

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

\*\*\*\*\*

REVERE HIGH YIELD FUND, LP.,	)	
	)	
Plaintiff,	)	
	)	CIVIL NO. 16-CV-0006
vs.	)	
	)	
M/V MISTER B, her tackle, gear,	)	IN REM ACTION IN
and all of her appurtenances, <i>in rem</i> ,	)	ADMIRALTY TO FORECLOSE
	)	
	)	
and	)	
	)	
	)	
M/V AUTO TRANS-IT, her tackle, gear,	)	
and all of her appurtenances, <i>in rem</i> ,	)	
	)	
	)	
and	)	
	)	
	)	
BOYSON, INC.; OCEAN LINK	)	
ENTERPRISES, LTD.; ARTHUR'S	)	
LEGACY, LLC; BREEZE SHIPPING,	)	
LLC; CHERYL BOYNES-JACKSON,	)	
Individually and as trustee; NOEL	)	
U. BOYNES, SR.; BERNICE	)	
MAHONEY-BOYNES; CHEMICA B.	)	
JACKSON, as trustee; BERNICE C.	)	
BOYNES; and MICHAEL JACKSON,	)	
SR.,	)	
	)	
<u>Defendants.</u>	)	

**DEFENDANTS' BRIEF CONCERNING THE CONFLICT  
OF INTEREST OF DEFENDANTS' COUNSEL**

COMES NOW, JULIE GERMAN EVERT, ESQ., and in response to this Honorable Court's request for briefing with citations of authorities, states as follows:

Defendants' counsel believes that given the fact that she has not discussed any of the issues with any Defendant, other than BOYSON, INC. ("BOYSON") and CHERYL BOYNES-JACKSON ("CHERYL"), and in view of the fact that counsel

**Defendants Brief Concerning the Conflict of Interest of Defendants' Counsel**  
**Revere High Yield Fund, LP v. M/V Mister B et al**  
**Case No. 16-CV-0006**  
**Page 2**

has not reviewed in detail any of the loan documents, including personal guaranties, counsel believes that she can continue to represent BOYSON, INC. and M/V MISTER B. The individual defendants have agreed to file responses pro-se and the principals of each remaining corporate defendant are aware that they must retain counsel if they wish to respond to the Complaint.

**FACTUAL AND PROCEDURAL HISTORY**

On or about April 20, 2015, Boyson, Inc. executed loan documents which were delivered to REVERE HIGH YIELD FUND, LP. ("REVERE"), as set forth in paragraph 19 of the Verified Complaint. On January 20, 2016, Plaintiff REVERE HIGH YIELD FUND, LP., filed a Verified Complaint seeking relief against the Defendants, jointly and severally, filed an Action *In Rem* seeking to foreclose on a First Preferred Ship Mortgage, and an Action for Damages. On March 15, 2016, Defendants filed a Notice of Special Appearance for Purposes of requesting Additional Time to File Responsive Pleadings Due to Conflicts in which counsel indicated:

The above named individuals are related to each other and have different interests in Boyson, Inc. Some of the property that is mortgage [sic] in favor of Plaintiff is owned by some of the Defendants. The individuals have certain defenses that may conflict with the defenses that will be raised by BOYSON, INC.

The Notice of Special Appearance was filed as a "placeholder" to put this Honorable Court on notice of the conflict and to advise the Court regarding what was occurring on behalf of Defendants. The conflict described in the Notice of Special Appearance was a conflict that the individual defendants might have with

**Defendants Brief Concerning the Conflict of Interest of Defendants' Counsel**  
**Revere High Yield Fund, LP v. M/V Mister B et al**  
**Case No. 16-CV-0006**  
**Page 3**

BOYSON, if the individuals assert defenses or claims against BOYSON. BOYSON has no hypothetical defenses or claims against the individual guarantors or other corporate entities.

Counsel for all parties agreed that Plaintiff would not seek defaults against the Defendants in order to give BOYSON the time and opportunity to secure a loan to pay off the Revere Mortgage. BOYSON has been using its best efforts to secure financing to pay Plaintiff, but as of the date of this filing, the loan has not closed. *See Affidavit of Julie German Evert, Esquire*, attached hereto and made part hereof as **Exhibit "A"**.

Defendants' counsel has not filed an Answer on behalf of any of the Defendants. Defendants' counsel has never discussed any of the issues concerning this action with Defendants BERNICE MAHONEY-BOYNES, ("BERNICE"), NOEL U. BOYNES ("NOEL"), CHERYL BOYNES-JACKSON ("CHERYL"), MICHAEL JACKSON ("MIKE"), or CHEMICA B. JACKSON ("CHEMICA"). Defendant's counsel did represent NOEL in a personal injury action several years ago. *See Exhibit "A"*.

Other than what is plead in the Verified Complaint and attached as Exhibits, Defendants' counsel does not know the structure and relationship between the individual Defendants and OCEAN LINK ENTERPRISES, LTD, ARTHUR'S LEGACY, LLC and BREEZE SHIPPING, LLC. Defendants counsel recently learned the relationship between the parties and the individuals who are corporate

**Defendants Brief Concerning the Conflict of Interest of Defendants' Counsel**  
**Revere High Yield Fund, LP v. M/V Mister B et al**  
**Case No. 16-CV-0006**  
**Page 4**

officers or members of different corporate entities named in the Verified Complaint.

See **Exhibit “A”**.

Defendants' counsel has been in frequent contact with Defendant CHERYL, who is a shareholder and Vice president of BOYSON, INC., in addition to being a guarantor. To date, Defendants' counsel has had no meetings with any person named as a Defendant other than CHERYL. Defendant's counsel has not received any confidential information that could possibly be used against the individual Defendants. Defendants' counsel has not received any information from the individual Defendants or the corporate defendants other than BOYSON, which information could be used to assert a claim or defense against BOYSON.

The relationship among the individual defendants is as follows:

NOEL is married to BERNICE, who is the same person as Defendant BERNICE C. BOYNES (“Bernice”). NOEL and BERNICE have a daughter CHERYL, who is married to MIKE. Cheryl and Mike have a daughter CHEMICA.

Defendant OCEAN LINK ENTERPRISES, LTD (“Ocean Link”) is a Virgin Islands Corporation, whose Officers and Directors are NOEL, CHERYL and BERNICE. OCEAN LINK owns the vessel M/V AUTO TRANS-IT.

Defendant ARTHUR'S LEGACY, LLC (“Arthur's Legacy”) is a Virgin Islands limited liability company, whose members are BERNICE, LEON PLASKETT and CHERYL, and which company owns two (2) parcels on St. Thomas, Virgin Islands.

**Defendants Brief Concerning the Conflict of Interest of Defendants' Counsel**  
**Revere High Yield Fund, LP v. M/V Mister B et al**  
**Case No. 16-CV-0006**  
**Page 5**

Defendant BREEZE SHIPPING, LLC ("Breeze Shipping") is a Virgin Islands limited liability company whose members are NOEL, CHERYL and BERNICE and which company owns the M/V COMMANDER.

Boyson, Inc. is a Virgin Islands corporation whose officers and shareholders NOEL (President), CHERYL (Vice President) and BERNICE (Secretary and Treasurer). Defendant BOYSON owns the M/V MISTER B.

**LEGAL ANALYSIS**

A. The Virgin Islands Rules of Professional Conduct, Rule 211.1.17 and the Local Rule of Civil Procedure 83.2(a)(1) control the Conflict Issue of Defendants' Counsel

The American Bar Association's Model Rules of Professional Responsibility (the "Model Rules"), have been judicially adopted in the Virgin Islands. See *Bluebeard's Castle, Inc. v. Delmar Mktg.*, 886 F.Supp. 1204, 1207-07 (D.V.I. 1995) (citing *Virgin Islands Bar Association v. Boyd-Richards*, 765 F. Supp. 263 (D.V.I. 1991). Local Rule of Civil Procedure 83.2(a)(1) provides that the Model Rules of professional Conduct of the American Bar Association govern the conduct of the members of the bar of this Court. The Model Rules of Professional Responsibility Rule 1.7 have been adopted by the Virgin Islands Supreme Court as Virgin Islands Rules of Professional Conduct 211.1.7 which provides in pertinent part:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client; or

**Defendants Brief Concerning the Conflict of Interest of Defendants' Counsel**  
**Revere High Yield Fund, LP v. M/V Mister B et al**  
**Case No. 16-CV-0006**  
**Page 6**

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client...

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(3) The representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal...

(4) each affected client gives informed consent, confirmed in writing.

The comments to the ABA Model Rules of Professional Conduct elaborate on the proscription contained in Rule 1.7(b)(3):

Paragraph (b)(3) describes conflicts that are non-waivable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. ABA Model R. Prof'l Conduct 1.7 cmt.

In interpreting the professional obligations of attorneys, the Virgin Islands courts have looked for the American Bar Association's model rules, on which the Virgin Islands' rules were based. *See, Denero v. Caterd To, Inc., et al.*, 2015 U.S. Dist Lexis 25864 (DVI 2015), *See also, e.g., Matter of Maynard*, 60 V.I. 444, 2014 WL 201952 (citing to Model Rule 1.7 in evaluation attorney behavior). Thus, the Court should first consider if there is either direct adversity between two or more clients or a significant risk of material limitation on the lawyer's advocacy due to

**Defendants Brief Concerning the Conflict of Interest of Defendants' Counsel**  
**Revere High Yield Fund, LP v. M/V Mister B et al**  
**Case No. 16-CV-0006**  
**Page 7**

the lawyer's relationship with multiple clients. Then, if there is a conflict, the Court must determine whether or not there was informed consent given by all affected clients.

While it is possible that the individual defendants and the companies other than BOYSON could potentially have a claim or defense against BOYSON, it is not possible that BOYSON could have a claim or defense against the individuals or the other defendant companies. If BOYSON has claims or defenses, those claims or defenses are against the Plaintiff REVERE HIGH YIELD FUND, LP.

The court must determine if there is a conflict in Defendants' counsel representing all defendants. First, Defendants admit that there may be such a conflict and notified the Court of this conflict, and that undersigned counsel does not intend to represent, in this matter, any defendants other than BOYSON or the M/V MISTER B. Defendants' counsel did not file an Answer on behalf of any of the other Defendants.

Rule 1.7 (comment 8) provides

[A] lawyer asked to represent several individual...is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose course of action that reasonably should be pursued on behalf of the client.

Simultaneous representation of parties whose interest in litigation may conflict, such as co-plaintiffs or co-defendants, is governed by paragraph (a)(2). A

**Defendants Brief Concerning the Conflict of Interest of Defendants' Counsel**  
**Revere High Yield Fund, LP v. M/V Mister B et al**  
**Case No. 16-CV-0006**  
**Page 8**

conflict may exist by reason of substantial discrepancies in the parties' testimony, incompatibility in positions in relation to an opposing party of the fact that there are substantially different possibilities of settled of the claims or liabilities in question. *Id.* (comment 23).

"An actual conflict exists if counsel's introduction of probative evidence or plausible arguments that would significantly benefit one defendant would damage the defense of another defendant whom the same counsel is presenting." *Denero* at 16 quoting *United States v. Rico*, 51 F.3d 495, 509 (5<sup>th</sup> Cir. 1995).

Counsel will not be materially limited in her ability to recommend or advocate all possible positions that BOYSON might take because of any duty of loyalty to the other defendants. Counsel has obtained no confidential information, or any other information which could be used to assert or defend any claim against the individuals or other corporate defendants. There is no risk that representation of BOYSON would materially limit Defendants' counsel's ability to fulfill her responsibility, or that any brief representation of the other defendants through the Notice of Special Appearance would limit or restrict advocacy on behalf of BOYSON. This is due to the fact that counsel never met with any of the other defendants to discuss this case, and counsel has not received any confidential information from any defendant that could be used against another defendant.

Having determined that there is a conflict, the Court next considers if that conflict is waivable by the defendants. A conflict can be waived if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent



**Defendants Brief Concerning the Conflict of Interest of Defendants' Counsel**  
**Revere High Yield Fund, LP v. M/V Mister B et al**  
**Case No. 16-CV-0006**  
**Page 9**

representation to each affected client; (2) the representation is not prohibited by law; and (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal. V.I. Rule 211.1.7(b).

Counsel reasonably believes that she can provide competent and diligent representation to BOYSON and M/V MISTER B. BOYSON does not have any claims or defenses it intends to assert against the individual and corporate defendants. See Affidavit of CHERYL BOYNES-JACKSON, attached hereto and made part hereon, as **Exhibit “\_\_\_”**. This is a conflict that can be resolved by counsel continuing to represent BOYSON and M/V MISTER B. and allowing the other defendants to retain separate counsel.

**WHEREFORE**, counsel respectfully requests that she be permitted to represent BOYSON, INC. and M/V MISTER B.

Respectfully submitted,  
**LAW OFFICE OF JULIE GERMAN EVERT**

**DATED:** July 22<sup>nd</sup>, 2016

/s/ Julie German Evert  
Julie German Evert, Esq.  
5143 Palm Passage Ste 10A  
St. Thomas, VI 00802  
Telephone: (340) 774-2830  
Facsimile: (340) 774-2803  
*Attorney for Defendants*

Defendants Brief Concerning the Conflict of Interest of Defendants' Counsel  
Revere High Yield Fund, LP v. M/V Mister B et al  
Case No. 16-CV-0006  
Page 10

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 22<sup>nd</sup> day of July, 2016, a true and correct copy of the foregoing **RESPONDENT EDWARD P. MCKENZIE'S OPPOSITION TO MOTION WITH CITATION OF AUTHORITY TO EXCLUDE PROFERRED "EXPERT" TESTIMONY** electronically filed with the Clerk of the Court via CM/ECF system and was served via U.S Postal Service, postage pre-paid to:

Charles S. Russell, Jr., Esq.  
Kanaan L. Wilhite, Esq.  
Moore Dodson & Russell, PC  
PO Box 310  
St. Thomas, VI 00804

/s/ Headdie Henry

**Headdie Henry**, Legal Assistant

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

\*\*\*\*\*

REVERE HIGH YIELD FUND, LP., )

Plaintiff, )

vs. )

M/V MISTER B, her tackle, gear, )  
and all of her appurtenances, *in rem*, )

and )

M/V AUTO TRANS-IT, her tackle, gear, )  
and all of her appurtenances, *in rem*, )

and )

BOYSON, INC.; OCEAN LINK )  
ENTERPRISES, LTD.; ARTHUR'S )  
LEGACY, LLC; BREEZE SHIPPING, )  
LLC; CHERYL BOYNES-JACKSON, )  
Individually and as trustee; NOEL )  
U. BOYNES, SR.; BERNICE )  
MAHONEY-BOYNES; CHEMICA B. )  
JACKSON, as trustee; BERNICE C. )  
BOYNES; and MICHAEL JACKSON, )  
SR., )

Defendants. )

CIVIL NO. 16-CV-0006

IN REM ACTION IN  
ADMIRALTY TO FORECLOSE

**AFFIDAVIT OF JULIE GERMAN EVERT**

I, **JULIE GERMAN EVERT**, having been duly sworn on my oath hereby  
deposes and say:

1. I filed a Notice of Special Appearance on behalf of all Defendants in the  
instant matter.

**Affidavit of Julie German Evert**  
**Revere High Yield Fund, LP v. M/V Mister B et al**  
**Case No. 16-CV-0006**  
**Page 2**

2. The purpose for filing the Notice of Special Appearance was to notify the Court that the parties have potential conflicts of interest, and need time to retain counsel.

3. I engaged in several conversations with Charles Russell, Esquire concerning the Answers of the Defendants, and Attorney Russell agreed that REVERE would not seek defaults against any of the Defendants without giving me notice prior to filing for Entry of Default.

4. I only recently learned the relationship between the corporate Defendants and the individual Defendants, which information was provided to me by CHERYL BOYNES-JACKSON in response to my request.

5. I have spoken with Defendant CHERYL BOYNES-JACKSON numerous times concerning the case as it affects BOYSON, INC. and the M/V MISTER B.

6. I have not met or spoken with any of the other Defendants named in this action, nor have I met any of the other Defendants in this action, with the exception of NOEL U. BOYNES, SR., whom I represented several years ago in a personal injury action.

7. I have not received confidential information from CHERYL BOYNES-JACKSON which could be used to defend or assert any claims against the individual Defendants or the corporate Defendants.

8. CHERYL BOYNES-JACKSON has advised me that the individual Defendants will proceed *pro se*. CHERYL BOYNES-JACKSON communicates with

**Affidavit of Julie German Evert**  
**Revere High Yield Fund, LP v. M/V Mister B et al**  
**Case No. 16-CV-0006**  
**Page 3**

her family members multiple times each day, and she has informed me that her family members understand what is happening in this matter. CHERYL BOYNES-JACKSON has informed me that her father has medical issues, and she is communicating with her parents to keep them advised of what is happening in this matter. CHERYL BOYNES-JACKSON has also informed me that she is keeping her daughter and her husband advised about what is happening in this case.

9. If I am permitted to continue to represent BOYSON, INC. and the M/V MISTER B, my representation will not be directly adverse to the other Defendants because I have not received any confidential information, nor have I engaged in any communication with the other Defendants, nor is there a significant risk that my representation of BOYSON, INC. and the M/V MISTER B will be materially limited by my responsibilities to the other Defendants.

**FURTHER AFFIANT SAYETH NAUGHT.**

**DATED:** July 21, 2016

  
\_\_\_\_\_  
**JULIE GERMAN EVERT**

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

\*\*\*\*\*

REVERE HIGH YIELD FUND, LP.,	)	
	)	
Plaintiff,	)	
	)	CIVIL NO. 16-CV-0006
vs.	)	
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M/V MISTER B, her tackle, gear,	)	IN REM ACTION IN
and all of her appurtenances, <i>in rem</i> ,	)	ADMIRALTY TO FORECLOSE
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M/V AUTO TRANS-IT, her tackle, gear,	)	
and all of her appurtenances, <i>in rem</i> ,	)	
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and	)	
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	)	
BOYSON, INC.; OCEAN LINK	)	
ENTERPRISES, LTD.; ARTHUR'S	)	
LEGACY, LLC; BREEZE SHIPPING,	)	
LLC; CHERYL BOYNES-JACKSON,	)	
Individually and as trustee; NOEL	)	
U. BOYNES, SR.; BERNICE	)	
MAHONEY-BOYNES; CHEMICA B.	)	
JACKSON, as trustee; BERNICE C.	)	
BOYNES; and MICHAEL JACKSON,	)	
SR.,	)	
	)	
Defendants.	)	

AFFIDAVIT OF CHERYL BOYNES-JACKSON

I, CHERYL BOYNES-JACKSON, having been duly sworn on my oath  
hereby deposes and say:

1. I am named in the instant action as an individual and as Trustee.
2. I am also a member and/or Officer and Director of every corporate Defendant named in this action.
3. I am the Vice President of BOYSON, INC.

Affidavit of Cheryl Boynes-Jackson  
Revere High Yield Fund, LP v. M/V Mister B et al  
Case No. 16-CV-00006  
Page 2

4. My father, NOEL U. BOYNES, SR. is the President of BOYSON, INC.
5. My mother, BERNICE MAHONEY-BOYNES, is also the same person listed in this action as BERNICE C. BOYNES.
6. My mother, BERNICE MAHONEY-BOYNES is the Secretary and Treasurer of BOYSON, INC.
7. I have been in direct communication with Julie German Evert, Esquire regarding her representation of BOYSON, INC.
8. Attorney Evert and I have communicated only by telephone.
9. Attorney Evert has not met with any of my family members to discuss this case.
10. I have relayed all information to my family that I have received from Attorney Evert.
11. I have not provided Attorney Evert with any confidential information which could be used against my mother or father or husband or my daughter, or any of the corporate entities.
12. BOYSON, INC. has been trying for months to obtain financing to pay off REVERE.
13. We believe we are finally close to receiving the financing required to pay off REVERE.
14. BOYSON, INC. understands that there are hypothetical or potential conflicts between the Defendants.

Affidavit of Cheryl Boynes-Jackson  
Revere High Yield Fund, LP v. M/V Mister B et al  
Case No. 16-CV-0006  
Page 3

15. BOYSON, INC. waves any conflict of interest that may exist between the Defendants.

16. BOYSON, INC. and my family members would like Attorney Evert to remain as counsel for BOYSON, INC.

17. My mother and father, daughter, husband and I will be filing pro se Answers in this action.

18. My family members and I are discussing among ourselves, which attorneys we can afford to retain to represent the corporate Defendants other than BOYSON, INC.

19. On July 21, 2016, I provided Attorney Evert with the names of the owners, shareholders and officers of the corporate Defendants other than BOYSON, INC.

20. I am presently staying in Washington, DC, and I will be sending this Affidavit via FedEx to Attorney Evert.

**FURTHER AFFIANT SAYETH NAUGHT.**

DATED: July 21, 2016

  
\_\_\_\_\_  
CHERYL BOYNES-JACKSON



Affidavit of Cheryl Boynes-Jackson  
Revere High Yield Fund, LP v. M/V Mister B et al  
Case No. 16-CV-0006  
Page 4

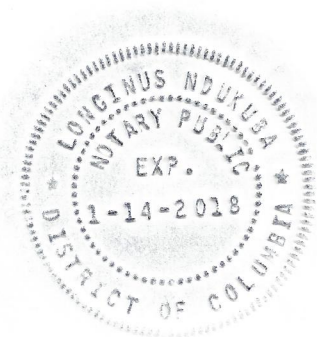
ACKNOWLEDGEMENT

DISTRICT OF COLUMBIA

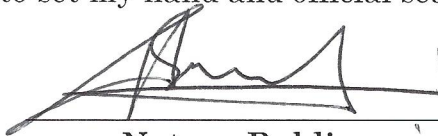
)  
) ss:

On this 21<sup>st</sup> day of July, 2016 before me the undersigned officer, personally appeared **CHERYL BOYNES-JACKSON**, proven to me to be the individual described in and who executed the foregoing instrument, and acknowledged that she executed the same of her own free will for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



LONGINUS NDUKUBA  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires January 14, 2018

  
\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_