

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

TONYA KAY DAY, *aka* TONYA KAY  
FOELGNER

Plaintiff

v.

THE CORNÈR BANK (OVERSEAS)  
LTD; CORNÈR BANK S.A., *aka*  
CORNÈR BANCA S.A.; *aka* GRUPPO  
CORNÈR, *aka* CORNÈR BANQUE S.A.;  
COLYN ROBERTS;  
GRAHAM THOMPSON & CO.

and DOES from 1 to 100

Defendants

CIVIL ACTION No. 10cv1339-RCL

**AMENDED COMPLAINT**

**FOR DAMAGES AND ORDERS  
BASED ON:**

- 1. BREACH OF CONTRACT;**
- 2. BREACH OF FIDUCIARY  
DUTIES;**
- 3. CONVERSION;**
- 4. UNJUST ENRICHMENT;**
- 5. DECLARATORY RELIEF;**
- 6. ACCOUNTING;**
- 7. CIVIL CONSPIRACY;**
- 8. BATTERY;**
- 9. INFLECTING SEVERE  
EMOTIONAL DISTRESS;**
- 10. MALPRACTICE;**
- 11. MISREPRESENTATION,  
FRAUD**
- 12. INVASION OF PRIVACY**

This is an action for recovery of the moneys owned by Plaintiffs on the account held, or controlled, by Defendants.

**I. PARTIES**

1. Plaintiff TONYA KAY DAY, *aka* TONYA KAY FOELGNER, her maiden name (hereinafter also “DAY”) is a U.S. citizen, currently residing in Las Vegas, Nevada. She is, on information and belief, the beneficiary of the assets on the account held or controlled by Defendants (the “Account”). DAY has trust arrangements in Washington, D.C.

2. Plaintiff TONYA KAY DAY is also, on information and belief, a designated beneficiary, and/or trustee, and/or an administrator for the assets on a certain Account set up by, of for, LAVERA JEAN FOELGNER, her mother, with the express disclaimer DAY's interest alleged hereinafter did not concern her entire estate in the US, but one offshore account, undisclosed during the lifetime of FOELGNER. That latter had resided in the State of Kansas before she died in September of 2006. In that capacity still to be identified upon the benefit of the documents sought to be obtained, DAY, on information and belief, is also the beneficiary of the assets and/or signatory on the Account held by Defendants.

3. Defendant CORNÈR BANK (OVERSEAS) LTD. is a subsidiary in the Bahamas of the Swiss bank CORNÈR BANK, see Paragraph 4 below. Said banking subsidiary, believed to be a wholly owned subsidiary of the parent Swiss bank and completely dependent upon its parent banking entity in Switzerland, is located at 308 East Bay Street, Nassau, Bahamas.

4. Defendant THE CORNÈR BANK, *aka* CORNÈR BANK, *aka* CORNÈR BANK S.A., *aka* CORNÈR BANCA S.A., *aka* GRUPPO CORNÈR, *aka* CORNÈR BANQUE, is a bank with main offices at Via Canova 16, Lugano, Switzerland. That bank was founded in 1952 and has since developed offices in Zurich, Lausanne and elsewhere in Switzerland. According to disclosures, that privately held banking group has been owned and/or controlled from the start, almost entirely, by the Cornaro family. That Bank also has developed a subsidiary in the Bahamas, cited in Paragraph 3, as well as it has a subsidiary in Luxembourg. The bank is known also under the same name in the Italian and French languages, representing the same banking institution in

Switzerland. For purposes of this Complaint, the bank, both its parent and its subsidiary in the Bahamas are referred to hereinafter as “CORNÈR BANK”.

5. Defendant COLYN ROBERTS (hereinafter also “ROBERTS”) is an individual, on information and belief, a manager of CORNÈR BANK in Nassau, the Bahamas, cited above.

6. Defendant GRAHAM, THOMPSON AND CO. is a law firm in the Bahamas, situated at the address: Sassoon House, Shirley St & Victoria Ave., P.O. Box N-272, Nassau, the Bahamas. Plaintiff retained said law firm, that has admitted to have U.S. clients, that did not disclose that it actually represented the adverse party in the very same matter, CORNÈR BANK.

## II. JURISDICTION

7. This Court has jurisdiction pursuant to 28 U.S.C. Section 1332, because of the diversity of jurisdiction of the parties. Namely, DAY is a citizen of the State of Nevada. In her capacity as a beneficiary of the certain assets of her deceased mother FOELGNER, DAY has substantial nexus to the State of Kansas. DAY has also made trust arrangements in, and under the laws of, the District of Columbia. None of the Defendants are citizens of any of these three jurisdictions in the U.S.

8. Specifically, CORNÈR BANK (OVERSEAS) LTD. and ROBERTS are residents of the Bahamas. Likewise, GRAHAM THOMPSON is a law firm in the Bahamas. The parent Swiss bank, THE CORNÈR BANK, *aka* CORNÈR BANK S.A. *aka* CORNÈR BANCA S.A., *aka* GRUPPO CORNÈR, *aka* CORNÈR BANQUE S.A., is a bank, situated in, and governed by the laws of, Switzerland, more specifically, Canton Tessin.

9. Jurisdiction is proper, because the CORNÈR BANK group has engaged in substantial business in the U.S., including being the first Swiss banking group that introduced Visa and subsequently Mastercard credit cards' services to its clients.

10. Jurisdiction is also proper, because the parent entity of CORNÈR BANK holds correspondent banking accounts in the United States. As a holder of correspondent accounts in the U.S., CORNÈR BANK, through its parent entity, has filed, as required under the law known as the Patriot Act, the certification with the Federal Reserve of the agent for service of process, situated in New York City. The parent entity's using correspondent accounts in the USA, presumably in New York, includes, on information and belief, transfers between the parent entity's accounts in Switzerland and its subsidiary's accounts in the Bahamas.

11. Jurisdiction is proper, because the amount of controversy, alleged to be about \$14 million, is in excess of the statutory minimum of \$75,000. The amount in controversy is thus in excess of the statutory minimum under 28 U.S.C. Section 1332.

12. Venue is proper, because Plaintiff have made trust arrangements in Washington D.C. Venue is also proper because of the presence of the Embassy of the Bahamas in Washington, D.C., that may be involved in the transfer of the documents and for other reasons. Likewise, venue is proper, because the Embassy of Switzerland in Washington, D.C. has an office of commercial attaché and an office of a legal attaché, who may be involved in this litigation for the transfer of the required documents and for other reasons. Otherwise, the present American Plaintiff is entitled to sue aliens in any District in the U.S.

13. Any venue in the Bahamas for the present case would be *forum nonconveniens*. The banking secrecy laws of the Bahamas and very limited discovery

allowed under the rules in the courts of the Bahamas render DAY's chances of determining information on the Account in question next to nil. Furthermore, Defendants enjoy a substantial leverage over the local media, causing the publications favoring the Bahamian Defendants' declination to cooperate. That has included the editorials published in a leading newspaper of the Bahamas, favoring Defendants and diminishing DAY's chances in that other possible forum, if any.

### **III. UNDERLYING FACTS**

14. As mentioned above, DAY was the daughter of the deceased, FOELGNER. DAY and FOELGNER had a very close relationship until FOELGNER passed away, as addressed below. That bond was even stronger after DAY's father left the family in about 1965 and subsequently remarried.

15. In about 1971, FOELGNER started dating Dominico Iannitti, aka Dominick Joseph Iannitti, aka Dick Iannitti, aka DJ Iannitti ("IANNITTI), then a co-owner of the oil and gas company called Woodman Iannitti Oil Drilling, Co. IANNITTI was a very successful entrepreneur, of Italian origin, operating oil and gas wells in Kansas, at certain times being within the top five oil producing States in the U.S.

16. That relationship with FOELGNER led to IANNITTI's leaving his then family and ultimately divorcing his wife. On her end, FOELGNER ultimately got a divorce from her husband.

17. The couple never married nor moved together, but they lived next to each other and became close companions for the next about 25 years, until IANNITTI died of a combination of illnesses. DAY felt that IANNITTI was more of a father to her, than her biological father, who was, from early on, almost absent from her life.

18. Apart from the intertwined personal lives for about 25 years, FOELGNER also got a part-time work from IANNITTI, doing about every Saturday 2-4 hours of book keeping for IANNITTI, namely in his home office in the basement of his house, being paid about \$500 a week for that effort.

19. FOELGNER accompanied IANNITTI in almost all of his numerous trips, averaging at least some four trips a year, except for his traveling to Italy almost every year once, where IANNITTI's relatives lived.

20. In about 1975 or 1976, the couple came back from a trip to the Bahamas. DAY remembers that shortly thereafter, a painting, wrapped up in brown paper, apparently associated with that trip, was delivered to the house.

21. Shortly after that trip, DAY observed some printed papers on FOELGNER's table, which resembled certain banking records, but not looking like usual bank statements from American banks. The painting mentioned above was on the floor leaning against the wall with its back side out, to be seen. In DAY's recollection, she called FOELGNER who came downstairs and where her daughter asked questions about the papers. FOELGNER got upset, particularly when DAY asked about some resemblance of the numbers on the back of the painting and on the apparently banking statements. Almost immediately, the documents and the painting were moved to IANNITTI's house, where the painting was displayed on a wall, for about a year, and then was hidden, never to be displayed on a wall again.

22. Subsequently, DAY, who was close to the high school graduation by that time, dated several of IANNITTI's junior employees. They all retold the rumor in the community that IANNITTI had set up the financial benefit for FOELGNER for life, which they commonly called 'a workman's override' and which eventually referred to an

overriding royalty interest, or interest in IANNITTI's ventures, whereas FOELGNER did not have to engage in any management. Those rumors circulated in the community essentially as an established matter, until IANNITTI died.

23. Approximately in the late 1970s, IANNITTI's long-time partner in the oil business, K.T. Woodman, became seriously ill and inactive businesswise. However, IANNITTI continued to use the successful commercial name Woodman Iannitti Drilling Co. (also known as Woodman Iannitti Drilling Oil and Gas Co.). On information and belief, IANNITTI bought out the stake that K.T. Woodman had in their company, and continued to use the light blue color for painting his pumping equipment, as that company was known for, to distinguish from other oil men's equipment. IANNITTI was also known as a very successful investor, on information and belief, making gains in almost all he did businesswise, and becoming a very rich person, with diversified assets.

24. During her remaining life with IANNITTI, FOELGNER, on information and belief, accumulated wealth, ultimately amounting, in the aggregate, to about \$14 million, pursuant to revenues accumulated from her interest that IANNITTI gave to her, believed to be through an overriding royalty interest in oil wells and/or interest in IANNITTI's ventures, stretched to over 20 years.

25. On information and belief, IANNITTI's arrangement for FOELGNER was a joint account or a trust account set up with CORNÈR BANK (OVERSEAS) LTD. in the Bahamas. FOELGNER and DAY were the holders or alternatively beneficiaries of that account, which also followed from what DAY was told by IANNITTI. Even though this was a common rumor among those who knew the couple, however, FOELGNER invariably refused to admit those offshore assets to anyone or discuss it even with her

daughter DAY. Moreover, FOELGNER got upset with DAY when she attempted to discuss “this money”.

26. On several occasions, IANNITTI told DAY that he took care of her mother financially for life, including herself, DAY. In 1996, IANNITTI was dying of several ailments, including a heart condition. DAY had conversations with him, when he was already gravely ill, on his death bed. IANNITTI told DAY not to believe her mother when she would say she was broke, because he had set up financially FOELGNER and DAY herself, too, for life.

27. After IANNITTI’s death, FOELGNER continued to maintain that the rumors about the hidden assets were untrue, even before DAY. For example, DAY repeatedly asked FOELGNER just to give her one million dollars from the secretive assets and let her go on in her life taking care of herself from then on. FOELGNER continued to deny before DAY the existence of the secretive assets, always getting upset when that topic was raised by her daughter.

28. However, years later, FOELGNER and DAY had various conversations, in which FOELGNER started to abate her adamant denials. Ultimately FOELGNER confided that in fact she had accumulated assets on an Account in Nassau, the Bahamas, and wanted, after her death, that DAY and DAY’s daughter (thus FOELGNER’s granddaughter), as well as the latter’s children, to benefit from, and inherit, the proceeds on that Account in Nassau.

29. More specifically, such a revealing conversation took place on or about July 3, 2006, when DAY was visiting FOELGNER during the holidays in Kansas and stayed at her place for about two days. That visit, as always before, was marked by a

usual mother-daughter special attachment to each other. This time, FOELGNER told DAY that she had a premonition of dying soon and wished to reveal to her something.

30. During that particular stay of her daughter at her home, FOELGNER conveyed to DAY certain information about the Account, ultimately revealing that the Account's number had something to do with the numbers on the back of the painting they argued about many years before.

31. To the best of DAY's recollection of that conversation, DAY asked FOELGNER, how much is that Account had accumulated. FOELGNER responded, guess how much, to which DAY made a guess 'between 8 and 10 million'. As DAY recalls, FOELGNER responded, it was close to 14 million dollars.

32. To the best of DAY's recollection of that conversation, DAY then asked what bank it was, to which FOELGNER said that it was the 'corner bank' in the Bahamas. DAY did not realize at that time that the word 'corner' referred not to some street address, and insisted to disclose the name of the bank. FOELGNER repeatedly said that it was the 'corner bank' but DAY still thought that this referred to a street address and asked to tell her what was the crossing street. FOELGNER, apparently upset, responded that DAY was 'a smart girl' and that she would figure this out, as well as that she would send her the banking documents.

33. Further, based on that and other conversations, to the best of DAY's understanding, the Account was in both names of FOELGNER and DAY, with the signature rights for both, or alternatively, it was a trust Account with two beneficiaries, FOELGNER and DAY, in which they had the controlling powers.

34. At that meeting, FOELGNER reminded DAY of the painting that appeared after one of her and IANNITTI's trips to the Bahamas. As mentioned above,

there was a sticker on the back of that painting, on information and belief, with the mechanically printed numbers related to the Account number and one of two passwords. DAY was aware that that painting was treated unusually. Aside from a short period of time in IANNITTI's house, that painting was never put on the wall, and after IANNITTI's death, FOELGNER carefully kept it hidden.

35. FOELGNER expressed her intention that DAY and her assigns had the rights to use all the proceeds on that Account. DAY was under the impression that FOELGNER believed, for whatever reason, that she would not live much longer, despite that, at that particular time, her mother seemed to be in good health.

36. FOELGNER also said that she was to send the bank statements with all information to DAY later on, so that DAY could have her independent access to that Account in Nassau.

37. Most sadly, on September 8, 2006, FOELGNER was tragically killed, being a victim in a vehicular homicide accident, caused by a drunken driver. By way of precaution, Plaintiff emphasizes herewith that no allegations against Defendants are made with regard to that tragic accident. There was no association with the issue of the Account, the vehicular homicide was completely accidental.

38. Prior to that tragic accident, FOELGNER, therefore, did not pass the banking statements to DAY. Thus, DAY was left with the information that remains on the above paper sticker on the back of the painting, as well as the information that FOELGNER passed to DAY orally. After that accident, DAY also received that painting, through the advice of her aunt (FOELGNER's sister) who said that this is that same painting that the deceased wanted her to have.

39. DAY, who had, as cited above, a close attachment to her mother, was recovering from her mother's tragic and sudden death for a long time. DAY recused herself from being actively involved in the disposition of the declared estate assets of FOELGNER. Thereupon, DAY started to make inquiries in Nassau, the Bahamas, on that Account, including her first trip there, lasting about three weeks.

40. Among other things, she contacted the Central Bank of the Bahamas, made inquiries about the procedure to recover her or her mother's Account, characterizing it as a dormant, with limited information available to her. DAY also visited several banks' offices and inquired about the procedures how to search for a dormant account, but with no success. Unlike the encounter with the CORNÈR BANK, described below, DAY's interlocutors seemed willing to help.

41. DAY brought from her first trip a Yellow Pages book from the Bahamas and later started to make phone calls to the banks and offices in Nassau. In one of the telephonic conversations a banking employee asked DAY to retell him what her mother told her, exactly. After DAY retold that conversation, the banking employee explained to her over the phone that instead of looking for a bank on a street corner, there was actually a bank, called the CORNÈR BANK.

42. DAY located the telephone number of CORNÈR BANK in Nassau (among over 100 other banks licensed and operating in the Bahamas) and called it, speaking, on information and belief, with ROBERTS. In contrast with other banks that DAY contacted, who normally offered some cooperation, ROBERTS immediately told DAY that there was no such Account. ROBERTS further declined to undertake search, telling DAY there was no need to do any search, because he knew all accounts that were

at his bank in Nassau. DAY asked ROBERTS repeatedly, but with the same outcome, the declination to set up any search.

43. DAY also retained an attorney in the State of Utah, who got in touch with a law firm located in Nassau, Bahamas, called GRAHAM THOMPSON, CO. (hereinafter "GTC"). Said law firm did not disclose, however, at that time that it simultaneously represented CORNÈR BANK.

44. At some point, it turned out, however, that GTC in fact simultaneously represented CORNÈR BANK and knowingly overcame that conflict of interest. However, at that point, GTC was privy to confidential information from DAY.

45. The motives of GTC for not disclosing that CORNÈR BANK was GTC's client appear suspect to DAY. GTC inquired about the administration of FOELGNER's estate and asked for certain documents, apparently trying to get as much information as possible.

46. More specifically, in the course of DAY's second trip to Nassau, the Bahamas, she was planning to visit the office of CORNÈR BANK. First, she went into GTC's office, without advising GTC in advance of her arrival, where DAY had a meeting with GTC's partner Cheryl T. Whyms. The latter, again, asked questions, and then, per DAY's request, agreed to type for DAY a letter to CORNÈR BANK.

47. DAY went directly, with that letter from GTC, to CORNÈR BANK, at 308 East Bay Street, Nassau, which was within a walking distance. That visit was proceeding under strange circumstances, because the bank's office was not open to the public and the bank manager, subsequently identified as ROBERTS, was not opening the door of the office before DAY, when she asked to enter. Once DAY said who she was,

ROBERTS attempted to forcefully shut the door right in front of her, but DAY put her foot in the door, attempting to have a conversation.

48. When DAY started the oral communication with ROBERTS, when he held the door only half-open most of the time, except for the occasion ROBERTS went inside to read GTC's letter and DAY was able to actually get in. DAY told ROBERTS that she wanted to inquire about the Account at issue and that she used the services of counsel, showing GTC's letter. ROBERTS said that GTC was a reputable law firm that represented his bank and that she, DAY, stood no chances against that law firm. DAY was stunned with what this might mean, namely it now appeared, for the first time, that GTC represented both sides, in the very same matter.

49. Apart from essentially forcing DAY out, the conversation was such that that ROBERTS would not cooperate. DAY told ROBERTS at the end of such an encounter that she essentially had no choice but to initiate litigation against him and his bank.

50. As a result of such an encounter, DAY suffered not only the physical inconvenience of being pushed out, but also a severe emotional distress after ROBERTS's such outrageous conduct. DAY was under the impression at that time that she was mocked and that her money was being stolen from her and she was under stress of these developments.

51. In DAY's recollection, at some point she was brought to tears in the course of that encounter with ROBERTS, and ROBERTS apparently tried to mitigate what had happened by calling a car to transport DAY back to her hotel.

52. As cited above, GTC then actually admitted to DAY that their law firm represented CORNÈR BANK and transferred the fees received from DAY to another law

firm, called McKinney, Bancroft & Hughes, at Mareva House, 4 George Street, Nassau, the Bahamas. GTC also passed the retainer money to that other law firm. That other law firm that replaced it in the Bahamas was, however, of little or no help to DAY, essentially charging fees from the retainer just for reading various e-mails.

53. In the course of the last oral contacts with GTC, however, GTC conveyed to DAY at one point that their law firm had “a hit” on the name FOELGNER, implying the Account was identified, but that since conflict was discovered their representation was over and that information could not be revealed to DAY.

54. DAY also attempted to make inquiries at the main offices of CORNÈR BANCA in Lugano, Switzerland. Such attempts were also to no avail, as though the parent banking corporation had no control over its subsidiary in Nassau. On information and belief, CORNÈR BANCA, however, has had the full authority to compel its relatively small subsidiary in Nassau, the Bahamas, to disclose the needed information, and the pretense of no access was false. As it turned out, the parent banking office in Lugano was in Tessin, the only Swiss Canton, where Italian was the official language. In DAY’s understanding, IANNITTI, who spoke Italian and was bi-lingual, could have considered that as a factor of convenience, while selecting a Swiss bank.

55. The net result of DAY’s attempted contacts with both CORNÈR BANK’s branch in Nassau and with its parent in Switzerland was that they flatly refused to cooperate with her, even though obligated to cooperate with the person who was, at a minimum, a beneficiary of one of their accounts.

56. The conduct of CORNÈR BANK in Nassau in the Bahamas and of ROBERTS was offensive and unbecoming of a banking institution that had fiduciary obligations before persons who assert beneficiary rights in accounts held by their bank.

57. Furthermore, the conduct of CORNÈR BANK in Nassau was contrary to the laws of the Bahamas, as cited below.

58. By way of a context, after DAY was treated by CORNÈR BANK in that outrageous manner, DAY started to review public information about CORNÈR BANK and found out that there were adverse publications on that bank's reputation, alleged money laundering and harboring substantial Iranian accounts, overcoming the sanctions imposed by the United States against Iran. These publications strengthened DAY's desire and determination to have the proceeds from that alleged Account transferred under her control to a bank in the United States without any further delays, and to seek any and all damages allowed by the law.

59. At a later time, GTC and CORNÈR BANK, on information and belief, staged a setting for an improper campaign in the media in the Bahamas. Even though the present case was at an early stage and concerned private matters of a non-public figure. These Defendants, on information and belief, caused or prompted or otherwise secured at least three editorials in the leading newspaper in the Bahamas, reflecting their positions and putting DAY into a false light. Of particular notation were these editorials in the Bahamian press: 'Top Law Firm Wants \$14 Million Action Claim Thrown Out', September 27, 2010; 'Bahamas bank: No Record of Disputed \$14 million Trust Account', October 4, 2010; 'Scurrilous attacks': Law Firm Fights Back', dated January 4, 2011.

**COUNT I. (BREACH OF CONTRACT)**  
**(Against All Defendants)**

60. Plaintiff incorporates by reference the allegations in the preceding Paragraphs 1 to 59, as if pled with the same force and effect herewith.

61. As cited above, CORNÈR BANK, on information and belief, has maintained and held the assets beneficially owned by DAY, both in her individual capacity, and being otherwise entitled to FOELGNER's assets on that Account, which she transferred to DAY, along with, on information and belief, two passwords to have access to the Account.

62. On information and belief, DAY is the joint account holder with her deceased mother FOELGNER. CORNÈR BANK had the obligations under the Account contract concluded with FOELGNER not to handicap her or DAY's access to that joint or trust Account.

63. By way of preventing DAY from using the Account and concealing the respective banking records, CORNÈR BANK was in breach of contract, discarding both the express and implied obligations of a banking institution before its customer and beneficial owner of certain assets.

64. That conduct was also illegal. CORNÈR BANK also disregarded, among other, the law of the Bahamas, namely Section 17 of the Banks Act of the Bahamas, entitled 'Deposits to credit of deceased persons, how dealt with'.

65. DAY is entitled to enforce the contract and her entitlement to that money and to obtain the proceeds on that Account, transferring those to the United States. DAY is further entitled to damages for CORNÈR BANK's breach of contract.

66. Likewise, GTC was in breach of contract, when that law firm in Nassau purported to represent the parties with the adverse interests, without disclosing that conflict to DAY, until that conflict was incidentally revealed by ROBERTS. Plaintiff is entitled to relief on that Count.

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**COUNT II (BREACH OF FIDUCIARY DUTIES)  
(against All Defendants)**

67. Plaintiff incorporates by reference the allegations in the proceeding Paragraphs 1 to 66, as if pled with the same force and effect herewith.

68. As a bank that obtained proceeds from FOELGNER for the benefit of FOELGNER and DAY, CORNÈR BANK owed fiduciary duties to both FOELGNER and DAY, as the beneficiaries of these proceeds. CORNÈR BANK was never an owner of these proceeds and had no right to withhold these proceeds from DAY. However, CORNÈR BANK ended acting as if the monies belonged to it.

69. Consequently, CORNÈR BANK is in breach of its fiduciary duties to DAY. As its officer and banker, ROBERTS, whose conduct was outrageous, also was in breach of his fiduciary duties before the bank's client.

70. Likewise, GTC was in breach of its fiduciary duties to Plaintiff, because it represented the parties with directly adverse parties. GTC's subsequent recusal provided no excuse for that law firm's seeking being retained and then actually being retained by DAY including obtaining her retainer, representing her in the matter against its client CORNÈR BANK.

71. Therefore, Plaintiff is entitled to damages for CORNÈR BANK's, ROBERTS's and GTC's breach of fiduciary duties before DAY.

**COUNT III. (CONVERSION)  
(against CORNÈR BANK)**

72. Plaintiff incorporates by reference the allegations in the proceeding Paragraphs 1 to 71, as if pled with the same force and effect herewith.

73. By way of its conduct, CORNÈR BANK withheld very substantial proceeds, on information and belief, about \$14 million belonging to DAY as the Account

holder or its beneficiary. Those proceeds were very substantial on that bank's books, given the public information about the relatively modest size of that bank's subsidiary and/or branch in Nassau.

74. By way of its conduct, CORNÈR BANK attempted to control and it effectively converted the proceeds belonging to the client, without any apparent intent to return the proceeds to whom those belong.

75. Therefore, Plaintiff is entitled to damages based on the conversion by CORNÈR BANK. That includes both the full restitution of the proceeds and the damages on the basis of conversion and depriving DAY from using those proceeds, i.e. disallowing her to wire transfer those proceeds to the U.S.

**COUNT IV. (UNJUST ENRICHMENT)  
(against CORNÈR BANK)**

76. Plaintiff incorporates by reference the allegations in the proceeding Paragraphs 1 to 75, as if pled with the same force and effect herewith.

77. By way of obstructing DAY's access to the joint Account, CORNÈR BANK continued to hold the proceeds, eventually without any intention to provide those to DAY at all.

78. Regardless of its intent, CORNÈR BANK has been able to use the proceeds for its own purposes, at DAY's expense, thus being unjustly enriched. On information and belief, CORNÈR BANK has been able to use these proceeds, under the circumstances, as its free working capital, and get enriched at least in that manner.

79. Therefore, Plaintiff DAY is entitled to damages based on the unjust enrichment of CORNÈR BANK.

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**COUNT V (DECLARATORY RELIEF)**  
**(Against All Defendants)**

80. Plaintiff incorporates by reference the allegations in the proceeding Paragraphs 1 to 79, as if pled with the same force and effect herewith.

81. At all relevant times, CORNÈR BANK denied DAY's entitlement to dispose of the Account and denied her right to be recognized as the Account holder.

82. Therefore, DAY is entitled to the declaratory relief of this Court, establishing that she is the Account holder and/or its beneficiary.

83. Furthermore, DAY is entitled to a declaratory relief, a judicial declaration that CORNÈR BANK's and ROBERTS's conduct was unlawful, despicable and outrageous. Additionally, DAY is entitled to a pronouncement that GTC overcame conflict of interest and breached their professional duties to DAY.

84. Therefore, Plaintiff DAY is entitled to such declaratory relief, as described above.

**COUNT VI (ACCOUNTING)**  
**(against CORNÈR BANK and ROBERTS)**

85. Plaintiff incorporates by reference the allegations in the proceeding Paragraphs 1 to 84, as if pled with the same force and effect herewith.

86. By way of being a banking institution, CORNÈR BANK owed the duty of accounting before DAY for the Account, all interest and dividends accrued, any disbursements, along with monthly statements, reflecting all transactions.

87. CORNÈR BANK did nothing to comply with its duty to account to the account holder and/or beneficiary, DAY.

88. Therefore, Plaintiff DAY is entitled to CORNÈR BANK's and ROBERTS's accounting for all proceeds on the Account, all interest and dividends

accrued, or disbursements made, and to provide to DAY all the monthly statements, as well as any other records associated with that Account.

**COUNT VII. (CIVIL CONSPIRACY)**  
**(against All Defendants)**

89. Plaintiff incorporates by reference the allegations in the proceeding Paragraphs 1 to 88, as if pled with the same force and effect herewith.

90. As the facts above show, CORNÈR BANK, ROBERTS and GTC engaged in a civil conspiracy contrary to the interests of DAY, conspiring that she would never get access to that Account and to the proceeds.

91. CORNÈR BANK's counsel GTC failed or refused to disclose to DAY that it represented that bank and could not be retained by DAY. Instead, CORNÈR BANK, its manager ROBERTS, acted in concert with GTC to impinge upon the interests of DAY and not to allow her access to the Account.

92. Plaintiff DAY is entitled to the damages for Defendants' civil conspiracy against DAY.

**COUNT VIII. (BATTERY)**  
**(against ROBERTS and CORNÈR BANK)**

93. Plaintiff incorporates by reference the allegations in the proceeding Paragraphs 1 to 6 and 47-51, as if pled with the same force and effect herewith.

94. ROBERTS's conduct before DAY, when she tried to visit CORNÈR BANK's office in Nassau, was outrageous. ROBERTS's effectively pushing DAY out of the offices of CORNÈR BANK, using the office's door, was unauthorized, against her will, unbecoming of a banker and outrageous.

95. DAY was physically overwhelmed by such an extraordinary conduct of a purported banker of CORNÈR BANK, who used force pushing a woman out of the bank's office, using the door. That conduct was intentional and tortious.

96. Plaintiff DAY is entitled to damages against ROBERTS and his *respondeat superior* CORNÈR BANK, for the tort of battery with malicious intent.

**COUNT IX. (INFLECTING SEVERE EMOTIONAL DISTRESS)  
(against ROBERTS)**

97. Plaintiffs incorporate by reference the allegations in the proceeding Paragraphs 1 to 6 and 47-51, as if pled with the same force and effect herewith.

98. ROBERTS's conduct before DAY was outrageous to cause humiliation of a person traveling all the way from Las Vegas, the U.S., to visit CORNÈR BANK's office. ROBERTS caused DAY's severe emotional distress. In particular, that stress was caused by ROBERTS's effectively pushing DAY out of the offices of CORNÈR BANK, using the office's door, at some point bringing DAY, during that encounter, to tears.

99. DAY, a weaker woman, was physically overwhelmed by a man, ROBERTS, and distressed by such an extraordinary conduct of that banker. That emotional distress went beyond the fear of the economic loss of the alleged about \$14 million, but was caused by ROBERTS's using force against DAY. Therefore, DAY felt distressed and even unsafe for the remainder of her trip to Nassau.

100. Plaintiff DAY is entitled to damages for ROBERTS's causing a severe emotional distress by his extraordinary conduct including using force, unbecoming of a banker with regard to a woman of lesser physical power.

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**COUNT X. (MALPRACTICE)**  
**(against GRAHAM THOMPSON)**

101. Plaintiff incorporates by reference the allegations in the proceeding Paragraphs 1 to 6 and 44 to 46, as if pled with the same force and effect herewith.

102. When GTC proposed to be retained, and was in fact retained by DAY, said law firm did not disclose that it represented the adverse party, CORNÈR BANK, thus overcoming and concealing conflict of interest.

103. That conduct was in violation of the Bahamas Bar Act of 1971 (Chapter 64 of the Bahamas laws, 'Legal Profession'), with the effect in the United States, where DAY was deprived of honest services and of undivided loyalty of a counsel that she retained overseas.

104. But for an incidental discovering a conflict, DAY would have been unaware that GTC acted in breach of that firm's duties of a counsel before the client.

105. Therefore, DAY is entitled to damages against GTC for malpractice.

**COUNT XI. (MISREPRESENTATION, FRAUD)**  
**(against GRAHAM THOMPSON)**

106. Plaintiff incorporates by reference the allegations in the proceeding Paragraphs 1 to 6 and 44 to 46, as if pled with the same force and effect herewith.

107. When GTC agreed to be retained and was actually retained by DAY, said law firm concealed that it had been representing the adverse party, CORNÈR BANK.

108. Apart from the violation of the Bahamas Bar Act of 1971, such a conduct amounted also to misrepresentation (concealment) and fraud, regardless of the standards of professional conduct and formal duties.

109. Therefore, DAY is entitled to damages against GTC for misrepresentation and fraud.

**COUNT XII. (INVASION OF PRIVACY)**  
**(against GRAHAM THOMPSON and CORNER BANK)**

110. Plaintiff incorporates by reference the allegations in the proceeding Paragraphs 1 to 6 and 44-59, as if pled with the same force and effect herewith.

111. As cited above, Defendants caused, or prompted, or otherwise secured at least three editorials in the leading newspaper in the Bahamas, towit: - ‘Top Law Firm Wants \$14 Million Action Claim Thrown Out’, September 27, 2010; - ‘Bahamas Bank: No record of Disputed \$14 million Trust Account’, October 4, 2010; - ‘Scurrilous attacks’: Law Firm Fights Back’, dated January 4, 2011.

112. Those editorials reflected Defendants’ positions, favoring the Bahamian parties, and putting DAY, who is not a public person and pursues family matters, into a false light. That media attention in the Bahamas was even more unwarranted where there was no trial and litigation did not progress beyond the pleading stage and the motions to dismiss.

113. Those publications also underscored that DAY, who has been depicted less than favorably, would stand zero chances to succeed in her lawsuit should it be filed in the Bahamas. On information and belief, such publications were used to discourage DAY from pursuing her claim as hopeless.

114. Plaintiff DAY is entitled to privacy in this matter, Defendants’ using or manipulating the media in the Bahamas in their favor has been unwarranted. Plaintiff is entitled to relief on that Count.

**REQUESTS FOR RELIEF**

Wherefore, Plaintiff DAY prays for the following relief:

- a. Recovery of the Account, described hereinabove, and all the proceeds on that Account, in favor of Plaintiff;
- b. Recovery of any and all interest and any dividends accrued on that Account;
- c. Order to CORNÈR BANK to immediately transfer all the proceeds deposited on that Account, including all interest, accruals, dividends and the like, to account(s) in the USA, to be designated by DAY;
- d. Order to CORNÈR BANK to immediately disclose all the banking records on the above Account for the benefit of Plaintiffs;
- e. Punitive and exemplary damages for the despicable conduct of Defendants;
- f. Damages against GTC for malpractice, misrepresentation and fraud, regardless of their refund of unauthorized fees, transferred to another law firm that GTL recommended;
- g. Separate damages against ROBERTS for his despicable conduct *ultra vires*;
- h. Attorney's fees, costs;
- i. Any other relief that the Court finds just and fair.

Respectfully submitted,

Dated: June 16, 2011

/s/

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**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial in this action.

Dated: June 16, 2011

/s/

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