IN THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

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ST-2020-CV-00014
TAMARA CHARLES
CLERK OF THE COURT

SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS / ST. JOHN

GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS, PLAINTIFF, V. DARREN K. INDYKE, IN HIS CAPACITY AS THE EXECUTOR FOR THE ESTATE OF JEFFREY E. EPSTEIN AND ADMINISTRATOR OF THE 1953 TRUST; RICHARD D. KAHN, IN HIS CAPACITY AS THE EXECUTOR FOR THE ESTATE OF JEFFREY E. EPSTEIN AND ADMINISTRATOR OF THE 1953 TRUST; ESTATE OF JEFFREY E. EPSTEIN; THE 1953 TRUST; PLAN D, LLC; GREAT ST. JIM, LLC; NAUTILUS, INC.; HYPERION AIR, LLC; POPLAR, INC.; SOUTHERN TRUST COMPANY, INC.; AND JOHN AND JANE DOES, DEFENDANTS.	**Case No. ST-2020-CV-00014** **Action for Damages** **Jury Trial Demanded**
GHISLAINE MAXWELL, **Plaintiff**, V. ESTATE OF JEFFREY E. EPSTEIN; DARREN K. INDYKE, IN HIS CAPACITY AS EXECUTOR OF THE ESTATE OF JEFFREY E. EPSTEIN; RICHARD D. KAHN, IN HIS CAPACITY AS EXECUTOR OF THE ESTATE OF JEFFREY E. EPSTEIN; AND NES, LLC, A NEW YORK LIMITED LIABILITY COMPANY, **Defendants.**	**Case No. ST-2020-CV-00155** **Action for Indemnification**
IN RE: ESTATE OF JEFFREY E. EPSTEIN, **deceased.**	**Case No. ST-2019-PB-00080**

ORDER

THESE MATTERS are before the Court to determine whether they should be designated as complex or, in the alternative, assigned to the same judge as related cases. For the reasons stated below,

the Court will designate *Government of the United States Virgin Islands v. Darren K. Indyke, et al.* (hereinafter "*Indyke*") as complex and assign the case to the undersigned judge for all further proceedings. The Court will also designate *Ghislane Maxwell v. Estate of Jeffrey E. Epstein, et al.* (hereinafter "*Maxwell*") as complex and reassign it to the undersigned for all further proceedings. Finally, the Court will decline to designate the *Estate of Jeffrey E. Epstein* probate proceeding as complex at this time.

Darren K. Indyke and Richard D. Kahn, Co-Executors of the Estate of Jeffrey E. Epstein and Administrators of the 1953 Trust (hereinafter "Co-Executors") and Defendants in *Indyke* and *Maxwell*, filed a motion in *Indyke* to have that case designated complex. The Plaintiff, Government of the United States Virgin Islands (hereinafter "the Government"), did not oppose. The Court (Tejo, J.) referred the motion to the Complex Litigation Division for determination.[1] This Court, in its administrative capacity, issued an Order, setting a briefing schedule. The Court also asked the parties to address whether the related probate proceeding, which the Co-Executors had referenced in their motion to designate *Indyke* as complex, should also be designated complex or, alternatively, whether the same judge should handle both cases. Leave was granted to identify other related cases that might benefit from being assigned to the same judge. The Co-Executors filed a supplemental brief in support of their motion, to which the Government responded. The Co-Executors also filed a reply. Defendant Southern Trust Company had appeared in *Indyke* (by filing a motion for a protective order) but did not respond as to whether the case should be designated as complex. None of the other Defendants have appeared to date, despite having been served.

After the Order issued in *Indyke*, the Court (Tejo, J.) referred a second case, *Ghislane Maxwell v. Estate of Jeffrey E. Epstein, et al.*, to determinate whether it, too, should be treated as complex. This Court, again in its administrative capacity, issued a briefing schedule and, as earlier, inquired whether, if *Maxwell*

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[1] The Honorable Sigrid M. Tejo then recused from *Indyke*, after which the Clerk's Office reassigned the case to the Honorable Denise M. Francois, who also recused. At present, *Indyke* is assigned to the Honorable Kathleen Mackay.

was not designated complex, it should be assigned to the same judge as *Indyke* and the probate case. The Co-Executors, and the Plaintiff, Ghislane Maxwell (hereinafter "Ghislane"), filed briefs in response. Although the Government had filed a motion to intervene in *Maxwell*, the Government did not file a brief.

The Court turns first to *Indyke*. In their supplemental brief, the Co-Executors gave little attention to the question asked, whether this case should be designated as complex. Instead, they focused on the related question whether the probate matter should be designated as complex or, alternatively, both cases assigned to the same judge. The Co-Executors did adequately address the criteria for designating *Indyke* as complex in their initial motion for complex treatment, however. Hence, the Court accepts their earlier arguments and finds no harm from omitting those points in their supplemental brief. The Government, by contrast, initially filed a one-page response to the Co-Executor's motion to state its non-opposition to designating this case as complex, a position the Government reiterated in its brief in response to the Co-Executor's supplemental brief. Although the Government did touch on why it believes this case should be designated as complex, it too devoted much of its brief to addressing whether the probate proceeding should be treated as complex or both matters assigned to the same judge. The Court will address the arguments for and against designating the probate case as complex further below.

In short, both the Government and the Co-Executors agree that *Indyke* is complex and should be so designated. Considering that the parties are in agreement, and that litigants generally have the right to choose the division in which their case is heard, the Court concurs that *Indyke* should be designated as complex. More than the parties' agreement compels this conclusion, however. As the Co-Executors point out in their motion, "the number of defendants (10), the nature and number of the statutory claims (twenty-three (23) CICO counts), the purported duration of the alleged criminal activity (more than two (2) decades), and the myriad financial transactions and tax matters at issue weigh substantially in favor of [complex treatment] . . . ." (Mot. 2, filed Feb. 1, 2021.) And, as the Government notes in its response, if

its motion for leave to file a second amended complaint is granted, the number of parties and claims in *Indyke* will only expand. Although this case does not fit within any of the categories of presumptively complex cases, *see* V.I. R. Civ. P. 92(b), "a single case, unrelated to any other and regardless of the number of parties, can also be complex if it 'requires exceptional judicial management.'" *Highland Credit Opportunities CDO, Ltd. v. Evans-Freke*, 74 V.I. 275, 281 (Super. Ct. 2021) (quoting *Sixteen Plus Corp. v. Yousef*, 72 V.I. 610, 627 (Super. Ct. 2020)). Given the number of defendants, the type and nature of the claims, and the potential need to coordinate proceedings with other cases, both within and without this jurisdiction, it is clear that *Indyke* is complex and will be so designated.

The Court turns next to *Maxwell*. Both the Co-Executors and Ghislane agree that the case is not complex. The Co-Executors note that *Maxwell* "is a simple, one (1) issue dispute—whether Maxwell is entitled to indemnification of legal fees." (Co-Executors' Br. 1, filed Mar. 29, 2021.) The case does not fall within any of the presumptively complex categories, nor will it require exceptional judicial management, they contend. The Co-Executors also do not believe the case needs to be assigned to the same judge as *Indyke* or the probate case. However, they fail to explain why. Ghislane, for her part, concurs with the Co-Executors on both points: complex treatment is not warranted and there is no reason to assign this case to the same judge as *Indyke* or the probate, she says.

Although the Court agrees, in general, with Ghislane and the Co-Executors that, at first glance, *Maxwell* does not appear to be complex, both sides neglected to mention (or intentionally omitted) that the Government has moved to intervene. In its motion, the Government maintains that Ghislane is the subject of a local investigation concerning her role in Epstein's alleged criminal activity and that she has evaded attempts to serve her with a CICO subpoena. What's more, the Government moved to intervene in *Maxwell* as of right and by permission, claiming an interest in the funds Ghislane seeks to cover legal fees and expenses. Ghislane opposed the Government's motion to intervene. The Co-Executors did not

respond to it. But neither side noted the potential for the Government to be involved in Maxwell, should its motion be granted, which would transform "a simple one (1) issue dispute" into a much more complicated case. Both sides' failure to reference this development undermines their purported certainty as to the simplicity of the case.

What's more, Ghislane and the Co-Executors fail to recognize that *Maxwell* could be seen as presumptively complex once *Indyke* is designated as complex. *Cf.* V.I. R. Civ. P. 92(b). Although the language of Rule 92(b)(6) speaks of "insurance coverage claims (including indemnification and contribution claims) arising out of multi-party proceedings in any of the above categories of cases," *id.*, meaning the other category of presumptively-complex cases, the overall intent of the rule is to allow for "satellite litigation" involving insurance coverage issues to also be designated as complex. *Accord Santa Clara Valley Water Dist. v. Century Indem. Co.*, Case No. 115CV286500, 2016 Cal. Super. LEXIS 273, *2-3 (Cal. Santa Clara Cty Super. Ct. Mar. 23, 2016) ("Insurance coverage cases . . . are complex in part because of the complexity of the underlying actions from which they arise. . . . [C]omplex cases often generate satellite litigation dealing with insurance coverage issues, which involve extremely complex sets of documents and facts." (brackets, internal quotation marks, and citation omitted)). It would be counterintuitive to allow a single case to be designated as complex—because it requires exceptional judicial management—but not designate any satellite litigation later spawned by that same case as complex.

At first glance, *Maxwell* does not appear to be satellite litigation generated by *Indyke* – because Ghislane is not a party to *Indyke*, at least not yet. But the Government has disclosed that Ghislane is the subject of an investigation and the target of subpoenas issued in *Indyke* and Ghislane seeks indemnification in *Maxwell* for "any threatened, pending, or completed suit, proceeding, or investigation relating to Epstein, his affiliated businesses, and his alleged victims." (Compl. ¶, filed Mar. 12, 2020, filed Mar. 12,

2020.) Since Ghislane seeks payment for legal fees incurred due to pending investigations and threatened suits, it follows that a portion the indemnification claims at issue in *Maxwell* arise out of *Indyke*. Thus, the Court will likewise designate *Maxwell* as complex as an indemnification case arising out of *Indyke*. *See* V.I. R. Civ. P. 96(b)(6). *Cf. Santa Clara Valley Water Dist.*, 2016 Cal. Super. LEXIS 273 at *4 ("The insurance coverage claims in this action are likely to implicate difficult and/or novel legal issues that will require extensive pretrial motions. Some of these issues could potentially be dispositive, and the Court and the parties may benefit significantly from the procedures available through complex case management, such as framing discrete legal issues for resolution, phasing discovery, and perhaps undertaking mini-trials on threshold issues.").

The Court turns next to the *Epstein* probate. The Government supports designating the probate case as complex. The Co-Executors oppose it. As a threshold point, the Court notes that probate proceedings can be designated as complex. *See* V.I. R. Civ. P. 92(a) ("A complex case is a civil action *or proceeding* . . . ." (emphasis added)). Thus, the *Epstein* probate is eligible for complex treatment. A probate case would never qualify as presumptively complex, however. Instead, it would have to warrant "exceptional judicial management[.]" V.I. R. Civ. P. 92(a). Considering that Co-Executors themselves refer to the estate as being "of . . . enormous size and complexity[,]" (Supp. Br. 3), involving "a welter of activity related to administration[,]" *id.* at 2, and potentially remaining in existence for "years down the road[,]" (Reply Br. 3, filed Apr. 6, 2021) – it certainly seems as if the Epstein probate qualifies as complex.

In fact, the magistrate judge appointed a special master to assist with the Epstein Victims' Compensation Fund, which underscores the exceptional judicial management the probate proceeding has already demanded. *See also* V.I. R. Civ. P. 95 ("Because complex cases inherently present exceptional circumstances, the judge assigned to the Complex Litigation Division may appoint and assign a master to assist with any of the cases pending in the Complex Litigation Division, whether individual cases, related

cases, or master case[s] . . . ."); *accord In re: Authorization for the Creation & Appointment of Staff Master*, S. Ct. Admin. Order No. 2021-0012, 2021 V.I. Supreme LEXIS 14 (V.I. Aug. 12, 2021). Of course, this is not to say that any case in which a master is appointed is *per se* complex. But the question here is whether "an estate of this enormous size and complexity[,]" (Supp. Br. 3), has already consumed (or will consume) too large a portion of judicial resources in contrast with other cases and proceedings pending before the same judicial officer. After all, the definition of "[a] complex case is a civil action or proceeding that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel." V.I. R. Civ. P. 92(a). The Complex Litigation Division has additional resources not available to other divisions of the court.

The Co-Executors proffer the probate should not be designated complex because the magistrate judge has "adeptly handled the many challenges associated with administration of the Estate, including the establishment and successful operations of the EVCP [or Epstein Victims' Compensation Program]." (Supp. Br. 5, filed Mar. 19, 2021; *see also id.* at 1-2 ("[D]uring the 19 months that Judge Hermon-Percell has handled the probate proceedings, she has presided over a continuous stream of case filings, hearings and other activities, and has an in-depth knowledge of the myriad issues pertaining to administration of this complex Estate."); *id.* at 3 (detailing extensive proceedings between 2019 and 2021).) The Court joins the Co-Executors in lauding the magistrate judge's efforts to date. But this Court, in its administrative capacity, must also be mindful of caseloads and efficient case management. *See* 4 V.I.C. § 72b(a) ("[The presiding judge] shall from time to time designate the judges who are to sit in each judicial division and divide the business in such manner as will secure the prompt dispatch of the business of the court and equalize the case loads of the several judges . . . ."). What's more, the very same point the Co-Executors make might now support complex designation since the magistrate judge has retired. Thus, even if the

probate case is not designated as complex, a new judge will be assigned and have to familiarize herself or himself with the case, which will have the same effect as "removing the one judge who has both historical and ongoing knowledge of the probate proceeding . . . ." (Reply Br. 2, filed Apr. 6, 2021.) Thus, the arguments in favor of leaving the *status quo* in place no longer carry the same weight.

That said, the Court cannot overlook the Co-Executors' concerns about requests to designate cases as complex masquerading as attempts at "judge shopping." *Cf. Evans-Freke*, 74 V.I. at 285 (noting that the motion for complex treatment was untimely and came after assigned judge had twice ruled against the movant). Here, the party who motioned for complex treatment opposes treating the probate matter as complex. It was the Court who asked the parties to consider whether the probate case should be among all the "Epstein cases" to be assigned or reassigned to the same judge. Thus, this is not an instance where the party seeking complex treatment did so in order to "seek[] a new audience . . ." (Reply Br. 4.) But the Co-Executors' concerns are still valid insofar as they relate to the Government's support for designating the probate as complex when viewed against the larger backdrop, namely the authority the Government has wielded over the Estate's assets, freezing most of the assets pursuant to Criminal Activity Lien Notices authorized by Title 14, Section 610 of the Virgin Islands Code. The record also reflects that the Probate Court and the Government have been at loggerheads at times. The Government's request to have the probate case designated as complex could give reason to pause. Again, however, the magistrate judge has retired and thus, the Co-Executors' concerns lack the force they once had.[2]

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[2] To be fair, the Co-Executors could also be seen as "seek[ig]a new audience[,]" (Reply Br. 3), insofar as they suggested that the Government should consent to having the magistrate judge assigned to the Estate probate try *Indyke* by consent. *Cf.* 4 V.I.C. § 123(d) ("Upon consent of the parties, the magistrate judge may conduct all proceedings in a jury or non-jury civil matter, including trial and enter a judgment in the case."). The Co-Executors only made this suggestion after this Court questioned whether the probate should be designated as complex or reassigned to the same judge as *Indyke* if that case, ultimately, were designated complex.

Having considered the arguments of the Co-Executors and the Government, the Court cannot find at this time that the probate should be designated as complex. Again, probate cases can meet the definition of a complex case and, if ever there were a probate case that could be deemed complex, the Epstein probate case may be it. But the magistrate judge who was assigned to the probate has handled it well and the Court trusts that her successor will too. What's more, the judicial officer who will take over the probate case retains the discretion to refer it for complex treatment at a later date. *Cf. Evans-Freke*, 74 V.I. at 283-84 ("Referral by the assigned judge or self-designation by the parties are the two ways in which a case is designated complex. Referral by the assigned judge does not have a time limit." (citing V.I. R. Civ. P. 92(e)(1))).

Similarly, the Court does not find that assigning the probate case to the same judge presiding over *Maxwell* and *Indyke* is appropriate here. "[A]ssigning related cases to different judicial officers is inefficient, wasteful of scarce judicial resources, and may result in inconsistent determinations . . . ." *In re: Procedure for the Assignment & Reassignment of Related Cases & Proceedings*, No. SX-2020-MC-00087, 2020 V.I. LEXIS 75, *1 (V.I. Super. Ct. Dec. 3, 2020). "[B]y contrast, 'assigning related cases to the same judge can be more efficient because the judge has knowledge of both cases and their respective procedural histories and can issue any other orders short of formal consolidation to avoid unnecessary cost or delay.'" *Id.* at *1-2 (brackets and ellipses omitted) (quoting *In re: Kelvin Manbodh Asbestos Litig. Series*, 69 V.I. 394, 422 (V.I. Super. Ct. 2018)). "Civil cases are deemed related when two or more lawsuits: (1) concern the same property (real or personal); or (2) involve the same or similar claim(s) between one or more of the same parties (or their successors-in-interest) that arises out of the same event, transaction, or contract." *Id.* at *2 (promulgation as Super. Ct. R. 17.1 pending).

Under this definition, *Indyke* and *Maxwell* are clearly related. Both cases concern the same property (Estate assets) and arising out of Epstein's alleged criminal activity. Moreover, the Co-Executors

moved to dismiss *Indyke* and *Maxwell* partly for the same reasons – because the Government and Ghislane, respectively, did not comply with the statutory waiting period before asserting claims against the Estate and further failed to submit their claims to the Co-Executors before bringing suit. Having different judges decide this same legal question would be inefficient and might result in inconsistent decisions, thereby increasing cost and delay. *Contra* V.I. R. Civ. P 1. In truth, however, all three cases—*Indyke*, *Maxwell*, and the *Epstein* probate—do orbit the same axis: the assets of the Estate. That is, all three cases concern the same issue: "Jeffrey E. Epstein ("Epstein") and his affiliated businesses[,]" (Compl. ¶ 1, *Maxwell*), the distribution of his assets and the assets of his affiliated businesses, and the claims and demands upon them.

In one respect the Court does agree with the Co-Executors, that "probate proceedings do not [necessarily] share the same civil litigation features [as regular civil actions], and thus do not easily lend themselves to . . . coordination . . . ." (Supp. Br. 5 n.2.). Unlike mass tort actions or multiple toxic torts cases involving the same defendants, or even regular civil cases, there will be little overlap between *Indyke* and *Maxwell* and the *Epstein* probate case – at least insofar as discovery, motion practice, and general pre-trial litigation is concerned. The Court does not agree, however, that coordination would "have only limited benefits." *Id.* In fact, the overlapping legal questions—and potential for inconsistent rulings—has been a source of concern for the Court. For example, the Co-Executors contend that the Government and Ghislane each should have waited twelve months before asserting claims against the Estate and further that the Probate Court has exclusive jurisdiction over their claims. For these reasons, among others, the Co-Executors moved to dismiss each case. Assuming, *arguendo*, that the judges assigned to *Maxwell* and *Indyke* were to agree and dismissed the cases—or stay them pending the filing of a claim in the probate case—the magistrate judge could still rule differently, rejecting the claims as premature or improper, which would leave the Government and Ghislane in legal limbo –forced to incur the costs of an appeal. There certainly are overlapping legal and factual issues between all three cases and any assertion to the

contrary, or that coordination of all three cases before the same judge would not be more efficient, is mistaken.

In the end, however, the Court will decline to reassign the probate case as a related case for one simple reason: the balance of caseloads and efficient case management. The Court has decided to designate *Maxwell* and *Indyke* as complex and assign them both to itself in furtherance of an earlier decision to share some of the caseload of the Complex Litigation Division. This Court still retains, however, an active general jurisdiction docket of regular civil and criminal cases, as well as an Appellate Division docket of magistrate appeals and appeals and petitions for writs or review of administrative agency decisions. To take on a complicated probate case, which may continue for years, with a special master appointed, and hearings and other protracted issues that have sometimes consumed a full day on the bench – the drain on this Court's other cases might be too much. For this reason, the Court will decline to deem the probate case related.

Accordingly, for the reasons stated above, it is hereby

ORDERED that the Motion for Complex Treatment filed by Defendants Darren K. Indyke and Richard D. Kahn on February 1, 2021, in *Government of the Virgin Islands v. Darren K. Indyke, et al.*, Case No. ST-2020-CV-00014, is **GRANTED**. The Clerk's Office shall **DESIGNATE** Case No. ST-2020-CV-00014 as **COMPLEX** and **REASSIGN** it to the docket of the undersigned judge. Venue remains in the St. Thomas / St. John Division. It is further

ORDERED that the Clerk's Office shall **DESIGNATE** *Ghislane Maxwell v. Estate of Jeffrey E. Epstein, et al.*, Case No. ST-2020-CV-00155 as **COMPLEX** and **REASSIGN** it to the docket of the undersigned judge. Venue remains in the St. Thomas / St. John Division. It is further

ORDERED that *Government of the Virgin Islands v. Darren K. Indyke, et al.*, Case No. ST-2020-CV-00014, and *Ghislane Maxwell v. Estate of Jeffrey E. Epstein, et al.*, Case No. ST-2020-CV-00155, are

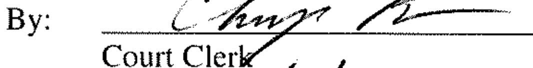
DEEMED RELATED so that proceedings short of formal consolidation may be coordinated between the two cases. It is further

ORDERED that *In re: Estate of Jeffrey E. Epstein*, Case No. ST-2019-PB-00080 remains assigned to the magistrate judge and any request (insofar as it could be viewed as such) to designate the probate case as complex or to assign it to the same judge as *Government of the Virgin Islands v. Darren K. Indyke, et al.*, Case No. ST-2020-CV-00014, as a related case is **DENIED without prejudice**.

DONE and so ORDERED this 7th day of December, 2021.

HAROLD W.L. WILLOCKS
Presiding Judge of the Superior Court

ATTEST:
Tamara Charles
Clerk of the Court

By: 
Court Clerk
Dated: 12/7/2021