

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS & ST. JOHN

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SUPERIOR COURT  
THE VIRGIN ISLANDS

IN THE MATTER OF THE ESTATE OF )  
JEFFREY E. EPSTEIN, ) ST-19-PB-000080  
)  
Deceased. )  
\_\_\_\_\_ )

**SUPPLEMENTAL BRIEF REGARDING CO-EXECUTORS OBLIGATIONS TO  
SATISFY EXPENSES OF ADMINISTRATION NOTWITHSTANDING LIENS  
ISSUED TO "THE ESTATE"**

COME NOW the Co-Executors of the Estate of Jeffrey E. Epstein (the "Estate"), DARREN K. INDYKE & RICHARD D. KAHN, and respectfully submit the following supplemental brief in support of their request, as personal representatives of the Estate, that they be permitted to continue to administer the Estate in an orderly fashion, irrespective of the (defective) liens filed by the Government of the Virgin Islands (the "GVI").

**I. RELEVANT PROCEDURAL AND FACTUAL BACKGROUND**

On August 10, 2019, Jeffery E. Epstein, a domiciliary of the U.S. Virgin Islands, died testate in New York. On August 15, 2019, a Petition for Probate and for Letters Testamentary was filed with this Court. On September 6, 2019, Letters Testamentary were issued to Darren K. Indyke and Richard D. Kahn, who have served as Co-Executors since then.

**The Government's Action against the Estate**

On January 15, 2020, the GVI filed a Complaint in this Court, Case No. ST-20-CV-14, against the Estate, the 1953 Trust, and several other entities, asserting claims under the Criminally Influenced and Corrupt Organizations Act, 14 V.I.C. § 600 *et. seq.* ("CICO"). On January 16, 2020, the GVI issued five Criminal Activity Lien Notices (collectively, the "Liens"), purportedly pursuant to 14 V.I.C. § 610. And, on January 23, 2020, the GVI sought leave to intervene in this probate proceeding.

**II. THE LIENS ARE INVALID AND, IN ANY EVENT, CANNOT IMPEDE THE COURT'S PRIMARY JURISDICTION OVER THE CO-EXECUTORS, THE ESTATE'S ASSETS AND ADMINISTRATION OF THE ESTATE**

The Liens filed by the GVI are invalid. Criminal Activity Lien Notices do not apply to executors of an estate, as expressly provided in 14 V.I.C. § 604(r). Rather, Criminal Activity Lien Notices apply to *trustees* pursuant to 14 V.I.C. § 610. In turn, a “*trustee*”, under CICO, does not include an executor appointed by, or under the control of, or accountable to, a court. Therefore, a Section 610 lien is not applicable to the executors of this or any estate. *See* 14 V.I.C. § 604(r).

The entire CICO action is defective as well because the GVI has failed to follow the statutory procedures outlined in 15 V.I.C. § 606(b) that must be met before such an action can be commenced. Simply put, a claimant cannot commence an action against an estate until it has first presented its claim to the Co-Executors and they have disallowed that claim. The GVI has failed to do that. Additionally, an action may not be commenced against an executor until the expiration of twelve months from the granting of letters testamentary. *15 V.I.C. § 606 (a)*. “Section 606(a) clearly authorizes a plaintiff to commence an action against an estate's executor or administrator in the Superior Court, and mandates that at the time of commencement (1) the estate have been open for a minimum of twelve months, and (2) the executor or administrator's duties in administering the open estate are ongoing. 15 V.I.C. § 606(a).” *Ottley v. Estate of Bell*, 61 V.I. 480, 491-92 (V.I. 2014).

Furthermore, the GVI has improperly sued and named the Estate as a defendant in its CICO forfeiture action. It is axiomatic that an estate is not a legal entity and cannot be sued.<sup>1</sup>

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<sup>1</sup> *See, e.g.*, 31 Am. Jur. 2d Executors and Administrators § 1141 (2016) (“Since estates are not natural or artificial persons, and they lack legal capacity to sue or be sued, an action against an estate must be brought against an administrator or executor as the representative of the estate.”). “It is a widely recognized principle that “[a] trust is not a legal entity. A trust is not an entity distinct from its trustees and capable of legal action on its own behalf ... .” Am. Jur. 2d Trusts § 3 (2013). *See also*, Amy Morris Hess, George Gleason Bogert & George Taylor Bogert, *Bogert's Trusts and Trustees* § 712 (2012) (“A trust is not a legal person, nor is the

The same holds true with respect to the GVI naming the 1953 Trust – which also cannot be sued -- as a defendant in its forfeiture action.

Furthermore, the GVI's liens are of no legal consequence. As noted above, the GVI's CICO action and the Liens improperly name and were issued to the Estate and the 1953 Trust, which are not legal entities. In addition, the applicable lien statute, 14 V.I.C. §§ 604(r) and 610, expressly excludes the Co-Executors from the reach of the Liens. Notably, the GVI has not yet presented its claims to the Co-Executors. Furthermore, in the event its claims are disallowed, the GVI must prosecute its claims before this Court in this probate proceeding, as required by 15 V.I.C. § 606(b).

Because the Liens are invalid, pursuant to 4 V.I.C. § 610(t)(1), the Court should enter a judgment extinguishing them and retain exclusive control of the assets and property of the Estate, including all entities named in the CICO action.

**A. Payment of Administrative Expenses has the Highest Priority**

The Virgin Islands Code creates an unambiguous preference in favor of payment of expenses of the Estate's administration. An executor "may retain in his hands in preference to any claim or charge against the estate, the amount of his own compensation and the necessary expenses of administration." 15 V.I.C. § 421(c).

Assuming *arguendo* that the Liens applied to the Co-Executors, the Liens would nevertheless be subordinate to the Estate's administrative expenses because the Court obtained jurisdiction of the Estate's assets before the GVI filed the Liens. Per 14 V.I.C. § 610(f):

The lien shall commence and attach as of the time of filing of the Criminal Activity Lien Notice and shall continue thereafter until expiration, termination or release as provided herein. The lien created in favor of the Government of the Territory of the Virgin Islands shall be superior to and prior to the interest

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trust property."); *Greenspan v. LADT, LLC*, 191 Cal. App. 4th 486, 521 (Cal. Ct. App. 2010) ("because '[a] trust is not a legal entity,' it 'cannot sue or be sued ... .'"); *Sec. Life of Denver Ins. Co. v. Shah*, No. CV411-008, 2011 WL 2181485, at \*1 (S.D. Ga. June 2, 2011) ("The trustee is the real party in interest in such a claim, not the trust itself. In fact, if the trust itself were joined to the action and attempted to assert such claims against SBN and Howie, the Court would be required to dismiss them.").

of any other person in the personal or real property or beneficial interest in it, **if the interest is acquired subsequent to the filing of the notice.** (Emphasis supplied).

Therefore, the Court continues to have full and exclusive control and jurisdiction over disposition of the Estate's assets.

**B. The Estate Cannot Function Unless Permitted to Pay its Expenses**

Unless the Estate's administrative expenses are paid in a timely manner, the Co-Executors' efforts to continue to administer the Estate will come to a grinding halt. This would benefit no one. At a minimum, the Court should reject any contention by the GVI that the Liens should operate to freeze the Estate's operating accounts, which are unrelated to any property alleged to have been a material part of criminal activity in the Virgin Islands.

The Estate has accumulated expenses that are in urgent need of payment. The Co-Executors, as personal representatives of the Estate, have been sued in multiple jurisdictions. They must be able to retain counsel to defend twenty-two (22) pending lawsuits filed in multiple jurisdictions. They have also needed to retain counsel to represent them concerning a multitude of complicated trust and estate matters, unlike most other estates, and the Co-Executors are properly receiving ongoing legal advice in this and in other jurisdictions. Such matters include novel and complicated U.S. and multi-jurisdictional issues confronting the Estate, including analyzing and addressing (i) complex and novel U.S., international, and multi-jurisdictional tax issues in the context of the extensive number of entities that are included in the Estate and which continue to operate, numerous known and unknown claims against the Estate, and the fiduciary duty issues that arise therefrom; (ii) administration issues with respect to a complicated Will and related pour-over trust and the various tax and financial issues and fiduciary obligations that result therefrom; (iii) a myriad of claims in various courts that the decedent committed sexual abuse in several locations within and outside of the United States and endeavoring to develop an

alternative method of resolving those claims; (iv) potential claims by the U.S. government that properties belonging to the decedent or entities he controlled are subject to civil forfeiture, civil actions and grand jury or criminal investigations related to the decedent in the United States as well as internationally; (v) issues that arise with respect to the decedent's (and now the Estate's) assets; (vi) litigation and research support regarding U.S. and French law on tax, trust, probate, asset management, litigation, potential civil forfeiture-related litigation and resolution, and related issues; and (vii) a comprehensive estate administration process for an extremely complex estate, given the multiple jurisdictions at issue (including New York, Florida, New Mexico, France and the U.S. Virgin Islands), tax and fiduciary issues that arise therefrom, as well as issues that arise as a result of the sexual assault claims made against the decedent and the Estate.

The Estate also has significant ongoing expenses that must be paid. For instance, the Estate must pay employees who are charged with preserving the Estate's substantial assets, including real property that is part of the Estate, for the benefit of all parties with an interest in the Estate. For example, notwithstanding the Liens, the Estate must safeguard and maintain the island of Little St. James. The same holds true for the Estate's substantial properties and assets located in multiple domestic jurisdictions and France. Likewise, the Co-Executors, as personal representatives of the Estate, must pay the Estate's income taxes and very substantial estate taxes on behalf of the Estate, and must employ accountants to maintain the accounts of the Estate, prepare quarterly accountings, and assist with preparing both income and estate tax returns, a substantial undertaking for an estate of this magnitude. Additionally, the Estate must hire and pay appraisers so that, *inter alia*, the Estate's taxes may be properly calculated and paid. Finally, the Co-Executors must retain the ability to make payments needed to maintain assets, particularly the real properties and related assets, so they do not fall into disrepair. Allowing that to happen would hurt everyone with an interest in the Estate.

If the Co-Executors are rendered unable to satisfy these expenses, it will cripple the Estate, jeopardize the Estate's assets, and prevent the Co-Executors from carrying out their fiduciary obligations.

### **III. THE EQUITIES STRONGLY DISFAVOR THE IMPOSITION OF THE LIENS**

The sweeping remedies belatedly sought by the GVI in its Complaint and the drastic constraints the GVI seeks to impose by the Liens it seeks, as set forth above, would completely shut down the Co-Executors' ability to administer the Estate. In addition, although the GVI claims it seeks the imposition of the Liens so it can compensate "victims who were trafficked and abused by Epstein in the Virgin Islands," (Motion to Intervene at p. 5), the heavy-handed methods it uses to try to achieve this purported goal would severely hamper if not destroy the voluntary claims resolution program (the "Program") and thereby undercut the GVI's own stated objective.

The Co-Executors have set forth in detail in their Reply to Government's Opposition to Estate's Motion for Establishment of a Voluntary Claims Resolution Program (the "Reply") the reasons why the Program was established and why the Court should authorize it to move forward. They have explained in depth why it is imperative that the Program's Administrator begin working with claimants who have already expressed their interest in voluntarily participating in the Program. A few points bear emphasis here.

First, the Co-Executors share the GVI's interest in providing a forum for any women that make claims of sexual abuse that took place in the Virgin Islands. As explained in the Reply, the Program Administrator is prepared to make sure any such claimants have the opportunity to share the basis for their claims in a confidential, private setting. There is no need for the GVI to now, after the Program is being developed and is rapidly progressing toward receiving claims, to undertake the expense to create a competing program for hearing

claims that exclusively relate to conduct that occurred in the Virgin Islands. To do so would be a tremendous and pointless waste of assets. (It also would usurp the proper role and authority of this Court)

Second, as set forth in the Reply, the GVI's criticisms of the Program often contradict each other and are based on an inaccurate reading of the Program's terms. As set forth in the November 14, 2019 announcement of the "Establishment of the Epstein Victims' Compensation Program," [EXHIBIT A] the Program is being designed and administered by independent experts with a remarkable track record; participation in it is 100% voluntary; claimants will be permitted to continue to prosecute their lawsuits against the Estate unless and until they accept an award from the Program; claimants will be afforded confidentiality and privacy; claimants will have counsel to protect their rights; there is no cap or limit on the Program Administrator's ability to award compensation; and "the Estate will have no authority to modify or reject [the Administrator] Ms. Feldman's decisions on any basis or as to any claim."

Already, dozens of claimants have expressed interest in participating in the Program. Furthermore, five of them have voluntarily stayed their lawsuits against the Estate pending their participation in the Program. If the GVI has its way, all of those claimants will be denied the alternative of the Program and will be forced to litigate. Not one cent will go to claimants without their being forced to litigate for it. Nothing could be more harmful to these claimants or the Estate than what the GVI seeks to have this Court order – all supposedly to help those claimants and preserve the Estate's assets.

### **CONCLUSION**

For the foregoing reasons, the Co-Executors respectfully request that the Court reject the Liens and allow the Co-Executors to continue to administer the Estate in an orderly fashion.

Respectfully,

Dated: January 31, 2020



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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 31<sup>st</sup> day of January 2020, I caused a true and exact copy of the foregoing **Supplemental Brief** to be served upon:

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A handwritten signature in blue ink, appearing to read "J. Russell B. Pate", is written over a horizontal line.

## **Administrator Jordana H. Feldman Announces Proposed Establishment of the Epstein Victims' Compensation Program**

Jordana ("Jordy") H. Feldman, Kenneth R. Feinberg and Camille S. Biros today announced that the Co-Executors of the Estate of Jeffrey E. Epstein ("Estate") have filed documents in the Superior Court of the U.S. Virgin Islands, seeking expedited approval from the Court for the establishment of a voluntary claims resolution program that will allow eligible individuals the opportunity to resolve their sexual abuse claims against Mr. Epstein and his Estate through a confidential, non-adversarial alternative to litigation.

Ms. Feldman, Mr. Feinberg and Ms. Biros – distinguished, independent claims administration experts with extensive experience in fashioning similar claims programs – will lead the design of the program, including developing criteria and requirements for the evaluation and determination of eligibility and compensation, and the accompanying claims process. Ms. Feldman, Mr. Feinberg and Ms. Biros will draft the program protocol and will afford interested parties, including potential claimants and/or their legal representatives, an opportunity to provide input on the protocol prior to its finalization. They expect that, once approved by the Court, the program will start accepting claims in approximately 90 days.

"This important program will offer victims the opportunity to obtain long-overdue compensation, to be heard and treated with the compassion, dignity and respect they deserve, and to achieve some measure of justice and validation that has eluded them for so many years. The claims resolution process will be fair, prompt, and non-adversarial, and will provide victims with a meaningful alternative to years of protracted civil litigation and its associated costs, risks and uncertainties," said Ms. Feldman.

Ms. Biros added that "participation in the program will be entirely voluntary and will not affect any rights the claimant may have unless and until she accepts the compensation determination and signs a litigation release. All claimants will be afforded an opportunity to meet confidentially with the Administrator, if they so desire, in order to provide any information that may be ar upon the evaluation of their claims."

Ms. Feldman, who recently served as Deputy Special Master of the September 11th Victim Compensation Fund, the litigation-alternative program administered by the U.S. Department of Justice that compensates victims who have become sick or died as a result of their September 11th-related exposure, will also administer the new program. Ms. Feldman will, in the role of Administrator, have complete autonomy and decision-making authority over program operations and claim determinations, and the Estate will have no authority to modify or reject Ms. Feldman's decisions on any basis or as to any claim. Mr. Feinberg, the nation's leading expert in fashioning effective dispute resolution alternatives, and his colleague, Ms. Biros, will partner with Ms. Feldman in the development and implementation of the program, lending their extensive expertise to that process.

Mr. Feinberg added, "We are pleased to have been asked to implement this important program, and are eager to begin designing it so that claimants will have a forum where their suffering is acknowledged and their claims are promptly and appropriately compensated." Regarding Ms. Feldman he said, "Jordy brings not only a wealth of experience from her long-time work with the 9/11 community, but also a profound sense of empathy for victims and a deep commitment to ensuring fairness in process and outcome."

Once approved, the program will operate and maintain a website that provides general information about the program, including the Protocol, Frequently Asked Questions, information about claims filing deadlines and a registration process for new complaints. Contact information for the program will also be available on the website.

For media inquiries about the program, contact Malisa L. Haley at [MLHaley@MLHaleyConsulting.com](mailto:MLHaley@MLHaleyConsulting.com) or 877-312-3055.

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