According to New York Supreme Court online filings: Following BVI Airways ('BVIA') acquisition by Colchester Aviation LLC in March 2014, the BVI Airports Authority ('BVIAA') threatened to seize the BVIA aircraft. In response, Jerry Willoughby, then BVIA's CEO planned to 'sneak' the plane out of the BVI to Florida and upon hearing of this plan the BVIAA obtained a Court Order to seize the plane on 12th September 2014. Whilst BVI later agreed to pay BVIAA \$150,000, Mr. Willoughby only authorised the payment of \$40,000 per the filings.
- Mr. Willoughby has previously served as Director of Flight Operations at Baltia Airlines, Inc ('Baltia') according to a 22nd December 2009 filing by Baltia with the US Department of Transportation. Pauline E. Jones, a BVIA shareholder, was also identified as the Director of Inflight Services from January 2009 to



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December 2010 (according to a 2017 LinkedIn profile). Baltia, established in 1989, has never flown a single aircraft.

- A then public LinkedIn profile for Mr. Willoughby stated that he served as a Director of Baltia until 2011 despite, in a BVI Beacon article dated 23rd March 2017, a BVIA spokesperson claiming he had only been a paid consultant to Baltia for a 'very short time in 2010'. The aforementioned LinkedIn profile then became inaccessible suggesting perhaps he was attempting to distance himself from Baltia.
- Despite Mr. Bradley and his company, Castleton Holdings LLC, being a real-estate company with no known relevant airline industry experience, you expressed the opinion, in your role as the BVIG's US Legal Counsel, that they were the best partner for the BVIG in this endeavour to launch an airline providing direct flights to Miami.

Did you identify any of these points in your due diligence and did you raise any of these issues with the BVI Government?

Appl. Ex. MSK-1, at 156-57. On 8 July 2019, Mr Hyman responded:

My due diligence consisted of asking about Mr. Bradley's outstanding reputation including the purchase of a 5-star hotel in Georgetown. I also spoke with friends of mine in the real estate business, each of whom expressed highest regard for Mr. Bradley. As a long time official in Massachusetts government (see my bio), I pride myself on my ability in judging people...thus it was with Bruce Bradley.

Appl. Ex. MSK-1, at 158. Other than conducting inadequate due diligence by simply asking around (without identifying whom he asked) and relying '[a]s a long time official in Massachusetts government . . . on my ability in judging people', *Id.*, with respect to Mr Bradley, Mr Hyman's due diligence did not 'consist[] of', *Id.*, any due diligence on any of the other parties, including, but not limited to, Mr Weisman, Mr Willoughby, Ms Jones,¹² BV Airways Inc., Castleton Holdings LLC, Colchester Aviation LLC, Colchester Aviation Ltd, or Raptor Aviation Ltd.

In summary, Mr Hyman has managed to achieve multiple Rule 1.3 violations, including, but not limited to,

¹² Additionally, Ms Jones, of Lansdale, Pennsylvania, is a now 59-year-old former flight attendant who on 13 February 2017 became a shareholder of record of BV Airways Inc. with a 30.6% shareholding, representing the second-largest shareholding. Whilst Mr Hyman is not listed as a shareholder of record of BV Airways Inc., Ms Jones' residential address on official documents with respect to this shareholding is listed as the same address as Mr Hyman's house in the Virgin Islands. In response to MKS' written questions of 3 July 2019, Mr Hyman wrote in his 8 July 2019 email that he did not know who Ms Jones was and had 'no idea why', *Id.*, she would be using his address. *Id.*



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- His overall conduct throughout his representation of the BVI Government with respect to the BVI Airways matter, Rule 1.3(a), (b)(1), and (b)(2);
- His lack of diligently conducting the requisite due diligence on the adverse parties (1) prior to introducing them to his client and (2) as part of his mandate during the course of his representation on the matter, Rule 1.3(a) and (b)(2);
- His failure to advocate suitable terms with respect to important issues of legitimate interest to his client, demanding instead that his client sign a side letter waiving crown immunity and agreeing to an anticompetitive subsidy restriction, Rule 1.3(a), (b)(1), and (b)(2); and
- His pervasive acting in his best interests and/or those interests of adverse parties rather than the best interests of his client, Rule 1.3(b)(2).

Conclusion

To determine whether an attorney-client relationship exists, Mr Pollack is correct in quoting *In re Lieber*, 442 A.2d 153 (D.C. 1982), Resp. 7, but the analysis consists of more:

It is well established that neither a written agreement nor the payment of fees is necessary to create an attorney-client relationship. Furthermore, it is not necessary for an attorney to take substantive action and give legal advice in order to establish such a relationship. However, a client's perception of an attorney as his counsel is a consideration in determining whether a relationship exists, and it is clear from the record that Smith considered Lieber to be his attorney.

In re Lieber, 442 A.2d 153, 156 (D.C. 1982) (citations omitted). In the instant matter, Mr Hyman was paid fees that he even said in writing was for work, in part, on the BVI Airways matter. E.g. Ex. 11. At all material times, the BVI Government perceived Mr Hyman to be their counsel on the BVI Airways matter, which is clear on the record from Mr Hyman's own contemporaneous correspondence that said so. What other perception can a client have when being charged (and paying) legal fees for a matter and correspondence with an attorney saying that he is acting as legal counsel? Mr Hyman, of course, had an attorney-client relationship with the BVI Government in respect to the BVI Airways matter (like he also acknowledged in writing on 8 July 2019 to MKS). The open question is whether he also had a purported attorney-client relationship with BVI Airways at any relevant period with respect to any matter adverse to the BVI Government.

Likely an attempt that hopefully something sticks, Mr Pollack's Response presents three inconsistent and mutually exclusive factual scenarios, which by definition means that at least some (I would submit that all) of the factual scenarios are being misrepresented. I submit that, in so doing, Mr Hyman has demonstrated that he cannot get his story straight.



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As Mr Hyman clearly was the BVI Government's attorney, I reiterate and stand by the violations as alleged in the initial disciplinary complaint as well as the new ones evidenced (or aggravated) by Mr Pollack's Response as detailed herein.

To date, almost one year after he was first requested in writing, Mr Hyman continues to fail to hand over his BVI Government client file, which is, by itself an egregious violation of the Rules of Professional Conduct. This failing is also not harmless; after having been placed in harm's way by their lawyer, the BVI Government are now forced to expend significant additional sums of taxpayer money to put together the records that Mr Hyman should have handed over a year ago now. Instead, just like his representation, his current actions perpetuate the fraud of a territory and her people, which Mr Hyman claims to love, Ex. 13, but I submit that his actions speak otherwise.

Mr Hyman received very substantial secret payments from the other side and concealed them until compelled by the Office of Disciplinary Counsel to respond to a former client's complaint, and then began to lie about not being the BVI Government's attorney, lying about having obtained informed consent, lying about representing the BVI Government free of conflict, and submitting a declaration under penalty of perjury in this disciplinary investigation with statements that he knows to be factually inaccurate.

I appreciate the opportunity to reply to Mr Pollack's Response and am available should the Office of Disciplinary Counsel have any questions or require any further information.

Yours sincerely,

Markus A. Stadler
Of Counsel

EXHIBIT 1

In re Application of)
)
 ATTORNEY GENERAL OF)
 THE BRITISH VIRGIN ISLANDS,) Case No. 1:19-mc-164-RCL
)
 Applicant,)
)
 for Judicial Assistance to Obtain Evidence)
 for Use in a Foreign Proceeding Pursuant)
 to 28 U.S.C. § 1782.)
)

3)—which should have concluded all briefing on the merits of the underlying Section 1782 application—is flawed. Despite the title of ECF No. 4, Mr. Hyman’s memorandum is actually a sur-reply regarding the initial application for judicial assistance, meaning that he should have sought the Court’s permission before filing it. It is thus ironic that he opposes the applicant’s motion for leave to file a sur-reply (ECF No. 5), as he failed to ask for leave to file his. Although the Court could disregard Mr. Hyman’s sur-reply and deny the applicant’s motion for leave to file a sur-reply, the Court prefers to err on the side of inclusivity and consider all available information. Therefore, the Court **GRANTS** the applicant’s motion for leave to file a sur-reply (ECF No. 5) and **ORDERS** that the Clerk of Court shall file the applicant’s sur-reply (found at ECF No. 5-1) on the record in this case.

It is **SO ORDERED**.

Date: May 21, 2020

/s/ Royce C. Lamberth
Royce C. Lamberth
United States District Court Judge

EXHIBIT 2

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ATTORNEY GENERAL OF
THE BRITISH VIRGIN ISLANDS,

Applicant,

for Judicial Assistance to Obtain Evidence
for Use in a Foreign Proceeding Pursuant
to 28 U.S.C. § 1782.

v.

LESTER HYMAN, ESQ.,

Defendant-Intervenor.

Case No. 1:19-mc-164-RCL

MEMORANDUM OPINION

The Attorney General of the British Virgin Islands (“the applicant”) has applied for judicial assistance to obtain evidence for use in a foreign proceeding pursuant to 28 U.S.C. § 1782 (“Section 1782”). ECF No. 1. The evidence sought would be used in a contemplated civil lawsuit in the British Virgin Islands (“BVI”) against Lester Hyman, a member of the District of Columbia Bar who represented the British Virgin Islands Government (“BVIg”) for approximately thirty years. The Court previously granted Mr. Hyman’s motion to intervene and oppose the application, making him a defendant-intervenor in this case. ECF No. 8. Upon consideration of all memoranda filed by both the applicant and Mr. Hyman (ECF Nos. 1, 2-1, 3, 4, & 5-1), the Court will **GRANT IN PART AND DENY IN PART** the application for judicial assistance under Section 1782. Specifically, the Court will **DENY WITHOUT PREJUDICE** all requests for discovery from persons or entities other than Mr. Hyman. The Court will also **DENY WITHOUT PREJUDICE** the two overly broad requests for discovery from Mr. Hyman

(detailed below and in the accompanying Order). The Court will **GRANT** all other requests for discovery from Mr. Hyman (detailed below and in the accompanying Order).

BACKGROUND¹

The applicant seeks assistance from this Court in obtaining evidence for contemplated civil proceedings against Lester Hyman in the BVI. ECF No. 1 ¶ 2. Mr. Hyman is a member of the District of Columbia Bar who represented the BVIG in an attorney-client capacity from 1987 to July 30, 2017, at which point the BVIG terminated Mr. Hyman. *Id.* The applicant is contemplating bringing a civil action in the BVI against Mr. Hyman for fraud in equity, breach of fiduciary care and loyalty, and negligence. *Id.* Legal professional ethics rules and case law in the BVI impose heightened pleading standards when alleging fraud or dishonesty, meaning that the pleading must be particularized and supported by cogent evidence. *Id.* at ¶ 3. Because the allegations the applicant is contemplating are very serious, the Attorney General would like to conduct investigations and discovery to ensure the accuracy of its founding pleading for use before the Eastern Caribbean Supreme Court at the BVI (“BVI High Court”). *Id.*

According to the applicant, while acting within the scope of his legal representation, Mr. Hyman introduced certain business promoters from the United States to the BVIG in late 2013 or early 2014. *Id.* at ¶ 4. These promoters proposed starting an airline that would operate nonstop commercial flights between Miami and the BVI. *Id.* The BVIG ultimately invested \$7,200,000 in the airline, but it never went into operation, and the other investors never invested any money before burning up the BVIG’s investment. *Id.* at ¶ 5. The BVIG’s investigations suggest that Mr.

¹ These facts are taken from the Section 1782 application (ECF No. 1) and serve merely as context for the remainder of the Memorandum Opinion. The Court takes no position on whether the applicant could prove these allegations in either a U.S. court or in the BVI High Court.

Hyman was a paid Director of the failed airline and personally profited an undisclosed \$10,000 in director's fees, \$2,500 for each in-person meeting, and stock options. *Id.* at ¶ 6. Mr. Hyman was also likely a paid Director of at least one of the airline's shareholder companies. *Id.* Additionally, Mr. Hyman apparently received a secret \$200,000 finder's fee from the airline and/or its promoters for putting the deal together with the BVIG. *Id.* Mr. Hyman did not disclose any of this information to the BVIG. *Id.*

After the BVIG terminated Mr. Hyman, he attempted to recharacterize his role from that of attorney to that of "honest mediator," but he later admitted to working on both sides of the transaction. *Id.* The BVIG cites numerous emails between Mr. Hyman and the then-Premier of the BVI which show that he failed to disclose important red flags about the airline investment to his client. *Id.* at ¶ 7. Mr. Hyman also attempted to convince the then-Premier to sign a side letter containing clauses adverse to the BVIG's interests. *Id.* at ¶ 9. Mr. Hyman then pushed the BVIG to enter into the airline venture. *Id.*

In June of 2019, the BVIG's current attorneys requested the BVIG's client file from Mr. Hyman. *Id.* at ¶ 10. Despite having had the BVIG as a client for thirty years, Mr. Hyman responded that there was neither a client file nor any form of written communications ever created because all of his meetings were in person or over the phone. *Id.* The BVIG, however, is in possession of many emails and documents between the BVIG and Mr. Hyman regarding the failed airline venture, thus suggesting that Mr. Hyman's response was inaccurate. *Id.* Additionally, when asked by the BVIG's current attorneys about the remuneration that he received as director of the failed airline venture, he responded that he believed he was paid about \$500; however, the director that the BVIG was entitled to place on the airline's Board of

Directors has provided an email from the airline setting out director compensation, which included a payment of \$10,000, \$2,500 per in person meeting, and stock options. *Id.* at ¶ 11.

Because of the heightened pleading standard that applies to the contemplated lawsuit, the applicant requests the Court's assistance so that it may better support its claim against Mr.

Hyman. *Id.* at ¶ 13. The applicant specifically requests the following:

- An Order that the applicant may serve subpoenas *duces tecum* on Lester S. Hyman, Esq., compelling the production of: (1) His entire client file for the BVI, which shall also include any documents, correspondence, or any other material that should be in the client file but that Mr. Hyman may not as of yet have included in the client file; (2) For the period of January 1, 1987 to the present, copies of all documents (whether in electronic or hard copy form) evidencing, describing, or otherwise mentioning any retainers, letters of engagement, letters of instructions, or any other document setting out the nature of the agreement(s) between Mr. Hyman and the BVI for the provision of legal advice or other services to the BVI; (3) For the period from September 1, 2013 to the present, copies of all account statements, payment advice slips, checks, wire transfer confirmations, cash receipt slips, or any other financial document (whether in electronic or hardy copy form) in respect to any Bank Account of Mr. Hyman, including documents or communications of any kind showing information regarding any and all payments or deposits made by electronic funds transfer, banker's draft, check, or cash for the credit of any Bank Account of Mr. Hyman;² (4) For the period from August 1, 2013 to the present, copies of all documents and information (whether in electronic or hard copy form) in Mr. Hyman's possession, custody, or control arising from or in connection with Mr. Hyman's provision of legal or other services to the BVI including, but not limited to, documents and information relating to the failed airline venture; (5) For the period from January 1, 1987 to December 31, 2017, copies of all annual reports (or similar) issued by Mr. Hyman to the BVI that set out a summary of the services rendered by Mr. Hyman in exchange for his \$100,000 annual retainer; (6) For the period from August 1, 2013 to the present, copies of all communications (whether in electronic or hardy copy form) in Mr. Hyman's possession, custody, or control between Mr. Hyman and any of the Operator Parties;³ and (7) For the years 2014, 2015, 2016, 2017, and 2018, copies of all U.S. federal income tax returns (including all schedules to such tax returns) filed by Mr. Hyman as well as a statement

² A "Bank Account of Mr. Hyman" is any account held at any bank, savings and loan association, credit union, securities broker-dealer, or other financial institution that is held in the name of Mr. Hyman or any legal entity, in which Mr. Hyman holds or has held, directly or indirectly, legally or beneficially, a fifty percent or greater interest.

³ The "Operator Parties" include: (1) BV Airways Inc.; (2) Castleton Holdings LLC; (3) Colchester Aviation LLC; (4) Colchester Aviation Ltd.; (5) Raptor Aviation Ltd.; (6) any shareholders (whether indirect or direct, corporate or individual, legal or beneficial), directors, officers, or any other related party or affiliate of, or acting on behalf of or in conjunction with, any of the enumerated five legal entities; (7) Bruce Bradley; (8) Jamaal Brown; (9) Adam Frieman; (10) Scott Weisman; (11) Jerry Willoughby; and/or (12) any party acting on behalf of or in conjunction with any of the five enumerated individuals.

setting out a detailed breakdown of the sources, nature, and amounts of income realized by Mr. Hyman in those years.

- An Order that the applicant may serve subpoenas *duces tecum* on any information technology person or entity residing or found in the District of Columbia that has provided, at any time since January 1, 2014, any information technology service, to include also anyone or any entity that has maintained and/or provided backup services of any computer, server, information technology device, and/or email correspondence, to Mr. Hyman and/or any legal entity, in which Mr. Hyman holds or has held, directly or indirectly, legally or beneficially, a fifty percent or greater interest, compelling the production of: (1) Any document, spreadsheet, presentation, email correspondence (whether draft or actually sent or received), or any other electronic file that is part of, or should be part of, Mr. Hyman's client file for the BVI; and (2) For the period from January 1, 2014 to the present, copies of all documents, spreadsheets, presentations, and other electronic files that were saved at any time during the period and that relate in any way to the BVI, Mr. Hyman's representation thereof, and/or any of the Operator Parties and all email correspondence during the period to or from, or saved as a draft by, Mr. Hyman and/or any person affiliated in any way with any legal entity, in which Mr. Hyman holds or has held, directly or indirectly, legally or beneficially, a fifty percent or greater interest, that relate in any way to the BVI, Mr. Hyman's representation thereof, and/or any of the Operator Parties.
- An Order that the applicant may serve subpoenas *duces tecum* on any bank, savings and loan association, credit union, securities broker-dealer, or other financial institution residing or found in the District of Columbia that holds or has held a Bank Account of Mr. Hyman at any time since September 1, 2013, compelling the production of: For the period from September 1, 2013, to the present, copies of all wire transfer records, debit advices, credit advices, remittance advices, statements of account, correspondence, emails, checks, demand drafts, or any other documents processed or held with respect to any Bank Account of Mr. Hyman.
- An Order that the applicant may serve subpoenas *duces tecum* on any income tax preparer, advisor, or accountant residing or found in the District of Columbia who prepared, advised, or assisted with Mr. Hyman's U.S. federal income tax returns and/or related materials for the years 2014, 2015 2016, 2017, and/or 2018, compelling the production of: Copies of all correspondence, emails, documents, tax returns, schedules to the same, and any other records in electronic or hard copy form that show the quantum, sources, and nature of Mr. Hyman's income from January 1, 2014, to December 31, 2018.
- An Order that the applicant may serve subpoenas *ad testificandum* on Mr. Hyman, compelling him to testify by way of sworn deposition regarding all matters relating to: (1) Any aspect, fact, or other thing arising out of or in any way connected with his representation of the BVI as its attorney; and (2) Any aspect, fact, or other thing connected in any way, also including any aspect, fact, or other thing regarding the BVI's and/or Mr. Hyman's communications and relationships, with any of the Operator Parties.

LEGAL STANDARD

Section 1782 is designed to “provide federal court assistance in gathering evidence for use in foreign tribunals.” *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 247 (2004).

Section 1782 applies to “documentary and other tangible evidence as well as testimony.” *Id.* at 248. Section 1782(a) reads:

The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court. By virtue of his appointment, the person appointed has power to administer any necessary oath and take the testimony or statement. The order may prescribe the practice and procedure, which may be in whole or part the practice and procedure of the foreign country or the international tribunal, for taking the testimony or statement or producing the document or other thing. To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure.

Essentially, Section 1782 requires that before granting these applications, courts must find that three factors are met: (1) a person, from whom evidence is sought, reside or be found in the District of this Court; (2) the evidence be for use in a foreign proceeding; and (3) the request be pursuant to a foreign tribunal request or upon application of an interested party. *Intel*, 542 U.S. at 264. As long as these three mandatory factors are met, courts have broad discretion in deciding whether to grant or deny these applications.

Four additional factors exist to guide the exercise of that broad discretion: (1) whether the person from whom discovery is sought is a participant in the foreign proceeding; (2) the nature of the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign government, the court, or agency abroad to federal-court judicial assistance; (3)

whether the § 1782(a) request conceals an attempt to circumvent foreign proof-gathering limits or other policies of a foreign country or the United States; and (4) whether the § 1782(a) request is unduly intrusive or burdensome. *Id.* at 264-65. The Court's discretion is further informed by the twin Congressional aims of "providing efficient means of assistance to participants in international litigation in our federal courts and to encourage foreign countries by example to provide similar means of assistance to our courts." *Id.* at 252.

ANALYSIS

As explained below, the Court finds that while all requests for discovery from Mr. Hyman satisfy the mandatory factors, the discretionary factors support granting only some of those requests. The requests for discovery from persons or entities other than Mr. Hyman fail to meet the first of Section 1782's mandatory factors and therefore must be denied.

I. MANDATORY FACTORS

The Court finds that all three of Section 1782's mandatory factors are satisfied with respect to the requests for discovery from Mr. Hyman. The requests for discovery from any other person or entity fail because the applicant has not properly shown that any other person or entity resides in or is found in the District of Columbia.

A. Although Mr. Hyman Undisputedly Resides in the District of Columbia, the Applicant Has Failed to Establish that Any Other Person or Entity from Whom Discovery is Sought Resides in or is Found in the District of Columbia.

The applicant seeks discovery from Mr. Hyman as well as from unnamed and unknown IT professionals, banks, and income tax preparers, advisers, and/or accountants who assisted with any of Mr. Hyman's 2014-2018 tax returns. Mr. Hyman does not dispute that he resides in

the District of Columbia. ECF No. 2-1 at 5. Therefore, the applicant's request for discovery from Mr. Hyman clearly satisfies the first mandatory factor.

Mr. Hyman asserts that the requests for discovery from persons or entities other than Mr. Hyman are too broad and do not provide any information about "the unnamed and unknown entities from which [the applicant] seeks discovery." *Id.* at 6. He maintains that the correct standard for "residing in" or being "found in" the district requires the applicant to show that the Court has general personal jurisdiction over the entity or person from whom discovery is sought. He then suggests that because very few banks are headquartered in the District of Columbia, the Court will not have general jurisdiction over the banks. Mr. Hyman similarly disputes whether the applicant can establish general jurisdiction over the unnamed IT professionals and tax assistants from whom it seeks information. Essentially, he argues that as a matter of law, specific jurisdiction will not suffice under the first mandatory factor, and the applicant cannot show general jurisdiction over these third parties.

The D.C. Circuit does not appear to have spoken directly on the issue of whether the first mandatory factor requires a finding of general personal jurisdiction rather than specific personal jurisdiction, but other Courts of Appeals as well as the D.C. District Court have found that either general or specific personal jurisdiction will suffice for the first mandatory factor.⁴ *See, e.g., In re del Valle Ruiz*, 939 F.3d 520, 527 (2d Cir. 2019) (finding that the "statutory scope" of the first mandatory factor "extends to the limits of personal jurisdiction consistent with due process" and thus encompasses both general and specific jurisdiction); *In re De Leon*, 2020 U.S. Dist. LEXIS

⁴ Mr. Hyman claims that in *In re Masters*, 315 F. Supp. 3d 269 (D.D.C. 2018), the Court found that only personal jurisdiction in the form of general jurisdiction will suffice for the first mandatory factor. Mr. Hyman's reading of *In re Masters* is patently incorrect. Although Judge Reggie Walton found that the Court lacked general jurisdiction over the banks in question, he specifically refrained from ruling on the legal issue of whether specific jurisdiction would also suffice, as it was clear that specific jurisdiction did not exist in that case. *In re Masters*, 315 F. Supp. 3d at 274-75.

37270, at *4-5 (D.D.C. Mar. 4, 2020) (quoting *In re del Valle Ruiz* in determining that the first mandatory factor “extends to the limits of personal jurisdiction consistent with due process”) (Chutkan, J.). The Court agrees with both the Second Circuit and Judge Chutkan that the first mandatory factor encompasses personal jurisdiction in either form.

Although the Court finds that either general or specific jurisdiction will suffice, the applicant is presently unable to provide the names of any of Mr. Hyman’s banks, IT professionals, tax assistants, etc. The Court recognizes that this is because the applicant has not yet been able to depose Mr. Hyman and obtain this information. The applicant has specified that it only seeks discovery from entities that are incorporated or headquartered in the District of Columbia or from entities that worked with Mr. Hyman directly through their District of Columbia branches or offices. ECF No. 3 at 11. Although this theoretically covers only those entities over whom this Court has general or specific jurisdiction, the Court cannot grant a blanket subpoena and trust that the applicant will make the proper determination about personal jurisdiction before serving that subpoena on a person or entity. It is the Court who must decide questions of personal jurisdiction on a case-by-case basis, not the applicant. Because the applicant cannot name any specific person or entity other than Mr. Hyman, the Court must deny the application with respect to any person or entity other than Mr. Hyman.

The Court will, however, deny that portion of the application *without* prejudice. As explained in this Memorandum Opinion, the Court will grant the request to depose Mr. Hyman, meaning that the applicant should be able to learn the names of specific banks, IT professionals, tax assistants, etc. Once it has these names, the applicant may refile the portion of its Section 1782 application seeking information from these other persons or entities. At that point, the applicant will be able to name the exact persons or entities that it would like to subpoena and

explain why the Court has personal jurisdiction (either general or specific) over each one. The Court will not discuss the requests for information from persons or entities other than Mr. Hyman any further in this Memorandum Opinion, as such a discussion will only be proper if the applicant can first establish that those persons or entities “reside in” or are “found in” the District of Columbia.

B. The Evidence Sought is for Use in a Foreign Proceeding.

The applicant seeks discovery for use in a contemplated civil suit against Mr. Hyman in the BVI, specifically in the BVI High Court. ECF No. 1 ¶ 24. The BVI High Court is clearly a foreign tribunal within the meaning of Section 1782. *See, e.g., In re Ming Yang*, 2019 U.S. Dist. LEXIS 146853, at *1-3 (N.D. Cal. Aug. 28, 2019) (granting an application under Section 1782 for evidence to be used in a proceeding before the BVI High Court). Mr. Hyman does not appear to dispute the BVI High Court’s status as a foreign tribunal.

Mr. Hyman does, however, argue that granting the applicant’s request would be improper because the foreign proceeding has not yet been initiated. ECF No. 2-1 at 6-7. This argument fundamentally misunderstands the second mandatory factor. The Supreme Court specifically stated in *Intel* that “the ‘proceeding’ for which discovery is sought under § 1782(a) must be in reasonable contemplation, but need not be ‘pending’ or ‘imminent.’”⁵ 542 U.S. at 247. The D.C. Circuit has further confirmed that the second mandatory factor merely asks whether there is “sufficient indication that a proceeding in court would eventuate in which the evidence gathered can be weighed impartially.” *In re Letter of Request from the Crown Prosecution Serv.*, 870 F.2d 686, 692 (D.C. Cir. 1989). The contemplated proceeding in the BVI High Court meets this test,

⁵ Mr. Hyman’s assertion that the application must be denied because foreign proceedings are not “reasonably imminent” is thus an incorrect statement of the law. ECF No. 2-1 at 6.

and the fact that the Attorney General of the BVI has not yet filed its civil suit against Mr. Hyman is not fatal to the request. The Declaration of Martin Kenney asserts that the proceedings against Mr. Hyman will likely “be launched within sixty days following the conclusion of discovery hereunder.” ECF No. 1-1 ¶ 76. This case is thus similar to *In re Application of Furstenberg Fin. SAS v. Litai Assets LLC*, where the Eleventh Circuit found that foreign proceedings were reasonably contemplated because the applicants stated that they would be filing proceedings in Luxembourg within 45 days of receiving the Section 1782 discovery. 877 F.3d 1031, 1035 (11th Cir. 2017).

The applicant has explained that it is requesting this evidence before filing its lawsuit to better ensure that it can meet the BVI’s heightened pleading standard for claims involving fraud or dishonesty. Mr. Hyman argues that if the applicant cannot meet the BVI’s heightened pleading standard without the discovery that it seeks from this Court, then no lawsuit is reasonably contemplated, and the application must be denied. This argument is flawed for two reasons. First, the applicant never stated that it *cannot* survive the heightened pleading standard without this evidence; rather, it has suggested that this evidence would be extremely useful in *ensuring* that it meets that standard. Second, even if the applicant could not meet the heightened pleading standard without this evidence, that would not automatically mean that the application must be denied. *See, e.g., LEG Q LLC V. RSR Corp.*, 2017 U.S. Dist. LEXIS 140280, at *2-5 (N.D. Tex. Aug. 31, 2017) (granting the Section 1782 request for the express purpose of enabling the applicant to meet England’s heightened pleading standard).

Furthermore, to adopt Mr. Hyman’s reasoning would be to ignore the Supreme Court’s determination in *Intel* that the foreign proceeding does not have to be underway for the Court to grant relief. Mr. Hyman argues that if the applicant *could* meet the pleading standard without this

evidence, the Court must deny the motion and let the BVI High Court handle discovery once the applicant files its lawsuit there. At the same time, however, Mr. Hyman argues that if the applicant *could not* meet the pleading standard without this evidence, then no lawsuit is reasonably contemplated and the Court must deny the motion. By this logic, an applicant could never obtain Section 1782 relief when a foreign proceeding is not already underway. Such a holding would not be in accordance with the Supreme Court's express ruling that an application can be granted even when a foreign proceeding has not yet begun. Therefore, regardless of whether the applicant could meet the heightened pleading standard without the requested discovery, the Court is satisfied that the civil suit against Mr. Hyman in the BVI High Court is in reasonable contemplation. The applicant has thus met the second mandatory factor with respect to requests for discovery from Mr. Hyman.

C. The Applicant is an Interested Party.

The third mandatory factor requires that the request come from either the foreign tribunal or an interested party. The applicant intends to initiate proceedings in the BVI as a claimant and seeks to benefit by obtaining monetary damages should it prevail in the contemplated proceeding. ECF No. 1 ¶ 26. Mr. Hyman concedes that this undoubtedly meets the standard for an interested party. ECF No. 2-1 at 5. Therefore, the applicant has clearly met the third mandatory factor. Because all three mandatory factors are satisfied with respect to the applicant's requests for discovery from Mr. Hyman, the Court may analyze these requests under the four discretionary factors.

II. DISCRETIONARY FACTORS

The Court finds that the balance of the discretionary factors weighs in favor of granting the application with respect to some but not all of the applicant's requests for discovery from Mr. Hyman.

A. The First Discretionary Factor Weighs in the Applicant's Favor.

The first discretionary factor asks the Court to consider whether the person from whom discovery is sought is a participant in the foreign proceeding in which the evidence will be used. Once the applicant files its contemplated lawsuit, Mr. Hyman will undoubtedly be a participant. Although normally being a participant in the foreign proceeding would weigh against granting the application because the BVI High Court could order production of this evidence on its own, *Intel*, 524 U.S. at 264, the critical distinction in this case is that the BVI High Court does not yet have jurisdiction over Mr. Hyman. Rather, the applicant seeks discovery to help it meet the heightened pleading standard for claims involving fraud or dishonesty. Therefore, the underlying rationale of the first discretionary factor—compelling production of evidence that the foreign tribunal lacks authority to compel—still applies. *See In re Ambercroft Trading Ltd.*, 2018 U.S. Dist. LEXIS 98175, at *10-11 (N.D. Cal. Oct. 3, 2018). The evidence that the applicant seeks is currently “unobtainable absent § 1782(a) aid.” *Intel*, 524 U.S. 264. Because the BVI High Court cannot presently order Mr. Hyman to appear for a deposition or turn over any documents, and in light of the unique procedural posture of this matter, the Court finds that the first discretionary factor weighs in favor of granting the application.⁶

⁶ Even if this factor did not weigh in the applicant's favor, this is not the only factor to be weighed, meaning that the Court's ultimate decision would likely remain unchanged.

B. The Second Discretionary Factor Weighs in the Applicant's Favor.

The second discretionary factor asks the Court to consider the nature of the foreign tribunal and whether the foreign court is receptive to assistance from a U.S. federal court. The BVI High Court has implicitly recognized the admissibility of evidence procured via Section 1782, and Mr. Hyman does not dispute that the second discretionary factor weighs in favor of granting the application. ECF No. 2-1 at 7. Additionally, the Court sees no evidence suggesting that the BVI High Court would not be receptive to evidence procured via Section 1782. The Court thus finds that the second discretionary factor clearly weighs in favor of granting the application.

C. The Third Discretionary Factor Weighs in the Applicant's Favor.

The third discretionary factor asks the Court to consider whether the application conceals an attempt to circumvent foreign proof-gathering restrictions or other policies of the foreign country or the United States. As previously explained, the BVI High Court has no objection to parties using evidence obtained via Section 1782. Nevertheless, Mr. Hyman argues that although this evidence would be discoverable in the BVI High Court or in a U.S. court once the applicant filed its lawsuit and reached the discovery stage, it is improper to allow the applicant to obtain this evidence before filing its lawsuit. Mr. Hyman notes that even though the BVI has a heightened pleading standard for these types of allegations, neither BVI nor U.S. courts allow pre discovery, even where heightened pleading is required.

The case law that Mr. Hyman cites, however, is not on point,⁷ and his arguments are not in accordance with the relevant case law. For example, in *In re Ambercroft*, the Northern District

⁷ Much of the case law that Mr. Hyman cites is presented in a misleading fashion, with quotes being selectively cherry-picked and holdings being taken out of context (or holdings being misstated altogether).

of California specifically held that the question of whether pre-discovery would be allowed in the BVI is irrelevant to the third discretionary factor, and “the fact that pre discovery may not be allowed under Eastern Caribbean Supreme Court Civil Procedure does not suggest that Petitioner is trying to circumvent proof-gathering restrictions.” *In re Ambercroft Trading Ltd.*, 2018 U.S. Dist. LEXIS 171366, at *21 (N.D. Cal. Oct. 3, 2018) (finding that the third discretionary factor weighed in favor of granting the application even though the lawsuit had not yet been filed in the BVI). The question posed by the third discretionary factor is not whether the BVI would permit pre-discovery, but whether BVI law affirmatively prohibits the applicant from obtaining relief under Section 1782. *See Intel*, 542 U.S. at 244 (“A foreign nation may limit discovery within its domain for reasons peculiar to its own legal practices, culture, or traditions; such reasons do not necessarily signal objection to aid from the United States federal courts.”).

Furthermore, Section 1782 does not impose an exhaustion requirement, meaning that the applicant does not need to request discovery from the foreign tribunal before filing its Section 1782 request. *See In re Maley Hungarian Airlines*, 964 F.2d 97, 99 (2d Cir. 1992). By the same logic, courts have also rejected “any implicit requirement that any evidence sought in the United States must be discoverable under the laws of the foreign country.” *In re Application of Aldunate*, 3 F.3d 54, 59 (2d Cir. 1993). As the Second Circuit has explained, “[p]roof-gathering restrictions are best understood as rules akin to privileges that *prohibit* the acquisition or use of certain materials, rather than as rules that *fail to facilitate*” discovery of the requested information. *Mees v. Buiter*, 793 F.3d 291, 303 n.20 (2d Cir. 2015). There is no indication that the BVI prohibits use of this material, and thus there can be no attempt to circumvent a foreign proof-gathering restriction. Because there is no evidence that the applicant is attempting to

circumvent any proof-gathering restrictions or policies in either the BVI or the U.S., the third discretionary factor weighs in favor of granting the application.⁸

D. Under the Fourth Discretionary Factor, Two of the Applicant's Requests for Discovery from Mr. Hyman are Unduly Burdensome and Overly Broad.

The fourth discretionary factor asks the Court to consider whether granting the application would be overly burdensome or intrusive for the person from whom information is sought. With respect to any information that is in (or should be in) the client file, Mr. Hyman cannot credibly argue that turning over that information is unduly burdensome or intrusive. The BVIG has a right to this information, and regardless of whether Mr. Hyman failed to maintain a client file or is simply withholding it, Mr. Hyman cannot refuse to turn over information that should be in that file. The applicant should also be able to obtain any information pertaining to Mr. Hyman's relationship with the failed airline, as that is directly relevant to the contemplated lawsuit. Therefore, as set forth in the Conclusion of this Memorandum Opinion and in the accompanying Order, the Court will grant the requests that are specifically tailored to Mr. Hyman's relationship with the airline and the BVI.

Some of the applicant's requests, however, are too broad, which makes them overly burdensome and invasive. The two requests for discovery from Mr. Hyman with which the Court is concerned are:

- For the period from September 1, 2013 to the present, copies of all account statements, payment advice slips, checks, wire transfer confirmations, cash receipt slips, or any other financial document (whether in electronic or hard copy form) in respect of any Bank Account of Mr. Hyman, including documents or communications of any kind showing information regarding any and all

⁸ Even if this factor did not weigh in the applicant's favor, this is not the only factor to be weighed, meaning that the Court's ultimate decision would likely remain unchanged.

payments or deposits made by electronic funds transfer, banker's draft, check, or cash for the credit of any Bank Account of Mr. Hyman.⁹

- For the years 2014, 2015, 2016, 2017, and 2018, copies of all U.S. federal income tax returns (including all schedules to such tax returns) filed by Mr. Hyman as well as a statement setting out a detailed breakdown of the sources, nature, and amounts of income realized by Mr. Hyman in those years.

These requests would reveal a great deal of personal financial information that is entirely unrelated to the contemplated civil suit against Mr. Hyman. Although the Court understands that the applicant has requested to see all of Mr. Hyman's financial documents out of concern that he will hide any unlawful or unethical transactions, at this time, the Court cannot allow the applicant to have unfettered access to his bank records and tax returns, most of which are unlikely to have any bearing on the contemplated lawsuit.¹⁰

Of course, granting an applicant's Section 1782 request for personal financial information from another person is not unprecedented. For example, the Southern District of Florida granted an applicant's Section 1782 request for personal financial records from another person—despite that person's objections—because his banking records were relevant to whether he had conspired to hide funds, which was the subject of the foreign proceeding. *In re H.M.B. Ltd.*, 2018 U.S. Dist. LEXIS 111108, at *28-31 (S.D. Fla. July 2, 2018).¹¹ In that case, however, the Court did not grant the applicant's full request; rather, the Court determined that some of the financial requests were too broad and thus narrowed the scope of its Order to grant discovery only for financial records that were directly relevant to the foreign proceeding. *Id.* In doing so, the

⁹ A "Bank Account of Mr. Hyman" is any account held at any bank, savings and loan association, credit union, securities broker-dealer, or other financial institution that is held in the name of Mr. Hyman or any legal entity, in which Mr. Hyman holds or has held, directly or indirectly, legally or beneficially, a fifty percent or greater interest.

¹⁰ It is true that this is only one of four discretionary factors to consider, and as a matter of law the Court could still choose to grant these requests in spite of their broad nature; however, the Court does not want to subject Mr. Hyman to such invasive discovery at this time.

¹¹ Although this explanation comes from Magistrate Judge Jonathan Goodman's Report & Recommendation, Judge Marcia Cooke adopted the Report & Recommendation in its entirety. See *In re H.M.B. Ltd.*, U.S. Dist. LEXIS 145522 (S.D. Fla. Aug. 24, 2018).

Southern District of Florida chose to assume responsibility for narrowing the wording of the request and ensuring that it would not be unduly burdensome or intrusive. The D.C. Circuit, however, has been clear that the District Court is not “obligat[ed] to trim [the] discovery request” after determining that it is “overbroad” or “vague.” *Lazaridis v. Int’l Ctr. for Missing & Exploited Children*, 473 Fed. App’x 2, 4 (D.C. Cir. 2012).

In light of *Lazaridis*, the Court could simply deny the two problematic requests outright, as this Court has no interest in assuming responsibility for trimming them itself; however, the Court will instead allow the applicant an opportunity to correct its own mistakes. The Court will deny the two specific requests at issue but allow the applicant to refile a more narrowly tailored request for financial and/or tax information that is *directly relevant* to the airline venture and the contemplated lawsuit. At this time, the Court believes that the applicant is entitled to financial information specifically pertaining to the airline venture and the contemplated civil suit, but not to financial information extending beyond those matters. Therefore, the applicant will need to reword its requests to ask only for information that is relevant to its contemplated lawsuit.

If, at a later date, the applicant wishes to refile the two requests as *currently* worded, it will need to make a strong showing that such invasive discovery is warranted. For example, if the applicant rewords its request for financial records and the Court grants it, but the applicant can prove that Mr. Hyman withholds information covered by that narrowly tailored request, the Court would then consider requiring Mr. Hyman to turn over all of the financial records sought in this initial request. For now, however, the applicant raises only speculative concerns about whether Mr. Hyman would comply with a more narrowly tailored request, making the discovery requests for *all* financial information (as currently worded) premature.

As for all other requests for discovery from Mr. Hyman, the Court finds that those are relevant to the contemplated litigation and thus are not overly broad or burdensome, so the fourth factor weighs in favor of granting those requests.¹²

E. The Twin Aims of Section 1782 Weigh in the Applicant's Favor.

The twin aims of Section 1782 ask the Court to consider whether granting the application would further the goals of “providing efficient means of assistance to participants in international litigation in our federal courts” and “encourag[ing] foreign countries by example to provide similar means of assistance to our courts.” *Intel*, 542 U.S. at 252. Although these twin aims are not their own separate factor, it is useful to note that they will be furthered by the Court’s ruling. For the reasons already stated above, the Court finds that granting the applicant’s request for discovery from Mr. Hyman would assist the BVIG with its lawsuit against Mr. Hyman. The Court also believes that granting this request will make foreign countries (especially the BVI, which has a provision similar to Section 1782) more likely to reciprocate should our government make a similar request in their courts.¹³ Therefore, the Court finds that granting discovery from Mr. Hyman will further the twin aims of Section 1782.

¹² Even if this factor did not weigh in favor of granting part of the application, this is not the only factor to be weighed, meaning that the Court’s ultimate decision would likely remain unchanged.

¹³ Although reciprocity is not “a predicate” to granting an application, *Deere Ltd. v. Sperry Corp.*, 574 F.2d 132, 135 (3d Cir. 1985), it is worth noting that the Court’s decision may ultimately foster reciprocity.

CONCLUSION

Based on the foregoing, the Court will **GRANT IN PART AND DENY IN PART** the application for judicial assistance to obtain evidence for use in a foreign proceeding pursuant to 28 U.S.C. § 1782 (ECF No. 1).

The Court will **DENY WITHOUT PREJUDICE** the requests for discovery from persons or entities other than Mr. Hyman, which the applicant may refile once it learns the identities of the specific persons or entities from which it seeks information. The applicant should ensure that its requests for discovery from these third parties are narrowly tailored and seek only financial/tax information that is directly relevant to the contemplated lawsuit. The current wording of these requests asks for:

- An Order that the applicant may serve subpoenas *duces tecum* on any information technology person or entity residing or found in the District of Columbia that has provided, at any time since January 1, 2014, any information technology service, to include also anyone or any entity that has maintained and/or provided backup services of any computer, server, information technology device, and/or email correspondence, to Mr. Hyman and/or any legal entity, in which Mr. Hyman holds or has held, directly or indirectly, legally or beneficially, a fifty percent or greater interest, compelling the production of: (1) Any document, spreadsheet, presentation, email correspondence (whether draft or actually sent or received), or any other electronic file that is part of, or should be part of, Mr. Hyman's client file for the BVI; and (2) For the period from January 1, 2014 to the present, copies of all documents, spreadsheets, presentations, and other electronic files that were saved at any time during the period and that relate in any way to the BVI, Mr. Hyman's representation thereof, and/or any of the Operator Parties and all email correspondence during the period to or from, or saved as a draft by, Mr. Hyman and/or any person affiliated in any way with any legal entity, in which Mr. Hyman holds or has held, directly or indirectly, legally or beneficially, a fifty percent or greater interest, that relate in any way to the BVI, Mr. Hyman's representation thereof, and/or any of the Operator Parties.¹⁴
- An Order that the applicant may serve subpoenas *duces tecum* on any bank, savings and loan association, credit union, securities broker dealer, or other financial institution

¹⁴ The "Operator Parties" include: (1) BV Airways Inc.; (2) Castleton Holdings LLC; (3) Colchester Aviation LLC; (4) Colchester Aviation Ltd.; (5) Raptor Aviation Ltd.; (6) any shareholders (whether indirect or direct, corporate or individual, legal or beneficial), directors, officers, or any other related party or affiliate of, or acting on behalf of or in conjunction with, any of the enumerated five legal entities; (7) Bruce Bradley; (8) Jamaal Brown; (9) Adam Frieman; (10) Scott Weisman; (11) Jerry Willoughby; and/or (12) any party acting on behalf of or in conjunction with any of the five enumerated individuals.

residing or found in the District of Columbia that holds or has held a Bank Account of Mr. Hyman at any time since September 1, 2013, compelling the production of: For the period from September 1, 2013, to the present, copies of all wire transfer records, debit advices, credit advices, remittance advices, statements of account, correspondence, emails, checks, demand drafts, or any other documents processed or held with respect to any Bank Account of Mr. Hyman.¹⁵

- An Order that the applicant may serve subpoenas *duces tecum* on any income tax preparer, advisor, or accountant residing or found in the District of Columbia who prepared, advised, or assisted with Mr. Hyman's U.S. federal income tax returns and/or related materials for the years 2014, 2015 2016, 2017, and/or 2018, compelling the production of: Copies of all correspondence, emails, documents, tax returns, schedules to the same, and any other records in electronic or hard copy form that show the quantum, sources, and nature of Mr. Hyman's income from January 1, 2014, to December 31, 2018.

The Court will **DENY WITHOUT PREJUDICE** the two overly broad requests for discovery from Mr. Hyman. The applicant may immediately file a more narrowly tailored request for financial/tax information that is directly relevant to the airline and the contemplated lawsuit. If, at a later date, the applicant wants to refile these requests as currently worded, for the reasons explained in this Memorandum Opinion, it will need to make a strong showing that such broad discovery is warranted. The current wording of these requests asks for:

- An Order that the applicant may serve *duces tecum* on Lester S. Hyman, Esq., compelling the production of: (1) For the period from September 1, 2013 to the present, copies of all account statements, payment advice slips, checks, wire transfer confirmations, cash receipt slips, or any other financial document (whether in electronic or hardy copy form) in respect to any Bank Account of Mr. Hyman, including documents or communications of any kind showing information regarding any and all payments or deposits made by electronic funds transfer, banker's draft, check, or cash for the credit of any Bank Account of Mr. Hyman; and (2) For the years 2014, 2015, 2016, 2017, and 2018, copies of all U.S. federal income tax returns (including all schedules to such tax returns) filed by Mr. Hyman as well as a statement setting out a detailed breakdown of the sources, nature, and amounts of income realized by Mr. Hyman in those years.

¹⁵ A "Bank Account of Mr. Hyman" is any account held at any bank, savings and loan association, credit union, securities broker-dealer, or other financial institution that is held in the name of Mr. Hyman or any legal entity, in which Mr. Hyman holds or has held, directly or indirectly, legally or beneficially, a fifty percent or greater interest.

As set forth below and in the accompanying Order, the Court will **GRANT** the application with respect to all other requests for discovery from Mr. Hyman.

It will be **ORDERED** that the applicant may serve subpoenas *duces tecum* on Lester S. Hyman, Esq., compelling the production of: (1) His entire client file for the BVI, which shall also include any documents, correspondence, or any other material that should be in the client file but that Mr. Hyman may not as of yet have included in the client file; (2) For the period of January 1, 1987 to the present, copies of all documents (whether in electronic or hard copy form) evidencing, describing, or otherwise mentioning any retainers, letters of engagement, letters of instructions, or any other document setting out the nature of the agreement(s) between Mr. Hyman and the BVI for the provision of legal advice or other services to the BVI; (3) For the period from August 1, 2013 to the present, copies of all documents and information (whether in electronic or hard copy form) in Mr. Hyman's possession, custody, or control arising from or in connection with Mr. Hyman's provision of legal or other services to the BVI including, but not limited to, documents and information relating to the failed airline venture; (4) For the period from January 1, 1987 to December 31, 2017, copies of all annual reports (or similar) issued by Mr. Hyman to the BVI that set out a summary of the services rendered by Mr. Hyman in exchange for his \$100,000 annual retainer; and (5) For the period from August 1, 2013 to the present, copies of all communications (whether in electronic or hardy copy form) in Mr. Hyman's possession, custody, or control between Mr. Hyman and any of the Operator Parties.¹⁶

¹⁶ The "Operator Parties" include: (1) BV Airways Inc.; (2) Castleton Holdings LLC; (3) Colchester Aviation LLC; (4) Colchester Aviation Ltd.; (5) Raptor Aviation Ltd.; (6) any shareholders (whether indirect or direct, corporate or individual, legal or beneficial), directors, officers, or any other related party or affiliate of, or acting on behalf of or in conjunction with, any of the enumerated five legal entities; (7) Bruce Bradley; (8) Jamaal Brown; (9) Adam Frieman; (10) Scott Weisman; (11) Jerry Willoughby; and/or (12) any party acting on behalf of or in conjunction with any of the five enumerated individuals.

It will be **ORDERED** that the applicant may serve subpoenas *ad testificandum* on Mr. Hyman, compelling him to testify by way of sworn deposition regarding all matters relating to: (1) Any aspect, fact, or other thing arising out of or in any way connected with his representation of the BVI as its attorney; and (2) Any aspect, fact, or other thing connected in any way, also including any aspect, fact, or other thing regarding the BVI's and/or Mr. Hyman's communications and relationships, with any of the Operator Parties.

A separate Order accompanies this Memorandum Opinion.

Date: May 23, 2020

/s/ Royce C. Lamberth
Royce C. Lamberth
United States District Court Judge

EXHIBIT 3

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ATTORNEY GENERAL OF
THE BRITISH VIRGIN ISLANDS,

Applicant,

for Judicial Assistance to Obtain Evidence
for Use in a Foreign Proceeding Pursuant
to 28 U.S.C. § 1782.

v.

LESTER HYMAN, ESQ.,

Defendant Intervenor.

Case No. 1:19 mc 164 RCL

ORDER

For the reasons set forth in the accompanying Memorandum Opinion, the Court
GRANTS IN PART AND DENIES IN PART the application for judicial assistance to obtain
evidence for use in a foreign proceeding pursuant to 28 U.S.C. § 1782 (ECF No. 1).

The Court **DENIES WITHOUT PREJUDICE** the requests for discovery from persons
or entities other than Mr. Hyman, which the applicant may refile once it learns the identities of
the specific persons or entities from which it seeks information. The applicant should ensure that
its requests for discovery from these third parties are narrowly tailored and seek only
financial/tax information that is directly relevant to the contemplated lawsuit. The current
wording of these requests asks for:

- An Order that the applicant may serve subpoenas *duces tecum* on any information technology person or entity residing or found in the District of Columbia that has provided, at any time since January 1, 2014, any information technology service, to include also anyone or any entity that has maintained and/or provided backup services of any computer, server, information technology device, and/or email correspondence, to Mr. Hyman and/or any legal entity, in which Mr. Hyman holds or has held, directly or indirectly, legally or beneficially, a fifty percent or greater interest, compelling the production of: (1) Any document, spreadsheet, presentation, email correspondence

(whether draft or actually sent or received), or any other electronic file that is part of, or should be part of, Mr. Hyman's client file for the BVI; and (2) For the period from January 1, 2014 to the present, copies of all documents, spreadsheets, presentations, and other electronic files that were saved at any time during the period and that relate in any way to the BVI, Mr. Hyman's representation thereof, and/or any of the Operator Parties and all email correspondence during the period to or from, or saved as a draft by, Mr. Hyman and/or any person affiliated in any way with any legal entity, in which Mr. Hyman holds or has held, directly or indirectly, legally or beneficially, a fifty percent or greater interest, that relate in any way to the BVI, Mr. Hyman's representation thereof, and/or any of the Operator Parties.¹

- An Order that the applicant may serve subpoenas *duces tecum* on any bank, savings and loan association, credit union, securities broker dealer, or other financial institution residing or found in the District of Columbia that holds or has held a Bank Account of Mr. Hyman at any time since September 1, 2013, compelling the production of: For the period from September 1, 2013, to the present, copies of all wire transfer records, debit advices, credit advices, remittance advices, statements of account, correspondence, emails, checks, demand drafts, or any other documents processed or held with respect to any Bank Account of Mr. Hyman.²
- An Order that the applicant may serve subpoenas *duces tecum* on any income tax preparer, advisor, or accountant residing or found in the District of Columbia who prepared, advised, or assisted with Mr. Hyman's U.S. federal income tax returns and/or related materials for the years 2014, 2015 2016, 2017, and/or 2018, compelling the production of: Copies of all correspondence, emails, documents, tax returns, schedules to the same, and any other records in electronic or hard copy form that show the quantum, sources, and nature of Mr. Hyman's income from January 1, 2014, to December 31, 2018.

The Court **DENIES WITHOUT PREJUDICE** the two overly broad requests for discovery from Mr. Hyman. The applicant may immediately file a more narrowly tailored request for financial/tax information that is directly relevant to the airline and the contemplated lawsuit. If, at a later date, the applicant wants to refile these requests as currently worded, for the

¹ The "Operator Parties" include: (1) BV Airways Inc.; (2) Castleton Holdings LLC; (3) Colchester Aviation LLC; (4) Colchester Aviation Ltd.; (5) Raptor Aviation Ltd.; (6) any shareholders (whether indirect or direct, corporate or individual, legal or beneficial), directors, officers, or any other related party or affiliate of, or acting on behalf of or in conjunction with, any of the enumerated five legal entities; (7) Bruce Bradley; (8) Jamaal Brown; (9) Adam Frieman; (10) Scott Weisman; (11) Jerry Willoughby; and/or (12) any party acting on behalf of or in conjunction with any of the five enumerated individuals.

² A "Bank Account of Mr. Hyman" is any account held at any bank, savings and loan association, credit union, securities broker-dealer, or other financial institution that is held in the name of Mr. Hyman or any legal entity, in which Mr. Hyman holds or has held, directly or indirectly, legally or beneficially, a fifty percent or greater interest.

reasons explained in the accompanying Memorandum Opinion, it will need to make a strong showing that such broad discovery is warranted. The current wording of these requests asks for:

- An Order that the applicant may serve *duces tecum* on Lester S. Hyman, Esq., compelling the production of: (1) For the period from September 1, 2013 to the present, copies of all account statements, payment advice slips, checks, wire transfer confirmations, cash receipt slips, or any other financial document (whether in electronic form or hardy copy) in respect to any Bank Account of Mr. Hyman, including documents or communications of any kind showing information regarding any and all payments or deposits made by electronic funds transfer, banker's draft, check, or cash for the credit of any Bank Account of Mr. Hyman; and (2) For the years 2014, 2015, 2016, 2017, and 2018, copies of all U.S. federal income tax returns (including all schedules to such tax returns) filed by Mr. Hyman as well as a statement setting out a detailed breakdown of the sources, nature, and amounts of income realized by Mr. Hyman in those years.

As set forth below, the Court **GRANTS** the application with respect to all other requests for discovery from Mr. Hyman.

It is **ORDERED** that the applicant may serve subpoenas *duces tecum* on Lester S. Hyman, Esq., compelling the production of: (1) His entire client file for the BVI, which shall also include any documents, correspondence, or any other material that should be in the client file but that Mr. Hyman may not as of yet have included in the client file; (2) For the period of January 1, 1987 to the present, copies of all documents (whether in electronic or hard copy form) evidencing, describing, or otherwise mentioning any retainers, letters of engagement, letters of instructions, or any other document setting out the nature of the agreement(s) between Mr. Hyman and the BVI for the provision of legal advice or other services to the BVI; (3) For the period from August 1, 2013 to the present, copies of all documents and information (whether in electronic or hard copy form) in Mr. Hyman's possession, custody, or control arising from or in connection with Mr. Hyman's provision of legal or other services to the BVI including, but not limited to, documents and information relating to the failed airline venture; (4) For the period from January 1, 1987 to December 31, 2017, copies of all annual reports (or similar) issued by

Mr. Hyman to the BVI that set out a summary of the services rendered by Mr. Hyman in exchange for his \$100,000 annual retainer; and (5) For the period from August 1, 2013 to the present, copies of all communications (whether in electronic form or hardy copy) in Mr. Hyman's possession, custody, or control between Mr. Hyman and any of the Operator Parties.³

It is **ORDERED** that the applicant may serve subpoenas *ad testificandum* on Mr. Hyman, compelling him to testify by way of sworn deposition regarding all matters relating to: (1) Any aspect, fact, or other thing arising out of or in any way connected with his representation of the BVI as its attorney; and (2) Any aspect, fact, or other thing connected in any way, also including any aspect, fact, or other thing regarding the BVI's and/or Mr. Hyman's communications and relationships, with any of the Operator Parties.

It is **SO ORDERED**.

Date: May 23, 2020

/s/ Royce C. Lamberth
Royce C. Lamberth
United States District Court Judge

³ The "Operator Parties" include: (1) BV Airways Inc.; (2) Castleton Holdings LLC; (3) Colchester Aviation LLC; (4) Colchester Aviation Ltd.; (5) Raptor Aviation Ltd.; (6) any shareholders (whether indirect or direct, corporate or individual, legal or beneficial), directors, officers, or any other related party or affiliate of, or acting on behalf of or in conjunction with, any of the enumerated five legal entities; (7) Bruce Bradley; (8) Jamaal Brown; (9) Adam Frieman; (10) Scott Weisman; (11) Jerry Willoughby; and/or (12) any party acting on behalf of or in conjunction with any of the five enumerated individuals.

EXHIBIT 4

Message

From: LSHyman@aol.com [LSHyman@aol.com]
Sent: 22/04/2014 14:12:57
To: orlsmith@hotmail.com
Subject: FOR THE PREMIER'S IMMEDIATE ATTENTION, PLEASE

Dear Orlando:

It was in December of 2013, four months ago, that I introduced you to Bruce Bradley who, in turn, presented to you and your colleagues a project that has the ability to bring high-end tourists from Europe and South America to Tortola by flying non-stop from Miami, something we have been trying to do for years now but have been unable to do because of the short length of our airport runway. As you well know, Bruce has come up with a unique solution to that problem. His is a project that, when implemented, undoubtedly will be a boon to BVI's tourism sector which is one the territory's essential pillars.

Bruce has spent a huge amount of his time putting this project together. He has responded affirmatively to each of the concerns that you and your colleagues have raised. Yet, after more than four months of negotiations, your Government has not been able to agree on an MOU which is not even a legally binding document. At the same time, Bruce has offered personally to pay the entire cost of an independent feasibility study which, upon completion, the BVI still has the option whether or not to go forward. If the project is profitable, the BVI will share in those profits. Yet, after many months of discussions, the BVI cannot seem even to agree to proceed with step one, the MOU. Note also that Bruce has a "hold" on the planes necessary for this project but that cannot continue much longer without a commitment by the BVI. There is a limit, then, to how long he can wait until your Government makes a decision. I would hate to see us lose this golden opportunity.

I truly believe that this project is good for the BVI. Else I never would have brought it to your personal attention, Orlando. The last time Bruce and I spoke on the phone with you, you said that you could work with the concessions he has made and that you would call us in three days time. The three days are now ten days and we have not heard a word from the BVI. I respectfully urge you to arrange a conference call with you, me and Bruce today. If the BVI will not even sign a non-binding MOU forthwith, I fear that we will lose Bruce and his project. I hope you would agree that that would be a most unfortunate result. Therefore I do hope that you will sign today the latest iteration of the MOU so the project can move forward. As U.S. Legal Counsel for the BVI, I assure you that this step legally has no downside risk for the BVI whatsoever.

Warmest regards.

Les

EXHIBIT 5

Message

From: LSHyman@aol.com [LSHyman@aol.com]
Sent: 23/04/2014 11:07:52
To: orlsmith@hotmail.com
Subject: Fwd: FOR THE PREMIER'S IMMEDIATE ATTENTION, PLEASE

Orlando: This is an April 22nd e-mail that never has been answered. If you still have any interest in Bruce's project, an answer should be coming from your office forthwith. Les

From: LSHyman@aol.com
To: orlsmith@hotmail.com
Sent: 4/22/2014 10:12:57 A.M. Eastern Daylight Time
Subj: FOR THE PREMIER'S IMMEDIATE ATTENTION, PLEASE

Dear Orlando:

It was in December of 2013, four months ago, that I introduced you to Bruce Bradley who, in turn, presented to you and your colleagues a project that has the ability to bring high end tourists from Europe and South America to Tortola by flying non-stop from Miami, something we have been trying to do for years now but have been unable to do because of the short length of our airport runway. As you well know, Bruce has come up with a unique solution to that problem. His is a project that, when implemented, undoubtedly will be a boon to BVI's tourism sector which is one of the territory's essential pillars.

Bruce has spent a huge amount of his time putting this project together. He has responded affirmatively to each of the concerns that you and your colleagues have raised. Yet, after more than four months of negotiations, your Government has not been able to agree on an MOU which is not even a legally binding document. At the same time, Bruce has offered personally to pay the entire cost of an independent feasibility study which, upon completion, the BVI still has the option whether or not to go forward. If the project is profitable, the BVI will share in those profits. Yet, after many months of discussions, the BVI cannot seem even to agree to proceed with step one, the MOU. Note also that Bruce has a "hold" on the planes necessary for this project but that cannot continue much longer without a commitment by the BVI. There is a limit, then, to how long he can wait until your Government makes a decision. I would hate to see us lose this golden opportunity.

I truly believe that this project is good for the BVI. Else I never would have brought it to your personal attention, Orlando. The last time Bruce and I spoke on the phone with you, you said that you could work with the concessions he has made and that you would call us in three days time. The three days are now ten days and we have not heard a word from the BVI. I respectfully urge you to arrange a conference call with you, me and Bruce **today**. If the BVI will not even sign a non-binding MOU forthwith, I fear that we will lose Bruce and his project. I hope you would agree that that would be a most unfortunate result. Therefore I do hope that you will sign today the latest iteration of the MOU so the project can move forward. As U.S. Legal Counsel for the BVI, I assure you that this step legally has no downside risk for the BVI whatsoever.

Warmest regards.

Les

EXHIBIT 6

Message

From: LSHyman@aol.com [LSHyman@aol.com]
Sent: 31/07/2014 18:46:53
To: orlsmith@hotmail.com
Subject: Legal fee

Dear Orlando:

As you undoubtedly know, as long-time U.S. Legal Counsel to the British Virgin Islands, I have been devoting a tremendous amount of my time (literally hundreds of hours) continuously since November of last year trying to help put together an airline that would fly non-stop from Miami to Tortola and not require any extension of the existing Terrence Lettsome Airport's runway. Such a project will be a boon to the BVI's tourist industry, one of the two pillars of our economy.

To achieve this project, I brought to the table a well-known U.S. business leader, Bruce Bradley, who is ready, willing and able to bring such a project to fruition. The parties (the BVI Government and Bradley a/k/a Castleton Holdings) now have signed an MOU and approved the preparation of a feasibility study (currently underway), the terms of which have been agreed upon by both parties. Upon completion of the feasibility study, the BVI Government may enter into a contract with Castleton Holdings, Mr. Bradley's company, and the work will proceed.

I sincerely believe that the project is essential to improving the BVI economy, and I respectfully submit to you that I have been instrumental in bringing the parties together, explaining each to the other, and suggesting compromises that both sides could accept. I respectfully submit that, but for my legal work on this matter, it would not have come to fruition.

Accordingly, Bruce has suggested that I should be appropriately compensated for my work on this project. Once the contract has been signed by the parties, Bruce has suggested that a fair "success fee" for my legal work should be \$200,000. As was done in the case of the feasibility study, he believes that that amount should be shared equally by the two parties (BVI government and Castleton Holdings) in the amount of \$100,000 each, payable upon the signing of the contract by the parties. In other words, I will only be paid if the deal closes. I believe this work extends above and beyond my general duties as US Legal Counsel.

Would you please let me know at your earliest convenience whether this arrangement would be satisfactory to the BVI Government? Many thanks.

Always sincerely,

Lester S. Hyman

P.S. I will be in Tortola for most of the month of August and would be pleased to discuss this matter with you in person.

EXHIBIT 7

Message

From: LSHyman@aol.com [LSHyman@aol.com]
Sent: 23/09/2014 10:42:08
To: orlsmith@hotmail.com
Subject: PLASE READ BEFORE 7am PHONE CALL

LAWYER'S PRIVILEGED AND CONFIDENTIAL COMMUNICATION

Dear Orlando:

Here is a summary of the matter I would like to discuss with you at our 7am telephone call...I hate to bother you at this early hour but I believe this is really important and deserves your attention.

As you know, a group headed up by Scott Weisman, a New York Investment banker, recently purchased BVI Airways (BVIA). At the time, he was told that BVIA owed approximately \$75,000 to the BVI Airport Authority. After the deal was consummated, Scott and his CEO Jerry Willoughby were told that the amount suddenly was about \$150,000.

On Thursday, August 28th, at BVIA's request, I arranged for Mr. Willoughby to meet with Ms. Diana Maduro at the office of the Airport Authority. Jerry asked me to attend that meeting which I did.

Jerry freely acknowledged that monies were owed to the Authority by BVIA but he first needed to know why the amount had increased from \$75,000 to \$150,000. Ms. Maduro was very accommodating and stated that she soon would have specific invoices sent to Jerry in that regard. Jerry said that, as soon as he received this information, they would work out a payment plan with the Authority. Ms. Maduro agreed. It was a very friendly and successful meeting. Thereafter however, **no breakdown of the \$150,000 was forwarded to Jerry.**

The next thing BVIA knew, a notice was posted on their airplane forbidding it to fly and stating that the plane was seized by the Authority. As you know, BVIA is the BVI's only regularly scheduled airline. They had to find another airline and pay them a substantial amount of money to fulfill their own scheduled flights which had been canceled.

BVIA then, at my recommendation, engaged the legal services of Gerry Farara to represent them at court. That case currently is being heard by the BVI Court. BVIA takes the position that the plane in question was leased and that it is a U.S. plane so that the Authority had no right to impound it.

Why did the Authority take this position without prior notice, especially after there had been a mutually satisfactory resolution between BVIA and the Authority? The only logical answer is that Mr. Denniston Fraser, the Managing Director (who was away from the Territory when we met with Ms. Maduro, returned to the BVI and reversed the arrangement proposed by Ms. Maduro. I find that unconscionable.

Note, please, that, according to Attorney Farara, **the BVI Airport Authority is a company that is owned by the BVI Government which is the sole shareholder.** Mr. Weisman and Mr. Willoughby have been greatly disappointed that the BVI Government has done nothing to help the BVIA straighten out this matter and resume its services. They believed that, when they bought the airline, they were fulfilling a need for air services which promote BVI tourism.

All BVIA seeks is the removal of the injunction against their flights and be given the specific breakdown of the \$150,000 that they allegedly owe and are, and have been, willing to pay so long as they know what the money is for.

What none of the parties described above realize is that failure to resolve this matter quickly and satisfactorily will destroy our mutual efforts to create a new airline (let's call it AVRO for the purpose of this letter) that provides non stop service from Miami to Tortola, a matter of utmost importance to the BVI's tourism program. The reason is as follows: In order for the new airline to become operative, it must have an operating license which is a very complex matter that often takes years to get. Instead AVRO has a cooperative agreement with BVIA and will be able to fly their planes under the umbrella of the existing BVIA operating license. We cannot afford to let Mr. Weisman pull the plug on his airline for lack of support from the BVI authorities. Might I respectfully suggest that you or your designee contact Mr. Weisman (sweisman@eticocapital.com) and offer him the support of the BVI government?

Thank you for your consideration of my views on this matter.

Warmest regards.

Les

EXHIBIT 8

Message

From: LSHyman@aol.com [LSHyman@aol.com]
Sent: 02/12/2015 16:00:28
To: orlsmith@hotmail.com
Subject: Re call to AG

Dear Orlando:

The AG told me in our recent phone conversation that he could not accept "reasonable efforts" (see paragraph marked number one on the second page of the October 31st Framework Agreement draft entitled "BVI Airways services") to launch and operate the new air service...he said that he needs a specific date. As we all know, that is impossible. You will see the word "reasonable" throughout the draft agreement...the AG says this is not sufficient. As you well know, because specific dates cannot be given at this time, the parties have mutually agreed that "reasonable" steps will be taken.

I enclose below Scott Wiseman's internal notes discussing the claim of immunity issue. Note that Scott also indicates that the parties have agreed about the "exclusivity" issue. The AG apparently still is concerned about the letter of credit issue but, again, the parties already have agreed on the handling of that matter.

I am confident that, if you speak with Neil, you will find that the parties have come to full agreement on all the salient issues.

The investors in this project are about to withdraw unless these issues are resolved this week. This is not a threat...rather it is their judgment based on the frustration in finalizing this deal. I have done everything I can do as BVI's United States legal counsel to keep the investors on board. In my humble judgment, there is no reason why, once you have spoken with the AG, you cannot sign the final document no later than Friday. I can't hold this matter together any longer than that...as you know, we've diligently been at it for almost two years now. **Thus we must have final resolution this week.**

Sorry to burden you with this matter while you are engaged in serious negotiations overseas in other matters affecting the BVI, but once the AG withdraws his objections on the specious issues he has raised (via a young associate who incredulously says that "time is *not* of the essence"), all that is required is your signing off on the final agreement so Scott, Bruce and Jerry can get to work building this new airline that will give a major boost to the BVI tourist industry.

Once again, please let me know by close of business tomorrow (Thursday) that you will sign the agreement so the project can move forward expeditiously.

Warmest regards.

Les

From: swabella@aol.com
To: lshyman@aol.com
Sent: 12/2/2015 9:10:52 A.M. Eastern Standard Time
Subj: internal notes

copy of Scott Wiseman's internal notes

If you do not already know, Jeff Tenen had a long (translate expensive) discussion with the AG—the immunity issue sounds like one of semantics we can live with the proffered representation and a covenant that the BVI will not assert a claim of immunity (a side letter works for me)—the subsidy issue appears to be a non issue. The AG indicated that he wanted to reread the agreement tonight but the major issues seemed to relate to the irrevocability of the letter of credit and our obligation to launch by a date certain with no qualifier such as using our commercially reasonable efforts.

As I am sure you know, each day of delay potentially slows the process by factor of three, puts the targeted launch date at risk and increases the cost and the degree of difficulty.

heading into a meeting will call you when I surface

EXHIBIT 9

Message

From: LSHyman@aol.com [LSHyman@aol.com]
Sent: 10/12/2015 16:02:38
To: orlsmith@hotmail.com
Subject: Fwd: FOR IMMEDIATE ATTENTION
Attachments: SideLetter(CleanwithChanges)Neil.docx

From: LSHyman@aol.com
To: orlsmith@hotmail.com
Sent: 12/10/2015 9:12:57 A.M. Eastern Standard Time
Subj: Fwd: FOR IMMEDIATE ATTENTION

Repeating message I sent last evening in the event your ship cannot receive e-mails while it still is at sea..

From: LSHyman@aol.com
To: orlsmith@hotmail.com
CC: swabella@aol.com, bbradley@castletonholdings.com, jerry.willoughby@gmail.com, LSHyman@aol.com
Sent: 12/9/2015 9:31:41 P.M. Eastern Standard Time
Subj: FOR IMMEDIATE ATTENTION

Dear Premier:

On December 7th you and Messrs. Wiseman, Bradley and Willoughby signed the Framework Agreement for direct non-stop air service between EIS and MIA, as well as direct service between EIS and SJU. In the side agreement document it was agreed by the parties (BVI Government and and BV Airways et al) that initially the service to MIA would be implemented either before, or at the same time as, the service to Puerto Rico.

The side agreements also guaranteed that the BVI government shall not invoke sovereign immunity from any claim made against it by BVI Air under this agreement. That is a matter that only can be decided by a court of law. Further it stated that, during the term of the agreement plus three years, Government would not provide a subsidy or guarantee to any other air service.

You, sir, agreed to all of the above, as well as to the letter of credit in the amount of seven million dollars from the BVI Government which states that, under the schedule of payments, after the initial three years of the agreement, there will be no further financial commitment on the part of the BVI government...that, if anything, there would be payments to the BVI Government.

During the day of December 8th, with regard to the two side agreements (sovereign immunity and subsidies as well as the letter of credit), you e-mailed to me: "OK I am ready to sign".

However, on the evening of December 8th, without any prior notice or discussion whatsoever, Neil Smith sent us completely different side agreements than the one we all had agreed upon (see attachment). He has eliminated the sovereign guarantee and, as well, the subsidy language. Note Neil's comment (MMS1) on the right-hand side of the document which states: "I have run this by other legal counsel. It is not our gift to give and cannot be included." Whoever crafted this language should be overruled by the Premier since it violates the agreements made by the parties. This is an issue that can only be ruled upon by the justices of a court of law and not by some anonymous local lawyer. Frankly we all were shocked at these last-minute significant proposed changes which were sent to us without prior consultation of any kind.

Messrs. Wiseman, Bradley and Willoughby insist that the language we all (including you, Premier) agreed upon re subsidies and sovereign immunity must be restored to the side agreements. It would be a shame if this entire project falls apart because of a change that has been suggested after all the parties had agreed on the appropriate language. If this situation is not remedied immediately (returning to the originally approved language), the gentlemen named above inform me that they will have to withdraw from the project. I do hope that that is not the result. The goal of improving BVI's tourist sector is too important to be dashed because of this matter.

As U.S. Legal Counsel to the BVI, I respectfully suggest that the proposal that both sides agreed to should stand so we can go forward with this essential matter. Thank you for your consideration of my views. Please note that your response and signature must be received by close of business today in order to avoid the loss of a great opportunity for the BVI.

Always sincerely,

Lester S. Hyman
U.S. Legal Counsel for the British Virgin Islands

EXHIBIT 10

Message

From: tenenj@gtlaw.com [tenenj@gtlaw.com]
Sent: 22/12/2015 02:30:39
To: orlsmith@hotmail.com
CC: jerry.willoughby@gmail.com; sweisman@eticocapital.com; bbradley@castletonholdings.com; LSHyman@aol.com; sdelacy@bvairways.com
Subject: RE: Side Letter

Dear Dr. Smith, many thanks for your reply. Kind regards, Jeffrey

From: Orlando Smith [mailto:orlsmith@hotmail.com]
Sent: Monday, December 21, 2015 9:06 PM
To: Tenen, Jeffrey S. (Shld-Mia-CP)
Cc: jerry.willoughby@gmail.com; sweisman@eticocapital.com; bbradley@castletonholdings.com; LSHyman@aol.com; sdelacy@bvairways.com
Subject: Re: Side Letter

Hello Jeffry

I have asked my secretary to have the document ready for my signature

And you should have received it or will receive shortly

I want to thank Bruce and the team for working so closely with us to get to this point

Sincere regards

DO Smith

Premier BVI

Sent from my iPhone

On Dec 21, 2015, at 5:17 PM, tenenj@gtlaw.com wrote:

Dear Dr. Smith, it appears that the redline comparison may not have been received. I attach a copy hereto for your convenience. Kind regards, Jeffrey

Jeffrey S. Tenen
Shareholder
Greenberg Traurig, P.A. | 333 S.E. 2nd Avenue | Miami, FL 33131
Tel 305.579.0727
tenenj@gtlaw.com | www.gtlaw.com



From: Tenen, Jeffrey S. (Shld Mia-CP)
Sent: Monday, December 21, 2015 4:15 PM
To: 'Orlando Smith'
Cc: Jerry Willoughby; 'sweisman@eticocapital.com'; Bruce Bradley; Tenen, Jeffrey S. (Shld-Mia-CP); 'LSHyman@aol.com'; 'sdelacy@bvairways.com'
Subject: Side Letter

Dear Dr. Smith,

Attached please find a copy of the Side Letter revised pursuant to your conversation with Mr. Bruce Bradley of earlier today. We have incorporated the requested changes and I attach both a clean and a red-lined comparison to the most recent version of the document circulated last Friday evening.

We trust that the document is now in agreeable form and would request that you execute four (4) originals and forward the same to my attention at the address below. We would also request that you send an advance copy by email. Upon receipt of both the electronic copy and the originals, I will circulate the same to the partners for execution. Should you have any questions, please do not hesitate to contact me.

Kind regards,

Jeffrey

Jeffrey S. Tenen
Shareholder
Greenberg Traurig, P.A. | 333 S.E. 2nd Avenue | Miami, FL 33131
Tel 305.579.0727
tenenj@gtlaw.com | www.gtlaw.com



If you are not an intended recipient of confidential and privileged information in this email, please delete it, notify us immediately at postmaster@gtlaw.com, and do not use or disseminate such information.

<GTRedline_185030697v2 - 185033023v1.pdf>

EXHIBIT 11

From: LSHyman@aol.com
To: lorna.smith@lgassociates.com
Sent: 2/12/2016 9:03:26 A.M. Eastern Standard Time
Subj: Legal fees

Dear Lorna:

I am deeply disappointed by the failure of the BVI government to pay my legal fees in a timely manner. \$25,000 became due on September 30th of last year, and an additional \$25,000 became due on December 31st of last year...a total of \$50,000 long overdue. To date I have not received a penny despite my many requests.

During the third and fourth quarters of 20015, I devoted literally hundreds of hours of my time 1) to improving the U.S. Government's listing of the BVI as an offshore entity as well as obtaining acknowledgement of our successful efforts to combat drug running, and 2) to creating the airline that will provide non-stop service from Tortola to Miami, as well as helping Government and private sector officials when they have problems in Washington.

I respectfully submit that the new airline never would have come into being without my efforts. If I were to have charged my usual legal fee for this matter alone for the six month period, it would have been \$378,000 plus out-of-pocket expenses. Instead all I ever have requested is a total of \$50,000. now long overdue, and have never even received the courtesy of a response to my many inquiries.

In all the years that I have been privileged to serve the BVI as its U.S. legal counsel, I never have asked for an increase in my \$25,000 per quarter fee which originally was set by Hon. H. Lavity Stoutt. Also I never have asked for reimbursement of my expenses.

I continue to devote many hours of my time to the airline matter.

Is there any way you can help me resolve this matter?

Warmest regards.

Les

EXHIBIT 12

Message

From: LSHyman@aol.com [LSHyman@aol.com]
Sent: 27/12/2016 21:19:10
To: orlsmith@hotmail.com
Subject: Emergency

LAWYER'S CONFIDENTIAL AND PRIVILEGED COMMUNICATION

Dear Orlando:

Our whole airline project is about to blow up because of ASSI's failure to give us their approval. They said they would have answers to us by the end of the year. Now they say they are shut down until next year. It's my understanding that the BVI pays ASSI a huge amount of money each year. Therefore you have every right to demand an affirmative decision from them. Otherwise the whole project is going to end. I understand that many of their complaints involve actions that the BVI government can take. Why has that not happened? It would be a shame if all our hard work goes up in flames unless something happens immediately. Bruce and Scott have been paying all the employees for the project. Their funding people are fed up and threatening to withdraw their support. Let me please suggest again that you arrange a summit meeting with ASSI immediately. I'm sure you'll agree that we cannot afford to let this project end. Thank you for hearing my frank views of where we stand.

Warmest regards.

Les

Warmest regards.

Les

EXHIBIT 13

Message

From: Lester Hyman [lshyman@aol.com]
on behalf of Lester Hyman <lshyman@aol.com> [lshyman@aol.com]
Sent: 06/04/2017 20:27:54
To: orlsmith@hotmail.com
Subject: Confidential memo re meeting tomorrow morning

Dear Orlando: Just a brief note before you and your colleagues have your meeting with Bruce and Scott tomorrow morning. The news a few days ago that American Airlines is ending its non-stop flights from New York to San Juan opens up a tremendous opportunity for the BVI. It comes at the same time that BVI Airways is prepared to fly non-stop from Tortola to New York, as well as non-stop service from the BVI to Miami on beautiful new planes that BVI Airways has purchased (not leased, as some opponents have wrongly claimed). This inevitably will result in a tremendous boost to BVI tourism, the second pillar in the BVI economy. I realize that a few officials are determined to kill the BVI Airways proposal. Nevertheless, for all the years I have had the privilege of knowing you, your decisions consistently have been based solely upon what is best for the BVI now and in the future. I would be very disappointed if a few government officials are allowed to deprive the people of the BVI of this wonderful direct air service to Miami and to New York. Let me add that I have known many American businessmen over the years, but never have I worked with as honorable and effective a business leader as Bruce. He cares deeply about the BVI and never would suggest any project that would be hurtful to your government or to the people of the BVI. When this airline proposal comes to fruition, the BVI not only will prosper but will have a great friend for the future in Bruce Bradley. Finally, despite the push and pull from all directions, I am convinced that you will make the right decision for the future of the British Virgin Islands. Thank you for allowing me to sound off, Orlando; I do it for no other reason than my love for the BVI, my second home for the past thirty years (and hopefully many more!). Your friend always, Les

EXHIBIT 14

Message

From: Lester Hyman [lshyman@aol.com]
on behalf of Lester Hyman <lshyman@aol.com> [lshyman@aol.com]
Sent: 18/04/2017 01:59:11
To: orlsmith@hotmail.com
Subject: Urgency

Dear Orlando:

From all I can gather, we've finally come to the end of the road...it's now or never that Government must make a decision regarding the BVI Airways proposal. I realize that you are being bombarded both by 1) the many supporters of the project including, I believe, the majority of the citizenry of the BVI and, 2) a few people who adamantly oppose the project for irrational personal reasons that are not clear to me. From everything I can gather, you have been very successful in gaining new concessions from Bruce and Scott (such as vouchers for lower fares and converting some of the existing debt to equity). So now is the time of decision and for working through these final details together.

One cannot overestimate how much positive results the BVI to Miami run, as well as the BVI to New York run, will do for our economy. Once your government has approved the BVI Airways proposal, you will see quickly the benefits of these beautiful state-of-the-art planes that will bring high end tourists from all over the world to the BVI. Without the BVI Airways project, tourism will continue to decline...the pillar will be destroyed. Once the BVI no longer is a favored destination by seasoned travelers, there will be no chance of reviving our tourist economy outside of the cruise ship business. I wish you had seen the expressions of excitement and thankfulness of the children (and their parents) who just have been flown to Curacao by BVI Air. This is just a small example of how this project will be received by the citizens of the BVI. By approving the BVI Airways plan, you will be assured that, by the time your service as Premier comes to an end, I predict that you will be thanked by the citizens of the BVI for having saved their economy. This project will assure your legacy as a wise and forward-looking leader who saved the BVI economy for the benefit of all its citizens. Please don't let this golden opportunity pass you by. The time to act is now...or never! Thanks again for hearing me out, Orlando.

Warmest regards from your friend and your U.S. Legal Counsel.

Les

EXHIBIT 15

Message

From: Lester Hyman [lshyman@aol.com]
on behalf of Lester Hyman <lshyman@aol.com> [lshyman@aol.com]
Sent: 18/06/2017 12:34:12
To: orlsmith@hotmail.com
Subject: A very personal letter

Dear Orlando:

I just wanted you to know that I am troubled, as I know you are, that the airline project has become so controversial.

When I brought Bruce Bradley to you more than two years ago, I did so because I was excited that he could resolve our ability to fly large planes on our short runway and, in so doing, revive and expand BVI's tourism opportunities especially with non-stop flights from Miami to Tortola and later from New York to Tortola. I had checked out Bruce carefully and determined that he was (and is) a man of honesty with a track record of success. It was my believe then, and now, that he is a good man and that this project will be good for the BVI. I believe that you share that opinion.

Bruce knew from the beginning, and knows now, that I am involved in this project solely in my capacity as the United States legal counsel for the BVI, and so I have tried every single day for more than two years to help bring the parties together successfully. Yet people in Tortola whom I have considered to be very close friends have accused me of siding only with one side when my only goal is to serve the best interests of the BVI. That hurt!

I understand the financial difficulties that face the BVI. My heart goes out to you as you try to juggle this project and many others with limited resources which you inherited when you became Premier. I hope that somehow we can figure out a solution to the dilemma we currently face. But I hope that you agree that I have served as an honest broker in the airline project. Most of all, I hope that our friendship that I treasure remains unbroken.

Warmest regards.

Les

P.S. I will be in Tortola from July 1 to 21 and hope we still can have one of our breakfasts while I am there.

From: lshyman@aol.com,
To: bfbradley@icloud.com,
Subject: Fwd: BVI Airways Inc.
Date: Thu, Jun 20, 2019 6:51 pm
Attachments: Letter to Lester Hyman dated 20 June 2019 (00073062xB3AE0).PDF (48K)

-----Original Message-----

From: lshyman <lshyman@aol.com>
To: bfbradleyruce <bfbradleyruce@icloud.com>
Sent: Thu, Jun 20, 2019 6:47 pm
Subject: Fwd: BVI Airways Inc.

Bruce: Can we please discuss this letter ASAP? At age 88, I have been bed-ridden for the past few weeks with a badly bruised right hip and elbow. Just beginning to feel better when this just came. Les

-----Original Message-----

From: Andrew Gilliland <AGilliland@mksolicitors.com>
To: LSHyman@aol.com <LSHyman@aol.com>
Cc: Martin Kenney <mkenney@mksolicitors.com>; Craig Allam <callam@mksolicitors.com>
Sent: Thu, Jun 20, 2019 3:55 pm
Subject: BV Airways Inc.

Dear Mr. Hyman

Please see attached letter in relation to the above matter.

Yours sincerely,

Andrew Gilliland
Interim Head of Litigation | **MARTIN KENNEY & CO., Solicitors**
Preferred Area of Practice: *International Fraud*

Third Floor, Flemming House, P.O. Box 4740, Road Town, Tortola, British Virgin Islands, VG 1110
T: +1 (284) 494-2444 Ext.2446 | F: +1 (284) 494-3313 | M: +1 (284) 346-1487 | W: www.martinkenney.com
BVI Representative of the International Chamber of Commerce's Fraudnet www.icc-fraudnet.com

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From: lshyman@aol.com,
To: bfbradley@cloud.com,
Subject: Proposed Response
Date: Sat, Jun 22, 2019 4:17 pm

Bruce: Below is my proposed reply to Martin Kenney & Co.'s "urgent" request to me for "paper file and electronic file including all e-mails" regarding the BVI Airways matter. Could you please give me your reaction ASAP before I send this e-mail?. Many thanks. Les

Dear Mr. Gilliland:

I write to you regarding your e-mail letter to me of June 20.

You are correct that I, for many, many years (through three BVI Administrations beginning in the 1990's), provided advice to the Government of the British Virgin Islands as their U.S. Legal Counsel.

In that capacity I introduced Mr. Bruce Bradley, a highly respected U.S. businessman to the then Premier, D. Orlando Smith. Mr. Bradley informed the Premier of a special airplane that could take off and land safely at the BVI's existing short runway (without requiring an airport extension) and offer tourists non-stop service from Miami to the BVI and eventually non-stop service from the BVI to New York. That's how it all started.

At Premier Smith's request, I worked with *both* the BVI Government and BVI Air to help achieve that result. To the best of my recollection, there were no written communications between me and the BVI Government or BVI Air regarding the BVI Air matter...everything was done telephonically or in person. Whenever I came from my home in Washington, D.C. to the BVI, I met privately one-on-one with Premier Smith to review the situation regarding the proposed new airline. As of July 30, 2017 my relationship as U.S. Legal Council to the BVI government ended. At that time I was 86 years old.

Always sincerely,

Lester S. Hyman

P.S. See biographical notes below.

LESTER S. HYMAN, LAWYER AND STRATEGIC ADVISOR

Lester S. Hyman is a Washington, D.C. attorney with more than 60 years of experience in law, politics, business, the arts and international affairs.

After serving in the federal government as an attorney with the U.S. Securities and Exchange Commission and later as Senior Consultant to the U.S. Secretary of Housing and Urban Development, Mr. Hyman returned to his home state of Massachusetts where, as a protégé of John F. Kennedy, he was Chief Assistant to the Governor, Secretary of Commerce and Development, and Chairman of the Democratic Party of that State. He also has taught at the Kennedy School of Government at Harvard University.

He then returned to Washington where he was a founder of the prominent law firm of Swidler Berlin representing major business clients both in the United States: (20th Century Fox, McGraw Hill) and overseas: France (Roussel Uclaf), Germany (Hoechst), Japan (Matsushita, Mazda), Korea (Hyundai), as well as representing a number of countries (Haiti, Liberia, Bermuda and the Virgin Islands).

Mr. Hyman has been very active in international peace resolution work in Africa where he has worked closely with former President Jimmy Carter and the International Negotiating Network. He was President Clinton's representative at the signing of the Guatemala Peace Treaty as well as Clinton's appointee to the Franklin D. Roosevelt Memorial Commission. He is the author of the 2004 book "U.S. Policy Towards Liberia" and the 2018 book "JFK...the Kennedys...and I".

He currently serves on the Boards of the Truman Center for National Policy, the Center for Advanced Defense Studies (C4ADS), and the International Intellectual Property Institute (IIPi).

As a devotee of the arts, Mr. Hyman served on the District of Columbia Arts and Humanities Council, and the Boards of the Norton Simon Museum of Art and the Dana Tai Soon Burgess Dance Company. In education, he was a member of the Board of the University of the District of Columbia and for 30 years served on the Board of the H. Lavity Stoutt Community College in the British Virgin Islands. "

From: Bruce Bradley
To: [Pollack, Barry](#)
Cc: [Deffebach, Anna](#)
Subject: FW: Airport proposal
Date: Tuesday, March 10, 2020 8:25:42 AM
Attachments: [image001.jpg](#)
[Airportextensionintroductionf11.docx](#)

Relationship?



Bruce F. Bradley
Castleton Holdings, LLC

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From: Lester Hyman <lshyman@aol.com>
Date: Sunday, December 29, 2013 at 8:31 AM
To: Bruce Bradley <bbradley@castletonholdings.com>
Subject: Fwd: Airport proposal

From: [LSHyman@aol.com](#)
To: [bbradley@gmail.com](#)
Sent: 12/28/2013 5:45:37 P.M. Eastern Standard Time
Subj: Fwd: Airport proposal

Here it is!

From: [LSHyman@aol.com](#)
To: [orlsmith@hotmail.com](#)
Sent: 12/28/2013 3:25:34 P.M. Eastern Standard Time
Subj: Airport proposal

Dear Orlando:

Attached please find our proposal for non-stop airline service from Tortola to Miami, as well as non-stop service from Tortola to San Juan. We trust that you will find it of great interest. We look forward to your reaction. I will be in Tortola from the 4th to the 10th of January. Perhaps we could have one of our 8am breakfasts to discuss the proposal further.

Warmest regards.

Les

From: Bruce Bradley
To: [Pollack, Barry](#)
Cc: [Deffebach, Anna](#)
Subject: FW: Proposal for direct flights between Miami and Tortola
Date: Tuesday, March 10, 2020 8:44:38 AM
Attachments: [image001.jpg](#)

See highlighted sentence below



Bruce F. Bradley
Castleton Holdings, LLC

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From: Bruce Bradley <bbradley@castletonholdings.com>
Date: Friday, March 21, 2014 at 12:36 PM
To: Orlando Smith <orlsmith@hotmail.com>
Cc: Lester Hyman <LSHyman@aol.com>
Subject: Re: Proposal for direct flights between Miami and Tortola

Dear Premier,

I apologize for not being able to reach you earlier. I am in transit with my family to the Bahamas, but will try to call you upon my arrival.

I appreciate your concerns. However, I would argue that with the revenue guarantee, it would be in your government's interest to assure this exclusivity for this specific aircraft and routes. Moreover, any airport operator would want this revenue stream and understand that the runway expansion would provide for larger more efficient aircraft, hence eliminating any potential conflict. This AVRO aircraft only makes sense because of current runway conditions.

Hence, I am willing to accept your proposal with one added clarification. That the BVI Government shall use "best efforts" to maintain this exclusivity.

If you can kindly add this clause, initial and return the executed document to me I would greatly appreciate.

We will then proceed in good faith with the feasibility study that will hopefully demonstrate to both parties that this enterprise is viable. At that juncture (roughly 60 days from now), if we are both comfortable, we then can sort through the complex details involved in the formal agreement.

Getting there will require a relationship and trust and I am comforted by the good will and personal exchange we have experienced to date.

Lester has played a valuable role in keeping this project on course and I would like to acknowledge how fortunate we are to have him as intermediary.

Premier, I look forward to moving forward with you on this venture.

Respectfully,



Bruce F. Bradley
Castleton Holdings, LLC

On Mar 21, 2014, at 7:37 AM, "Orlando Smith" <orlsmith@hotmail.com> wrote:

Good morning Mr Hyman and Mr Bradly. I do agree that a direct flight between Miami and Tortola is critical to the improvement of the visitor arrivals to the BVI, and is an objective which we have been working on over the years.

The proposal which you have made would certainly do that and we are excited about it!

However we are also well into negotiations on the reorganisation and expansion of the airport which will expand our capabilities greatly.

As we discussed, the two ideas are not mutually exclusive, and an immediate direct flight remains an immediate objective.

The proposal that you have discussed with us provides for the covering of all costs as well as ten to twenty percent profit, and the likelihood of greater profitability. The chances of anyone else flying without a load factor guarantee is virtually nil.

We have had long and wide discussion about the exclusivity aspect and are not comfortable with the idea given the structure of the development of the airport.

We then propose that a clause be added to the proposal that exclusivity can be given provided that the persons, organisations who will be financing and building and running the airport are satisfied. If some such clause is not included we fear that the objective of expanding the airport will be impeded.

DO Smith

From: Bruce Bradley
To: [Pollack, Barry](#)
Cc: [Deffebach, Anna](#)
Subject: FW: First draft of letter to Orlando
Date: Tuesday, March 10, 2020 9:01:08 AM
Attachments: [image001.jpg](#)

You should find the original email that Lester sent at my urging addressing the potential conflict and his “additional role”.



Bruce F. Bradley
Castleton Holdings, LLC

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From: Lester Hyman <LSHyman@aol.com>
Date: Wednesday, July 30, 2014 at 3:54 PM
To: Bruce Bradley <bbradley@castletonholdings.com>
Subject: First draft of letter to Orlando

Bruce: Is this the kind of letter you had in mind? Please feel free to edit it in any way you see fit. Thanks. Les

DRAFT

Dear Orlando:

As you undoubtedly know, as long-time U.S. Legal Counsel to the British Virgin Islands, I have been devoting a tremendous amount of my time (literally hundreds of hours) continuously since November of last year trying to help put together an airline that would fly non-stop from Miami to Tortola and not require any extension of the existing Terrence Lettsome Airport's runway. Such a project will be a boon to the BVI's tourist industry, one of the two pillars of our economy.

To achieve this project, I brought to the table a well-known U.S. business leader, Bruce Bradley, who is ready, willing and able to bring such a project to fruition. The parties (the BVI Government and Bradley a/k/a Castleton Holdings) now have signed an MOU and approved the preparation of a feasibility study (currently underway), the terms of which have been agreed upon by both parties. Upon completion of the feasibility study, the BVI Government may enter into a contract with Castleton Holdings, Mr. Bradley's company, and the work will

proceed.

I sincerely believe that the project is essential to improving the BVI economy, and I respectfully submit to you that I have been instrumental in bringing the parties together, explaining each to the other, and suggesting compromises that both sides could accept. I respectfully submit that, but for my legal work on this matter, it would not have come to fruition.

Accordingly, Bruce has suggested that I should be appropriately compensated for my work on this project. Once the contract has been signed by the parties, Bruce has suggested that a fair "success fee" for my legal work should be \$200,000. As was done in the case of the feasibility study, he believes that that amount should be shared equally by the two parties (BVI government and Castleton Holdings) in the amount of \$100,000 each, payable upon the signing of the contract by the parties.

Would you please let me know at your earliest convenience whether this arrangement would be satisfactory to the BVI Government? Many thanks.

Always sincerely,

Lester S. Hyman

P.S. I will be in Tortola for most of the month of August and would be pleased to discuss this matter with you in person.

From: Bruce Bradley
To: [Pollack, Barry](#)
Cc: [Deffebach, Anna](#)
Subject: FW: Waiver plus Fee
Date: Tuesday, March 10, 2020 9:04:30 AM
Attachments: [image001.jpg](#)

This email confirms that Lester sent this to the Premier



Bruce F. Bradley
Castleton Holdings, LLC

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From: Bruce Bradley <bbradley@castletonholdings.com>
Date: Wednesday, August 6, 2014 at 8:11 PM
To: Lester Hyman <lshyman@aol.com>
Subject: Re: Waiver plus Fee

Yes agreed, with the understanding that the second half (\$100,000) may need to be deferred for 12 months as we discussed at lunch.



Bruce F. Bradley
Castleton Holdings, LLC

On Aug 5, 2014, at 12:24 PM, "Lester Hyman" <lshyman@aol.com> wrote:

Bruce:

As soon as Carnival week is over, I hope to meet both with the Acting Governor and with the Premier (separate meetings) to discuss the waiver issue.

On another front, I have e-mailed to the Premier the letter I shared with you regarding your suggestion of a 100/100 split (total of 200,000) between Government and Castleton for my services.

I want us to make it clear, however, that if, for any reason, Government declines to pay me 100,000 when the project comes to fruition, Castleton then will pay me the entire 200,000 at that time.

I would appreciate your assent to that arrangement.

Many thanks.

Les

From: Bruce Bradley
To: [Pollack, Barry](#)
Cc: [Deffebach, Anna](#)
Subject: FW: Confidential memorandum re resuming AVRO project
Date: Tuesday, March 10, 2020 9:21:15 AM
Attachments: [image001.jpg](#)

Regarding Lester's fee and other work for BVI Airways



Bruce F. Bradley
Castleton Holdings, LLC

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From: Lester Hyman <LSHyman@aol.com>
Date: Friday, June 19, 2015 at 9:29 AM
To: Bruce Bradley <bbradley@castletonholdings.com>
Subject: Confidential memorandum re resuming AVRO project

LAWYER'S PRIVILEGED AND CONFIDENTIAL MEMORANDUM

Dear Bruce:

When you and I originally embarked upon our efforts to bring the AVRO planes to Tortola in order to provide non-stop flights between Miami and Beef Island, we spoke about a success fee of approximately \$200,000 for my making that possible. As you well know, I spent a tremendous amount of time on that project without any compensation. (Scott did pay me \$5000 for my role in advising him re the dispute between the BVI Aviation Authority and BVI Air).

Am I correct in assuming that you and Scott now will be working together to revive the Avro project? Scott and Jerry Willoughby currently are engaged in conversations with me involving my resuming negotiations with the BVI Government.

Before my doing so, however, I respectfully request written assurance that 1) I will receive only out-of-pocket expenses as I pursue this result and then, once a contract is signed between you and Scott and the BVI, I would receive \$200,000 as my success fee.

Would you please be kind enough to discuss this matter with Scott and let me know the result before I begin my discussions with the BVI authorities (primarily Premier Orlando Smith, Lorna Smith and head of tourism Russell Harrigan)?

I am hopeful that this time we will succeed.

Warmest regards.

Les

From: Bruce Bradley
To: [Pollack, Barry](#)
Cc: [Deffebach, Anna](#)
Subject: FW: Dinner at Capella
Date: Tuesday, March 10, 2020 9:56:34 AM
Attachments: [image001.jpg](#)

Context – first meeting/exchange



Bruce F. Bradley
Castleton Holdings, LLC

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From: Bruce Bradley <bbradley@castletonholdings.com>
Date: Sunday, September 15, 2013 at 11:22 AM
To: Lester Hyman <LSHyman@aol.com>
Subject: Re: Dinner at Capella

Dear Lester,

Thank you for your kind note. I am very pleased to hear you enjoy the hotel and hope you will become a frequent guest.

I always envisioned this as a quite refuge for my friends and something that could become their home away from home and escape from the bustle of Washington. Not quite Tortola, but something very different for Washington.

You are quite right about our friend Michael. He has been a wonderful friend and great promoter of the hotel. I am sure there will be many business partnerships for us in the future! He is a pretty amazing individual and has a special vision for Africa.

I hope our paths cross again soon. If I can be of service, please let me know.

Best regards,



Bruce F. Bradley
Castleton Holdings, LLC

Sent from my iPhone

On Sep 14, 2013, at 7:40 AM, "LSHyman@aol.com" <LSHyman@aol.com> wrote:

Dear Bruce:

Just a brief note to tell you how much I enjoyed meeting you last evening at Capella. We had a fantastic meal, and the hotel itself is truly beautiful. Congratulations on creating this wonderful addition to Washington life.

Always sincerely,

Les Hyman

P.S. I think you should give my dear friend Michael Moussa some stock in the hotel!...he truly is an ambassador of good will for your place...he first introduced me to it, as he's done for so many others.

<Lester Hyman.docx>

UNITED STATES DISTRICT COURT

for the
District of Columbia

The Attorney General of the British Virgin Islands

Applicant

v.

Lester S. Hyman, Esq.

Defendant- Intervenor

Misc. Case No. 1:19-mc-00164-RCL

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Lester S. Hyman

(Name of person to whom this subpoena is directed)

☒ **Production: YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: As set forth in the attached Schedule "A"

Place: Same Day Process Service
1413 K St., N.W., Fl. 7
Washington, DC 20005

Date and Time:

06/19/2020 9:00 am

☐ **Inspection of Premises: YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

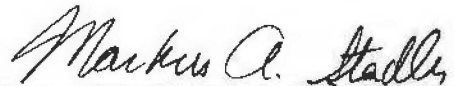
Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 06/10/2020

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk**Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* The Attorney General of the British Virgin Islands, who issues or requests this subpoena, are:

Markus Stadler, Martin Kenney & Co., P.O. Box 4740, Road Town, Tortola VG1110, British Virgin Islands, mstadler@mksolicitors.com, (284) 494-2444

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE “A”

- (1) Lester S. Hyman, Esq.,’s entire client file for the British Virgin Islands (“BVI”), which shall also include any documents, correspondence, or any other material that should be in the client file but that Mr. Hyman may not as of yet have included in the client file
- (2) For the period of January 1, 1987, to the present, copies of all documents (whether in electronic or hard copy form) evidencing, describing, or otherwise mentioning any retainers, letters of engagement, letters of instructions, or any other document setting out the nature of the agreement(s) between Mr. Hyman and the BVI for the provision of legal advice or other services to the BVI
- (3) For the period from August 1, 2013, to the present, copies of all documents and information (whether in electronic or hard copy form) in Mr. Hyman’s possession, custody, or control arising from or in connection with Mr. Hyman’s provision of legal or other services to the BVI including, but not limited to, documents and information relating to the failed airline venture
- (4) For the period from January 1, 1987, to December 31, 2017, copies of all annual reports (or similar) issued by Mr. Hyman to the BVI that set out a summary of the services rendered by Mr. Hyman in exchange for his \$100,000 annual retainer
- (5) For the period from August 1, 2013 to the present, copies of all communications (whether in electronic form or hard copy) in Mr. Hyman’s possession, custody, or control between Mr. Hyman and any of the Operator Parties¹

¹ The “Operator Parties” include: (1) BV Airways Inc.; (2) Castleton Holdings LLC; (3) Colchester Aviation LLC; (4) Colchester Aviation Ltd.; (5) Raptor Aviation Ltd.; (6) any shareholders (whether indirect or direct, corporate or individual, legal or beneficial), directors, officers, or any other related party or affiliate of, or acting on behalf of or in conjunction with, any of the enumerated five legal entities; (7) Bruce Bradley; (8) Jamaal Brown; (9) Adam Frieman; (10) Scott Weisman; (11) Jerry Willoughby; and/or (12) any party acting on behalf of or in conjunction with any of the five enumerated individuals.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ATTORNEY GENERAL OF
THE BRITISH VIRGIN ISLANDS,

Applicant,

for Judicial Assistance to Obtain Evidence
for Use in a Foreign Proceeding Pursuant
to 28 U.S.C. § 1782.

v.

LESTER HYMAN, ESQ.,

Defendant-Intervenor.

Case No. 1:19-mc-164-RCL

ORDER

For the reasons set forth in the accompanying Memorandum Opinion, the Court **GRANTS IN PART AND DENIES IN PART** the application for judicial assistance to obtain evidence for use in a foreign proceeding pursuant to 28 U.S.C. § 1782 (ECF No. 1).

The Court **DENIES WITHOUT PREJUDICE** the requests for discovery from persons or entities other than Mr. Hyman, which the applicant may refile once it learns the identities of the specific persons or entities from which it seeks information. The applicant should ensure that its requests for discovery from these third parties are narrowly tailored and seek only financial/tax information that is directly relevant to the contemplated lawsuit. The current wording of these requests asks for:

- An Order that the applicant may serve subpoenas *duces tecum* on any information technology person or entity residing or found in the District of Columbia that has provided, at any time since January 1, 2014, any information technology service, to include also anyone or any entity that has maintained and/or provided backup services of any computer, server, information technology device, and/or email correspondence, to Mr. Hyman and/or any legal entity, in which Mr. Hyman holds or has held, directly or indirectly, legally or beneficially, a fifty percent or greater interest, compelling the production of: (1) Any document, spreadsheet, presentation, email correspondence

(whether draft or actually sent or received), or any other electronic file that is part of, or should be part of, Mr. Hyman's client file for the BVI; and (2) For the period from January 1, 2014 to the present, copies of all documents, spreadsheets, presentations, and other electronic files that were saved at any time during the period and that relate in any way to the BVI, Mr. Hyman's representation thereof, and/or any of the Operator Parties and all email correspondence during the period to or from, or saved as a draft by, Mr. Hyman and/or any person affiliated in any way with any legal entity, in which Mr. Hyman holds or has held, directly or indirectly, legally or beneficially, a fifty percent or greater interest, that relate in any way to the BVI, Mr. Hyman's representation thereof, and/or any of the Operator Parties.¹

- An Order that the applicant may serve subpoenas *duces tecum* on any bank, savings and loan association, credit union, securities broker-dealer, or other financial institution residing or found in the District of Columbia that holds or has held a Bank Account of Mr. Hyman at any time since September 1, 2013, compelling the production of: For the period from September 1, 2013, to the present, copies of all wire transfer records, debit advices, credit advices, remittance advices, statements of account, correspondence, emails, checks, demand drafts, or any other documents processed or held with respect to any Bank Account of Mr. Hyman.²
- An Order that the applicant may serve subpoenas *duces tecum* on any income tax preparer, advisor, or accountant residing or found in the District of Columbia who prepared, advised, or assisted with Mr. Hyman's U.S. federal income tax returns and/or related materials for the years 2014, 2015 2016, 2017, and/or 2018, compelling the production of: Copies of all correspondence, emails, documents, tax returns, schedules to the same, and any other records in electronic or hard copy form that show the quantum, sources, and nature of Mr. Hyman's income from January 1, 2014, to December 31, 2018.

The Court **DENIES WITHOUT PREJUDICE** the two overly broad requests for discovery from Mr. Hyman. The applicant may immediately file a more narrowly tailored request for financial/tax information that is directly relevant to the airline and the contemplated lawsuit. If, at a later date, the applicant wants to refile these requests as currently worded, for the

¹ The "Operator Parties" include: (1) BV Airways Inc.; (2) Castleon Holdings LLC; (3) Colchester Aviation LLC; (4) Colchester Aviation Ltd.; (5) Raptor Aviation Ltd.; (6) any shareholders (whether indirect or direct, corporate or individual, legal or beneficial), directors, officers, or any other related party or affiliate of, or acting on behalf of or in conjunction with, any of the enumerated five legal entities; (7) Bruce Bradley; (8) Jamaal Brown; (9) Adam Frieman; (10) Scott Weisman; (11) Jerry Willoughby; and/or (12) any party acting on behalf of or in conjunction with any of the five enumerated individuals.

² A "Bank Account of Mr. Hyman" is any account held at any bank, savings and loan association, credit union, securities broker-dealer, or other financial institution that is held in the name of Mr. Hyman or any legal entity, in which Mr. Hyman holds or has held, directly or indirectly, legally or beneficially, a fifty percent or greater interest.

reasons explained in the accompanying Memorandum Opinion, it will need to make a strong showing that such broad discovery is warranted. The current wording of these requests asks for:

- An Order that the applicant may serve *duces tecum* on Lester S. Hyman, Esq., compelling the production of: (1) For the period from September 1, 2013 to the present, copies of all account statements, payment advice slips, checks, wire transfer confirmations, cash receipt slips, or any other financial document (whether in electronic form or hardy copy) in respect to any Bank Account of Mr. Hyman, including documents or communications of any kind showing information regarding any and all payments or deposits made by electronic funds transfer, banker's draft, check, or cash for the credit of any Bank Account of Mr. Hyman; and (2) For the years 2014, 2015, 2016, 2017, and 2018, copies of all U.S. federal income tax returns (including all schedules to such tax returns) filed by Mr. Hyman as well as a statement setting out a detailed breakdown of the sources, nature, and amounts of income realized by Mr. Hyman in those years.

As set forth below, the Court **GRANTS** the application with respect to all other requests for discovery from Mr. Hyman.

It is **ORDERED** that the applicant may serve subpoenas *duces tecum* on Lester S. Hyman, Esq., compelling the production of: (1) His entire client file for the BVI, which shall also include any documents, correspondence, or any other material that should be in the client file but that Mr. Hyman may not as of yet have included in the client file; (2) For the period of January 1, 1987 to the present, copies of all documents (whether in electronic or hard copy form) evidencing, describing, or otherwise mentioning any retainers, letters of engagement, letters of instructions, or any other document setting out the nature of the agreement(s) between Mr. Hyman and the BVI for the provision of legal advice or other services to the BVI; (3) For the period from August 1, 2013 to the present, copies of all documents and information (whether in electronic or hard copy form) in Mr. Hyman's possession, custody, or control arising from or in connection with Mr. Hyman's provision of legal or other services to the BVI including, but not limited to, documents and information relating to the failed airline venture; (4) For the period from January 1, 1987 to December 31, 2017, copies of all annual reports (or similar) issued by

Mr. Hyman to the BVI that set out a summary of the services rendered by Mr. Hyman in exchange for his \$100,000 annual retainer; and (5) For the period from August 1, 2013 to the present, copies of all communications (whether in electronic form or hardy copy) in Mr. Hyman's possession, custody, or control between Mr. Hyman and any of the Operator Parties.³

It is **ORDERED** that the applicant may serve subpoenas *ad testificandum* on Mr. Hyman, compelling him to testify by way of sworn deposition regarding all matters relating to: (1) Any aspect, fact, or other thing arising out of or in any way connected with his representation of the BVI as its attorney; and (2) Any aspect, fact, or other thing connected in any way, also including any aspect, fact, or other thing regarding the BVI's and/or Mr. Hyman's communications and relationships, with any of the Operator Parties.

It is **SO ORDERED**.

Date: May 23, 2020

/s/ Royce C. Lamberth
Royce C. Lamberth
United States District Court Judge

³ The "Operator Parties" include: (1) BV Airways Inc.; (2) Castleton Holdings LLC; (3) Colchester Aviation LLC; (4) Colchester Aviation Ltd.; (5) Raptor Aviation Ltd.; (6) any shareholders (whether indirect or direct, corporate or individual, legal or beneficial), directors, officers, or any other related party or affiliate of, or acting on behalf of or in conjunction with, any of the enumerated five legal entities; (7) Bruce Bradley; (8) Jamaal Brown; (9) Adam Frieman; (10) Scott Weisman; (11) Jerry Willoughby; and/or (12) any party acting on behalf of or in conjunction with any of the five enumerated individuals.

Misc. Case No. 1:19-mc-00164-RCL

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*I received this subpoena for *(name of individual and title, if any)* Lester S. Hymanon *(date)* 06-11-2020

Personally serving

☒ I served the subpoena by delivering a copy to the named person as follows: Lester S. Hymanat 3826 Van Ness St., NW, Washington, DC 20016on *(date)* 06-11-2020 ; or☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of

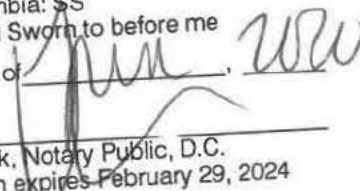
\$ 0.00

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: 06-12-2020*Server's signature*Kion Lathan / Process Server*Printed name and title*1413 K St., NW, Washington, DC 20005*Server's address*

Additional information regarding attempted service, etc.:

District of Columbia: SS
 Subscribed and Sworn to before me
 this 15 day of June, 2020

 K. Mack, Notary Public, D.C.
 My commission expires February 29, 2024



AFFIDAVIT OF PROCESS SERVER

United States District Court for the District of Columbia

The Attorney General of the British Virgin Islands

Plaintiff(s),

VS.

Lester S. Hyman, Esq.

Defendant(s).

Attorney: Markus Stadler

Martin Kenney & Co.

PO Box 4740

Road Town, Tortola, British Virgin Islands VG1110



255297

Case Number: 1:19-mc-00164-RCL

Legal documents received by Same Day Process Service, Inc. on 06/11/2020 at 9:52 AM to be served upon Lester S. Hyman at 3826 Van Ness St., NW, Washington, DC 20016

I, Kion Lathan, swear and affirm that on June 11, 2020 at 5:59 PM, I did the following:

Personally Served Lester S. Hyman the person listed as the intended recipient of the legal document with this **Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action; Schedule "A"; Order (Filed on 05-23-2020); at 3826 Van Ness St., NW , Washington, DC 20016.**

Description of Person Accepting Service:

Sex: Male Age: 88 Height: 5ft4in-5ft8in Weight: 131-160 lbs Skin Color: Indian Hair Color: White

Supplemental Data Appropriate to this Service:

I declare under penalty of perjury that the foregoing information contained in this affidavit is true and correct and that I am a professional process server over the age of 18 and have no interest in the above legal matter.

Kion Lathan
Process Server

Same Day Process Service, Inc.
1413 K St., NW, 7th Floor
Washington DC 20005
(202)-398-4200
info@samedayprocess.com

Internal Job ID:255297



District of Columbia: SS

Subscribed and Sworn to before me

this 15 day of June 2020

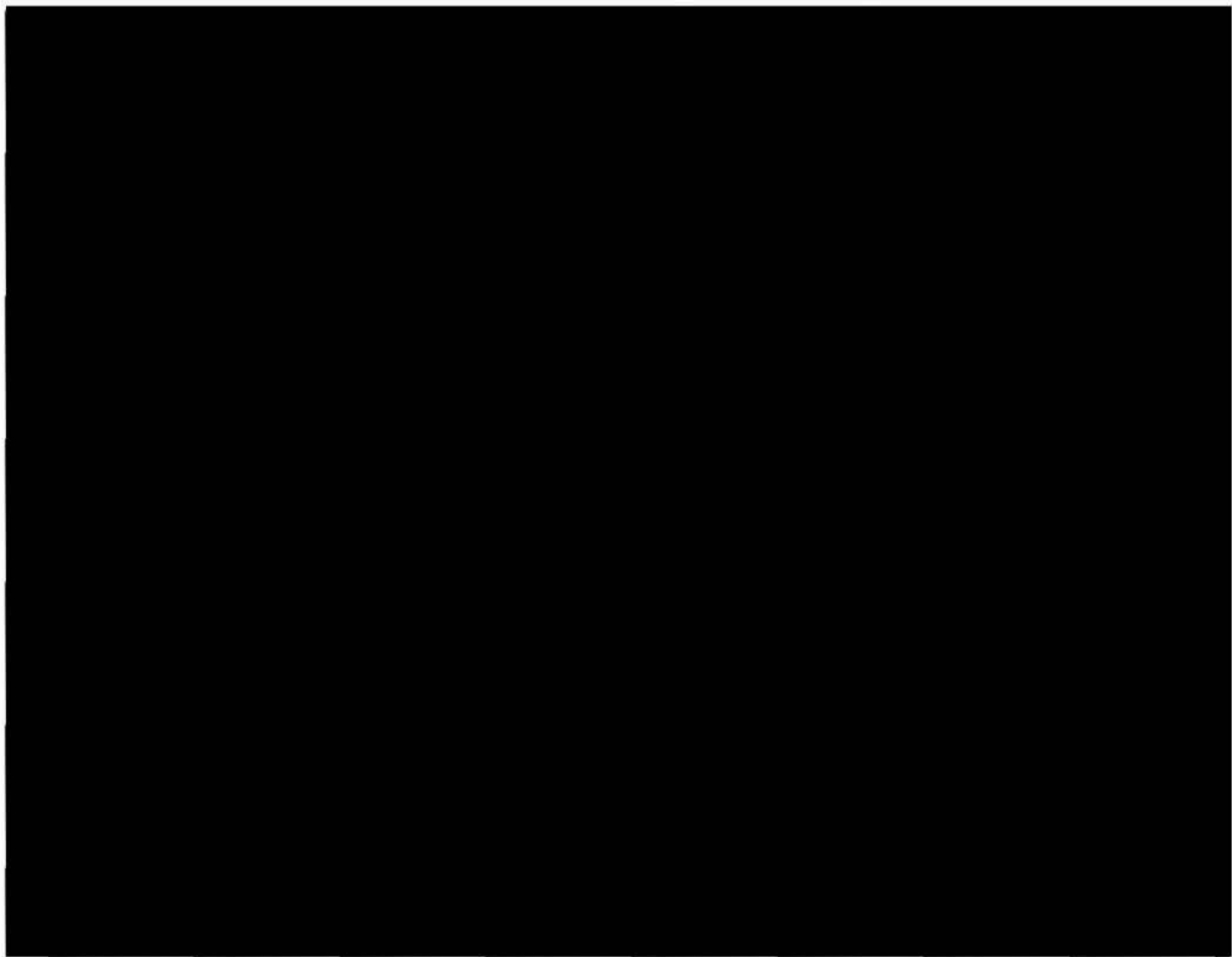
K. Mack, Notary Public, D.C.
My commission expires February 29, 2024

GROSS RECEIPTS OR SALES

[REDACTED]
BRITISH VIRGIN ISLANDS[REDACTED]
50,000.00[REDACTED]
50,000.00[REDACTED] [REDACTED] [REDACTED]
BV AIRWAYS INC[REDACTED]
100,000.00

[REDACTED]

[REDACTED]



Message

From: Orlando Smith [orlsmith@hotmail.com]
on behalf of Orlando Smith <orlsmith@hotmail.com> [orlsmith@hotmail.com]
Sent: 14/01/2015 03:09:08
To: Lester Hyman [lshyman@aol.com]

Dear Lester.

I would like to thank you for your patience and persistence on the matter of a direct flight between Miami and the BVI.

I had communicated to you that given several concerns outlined we were of the opinion that we should not continue with the project; but after further discussion agreed on further revision of the proposal .

Having received that and still being advised by my staff and other professionals within government that it would not be in the BVIs interest to continue, I decided to engage a professional accountant, who engages in project review.

I have now received his report and have discussed with my colleagues before presenting formally to Cabinet. The report from the consultant also indicated that it would not be in the best interest of the BVI to continue with the project, and this opinion was shared with my colleagues.

Regretfully then, although the need for direct access is still a priority I must advise that we cannot continue with on this course.

Sincerely

DO Smith

Premier BVI

Message

From: Orlando Smith [orlsmith@hotmail.com]
on behalf of Orlando Smith <orlsmith@hotmail.com> [orlsmith@hotmail.com]
Sent: 16/01/2015 01:40:03
To: Lester Hyman [lshyman@aol.com]; Bruce Bradley [bbradley@castletonholdings.com]
Subject: airline project

Dear Lester/Bruce

I would like to thank you for your patience and persistence on the matter of a direct flight between Miami and the BVI.

I had communicated to you that given several concerns outlined we were of the opinion that we should not continue with the project; but after further discussion agreed on further revision of the proposal .

Having received that and still being advised by my staff and other professionals within government that it would not be in the BVIs interest to continue, I decided to engage a professional accountant, who engages in project review.

I have now received his report and have discussed with my colleagues before presenting formally to Cabinet. The report from the consultant also indicated that it would not be in the best interest of the BVI to continue with the project, and this opinion was shared with my colleagues.

Regretfully then, although the need for direct access is still a priority I must advise that we cannot continue with on this course.

Sincerely

DO Smith

Premier BVI

-----Original Message-----

From: Lester Hyman <lsyman@aol.com>

To: orsmith <orsmith@gov.vg>

Sent: Sun, Apr 5, 2015 3:19 pm

Subject: New proposal

BVI Air / Turbo-Jet

Dear Orlando:

I just have been contacted by the owner of BVI Air who has a proposal that he believes 1) would be good for the people of the BVI and tourists and 2) **would not cost the Government a cent**. Here is the proposal: he would provide a 50-seater Turbo-prop plane that can take off and land at the Lettsome Airport runway as presently constituted and fly solely between Tortola and San Juan at a passenger cost that could be as much as **40% less** than the smaller plane airlines currently are charging for that same route. It seems to me that this could be an effective campaign issue. All the owner would require is your designating a single person of authority in the Government to help him on a continuous basis with permits, counter space and the like. Because of your Permanent Secretary's many responsibilities, when we were working on the AVRO proposal, he was unable to return phone calls or answer e-mails or attend meetings in a timely manner. For this project, BVI Air would need someone who makes this project truly a top priority. Is this a proposal that would meet with your approval? Please let me know ASAP so I can contact the head of BVI Air again and put him directly in touch with your designee. Obviously all this would have to be worked out before you went public with an announcement. I look forward to your reply.

Warmest regards.

Les

P.S. If the matter described above is a "go", they may later expand the locations they would serve...perhaps even toward the end of the year revisit the AVRO San Juan to Miami route.

<https://mail.aol.com/webmail-std/en-us/PrintMessage>

4/8/2015

TURBO - JST

From: Lester Hyman <lshyman@aol.com>
To: sweisman <sweisman@eticocapital.com>
Cc: swabella <swabella@aol.com>
Subject: Turbo-prop
Date: Sat, Apr 4, 2015 3:18 pm

Dear Scott: I spoke with Lorna last evening about the matter you discussed with me on the phone recently. She expressed interest. Accordingly I prepared the e-mail set forth below to send to Orlando but want to clear it with you before sending. it. Let me know your wishes, please. Les P.S. Had a terrific sail this morning with Benj and Heidi on the G.E.M. (now I know what the name stands for) and watched the regatta race. I'll invite them to dinner next week (it won't be of James Beard quality but it will have to do). P.P.S. My guess is that the BVI election will be held before August of this year.

Dear Orlando:

I just have been contacted by the owner of BVI Air who has a proposal that he believes 1) would be good for the people of the BVI and tourists and 2) **would not cost the Government a cent**. Here is the proposal: he would provide a 50-seater Turbo-prop plane that can take off and land at the Lettsome Airport runway as presently constituted and fly solely between Tortola and San Juan at a passenger cost that could be as much as **40% less** than the smaller plane airlines currently are charging for that same route. It seems to me that this could be an effective campaign issue. All the owner would require is your designating a single person of authority in the Government to help him on a continuous basis with permits, counter space and the like. Because of your Permanent Secretary's many responsibilities, when we were working on the AVRO proposal, he was unable to return phone calls or answer e-mails or attend meetings in a timely manner. For this project, BVI Air would need someone who makes this project truly a top priority. Is this a proposal that would meet with your approval? Please let me know ASAP so I can contact the head of BVI Air again and put him directly in touch with your designee. Obviously all this would have to be worked out before you went public with an announcement. I look forward to your reply.

Warmest regards.

Les

TORTOLERO-PROP

From: Lester Hyman <lshyman@aol.com>

To: swabella <swabella@aol.com>; sweisman <sweisman@eticocapital.com>

Subject: Fwd: New proposal

Date: Mon, Apr 6, 2015 9:49 am

LAWYER'S CONFIDENTIAL AND PRIVILEGED COMMUNICATION

Scott: Here is Lorna's response...very encouraging. Her support is extremely important. Now I await hearing from Orlando. As you undoubtedly know, there is no American who has as close a relationship with both Lorna and Orlando as I. Accordingly, if this new proposal of yours comes to fruition, I would expect to be appropriately recompensed for my efforts in making that possible. Please confirm. All the best! Les P.S. I have a call in to Benj inviting him and Heidi to be my guests for dinner one evening this week. Would you also let me know whether I am at liberty to discuss your excellent proposal with Bruce? Thanks.

-----Original Message-----

From: Lorna Smith <lorna.smith@lgsassociates.com>

To: Lester Hyman <lshyman@aol.com>

Sent: Sun, Apr 5, 2015 3:33 pm

Subject: Re: New proposal

 **Definitely and will make sure Orlando responds asap. Would be great for the BVI!**

On Sun, Apr 5, 2015 at 3:23 PM, Lester Hyman <lshyman@aol.com> wrote:

Lorna: On a confidential basis, I thought you might find the attached of interest. Les

-----Original Message-----

From: Lester Hyman <lshyman@aol.com>

To: orsmith <orsmith@gov.vg>

Sent: Sun, Apr 5, 2015 3:19 pm

Subject: New proposal

Dear Orlando:

I just have been contacted by the owner of BVI Air who has a proposal that he believes 1) would be good for the people of the BVI and tourists and 2) **would not cost the Government a cent**. Here is the proposal: he would provide a 50-seater Turbo-prop plane that can take off and land at the Lettsome Airport runway as presently constituted and fly solely between Tortola and San Juan at a passenger cost that could be as much as **40% less** than the smaller plane airlines currently are charging for that same route. It seems to me that this could be an effective campaign issue. All the owner would require is your designating a single person of authority in the Government to help him on a continuous basis with permits, counter space and the like. Because of your Permanent Secretary's many responsibilities, when we were working on the AVRO proposal, he was unable to return phone calls or answer e-mails or attend meetings in a timely manner. For this project, BVI Air would need someone who makes this project truly a top priority. Is this a proposal that would meet with your approval? Please let me know ASAP so I can contact the head of BVI Air again and put him directly in touch with your designee. Obviously all this would have to be worked out before you went public with an announcement. I look forward to your reply.

Warmest regards.

Les

P.S. If the matter described above is a "go", they may later expand the locations they would serve...perhaps even toward the end of the year revisit the AVRO San Juan to Miami route.

Dear Scott:

Delighted that we were able to get together yesterday...thanks for your hospitality. It was so good to have the opportunity of our getting to know one another better.

Russell just sent me an e-mail telling me that he had his first conversation with you regarding the Tortola-to-San Juan plane route.

That's a good sign re cooperation.

When you have a chance, I'd appreciate it if you would suggest a financial arrangement regarding my legal representation of that project.

I suggest for your consideration that we work out both a fee schedule for the actual time I spend on this matter...and, in addition, a substantial amount as a bonus for a favorable result.

Since you weren't aware of my legal/political/governmental background, I am taking the liberty of attaching a bio.

Warmest regards.

Les

Wednesday, May 6, 2015 AOL: LSHyman
169

HYMAN-BVI_000510

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

COLCHESTER AVIATION LLC,

Plaintiff,

-against-

LUKE SMITH,

Defendant.

Index No.

**REPLY AFFIDAVIT IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT IN
LIEU OF COMPLAINT**

STATE OF CALIFORNIA)
) SS.:
COUNTY OF SOLANO)

I, JERRY WILLOUGHBY declare under penalty of perjury that the following is true and correct:

1. I am the CEO and President of BVAirways, Inc. ("BVIA"), a corporation formed in the British Virgin Islands. Additionally, I am a member of the board of directors of Colchester Aviation, LLC ("Colchester") and am familiar with the facts set forth herein. I submit this Reply Affidavit in further support of Colchester's motion for summary judgment in lieu of complaint, and in response to the false statements in the affidavit of Luke Smith, dated June 9, 2015.

2. I have over forty years of experience in the aviation sector, including over 34 years in the United States Air Force Reserves, of which I was selected to the rank of Brigadier General. Additionally I have served in senior management positions within commercial aviation, including as Vice President of Flight Operations at Cargo 360. I was also a Captain and Check Airmen at Delta Airlines for over 28 years. During my

career, I have managed and commanded thousands of employees and military personnel. In all of my experience, I have never come in contact with a more dishonest, inept and deceitful individual than Luke Smith.

3. I am an aviation consultant of Etico Capital, and its founder Scott Weisman. In June 2013, I became acquainted with BVIA and Luke Smith through an aviation broker by the name of Brian Johnson, President and CEO of Aviation World Services, LLC. Mr. Johnson advised me and Mr. Weisman that Smith was interested in selling his ownership of BVIA. Smith represented that BVIA was a debt free, profitable airline with just over \$2 million dollars annual in revenues, with a net of around \$400,000 after everything was paid.

4. Shortly thereafter, Mr. Weisman and I were introduced to Smith, and we began discussions about a possible acquisition of BVIA. From the beginning, Smith was very anxious to move forward with the acquisition. We explained that Etico Capital required due diligence to obtain a true picture of BVIA's operational status, financial health and regulatory status. Of particular concern was the financial condition of the airline.

5. On September 5, 2013, the parties entered into a term sheet for the acquisition of BVIA by Colchester, subject to due diligence. Under the term sheet, Smith was obligated to pay \$50,000.00 to Etico Capital for reasonable costs and expenses of completing the sale, plus a transaction fee of \$25,000.00. *See Exhibit 5 hereto.* To date, Smith has not made any payment to Etico Capital. Smith was also obligated to pay Mr. Brian Johnson a finders fee in the amount of \$2,500.00, which he never paid. As a result, BVIA ended up paying Mr. Johnson. *See Exhibits 6 & 7 hereto.*

6. Smith alleges that after execution of the term sheet, Colchester effectively took control of BVIA. This is not true. At Smith's request, Mr. Weisman and I provided counseling on steps that Smith should take to place the airline on a more financially stable track. For example, the only aircraft in his operation was coming up on a major inspection that would require grounding the aircraft in early January 2014. We assisted Smith in negotiating with the lessor Corporate Flight Management ("CFM") to obtain the required inspections and repairs on the aircraft. Because BVIA was in arrears with CFM, without the assistance of Colchester, CFM would have refused to conduct further business with BVIA.

7. Because BVIA's sole aircraft was going to be out of service, Smith asked Colchester to assist him in finding another airline to provide subservice while the aircraft was undergoing maintenance. Colchester was in the process of negotiating with an airline in Haiti, Sunrise Airways, and we offered to approach Sunrise on behalf of BVIA to discuss possible subservice. Smith was overjoyed, and BVIA hired Sunrise to provide subservice during this period, to prevent economic deterioration of the airline. However, Smith failed to properly coordinate with all the regulatory authorities of the destinations that BVIA served, as was his responsibility. As a result, permission was denied by the regulatory authority of Saint Maarten and the subservice was terminated.

8. Smith wants to blame the precarious financial state of the airline on others, when in fact the problems were clearly due to his mismanagement of the airline and existed well before Colchester acquired BVIA.

9. Contrary to Smith's claim that he provided complete and accurate financial data to Colchester in due diligence, nothing could be further from the truth.

Smith never produced a profit and loss statement or annual budgets for the years he operated the airline. By his own admission, he had no financial accounting system in place. Mr. Weisman and I began efforts to reconstruct a financial model that we could work with and at the same time determine the viability of the airline.

10. According to Smith, in June 2013, BVIA was debt free. However, by November 2013, his story had changed. During a conference call on November 17, 2013, between Scott Weisman, Smith and myself, Smith stated that BVIA owed \$74,000 to vendors and subcontractors, as well as \$220,000.00 to CFM for overdue aircraft lease payments. Smith's story changed several times during the due diligence process.

11. On February 19, 2014, by an Amended and Restated Certificate of Formation, a pre-existing Delaware limited liability company named Aviation Leasing Associates, LLC, was renamed Colchester Aviation, LLC. *See* Exhibit 8, hereto.

12. Colchester's sole function was to hold BVIA, a small regional Caribbean airline based in Beef Island, Tortola, British Virgin Islands. From inception, Colchester's business office has been located at 3520 Embassy Drive, West Palm Beach, Florida 33401. Colchester has no office, and conducts no operations, in the State of New York. To the extent that Colchester conducts any management activity in New York, such activity is directed exclusively towards Florida and the Caribbean.

13. On March 4, 2014, the parties closed on Colchester's acquisition of BVIA. Only three days later, on March 7, 2014, Smith admitted that BVIA's total debts to vendors and subcontractors was **\$215,785.00**, and BVIA's debt to CFM was **\$302,000.00**. *See* Exhibit 9, hereto. Smith also belatedly stated that BVIA owed the British Virgin Island Airport Authority ("BVIAA") passenger tax, departure fees and

take-off and landing fees, dating back to 2011, in the amount of **\$91,000.00**—although Smith asserted the liability actually was \$45,000.00, or less. *See id.*

14. However, after Colchester's acquisition of BVIA, I discovered further undisclosed unpaid and delinquent debts. Indeed, only sixteen days after closing, BVIA received an email from the BVIAA demanding taxes and fees in the amount of \$169,000.00. *See* Exhibit 10, hereto. In addition, in May 2014, I was contacted by a collection agency representing the US Department of Treasury and Department of Transportation seeking \$20,500.00 in Air Traffic Control oversight fees dating back to 2011. *See* Exhibit 11, hereto.

15. Smith signed the April Note in order to compensate Colchester for the foregoing substantial liabilities, which he did not disclose to Colchester prior to closing. These liabilities are specifically identified in § 18(a) of the April Note, as "Accounts Payable," in the amount of \$275,000, as of April 1, 2014. However, the undisclosed liabilities of BVIA, in fact, were substantially greater than \$275,000.

16. While Smith executed two separate promissory notes in the amount of \$125,000, further investigation indicates that the April Note was meant to be a replacement of the earlier February Note.

17. Smith alleges that after Colchester acquired BVIA, the overdue accounts payable were not paid. This is not true. BVIA immediately began paying down the undeclared and unpaid debts that had now grown to \$615,000.00. By the time BVIA suspended service in September 2014, it had paid almost all of these prior obligations.

18. As part of my efforts to resolve BVIA's debts, I directed Smith to meet with the BVIAA authorities and negotiate a settlement of the \$169,000 liability.

However, Smith failed to do so. Accordingly, on August 28, 2014, I arranged my own meeting with the BVIAA, accompanied by BVIA's General Counsel, Lester Hyman. The outcome of the meeting was positive, and BVIA agreed to work with the BVIAA to resolve the outstanding obligation.

19. In his affidavit, Smith states that after this meeting I was "visibly shaken" and concerned that the BVIAA would take action against the airline. Not only is this not true, but Smith was not present at the meeting. Nor did I see Smith after the meeting, and I left the BVI the following day. Thus, Smith's sworn account is pure fabrication.

20. Smith alleges we "hatched a scheme" to "sneak" the aircraft out of the BVI and that, without informing him, BVIA shut down airline reservations from September 14, 2014, onward. In fact, as Smith knows, service had to be suspended because the aircraft under lease did not have a flight data recorder as required under the Overseas Territories Aviation Requirements ("OTARs"), and BVIA was about to lose its authority to operate in BVI airspace. BVIA thus had to return the aircraft to its lessor in Tennessee. As Chief Operating Officer, Smith was well aware of these circumstances—of his own creation—and advised BVIA concerning as the best date to suspend service.

21. BVIA's plan was to resume service during the high tourist season in January 2015 and, in cooperation with the BVI government, work to provide non-stop service from Miami directly into the BVI. The BVIAA was misinformed about BVIA's planned suspension of service during the low season and—despite our meeting and agreement—took legal action to prevent BVIA from returning the aircraft to CFM in the US. However, the action subsequently was resolved and the aircraft was returned to CFM as originally intended.

22. After the acquisition, I attempted to meet personally with all of the vendors, travel agents and employees, including contract employees. During my interactions and discussions, the disdain for Smith's character and lack of management skills became evident. As a result, on a number of occasions, I was forced to admonish Smith to exhibit professionalism in his role as a senior manager of the company. I offered to mentor Smith in how to properly conduct himself when dealing with customers, suppliers and employees. Despite several documented counseling sessions with Smith, I saw no improvement. Smith failed to manage the airline and appeared incapable of completing the simplest tasks when given clear directions.

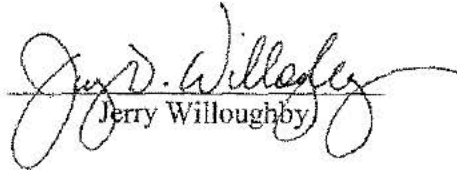
23. The board of directors found Smith to be incompetent, and this ultimately led to his dismissal for cause. There were many reasons for his termination, as outlined in Exhibit 4 to my opening affidavit, not the least of which was failing to pay the salary of one of the pilots, Shaun Munro, and keeping the money for himself. In accordance with Smith's contract of employment, if terminated for cause, the employee is not entitled to further compensation.

24. Smith claims that he has not been paid since August, 2014. This is not true. He received a paycheck on September 15, 2014. *See* Exhibit 12, hereto. As we pay a month in advance, the payment on September 15, 2014 covered his services through the termination date of October 4, 2014. He actually received pay through October 14, 2014. Additionally, despite numerous verbal and written requests formal requests, to this date, Smith has failed to completely account or send receipts for several cash withdrawals from the BVIA checking account in Tortola. *See* Exhibit 13, hereto.

25. Smith attaches as Exhibit I to his affidavit an email, dated August 15,

2014, in which I suggested that BVIA could deduct four monthly installments of \$225 from Smith's housing allowance, to make Smith current under the April Note. In fact, BVIA never did so. Thus, Smith did not pay any amount to Colchester under the April Note.

26. In view of the foregoing, I respectfully request that this Court grant Plaintiffs' motion in its entirety, and enter judgment in favor of Colchester and against Smith on the April Note, plus additional interest and costs.


 Jerry Willoughby

STATE OF CALIFORNIA }
 COUNTY OF SOLANO } ss.:

On the day of July, in the year 2015, before me, the undersigned, a notary public in and for said state, personally appeared JERRY WILLOUGHBY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

See Attachment
 Notary Public

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Solano

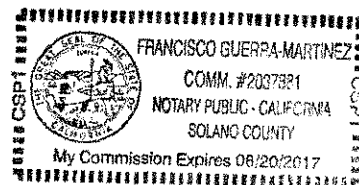
On July 10, 2015 before me, Francisco Guerra-Martinez, Notary Public
(insert name and title of the officer)

personally appeared Jerry Willoughby
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



Bruce: I am really angered by this e-mail from Scott. What do you think I should do next? Les

From: swabella@aol.com
To: lshyman@aol.com
Sent: 3/21/2017 8:58:45 A.M. Eastern Daylight Time
Subj: Re: The rabbi needs some gelt!

Lester

Thank you for your latest note- as you know, funds are extremely limited - we are in the middle of attempting to source additional capital so we can continue and launch service - once we are recapitalized I see gelt in your future

Thank you again for your on going support

Best regards

Scott

Sent from my iPhone

On Mar 19, 2017, at 4:15 PM, Lester Hyman <lshyman@aol.com> wrote:

Dear Scott:

Just a brief note to request that, upon your return from Jamaica (where I hope you are enjoying a well earned, albeit brief, short vacation) you send me a check for \$100,000 as the remainder of the fee owed me for the AVRO project.

As you will recall, the agreed upon total amount of \$200,000 became due as of contract execution which took place in December of 2015.

Of that amount, \$100,000 already has been paid. The remaining \$100,000 became due in December of 2016, but we mutually agreed that it could be held over until the beginning of 2017.

That time now has come. Accordingly, I would be most appreciative if you would send me now a check in that amount (\$100,000) as full payment. Thanks, Scott.

Warmest regards.

Les

EXTREMELY URGENT!!!

From: Lester Hyman <lshyman@aol.com>
To: orsmith <orsmith@gov.vg>
Cc: nmsmith <nmsmith@gov.vg>
Subject: EXTREMELY URGENT!!!
Date: Wed, Mar 22, 2017 5:31 pm

Dear Orlando:

It is extremely urgent that you resolve the guarantee issue tonight or first thing tomorrow morning. I am convinced that Mesrs. Bradley and Scott are not kidding when they say that, if nothing is resolved by close of business tomorrow, the whole BVI Air matter will be ended, **They are not bluffing**. As you know, once they have a guarantee, they will be able to acquire an even larger third plane that can go non-stop between Tortola and New York. Just imagine what a boost this would be to BVI tourism. They also need to be guaranteed that, if you decide to go ahead with the lengthening of the air strip, it will not interrupt their ability be able to take off for the Tortola/New York flight. Bruce and Scott need to discuss the above with you tonight or first thing tomorrow morning. Otherwise, the whole project will be over. I cannot imagine that that is what you want. CAN THEY ARRANGE A CONFERENCE CALL WITH YOU TONIGHT OR TOMORROW MORNING EARLY? Please let me know so I can help set up the call. Many thanks.

Les

Subj: **Confidential memo re meeting tomorrow morning**
Date: 4/6/2017 4:27:54 P.M. Eastern Daylight Time
From: lsyman@aol.com
To: orlsmith@hotmail.com
BCC: bfbbradley@icloud.com

Dear Orlando: Just a brief note before you and your colleagues have your meeting with Bruce and Scott tomorrow morning. The news a few days ago that American Airlines is ending its non-stop flights from New York to San Juan opens up a tremendous opportunity for the BVI. It comes at the same time that BVI Airways is prepared to fly non-stop from Tortola to New York, as well as non-stop service from the BVI to Miami on beautiful new planes that BVI Airways has purchased (not leased, as some opponents have wrongly claimed). This inevitably will result in a tremendous boost to BVI tourism, the second pillar in the BVI economy. I realize that a few officials are determined to kill the BVI Airways proposal. Nevertheless, for all the years I have had the privilege of knowing you, your decisions consistently have been based solely upon what is best for the BVI now and in the future. I would be very disappointed if a few government officials are allowed to deprive the people of the BVI of this wonderful direct air service to Miami and to New York. Let me add that I have known many American businessmen over the years, but never have I worked with as honorable and effective a business leader as Bruce. He cares deeply about the BVI and never would suggest any project that would be hurtful to your government or to the people of the BVI. When this airline proposal comes to fruition, the BVI not only will prosper but will have a great friend for the future in Bruce Bradley. Finally, despite the push and pull from all directions, I am convinced that you will make the right decision for the future of the British Virgin Islands. Thank you for allowing me to sound off, Orlando; I do it for no other reason than my love for the BVI, my second home for the past thirty years (and hopefully many more!). Your friend always, Les

Thursday, April 6, 2017 AOL: LSHyman

HYMAN-BVI_000173

Subj: **RE: Bill for Legal Services**
 Date: 9/3/2014 1:27:27 P.M. Eastern Daylight Time
 From: sweisman@eticocapital.com
 To: lshyman@aol.com

Lester--thank you for your note--are free tomorrow at 11:00?

what number should I call

Best regards

Scott

-----Original Message-----

From: "Lester Hyman" <lshyman@aol.com>

Sent: Tuesday, September 2, 2014 15:38

To: sweisman@eticocapital.com

Subject: Bill for Legal Services

BILL FOR LEGAL SERVICES

Dear Steve:

Please find below a breakdown of the legal work I have performed on behalf of BVI Air over the past month and a half. Although my usual fee is \$650 an hour, as a courtesy I have billed you at the rate of \$600 per hour. In addition I have absorbed personally all out-of-pocket costs (meals, long distance telephone, cell phone and e-mail messages, automobile gasoline, etc.). The recent e-mail from the Royal Governor's Personal Assistant seems optimistic that BVI Air will achieve a satisfactory result vis-a-vis ASSI. I will continue to follow these matters closely and be of service to BVI Air in this important matter. It has been a pleasure working with you and Jerry, and I hope that my work in the BVI will help assure BVI Air a successful future. Les

<u>Subject</u>	<u>Number of hours</u>
TCW Jerry Willoughby re BVI Air problem	.50
LT Governor Boyd McLeary before his departure	.25
Read materials sent by David Lucas (over 200 pages) re ASSI	2.00
E-mail to Steve and Jerry re proposed strategy	.50
Conference call with Steve and Jerry re strategy	.50
Consider revised strategy recommendation	1.00
Study roles of OTAR, ASSI and re both ACAS and FDR	1.25
E-mail Steve and Jerry with compromise suggestion	.50
Conference with Andrew Dimbleby, head of Governor's office re waiver	1.25
LF Dimbleby re meeting with new Governor	.25
TCW Andrew St.Hillaire re Minister Vanterpool's agreement that I should brief the Royal Governor re the waiver issue	.25
Private meeting with Premier D. Orlando Smith at his home to brief him on the waiver issue	1.00
Brief meeting with new Royal Governor John Duncan	.25
Brief meeting with Minister Vanterpool requesting an appointment	.25
TCW Bruce Bradley re emphasizing BVI Air's use of British planes	.25
E-mail from Dimbleby suggesting meeting with Maria Mays re waiver	.25
E-mail to Steve and Jerry re paragraph concerning Governor's authority	.50

Wednesday, September 3, 2014 AOL: LSHyman

HYMAN-BVI_000369

E-mail from Jerry re new strategy vis-a-vis Governor and request to arrange meeting with BVI Airport Authority re alleged fees owed by BVI Air	.25
TWC Jerry re letter to Governor	.25
Draft additions to letter	.50
TCW Maria Mays, Personal Assistant to Governor Duncan	.25
Meeting at airport with BVI Airport Authority re monies owed	1.00
CW Andrew St. Hillaire re status of our project vis-a-vis ASSI	.25
CW Minister Mark Vanterpool re strategy vis-a-vis ASSI	.50
CW Jerry re final version of letter to Governor	.25
TF Maria Mays (Governor's office) re Governor's call to ASSI	.25
E-Mail to Maria requesting Governor's reaction to ASSI call	.25
E-mail from Maria re Governor's call and ASSI's reaction; forward same to with both Steve and Jerry	.25

TOTAL HOURS: 1320 hours @ \$600 per hour equals \$8850

Please remit to: Lester S. Hyman, Esq., 3826 Van Ness Steet NW, Washington, D.C. 20016.

Many thanks.

Always sincerely,

Les

Scott A. Weisman

Co-Chairman

Etico Capital LP

Senior Managing Director

Olympus Securities, LLC

The Chrysler Building

405 Lexington Avenue

New York, NY 10174

212-986-0090 (main)

203-529-4025 (direct)

917-868-8375 (cell)

sweisman@eticocapital.com

www.eticocapital.com

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THE EASTERN CARIBBEAN SUPREME COURT

BRITISH VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

(CIVIL)

CLAIM NO. BVIHCV 2014/00

BETWEEN:

BVI AIRPORTS AUTHORITY LIMITED

Claimant/Applicant

AND

BVI AIRWAYS INCORPORATED

Defendant/Respondent

ORDER

MCW TODMAN & CO

LEGAL PRACTITIONERS FOR THE CLAIMANT

HYMAN-BVI_000377

PENAL NOTICE:

IF YOU THE WITHIN NAMED RESPONDENTS DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND TO HAVE AN ORDER FOR SEQUESTRATION MADE IN RESPECT OF YOUR PROPERTY

ANY DIRECTOR OR OFFICER RESPONSIBLE FOR SUCH DISOBEDIENCE MAY BE LIABLE TO BE IMPRISONED, FINED OR TO HAVE AN ORDER FOR SEQUESTRATION MADE IN RESPECT OF YOUR PROPERTY

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES NAYTHING WHICH HELPS OR PERMITS THE DEFENDANTS TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE LIABLE TO BE IMPRISONED, FINED OR TO HAVE AN ORDER FOR SEQUESTRATION MADE IN RESPECT OF HIS PROPERTY

THE EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS
IN THE HIGH COURT OF JUSTICE
(CIVIL)



CLAIM NO. BVIHCV 2014/00

BETWEEN:

BVI AIRPORTS AUTHORITY LIMITED

Claimant/Applicant

AND

BVI AIRWAYS INCORPORATED

Defendant/Respondent

ORDER

HYMAN-BVI_000378

BEFORE: The Hon. Justice Nicola Byer NG

DATED: The 12th day of September, 2014

ENTERED: The 12th day of September, 2014

UPON the Application seeking injunctive relief filed on 12th September 2014 coming on for hearing without notice

AND UPON READING the affidavits of DIANA MADURO filed on the 12th September 2014

AND UPON HEARING Terrance Neale of Counsel for the Claimant/Applicant with Ms. Elizabeth Ryan

AND UPON the Applicant giving the following undertakings:-

- (a) To serve the Notice of Application, the supporting affidavit, this Order , Notice of Application to continue this Order and a note of this ex parte hearing on the Respondent by close of business today 12th September 2014.
- (b) To abide by any Order the Court may make as to damages in case the Court shall be of the opinion that the Respondent shall have sustained any by reason of this Order which the Applicant ought to pay.
- (c) To keep all information obtained as a result of this Order confidential and not to use such information otherwise than for the purpose of these proceedings save with the permission of this Court.
- (d) If for any reason this Order ceases to have effect, to forthwith take all reasonable steps to inform in writing any person to whom notice of this Order has been given or who

they have reasonable grounds to suppose may act upon this Order that the Order has ceased to have effect.

(e) To serve within 7 days the Claim Form and Statement of Claim filed in the matter

IT IS HEREBY ORDERED as follows:-

Until the date for further consideration of this application

1. An Order restraining **BVI AIRWAYS INCORPORATED**, the Defendant/Respondent in the above action from selling, disposing or removing from the Terrance B. Lettsome International Airport its Super 32 turboprop aircraft Registration Number N487UE.
2. Except as provided below the terms of this Order do not affect or concern anyone outside the jurisdiction of this Court until it is declared enforceable or is enforced by a Court in the relevant country and then they are to affect him only to the extent that they have been declared enforceable or have been enforced unless such person is:
 - i. The Respondent, its directors, officers, servants or agents whether by power of attorney or otherwise; or
 - ii. Any person who:
 - a. is subject to the jurisdiction of this Court
 - b. has been given written notice of this Order at his residence or place of business within the jurisdiction of this Court
 - c. is able to prevent acts or omissions outside the jurisdiction of this Court which constitute or assist in a breach of the terms of this Order; or
 - iii. Any person only to the extent that this Order is declared enforceable by or enforced by a Court in that country or state.

3. There shall be a further hearing of this application with notice to the Respondent on 22nd day of September 2014 at 9:00 a.m. (the "date for further consideration")
4. This Order shall remain in effect until the 23rd September 2014 unless varied or discharged in the interim
5. The costs of this Application are reserved until the further hearing.

BY THE COURT


Dep. REGISTRAR

Subj: **RE: Compromise**
Date: 9/26/2014 1:38:10 P.M. Eastern Daylight Time
From: GFarara@fararakerins.com
To: LSHyman@aol.com

Lester, Your welcome! And many thanks for recommending me for this one. Funds just received into our account.

Gerry

From: LSHyman@aol.com [mailto:LSHyman@aol.com]
Sent: Friday, 26 September 2014 14:34
To: Gerard Farara
Subject: Re: Compromise

Congratulations, Gerry...and thank you very much for achieving this terrific result. Les

In a message dated 9/26/2014 1:27:53 P.M. Eastern Daylight Time,
GFarara@fararakerins.com writes:

Lester,

The proposal emanating from the BVIAA after Orlando's chat with the managing director prompted by your call or email to him, was accepted by our client and the injunction lifted yesterday, subject to our client's undertaking not to move the plane until they have paid the \$75K to the BVAAA, which sum they said they would wire to me today. I am checking, but it has not hit our client account as yet.

Best regards,

Gerry

From: LSHyman@aol.com [mailto:LSHyman@aol.com]
Sent: Friday, 26 September 2014 14:01
To: Gerard Farara
Subject: Compromise

LAWYER'S PRIVILEGED AND CONFIDENTIAL COMMUNICATION

Dear Gerry:

Has the proposal made by you on behalf of Scott Weisman been accepted by the BVIAA?

If not, since the BVIAA is a corporation wholly owner by the Government of the BVI...and since Orlando Smith is the Premier of that Government...could not the Premier overrule the officers of that Corporation and accept the new proposal which I believe is very reasonable to both sides?

All the best.

Les

=

Friday, September 26, 2014 AOL: LSHyman

Message

From: LSHyman@aol.com [LSHyman@aol.com]
Sent: 27/01/2016 01:42:03
To: orlsmith@hotmail.com
CC: jerry.willoughby@gmail.com; swabella@aol.com; bbradley@castletonholdings.com
Subject: BVI Air vs. BVI Airport Authority

Dear Premier:

In response to our telephone conversation of a few hours ago, let me set forth, to the best of my knowledge, what the situation is in terms of BVI Air's dealings with the Airport Authority.

About two years ago, one of the new owners of BVI Air (Jerry Willoughby) met with Ms. Maduro at the Airport Authority regarding monies allegedly owed by BVI Air to the Authority. Mr. Willoughby was told that that amount was \$77,000. Mr. Willoughby wanted some documentation as to what that amount of money consisted of. Apparently there were poor records on this subject.

Almost immediately thereafter, the Airport Authority, knowing that there was a new owner of BVI Air, said out of the blue that \$169,000 was owed instead of the \$77,000. As discussions between the parties were about to ensue, the Authority, without any prior notice, placed a lien on BVI Air's plane.

BVI Air then retained the legal services of Gerry Farara with regard to that matter. Upon his advice, BVI Air then paid the Authority \$75,000 with the understanding that the parties would work out their differences later on. However, to the best of my knowledge, those additional talks never took place.

Note, please that the Framework Agreement that you signed in December states: "Each of the Parties irrevocably and unconditionally...agrees that any and all obligations or amounts due to...the Government (including, without limitation, any Government agency, department, body, office or ministry) acting in any capacity, for any reason whatsoever, has been satisfied, waived, or otherwise discharged, in full."

Accordingly, it would appear to me that since BVI Air has paid \$75,000 to the Airport Authority, the Framework Agreement states clearly that no further funds are owed to the Authority.

Please do not hesitate to let me know if you seek any further information regarding this matter.

Best personal regards.

Always sincerely,

Lester S. Hyman

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE ATTORNEY GENERAL OF)	
THE BRITISH VIRGIN ISLANDS)	
)	
<i>Applicant</i>)	
)	
for Judicial Assistance to Obtain Evidence)	
for Use in a Foreign Proceeding Pursuant to)	
28 U.S.C. § 1782)	Misc. Case No. 1:19-mc-00164-RCL
)	
v.)	
)	
LESTER S. HYMAN, ESQ.)	
)	
<i>Defendant-Intervenor</i>)	
_____)	

(PROPOSED) ORDER

Upon considering all filings by the Parties and this Court, particularly (1) the Applicant's Motion to Amend Relief Sought, and any opposition thereto; (2) the Applicant's Application for Judicial Assistance to Obtain Evidence for Use in a Foreign Proceeding Pursuant to 28 U.S.C. § 1782, ECF no. 1; and (3) the Court's May 23, 2020, Memorandum Opinion, ECF no. 9, this Court hereby:

1. **GRANTS** the Applicant's Motion to Amend Relief Sought in paragraph 45(a)(iii) of the Application, ECF no. 1, to compel instead the statement and production of:
 - a. From the Defendant-Intervenor:
 - i. For the period from September 1, 2013, to the present, a sworn written declaration, in the form of responses to the Applicant's interrogatories, detailing each and every payment that the Defendant-Intervenor (including also any party acting on his behalf or any party, in which the Defendant-

Intervenor has a 50% or greater beneficial, financial, legal, voting, and/or other controlling interest, whether directly or indirectly) made to, received from, and/or offered by and/or promised to any of the Operator Parties¹ including the date, amount, method (e.g., cash, check, wire transfer, etc.), and purpose of the payment (or offer or promise thereof) as well as whether the Defendant-Intervenor made or received (or offered or promised, or was offered or promised) the payment and the identities of the Defendant-Intervenor's counterparty and the financial institutions involved in the transaction. The sworn declaration shall also include a statement that all responsive payments (or offers or promises thereof) have been disclosed. The sworn statement shall also be accompanied with copies of all documentary evidence in relation to payments (or offers or promises thereof) detailed in the sworn statement, including, but not limited to, any and all deposit confirmations, payment advice slips, canceled checks, wire transfer confirmations, cash receipt slips, or any other financial document (all of which whether in electronic or hard copy form) as well as all correspondence in relation with the payments (whether with financial institutions, any of the Operator Parties, or otherwise).

¹ The "Operator Parties" include (1) BV Airways Inc.; (2) Castleton Holdings LLC; (3) Colchester Aviation LLC; (4) Colchester Aviation Ltd.; (5) Raptor Aviation Ltd.; (6) any shareholders (whether indirect or direct, corporate or individual, legal or beneficial), directors, officers, or any other related party or affiliate of, or acting on behalf of or in conjunction with, any of the enumerated five legal entities; (7) Bruce Bradley; (8) Jamaal Brown; (9) Adam Frieman; (10) Scott Weisman; (11) Jerry Willoughby; and/or (12) any party acting on behalf of or in conjunction with any of the five enumerated individuals.

2. **ORDERS** that the Defendant-Intervenor shall respond to the Applicant's Interrogatories attached as Appendix "1" hereto and produce the documents or other things demanded in connection therewith within fourteen calendar days of the entry of this Order by the Court and deliver to the Applicant's attorney in the manner prescribed in the Applicant's Interrogatories.

3. **ORDERS** that in the event that any statement, document, or other thing cannot be technically delivered to the Applicant's attorney by electronic means, the postage costs for shipment via courier shall be borne by the Applicant.

SO ORDERED,

Date: _____

Royce C. Lamberth
United States District Court Judge

APPENDIX “1”

(PROPOSED) APPLICANT’S INTERROGATORIES

Applicant, through its attorney, Markus A. Stadler, requests that the Defendant-Intervenor respond to the following interrogatories. You are required to answer these interrogatories separately and fully in writing, under oath. You are required to respond to these interrogatories no later than fourteen calendar days after the entry of the Court’s order compelling the responses to these interrogatories to the undersigned at mstadler@mksolicitors.com or, to the extent that electronic delivery is not possible, to the undersigned’s attention via courier² at Martin Kenney & Co., Third Floor, Flemming House, Road Town, Tortola, VG1110, British Virgin Islands.

INSTRUCTIONS

1. Each interrogatory is to be answered fully on the basis of information that is in your possession or knowledge.
2. In each of your answers to these interrogatories, you are required to provide not only such information as is in your possession or knowledge but also information as is reasonably available. In the event that you are able to provide only part of the information called for by any particular interrogatory, please provide all the information you are able to provide and state the reason for your inability to provide the remainder.
3. If you object to or otherwise decline to answer any portion of an interrogatory, please provide all information called for by that portion of the interrogatory, to which you do not object or to which you do not decline to answer. For those portions of an interrogatory, to which you object or to which you do not decline to answer, state the reason for such objection or declination.

² Courier costs will be borne by the Applicant.

4. Every interrogatory herein shall be deemed a continuing interrogatory and information in addition to or in any way inconsistent with your initial answer to such Interrogatory.

DEFINITIONS

1. “Defendant-Intervenor” means Lester S. Hyman and any party acting on his behalf, or any party, in which Mr. Hyman has a 50% or greater beneficial, financial, legal, voting, and/or controlling interest, whether directly or indirectly.
2. “Operator Parties” include (1) BV Airways Inc.; (2) Castleton Holdings LLC; (3) Colchester Aviation LLC; (4) Colchester Aviation Ltd.; (5) Raptor Aviation Ltd.; (6) any shareholders (whether indirect or direct, corporate or individual, legal or beneficial), directors, officers, or any other related party or affiliate of, or acting on behalf of or in conjunction with, any of the enumerated five legal entities; (7) Bruce Bradley; (8) Jamaal Brown; (9) Adam Frieman; (10) Scott Weisman; (11) Jerry Willoughby; and/or (12) any party acting on behalf of or in conjunction with any of the five enumerated individuals.
3. “Documentary evidence” includes, but is not limited to, any and all deposit confirmations, payment advice slips, canceled checks, wire transfer confirmations, cash receipt slips, account statements (redacted as necessary), or any other financial document, all of which whether in electronic or hard copy form.
4. “Correspondence” means any and all inquiries, discussions, conferences, conversations, negotiations, agreements, meetings, interviews, telephone conversations, letters, notes, telegrams, facsimiles, electronic mail, memoranda, or other forms of communications, including but not limited to both oral and written communications.

5. “Identify” means to give a sufficient characterization of such documentary evidence or correspondence so as to properly identify it and shall include, without limitation, the following information with respect to each such document:
 - a. The date appearing on such documentary evidence or correspondence, and if it has no date, the answer shall so state and shall give the date or approximate date of such documentary evidence or correspondence.
 - b. The general nature and description of such documentary evidence or correspondence.
6. “Produce” means to provide a legible true copy of the original of any documentary evidence or correspondence.

INTERROGATORIES

1. State each and every payment for the period from September 1, 2013, to the present, that the Defendant-Intervenor made to, received from, offered and/or promised to, or was offered and/or promised by any of the Operator Parties, including, for each and every payment, the:
 - a. Date;
 - b. Amount;
 - c. Method of payment (e.g., cash, check, wire transfer, etc.);
 - d. The account, or accounts, to and/or from which any payments were made;
 - e. Purpose;
 - f. Whether the Defendant-Intervenor made, received, offered or promised, or was offered or promised the payment;
 - g. The identity of the Defendant-Intervenor’s counterparty or counterparties; and

- h. The financial institution, or institutions, involved in the transaction, including the names and addresses of any and all branches of the institution or institutions involved in the payment.
2. Identify and produce all documentary evidence in relation to each and every payment detailed in response to Interrogatory (1) above.
3. Identify and produce all correspondence in relation to each and every payment detailed in response to Interrogatory (1) above.
4. State whether, in response to Interrogatory (1) above, the Defendant-Intervenor has disclosed all responsive payments (or offers or promises thereof).

August 21, 2020

/s/ Markus A. Stadler

Markus A. Stadler

D.C. Bar No. 1046805

Attorney for the Applicant

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