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MEMORANDUM

TO: Denise Francois, Esq.
FROM: Darren Indyke
RE: Molyneux Complaint in the District Court of the Virgin Islands
DATE: April 14, 2010

In connection with my request for you to send Rosh D. Alger a Rule 11 letter, you have asked me to provide you with some background relating to Jeffrey's claims against Mr. Molyneux which lead to the improper filing of Molyneux's complaint in the United States District Court of the Virgin Islands.

In May 2009, Molyneux fraudulently induced Jeffrey to resolve claims against Molyneux for, among other things, fraud and other serious misconduct relating to Architectural and Design and related services that Jeffrey paid Molyneux to perform but he never did. As part of that resolution, Molyneux returned to Jeffrey only a quarter of the more than \$4 Million Jeffrey previously paid to Molyneux, claiming that he was experiencing a financial crisis and could not repay Jeffrey anything further. In lieu of monetary payment, Molyneux requested that he be allowed to provide items and services to complete the design, construction and exterior and interior design of the office pavilion presently under construction on Little St. James Island. The Agreement for Design Services attached to the Complaint, along with a separate Settlement Agreement between Jeffrey and Molyneux, are the result of Molyneux's request.

For Jeffrey to accept Molyneux's request to provide items and services in lieu of payment to Jeffrey, the single most important requirement to Jeffrey was for Molyneux to deliver, install, restain and refinish the library cabinetry for the office pavilion that was then under construction. Jeffrey contracted with Molyneux in early 2006 to have this cabinetry custom built and finished with a dark walnut stain and a wax finish and then installed in the library of the office pavilion on the Island. At the time that Molyneux and Epstein began settlement negotiations three years later, the finished cabinetry still had not been delivered to the Island.

The cabinetry was to be an exact duplicate of the cabinetry in the library of El Escorial in Spain. In order to ensure that it was reproduced in exacting detail, it was to be built in France by French craftsmen. While the cabinetry was under

fabrication, Jeffrey repeatedly requested photos of the work, but Molyneux refused to provide them. When the cabinetry was supposedly completed, Molyneux insisted that it was too big to be assembled in France and had to be trucked to Italy for assembly. Jeffrey again requested pictures, but Molyneux would not allow anyone but Molyneux himself to take the pictures and delayed sending any pictures, claiming that he had to go to Italy himself to photograph the cabinetry. Jeffrey sent his representative to meet Molyneux in Italy and, over two years ago, finally received the first photos of the assembled finished cabinets. Immediately after Jeffrey received those photos, he understood why Molyneux would not send them earlier. The cabinets were of light oak rather than the dark stained walnut Jeffrey agreed to and paid a \$390,000 deposit for. Moreover, we have discovered that the cabinets were not built in France, but were made by Italian carpenters in Italy. As soon as Jeffrey received the photographs of the assembled cabinetry, Jeffrey rejected them immediately.

Jeffrey wanted the cabinets to be restained and refinished in Europe, but Molyneux insisted that they be delivered to the Island and refinished on site. He assured Jeffrey that the refinished cabinets would be 100% to Jeffrey's satisfaction. It was on this basis that Jeffrey agreed to allow Molyneux to repay Jeffrey with services and deliverables instead of money. Jeffrey needed the cabinets to complete the office pavilion that was already under construction, wanted to avoid wasting further time and the substantial costs of further delays (having already incurred significant delays and costs directly attributable to Mr. Molyneux's misconduct) involved in starting the process all over again. So, Jeffrey allowed Molyneux deliver, install, restain and refinish the cabinets and otherwise complete the office pavilion in lieu of making additional payments.

The Agreement for Design Services attached to the complaint requires Molyneux to provide, among other things, the skilled labor and supervision and the payment of all expenses and disbursements in connection therewith, necessary for the proper installation, restaining and refinishing of office cabinetry in the office pavilion on Little St. James Island. As provided in the Agreement for Design Services (see Exhibit B), this includes travel, lodging, food, incidentals and any other installer expenses. Exhibit B also makes clear that staining and refinishing the cabinetry is to be at no cost to Jeffrey. Although the cabinetry has been delivered and installed, it is defective in numerous respects and it has not been restained and refinished as required. The invoiced amount for the cabinetry alone was \$780,000. Thus, to the extent that Molyneux's so-called damages are attributable to his expenditures on the cabinetry, these are not damages but costs of performing his obligations under the Agreement for Design Services. Finally, the Agreement for Design Services requires that the Office Pavilion be completed to Jeffrey's reasonable satisfaction, so to the extent that Molyneux may have incurred additional expenses to satisfy this requirement, those expenses too are his obligations under the Agreement for Design Services. There have been ample emails and letters exchanged between the parties to document both the defects in the Cabinetry and the fact that the cabinetry remains to be restained and refinished.

In addition, the Agreement for Design Services requires Molyneux to deliver furniture and furnishings and other decorative items and services, the cost of which Molyneux has claimed exceed \$250,000. These items and services were to be applied against a \$250K credit that Epstein has with Molyneux as provided in the Agreement for Design Services. Moreover, to the extent the cost of these items and services exceeded that credit, under Section 5 of the Agreement for Design Services, the items and services were still to be provided at no additional cost to Jeffrey. Thus to the extent that the alleged \$300K of damages consists of these items and services, then Molyneux's claim for damages is also fabricated in that respect.

The original deadline under the Agreement for Design Services to complete all of this work was January 1, 2010 and, as evidence of Jeffrey's good faith and cooperation with Molyneux, Jeffrey agreed to extend that deadline twice to enable Molyneux to satisfy his obligations. The final agreed deadline is April 15, 2010. I note that Molyneux included no evidence of those two extensions in the attachment to his complaint, which clearly misleads the court as to what transpired in this matter.

Although the deadline was twice extended, and Molyneux had almost a year since the date of the Agreement for Design Services to correct any defects in the cabinetry, Molyneux's subcontractors had still not completed correcting the defects in the cabinetry by March 18, 2010. They returned to the Island on March 18, less than one month before the twice extended deadline was to expire, supposedly to complete the correction of these defects, but performed only superficial work, leaving the cabinetry still in shoddy and defective condition. Molyneux also claims that he brought his subcontractors to the site to refinish the cabinetry, but could not do so because the ambient humidity levels in the library and moisture content of the furniture exceeded certain requirements. Unfortunately, the first time Molyneux ever mentioned those requirements to Jeffrey was when he came to the Island on March 18. Though it was his and his subcontractor's responsibility as the designer and refinishers, respectively, to advise Jeffrey's team of these requirements, so that the cabinets and the room were prepared for their arrival, neither Molyneux nor his refinishers did so. Instead, Molyneux sought to blame Jeffrey for Molyneux's and his refinishers' own failures.

It now appears that this was all an elaborate sham. After receiving notice that the cabinetry could not be refinished supposedly because of excessive humidity and moisture, Jeffrey sent wood experts to the Island to inspect the situation. Among the numerous problems reported by the wood experts was the fact that the cabinetry wood had been limed. Apparently, liming is one alternative technique to make wood appear to be antique, but it was never agreed to by Jeffrey and never mentioned in any of the purchase orders for the cabinets. Apart from the fact that the liming itself was done in a shoddy and unprofessional manner, once limed, the wood could not be restained and refinished. Dark stain and finish would not take to the wood once it was limed. The wood would have to be stripped and sanded,

further worsening the already poor condition of the fabricated cabinetry with no reasonable likelihood that the restained and refinished product could achieve the originally agreed to result.

Molyneux knew that the wood was limed when he promised that he could restain and refinish the cabinetry on site 100% to Jeffrey's satisfaction. He knew this when he induced Jeffrey to resolve his claims against Molyneux and allow Molyneux to complete the Office Pavilion in lieu of making further payment. Molyneux knew that he would be unable to restain and refinish the cabinetry to Jeffrey's satisfaction, when he induced Jeffrey to sign the Settlement Agreement to release Molyneux for past misconduct and enter into the Agreement for Design Services.

After securing his settlement and releases, Molyneux then dragged his feet in performing the Agreement for Design Services for almost a year, knowing full well that he would never be able to deliver the finished cabinetry to Jeffrey's reasonable satisfaction. After executing the Agreement for Design Services, Molyneux literally took months to respond to Jeffrey's repeated requests for multiple dark stain samples with different finishes and then provided Jeffrey with one wholly inadequate light stain sample which Jeffrey immediately rejected. Jeffrey again repeatedly requested multiple finished wood samples of different dark stains and different finishes. Several weeks later, Molyneux sent Jeffrey only a single sample board which, inexplicably, showed 5 virtually indistinguishable light stains with the exact same finish. Jeffrey rightfully rejected this sample board as well, and, astonishingly, Molyneux's counsel claimed that Jeffrey, rather than Molyneux, was being unreasonable and acting in bad faith.

At the 11th hour, on or about March 22, 2010, when Molyneux knew well that he would be unable to extend the completion deadline any further, he raised claims about the humidity levels and moisture content in the office pavilion to excuse his failure to restain and refinish the cabinetry. On March 25, 2010, Molyneux's counsel sent me a memo citing Jeffrey's failure to appear on Island on March 22 as evidence that Jeffrey sought to frustrate Molyneux's performance of his contract. I responded with my own letter on March 31, 2010, advising that I had personally seen the cabinetry, that I had found the cabinetry to be in shoddy and defective condition (which it was), and that it was Molyneux's, and not Jeffrey's, responsibility to prepare the cabinetry and office pavilion for the restaining. I also noted that Jeffrey's inability to be present on the Island did not excuse any of this. I advised Molyneux's counsel that Jeffrey would file suit after the 10 day cure period if the problems were not resolved by the April 15 deadline. For the sole purpose of heading off suit in the VI Superior Court, Molyneux had his local attorney file this ridiculous claim in Federal court.

Additionally, I note that although frustration of performance may be an affirmative defense to a claim for breach under the Agreement for Design Services, I am not sure that it constitutes a separate cause of action in the Virgin Islands,

especially where the only claim of damages is for moneys Molyneux was required to spend to perform his obligations under that very Agreement. Consequently, this alone may be a basis to demand that Alger dismiss or face Rule 11 sanctions.

Morover, Section 20 of the Agreement for Design Services provides that the existence, terms and consideration paid pursuant to the Agreement for Design Services are strictly confidential and that the Agreement for Design Services will not be filed in any court except to enforce the Agreement for Design Services or the Settlement Agreement. If Molyneux has no real claims to enforce, then his disclosure of the Agreement for Design Services and attaching that to the Complaint are themselves a violation of the Agreement for Design Services. This may also be helpful in your demand to Mr. Alger.