

compensation under the Program would execute. (See 4/7/2020 AG Status Report at 2-3.)¹ That is false. On the very day that the Attorney General made that (mis)representation to the Court, the two most active claimants' counsel — together, representing by far the largest number of claimants — informed the Co-Executors and the Attorney General that *they are prepared to proceed with the Program without change to the existing Release.*

The evidence on this point is undisputed. On the morning of April 7, 2020, David Boies of Boies Schiller Flexner LLP (counsel for at least five prospective claimants) informed the Co-Executors that the existing Release was acceptable as written:

"I spoke with [counsel for the Co-Executors] this morning. I am now in agreement that we should move forward with the claims process without trying to further modify the [R]elease.

I am influenced by the desirability of getting the [P]rogram underway so that our clients can begin getting compensation; by the fact that the [R]elease will be limited to persons who provided services to Epstein, with the [Re]lease signed by individual victims who accept an award having a space to make clear that certain individuals . . . are not released, and by the fact that the release of Epstein's employees/service providers will be taken into account by the [Program] Administrator in setting the amount of the award. And, of course, this is a voluntary process where our clients get to decide whether to be bound after learning the amount of the proposed award."

(See email from David Boies dated April 7, 2020 to Bradley Edwards and counsel for the Co-Executors, copy attached here as **Exhibit B**; emphasis supplied.)

Claimants' counsels' intent to proceed with the Program *including the Release as written* was known to the Attorney General before she informed the Court otherwise. On April 6, 2020 — the day before the Attorney General filed her most recent Status Report — lead counsel for some two dozen other prospective claimants told her exactly that. Writing to Mr. Boies, Bradley

1. A copy of the Release, provided on March 16, 2020 by the Co-Executors to the Attorney General and claimants' counsel, is attached hereto as **Exhibit A**.

Edwards explained his agreement to accept the Release as written, and noted that he had the day before told the Attorney General of that fact:

“We are now both on the same page. I would like, with your permission to forward that email [*i.e.*, Mr. Boies' email quoted *infra*, approving the Release as written] to the AG, *as I voiced a very similar position to her yesterday.*”

(See email from Bradley Edwards dated April 7, 2020 to David Boies and counsel for the Co-Executors; copy attached as **Exhibit C**).²

It is one thing for the Attorney General, who has no experience or expertise with mass tort compensation programs, to inveigh against the Program. It is quite another for her to misrepresent to the Court that claimants' counsel join in her criticism of the Release. They do not.

2. The Attorney General Misrepresents the Scope of the Release, Which is Designed to Prevent “Double Dipping” by Claimants

The Attorney General also misrepresents the scope of the Release, asserting that the Estate seeks the release of “any party” who themselves participated in wrongdoing, including “individuals for whom the Estate has no liability.” (See 4/7/2020 AG Status Report at 3.) Again, that is false.

The Release is closely modeled on releases employed in multiple voluntary compensation programs administered by the Program Administrator and Designers, including the sexual abuse scandals currently faced by the Catholic Church. Contrary to the Attorney General's claim, it does not include “any party” who committed wrongdoing, nor have the Co-Executors ever proposed

2. Both Mr. Boies and the Co-Executors immediately consented to Mr. Edwards' request to share Mr. Boies' email with the Attorney General, who thus had both Mr. Boies' and Mr. Edwards' statements *accepting the Release as written* before she filed her misleading Status Report with the Court.

that it would.³ Rather, as the Co-Executors have explained several times to the Attorney General, the Release is aimed at protecting the assets of the Estate by ensuring that an individual claimant does not “double dip” — *i.e.*, she cannot both elect to (1) receive full compensation from the Estate through the Program, and also (2) sue individuals *affiliated with the Estate* who may well implead the Estate under doctrines of contribution, indemnification, *respondeat superior* or otherwise.⁴ The Co-Executors' duties under Virgin Islands law require them to protect the Estate's assets, including for the benefit of its creditors and claimants. The Release is indispensable in achieving that result.

Nor should the Court accept the Attorney General's straw-man formulation that, “[a]ssuming a fairly bargained transaction, the Estate would have to offer increased compensation to victims to secure the third-party release to satisfy claims for which it has no legal responsibility.” (4/7/2020 AG Status Report at 4.) As explained above, the Release is not aimed at claims for

-
3. The subjects of the Release are limited to the individuals or entities affiliated with or who provided services to Mr. Epstein, as follows:

“The Co-Executors of the Estate of Jeffrey E. Epstein (the ‘Epstein Estate’), the Co-Trustees of The 1953 Trust, the Epstein Estate, any entities owned or controlled in whole or part by the Estate (the ‘Epstein Entities’) and their respective current and former principals, officers, directors, stockholders, managers, members, partners, limited partners, trustees, beneficiaries, administrators, agents, employees, attorneys, predecessors, successors, assigns and affiliates, and any entities or individuals who are or have ever been engaged by (whether as independent contractors or otherwise), employed by, worked in any capacity for, or provided any services to Mr. Epstein, the Epstein Entities or the Epstein Estate.” (Ex. A at 1-2.)

The Release specifically provides that it will not release third parties unaffiliated with the Epstein Entities, including individuals specified by the claimant. (*Id.* at 4.)

4. This is no theoretical risk. On March 12, 2020, one of the primary individuals alleged to have worked as a “recruiter” of young women for Mr. Epstein brought suit in the Virgin Islands against the Estate and the Co-Executors, demanding indemnification. *Ghislaine Maxwell v. Estate of Jeffrey E. Epstein, et al.*, Civil Case No. ST-20-CV-155 (Superior Court of the Virgin Islands, Division of St. Thomas and St. John).

which the Estate “has no legal responsibility”. Rather, its function is exactly the opposite: the Release’s acknowledged purpose is to avoid having the Estate pulled into litigation by individuals who claim that the Estate is legally responsible for their actions. And, as claimants’ counsel Mr. Boies recognized, the Program will properly offer compensation to legitimate claimants that reflects their release of any third parties who are affiliated with Mr. Epstein or the Estate.

Consistent with their fiduciary duties, the Co-Executors determined that the benefits of including within the Release those individuals who may claim (as Ms. Maxwell has already done) that the Estate bears financial responsibility for the claims against them, substantially outweighs the downside of not requiring a release of those persons. Those downsides include that the Co-Executors would be forced to (1) litigate against the very claimants the Estate will have compensated through the Program and thereby sought to both avoid being adverse to those claimants and incurring the financial costs of litigating against them; (2) litigate alongside persons for harms caused by their alleged conduct for which the Estate has already paid the plaintiff; and (3) pay twice for any harm caused by Mr. Epstein if the damages awarded in that litigation focus not just on the conduct of the released person but also Mr. Epstein’s conduct.⁵

3. The Attorney General Lacks Standing to Re-Shape the Program Developed by the Co-Executors and Experts in the Field

More than two months ago — but five months after the Co-Executors and the independent claims program experts began working arduously to establish the Program — the Attorney General sought to intervene in this probate proceeding in order to oppose the Co-Executors’

5. The Court should not credit the Attorney General’s bizarre complaint that some claimants “may not even know the identity of their abusers,” and thus could not specify them in the liability carve-out of the Release. (4/7/2020 AG Status Report at 3.) None of the 32 claimants who have filed lawsuits to date has been unable to identify her claimed abuser. Moreover, any claimant who cannot identify a purported abuser would not succeed in litigation against that person, since one cannot enforce a money judgment against an unnamed, unknown party.

implementation of the Program.⁶ At the hearing on February 4, 2020, during which the Attorney General displayed her disregard for probate procedures and the Court's statutory authority, the Court expressly denied the Attorney General's motion. (February 4, 2020 Hearing Tr. at 98:8-12.) Accordingly, the Attorney General has no standing to demand that the Court re-shape the Program to suit her preferences or priorities. That includes her most recent demand that the Court ignore the Co-Executors, claimants' counsel and acknowledged experts in the field in order to rewrite the text of the Release.

Just as the Attorney General sought to position herself as a substitute for the Court in reviewing and approving the Co-Executors' regular administration of the Estate, she now seeks to assume the mantle of Program overseer: demanding that her own hand-picked choice (Marci Hamilton) be placed on the Program's payroll; requiring that \$25 million from the Estate be made unavailable to pay legitimate claimants through the Program;⁷ and rewriting the scope of the Release when everyone but her — including claimants' counsel, whose clients (unlike the Attorney General) would sign the Release — has accepted that Release as written. That is improper.

The Attorney General has no right to inject herself into the Program, dictating its policies, procedures and administration. To allow her to do so would rob the Program of its independence, one of its most critical attributes. And the Attorney General has no business forcing the Court to act as umpire on each of her dissatisfactions with the Program; as the Court indicated on more than one occasion, it is up to the Co-Executors — acting as duly appointed extensions of the Court —

6. *See* Attorney General's Motion to Intervene, filed January 23, 2020 (attaching Government's Opposition to Estate's Motion for Establishment of a Voluntary Claims Program).

7. The Attorney General's separate CICO action would, if successful, remove an additional approximately \$150 million from the Estate's assets. Her public pronouncements notwithstanding, the Attorney General has never offered to make a penny of those Funds available to victims of sexual abuse.

to fulfill their fiduciary duties to the Estate. As designed and to be implemented by nationally recognized experts, and as approved by virtually every claimants' counsel, the Epstein Victims' Compensation Program accomplishes that precise goal.⁸

* * * *

As in their March 24, 2020 application, the Co-Executors again ask the Court to allow them to continue to perform their fiduciary duties, and — for the benefit of all stakeholders in the Estate, including those women who seek to participate in the Program — grant their motion to establish the Program as originally conceived and presented to the Court on November 14, 2019.

Respectfully,

Dated: April 10, 2020

/s/ Christopher Allen Kroblin, Esq.
CHRISTOPHER ALLEN KROBLIN, ESQ.
ANDREW W. HEYMANN, ESQ.
WILLIAM L. BLUM, ESQ.
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⁸ Mr. Boies' co-counsel, Kevin D'Amour, echoed the statements of numerous claimants' counsel at the February 4, 2020 hearing: "I think if we go forward with this program we are going to see great results and I think we are going to have a much better outcome if we can go forward with this program as soon as possible." (February 4, 2020 Hearing Tr. at 88:15-19.) The Court summarized the view of those present at that hearing, noting as follows: "I think we agreed that everybody believes this program is a great program..." (*Id.* at 113:24-25.)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of April 2020, I caused a true and exact copy of the foregoing **Co-Executors' Corrections to Attorney General's Status Report on Voluntary Compensation Program and Renewed Request for Ruling** to be served via electronic mail upon:

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/s/ Christopher Allen Kroblin



Marjorie whalen <mwhalen@kellfer.com>

FW: EVCP - General Release

1 message

Weiner, Daniel H. <daniel.weiner@hugheshubbard.com>

Fri, Apr 10, 2020 at 11:58 AM

To: "ckroblin@kellfer.com" <ckroblin@kellfer.com>, Shari D'Andrade <s.dandrade@kellfer.com>, Marjorie Whalen <mwhalen@kellfer.com>

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From: Weiner, Daniel H.**Sent:** Monday, March 16, 2020 10:03 PM**To:** 'Singer, Linda' <lsinger@motleyrice.com>**Cc:** 'Carol.Jacobs@vi.gov' <Carol.Jacobs@vi.gov>; 'pamela.tepper@vi.gov' <pamela.tepper@vi.gov>;

'Ariel.Smith-Francois@vi.gov' <Ariel.Smith-Francois@vi.gov>; 'Brad Edwards' <brad@epllc.com>;

'Brittany@epllc.com' <Brittany@epllc.com>; 'Tomback, Andrew' <andrew.tomback@whitecase.com>; Chris

Kroblin <ckroblin@kellfer.com>; 'cscott@motleyrice.com' <cscott@motleyrice.com>

Subject: EVCP - General Release

Linda –

As requested, we attach a proposed release to be executed by those claimants who elect to accept compensation through the Epstein Victims' Compensation Program.

Best,

Dan

**RELEASE NEW - 96483947_5.pdf**
67K

4/10/2020

Kellerhals Ferguson Kroblin Mail - FW: EVCP - General Release

EPSTEIN VICTIMS' COMPENSATION PROGRAM ("EVCP")

GENERAL RELEASE

This General Release is made this ____ day of _____ 20____.

WHEREAS, _____ (the "Claimant"), submitted a claim for compensation to the Epstein Victims' Compensation Program ("EVCP") asserting that she is a victim of sexual abuse by Jeffrey E. Epstein; and

WHEREAS, the EVCP Program Administrator (the "Administrator") determined pursuant to the EVCP Protocol that Claimant is eligible to participate in the EVCP; and

WHEREAS, after reviewing Claimant's submissions and after careful consideration of documentation and proof, and after due deliberation, the Administrator issued a compensation determination to Claimant ("Compensation Offer"); and

WHEREAS, several jurisdictions within the United States have enacted claims revival statutes concerning the timeliness of claims of sexual abuse; and

WHEREAS, Claimant is aware that, by accepting this Compensation Offer from the EVCP, Claimant waives and releases certain individuals and entities from any and all claims or causes of action arising from Mr. Epstein's conduct, whether pursuant to claims revival statutes or otherwise; and

WHEREAS, after careful consideration of the proposed Compensation Offer, including consultation with her legal counsel regarding the Compensation Offer, Claimant informed the Administrator that Claimant has decided to accept the Compensation Offer.

NOW THEREFORE,

Claimant, _____, for and on behalf of herself and her heirs, devisees, legatees, distributees, executors, administrators, trustees, personal representatives, successors and assigns (collectively, "Releasor"), for and in consideration of _____ Dollars (\$ _____) (the Compensation Offer) to be received from the EVCP, the adequacy and sufficiency of which are hereby acknowledged, hereby releases and forever discharges the Co-Executors of the Estate of Jeffrey E. Epstein (the "Epstein Estate"), the Co-Trustees of The 1953 Trust, the Epstein Estate, any entities owned or controlled in whole or part by the Epstein Estate (the

“Epstein Entities”) and their respective current and former principals, officers, directors, stockholders, managers, members, partners, limited partners, trustees, beneficiaries, administrators, agents, employees, attorneys, predecessors, successors, assigns and affiliates, and any entities or individuals who are or have ever been engaged by (whether as independent contractors or otherwise), employed by, worked in any capacity for, or provided any services to Mr. Epstein, the Epstein Entities or the Epstein Estate (jointly and severally, the “Releasees”), from any and all claims, demands, actions, causes of action, suits, debts, dues, sums of money, accounts, variances, trespasses, damages and judgments, whether sounding in equity, tort, common law, contract, statute, regulation or otherwise and whether now existing, hereafter existing or revived in the future whatsoever in law, admiralty, equity or otherwise, including without limitation any and all claims or causes of action that arise or may arise from or which otherwise concern acts of sexual abuse by Mr. Epstein (the “Claims”) which against the Releasees, Releasor ever had, now have or hereafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world through the date of this General Release.

This General Release is a broad release of any and all Claims of Releasor against any and all Releasees, including without limitation any and all causes of action, lawsuits, claims, demands, damages and liability whatsoever, and also including without limitation to the extent of their respective liability for the same, any and all such claims against any and all Releasees for contribution as to any other person or persons who may be determined to have been joint tortfeasors arising out of or in any way related to any and all known and unknown personal injuries, and also including without limitation any derivative claims for loss of consortium, under any federal, state or local law, without limitation. This General Release is all-encompassing and is specifically made and given on the premise that any and all Claims by Releasor are hereby released and extinguished, whether said Claims arose in Florida, New Mexico, New York, the United States Virgin Islands, France or any other country, state, territory, possession or jurisdiction, or otherwise.

This General Release extends to released Claims that Releasor does not know or suspect to exist in her favor, which, if known by Releasor, would have materially affected her decision to enter into this General Release, and Releasor understands and agrees that she is releasing any and all such unknown or unsuspected Claims in Releasor’s favor. Releasor acknowledges that she is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Releasor expressly waives and relinquishes any right or benefit that Releasor has or may have under Section 1542 of the California Civil Code and under any other statute or legal principle with similar effect. In connection with such waiver and relinquishment, Releasor acknowledges that she is aware that, after executing this General Release, Releasor or Releasor's attorneys or agents may discover released Claims or facts in addition to, or different from, those which they now know or believe to exist with respect to the subject matter of this General Release, but that it is Releasor's intent hereby to fully, finally and forever settle and release all of the Claims, whether known or unknown, suspected or unsuspected, which now exist, may exist, or heretofore may have existed. In furtherance of this intent, this General Release shall be, and remain in effect as, a full and complete release of the Claims notwithstanding the discovery or existence of any such additional or different Claims or facts.

The Administrator of the EVCP has retained _____ to confirm that the Centers for Medicare and Medicaid Services ("CMS") and Medicaid will not assert any reimbursement claim or lien with respect to compensation awarded to any participating claimant under the EVCP; provided, however, that if either entity does assert any such interest, _____ is hereby authorized to act on behalf of the EVCP to verify and resolve such lien or reimbursement claim. Releasor agrees to allow the Administrator to provide to _____ certain information as to Releasor, including: (1) first name, last name and middle initial, (2) Social Security number; (3) date of birth, (4) gender and (5) basic information regarding the nature of Releasor's Claims, and hereby authorizes the Administrator and _____ to use, exchange and report this information to Medicare, if necessary, for purposes of ensuring compliance with the Medicare Secondary Payer Act, 42 U.S.C. § 1395(y)(b), and its accompanying regulations.

Releasor represents and acknowledges that she is voluntarily and freely granting this General Release in exchange for payment of the Compensation Offer, and that she is legally competent to execute and deliver this General Release. Releasor further represents that she is represented by legal counsel and has received legal advice prior to entering into this General Release and that she has been advised by said attorney regarding the terms and conditions of this General Release, which she has completely read and fully understands, including that accepting the Compensation Offer and signing

this General Release is a full and final compromise, adjustment and resolution of any and all Claims that Releasor may now have or ever will have against Releasees.

Pursuant to the EVCP Protocol, the Administrator will maintain the confidentiality of all information and documentation relating to claimants who participate in the EVCP Program. This General Release does not require participating claimants to maintain such confidentiality and Releasor may -- at Releasor's voluntary and sole option -- disclose such information regarding the claims process and/or the Compensation Offer and any other information pertaining to her claim.

This General Release specifically does not include _____ as a Releasee or released party under this Agreement, and all parties expressly acknowledge, agree and understand that any and all claims that Releasor has or may have against _____ are expressly preserved.

Releasor represents and warrants that she has not assigned any Claims released pursuant to this General Release.

As soon as is reasonably practicable after payment of the Compensation Offer is made, and in no event later than three (3) business days from the date thereof, Releasor will dismiss with prejudice any legal actions -- whether lawsuits, probate claims or otherwise -- that Releasor has filed against any of Releasees, with each party to bear her, his or its own costs and attorneys' fees.

This General Release contains the entire understanding of the Releasor and the Co-Executors of the Epstein Estate. Any modification of any of the provisions of this General Release shall be effective only if made in writing and executed by Releasor and the Co-Executors of the Epstein Estate with the same formality as this General Release.

IN WITNESS WHEREOF, Claimant has executed this General Release on the date below her signature.

(Signature: Claimant)

(Date)

STATE OF _____)

ss:

COUNTY OF _____)

On _____, 20__, before me personally came _____, to me known, who, by me duly sworn, did depose and say that deponent is the Releasor who executed the foregoing General Release.

Notary Public

Reviewed and approved:

Type (or print) Name of Claimant: _____

Attorney for Releasor:

Type (or print) Name of Attorney: _____

Signature: _____



Marjorie whalen <mwhalen@kellfer.com>

FW: Where we are

1 message

Weiner, Daniel H. <daniel.weiner@hugheshubbard.com> Fri, Apr 10, 2020 at 12:00 PM
To: "ckroblin@kellfer.com" <ckroblin@kellfer.com>, Shari D'Andrade <s.dandrade@kellfer.com>, Marjorie Whalen <mwhalen@kellfer.com>

Daniel H. Weiner | Partner

Hughes Hubbard & Reed LLP

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-----Original Message-----

From: David Boies <xboies@gmail.com>
Sent: Tuesday, April 7, 2020 10:48 AM
To: Brad Edwards <brad@epllc.com>
Cc: Weiner, Daniel H. <daniel.weiner@hugheshubbard.com>; Andrew Tomback <andrew.tomback@whitecase.com>
Subject: Where we are

CAUTION: This email was sent by someone outside of the Firm.

I spoke with Dan and Andy (whom I am copying) this morning. I am now in agreement that we should move forward with the claims process without trying to further modify the release. I am influenced by the desirability of getting the program underway so that our clients can begin getting compensation; by the fact that the release will be limited to persons who provided services to Epstein, with the lease signed by individual victims who accept an award having a space to make clear that certain individuals (e.g., Prince Andrew or others to whom our clients were trafficked) are not released; and by the fact that the release of Epstein's employees/service providers will be taken into account by the Administrator in setting the amount of the award. And, of course, this is a voluntary process where our clients get to decide whether to be bound after learning the amount of the proposed award.





Marjorie whalen <mwhalen@kellfer.com>

FW: Where we are

1 message

Weiner, Daniel H. <daniel.weiner@hugheshubbard.com>

Fri, Apr 10, 2020 at 12:02 PM

To: "ckroblin@kellfer.com" <ckroblin@kellfer.com>, Shari D'Andrade <s.dandrade@kellfer.com>, Marjorie Whalen <mwhalen@kellfer.com>

Daniel H. Weiner | Partner**Hughes Hubbard & Reed LLP**

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-----Original Message-----

From: Brad Edwards <brad@epllc.com>

Sent: Tuesday, April 7, 2020 11:00 AM

To: David Boies <xboies@gmail.com>Cc: Weiner, Daniel H. <daniel.weiner@hugheshubbard.com>; Andrew Tomback <andrew.tomback@whitecase.com>

Subject: Re: Where we are

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Sent from my iPhone

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>

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