

# IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

IN RE: SANDBLASTER SILICOSIS  
CASES.

MASTER CASE NO. SX-19-MC-0000023

## NOTICE OF ENTRY OF MEMORANDUM OPINION AND ORDER

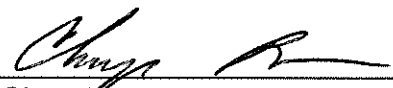
TO: THEODORE H. HUGE, ESQ.  
KOREY A. NELSON, ESQ.  
W. MARK WILCZYNSKI, ESQ.  
SIMONE R. D. FRANCIS, ESQ.  
BERNARD C. PATTIE, ESQ.  
JOHN H. BENHAM, ESQ.  
KEVIN A. RAMES, ESQ.  
CAROL G. HURST, ESQ.  
MICHAEL J. SANFORD, ESQ.  
EUGENIO W.A. GEIGEL- SIMOUNET, ESQ.

J. RUSSELL B. PATE, ESQ.  
CARL A. BECKSTEDT III, ESQ.  
JAMES L. HYMES, ESQ.  
RICHARD H. HUNTER, ESQ.  
RYAN STUTZMAN, ESQ.  
MARK D. HODGE, ESQ.  
EDWARD L. BARRY, ESQ.  
DOUGLAS CAPDEVILLE, ESQ.  
WARREN T. BURNS, ESQ.  
DANIEL H. CHAREST, ESQ.

**PLEASE TAKE NOTICE** that on March 25, 2019 a **MEMORANDUM OPINION AND ORDER** dated March 25, 2019 were entered by the Clerk in the above-entitled matter.

**Dated: March 25, 2019**

**Estrella H. George  
CLERK OF THE COURT**

By:   
Cheryl A. Parris  
Court Clerk III

**SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX**

<b>IN RE: SANDBLASTER SILICOSIS CASES.</b>	)	<b>MASTER CASE NO. SX-19-MC-023</b>
<hr/>	)	<b>COMPLEX LITIGATION DIVISION</b>
	)	
This Opinion Pertains to all John Doe	)	
Defendants.	)	
<hr/>	)	

Cite as: 2019 VI Super 44

**Appearances:**

**THEODORE H. HUGE, ESQ.**

Harris & Huge, LLC  
Charleston, SC 29403  
*For Plaintiffs*

**J. RUSSELL B. PATE, ESQ.**

The Pate Law Firm  
St. Thomas, VI 00804  
*For Plaintiffs*

**KOREY A. NELSON, ESQ.**

Burns Charest LLP  
New Orleans, LA 70130  
*For Plaintiffs*

**WARREN T. BURNS, ESQ.**

**DANIEL H. CHAREST, ESQ.**

Burns Charest LLP  
Dallas, TX 75202  
*For Plaintiffs*

**CARL A. BECKSTEDT, III, ESQ.**

Beckstedt & Associates  
Christiansted, VI 00820  
*For Hess Oil Virgin Islands Corporation, HOVENSA, LLC, and Amerada Hess Corporation*

**W. MARK WILCZYNSKI, ESQ.**

Law Office of W. Mark Wilczynski, P.C.  
St. Thomas, VI 00804  
*For Litwin Corporation and John Crane Company*

**JAMES L. HYMES, III, ESQ.**

Law Office of James L. Hymes, P.C.

St. Thomas, VI 00802

*For Litwin Corporation and Foster Wheeler Corporation*

**MICHAEL J. SANFORD, ESQ.**

**RYAN STUTZMAN, ESQ.**

Sanford, Amerling & Associates

Christiansted, VI 00820

*For Garlock Sealing Technologies, LLC, Riggers & Erectors International, Inc., Riggers & Erectors Virgin Islands Corporation, Virgin Islands Industrial Maintenance Corporation, and Resal, Inc.*

**RICHARD H. HUNTER, ESQ.**

Hunter & Cole

Christiansted, VI 00820

*For Raritan Supply Company, CertainTeed Products Corporation, Crane Co., Optimized Process Furnaces, Union Carbide Corporation, General Electric Corporation, Crane Co., Born Inc., and Universal Oil Products Company*

**SIMONE R.D. FRANCIS, ESQ.**

Ogletree, Deakins, Nash, Smoak & Stewart, LLC

St. Thomas, VI 00802

*For 3M and Durabla Manufacturing Company*

**DOUGLAS L. CAPDEVILLE, ESQ.**

Law Offices of Douglas L. Capdeville

Christiansted, VI 00820

*For Alltite Gasket Company*

**BERNARD C. PATTIE, ESQ.**

Law Offices of Bernard C. Pattie

Christiansted, VI 00820

*For Stubbs-Overbeck, Inc.*

**MARK D. HODGE, ESQ.**

Hodge & Hodge

St. Thomas, VI 00802

*For Chicago Bridge & Iron, N.V., CBI Company, Ltd., CBI Services, Inc., and Parsons Infrastructure & Technology Group*

**EDWARD L. BARRY, ESQ.**

Law Offices of Edward L. Barry

Christiansted, VI 00820

*For Clemco Industries, Inc.*

**JOHN H. BENHAM, III, ESQ.**

Law Office of John H. Benham, P.C.

St. Thomas, VI 00801

*For Ingersoll Rand Corporation and Fluor Engineers & Constructors, Inc.*

**CAROL G. HURST, ESQ.**

Carol G. Hurst, P.C.

St. Thomas, VI 00802

*For Bigelow-Liptak Corporation*

**KEVIN A. RAMES, ESQ.**

K.A. Rames, P.C.

Christiansted, VI 00820

*For Yarway Corporation*

**EUGENIO W.A. GÉIGEL-SIMOUNET, ESQ.**

GS Law Offices P.C.

Gallows Bay, VI 00824

*For Rubber & Gasket Company of Puerto Rico, Inc.*

**MEMORANDUM OPINION**

**MOLLOY, Judge.**

¶1 **THIS MATTER** is before the Court *sua sponte* following a review of the cases grouped under this master case.<sup>1</sup> In nearly every case, the plaintiffs sued several companies designated as John Doe. One defendant, Litwin Corporation (“Litwin”), also filed third-party claims against several

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<sup>1</sup> The individual cases grouped under this master case are: *Ralph Richards, et al. v. Hess Oil Virgin Islands Corporation, et al.*, SX-04-CV-599; *Anselm Alexander, et al. v. Hess Oil Virgin Islands Corporation, et al.*, SX-04-CV-602; *Claude Theodule, et al. v. Hess Oil Virgin Islands Corporation, et al.*, SX-04-CV-604; *Rudolph Albert, et al. v. Hess Oil Virgin Islands Corporation, et al.*, SX-04-CV-605; *Alexis Denis, et al. v. Hess Oil Virgin Islands Corporation, et al.*, SX-04-CV-606; *Arnold Anthony, et al. v. Hess Oil Virgin Islands Corporation, et al.*, SX-04-CV-607; *Estate of Henry, et al. v. Hess Oil Virgin Islands Corporation, et al.*, SX-04-CV-609; *Nicholas George v. Hess Oil Virgin Islands Corporation, et al.*, SX-05-CV-221; *Jules J. Victor, et al. v. Hess Oil Virgin Islands Corporation, et al.*, SX-05-CV-790; *Raphael Hurtault, et al. v. Hess Oil Virgin Islands Corporation, et al.*, SX-05-CV-791; *James A. Gill, et al. v. Hess Oil Virgin Islands Corporation, et al.*, SX-05-CV-792; *Samuel Holloway v. Hess Oil Virgin Islands Corporation, et al.*, SX-05-CV-877; *Jose Alberto Sanchez, et al. v. Hess Oil Virgin Islands Corporation, et al.*, SX-06-CV-614; *Estate of Carrasquillo-Acosta v. Hess Oil Virgin Islands Corporation, et al.*, SX-06-CV-615; *Eli Charles McKenzie, et al. v. Hess Oil Virgin Islands Corporation, et al.*, SX-06-CV-653; *Estate of Wigley v. Hess Oil Virgin Islands Corporation, et al.*, SX-09-CV-381; *Shirley Murren, et al. v. Hess Oil Virgin Islands Corporation, et al.*, SX-15-CV-504; *Felipe Rios, et al. v. Hess Oil Virgin Islands Corporation, et al.*, SX-15-CV-505; and *Estate of Farrell v. Hess Oil Virgin Islands Corporation, et al.*, SX-15-CV-506.

companies designated as John Doe. To date, neither the plaintiffs nor Litwin has moved to amend the proceedings to set forth the true names of these fictitious defendants. Failure to do so precludes the entry of final judgment. For the reasons stated below, the Court will *sua sponte* drop the fictitious defendants from these cases unless the plaintiffs or Litwin show cause otherwise.

### **BACKGROUND**

¶2 Between 2004 and 2009, sixteen cases were filed in the Superior Court of the Virgin Islands<sup>2</sup> by forty-six persons. Twenty-five were men who had worked at the oil refinery on St. Croix, which was owned and operated at that time by Hess Oil Virgin Islands Corporation (“HOVIC”).<sup>3</sup> They sought damages for alleged exposure to silica dust, asbestos, or both. Two personal representatives sued on behalf of estates of deceased workers.<sup>4</sup> They too sought damages for the deceased workers’ alleged exposure to silica dust or asbestos. The remaining nineteen were the wives of the workers who joined their husbands’ suit and claimed loss of consortium.<sup>5</sup>

¶3 All forty-six Plaintiffs (hereinafter “Plaintiffs”) sued HOVIC, its parent company, Hess

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<sup>2</sup> Named the Territorial Court of the Virgin Islands in 2004.

<sup>3</sup> Ralph Richards, Clifford Emmanuel, James Francis (599/2004); Anselm Alexander and Joseph Herrelle (602/2004); Claude Theodule, John St. Rose, George Louison (604/2004); Rudolph Albert, Albert P. Victor, Arnold Anthony, George C. Joseph (605/2004); Alexis Denis (606/2004); Ezekiel Farrell; Arnold Anthony, Felipe Rios, and Scipio Murren (607/2004); Martin Emmanuel (209/2004); Nicholas George (221/2005); Jules J. Victor (790/2005); Raphael Hurtault (2005/791); James A. Gill (792/2005); Samuel Holloway (877/2005); Jose Albert Sanchez (614/2005); Francisco Carrasquillo-Acosta (615/2006); Eli Charles McKenzie (653/2006). Arnold Anthony was a party to two cases: 605/2004 and 607/2004. The claims of the Murrens, the Rioses, and the Farrells were severed in 2015 from case number 607/2004. Mrs. Farrell did not refile, and her claims were dismissed. Mr. Farrell’s granddaughter continued his claims as personal representative of his estate. Mrs. Murren refilled her claims and continued her husband’s claims as personal representative of his estate.

<sup>4</sup> Estate of Joseph Henry (609/2004); Estate of Emile Wigley (381/2009).

<sup>5</sup> Agatha Emmanuel and Carnella Francis (599/2004); Mary Herrelle (602/2004); Rosaline St. Rose, Blondelle Louison (604/2004); Eslyn Albert, Cynthia Victor, Elizabeth Anthony, Esther Joseph (605/2004); Florence Denis (606/2004); Bernadine Farrell, Elizabeth Anthony, Maria E. Rios, Shirley Murren (607/2004); Magdalene L. Victor (790/2005); Ruthina Hurtault (791/2005); Odette M. Gill (792/2005); Edith Sanchez (614/2006); Ana Julia Bonano (615/2006); Sybil McKenzie (653/2006). Like her husband, Elizabeth Anthony was also a party to two cases.

Corporation (formerly Amerada Hess Corporation) (collectively “Hess Defendants”), and Litwin—in addition to other companies who either manufactured, supplied, or distributed sand and sandblasting equipment, asbestos and asbestos-containing products, or masks and other filtration products. Not all Plaintiffs named the same companies as defendants. But all Plaintiffs did sue several companies designated as John Doe defendants. And in the four cases in which Litwin filed third-party complaints—*Alexander*, *Denis*, *Estate of Henry*, and *George*—Litwin also sued John Doe defendants.

¶4 Most of the defendants (including third-party defendants) appeared and answered the complaints or filed pre-answer motions. Shortly after the 2004 cases commenced, the Hess Defendants moved to disqualify the Plaintiffs’ local counsel, Lee J. Rohn, Esq. (“Attorney Rohn”), and her law firm, the Law Offices of Rohn & Cameron, because Attorney Rohn had defended Hess and HOVIC in litigation involving exposure to asbestos and other toxic substances some twenty-years earlier. *See, e.g., Brice v. Hess Oil V.I. Corp.*, 769 F. Supp. 193, 194 (D.V.I. 1990) (“Plaintiff is represented by Attorney Lee J. Rohn of St. Croix, U.S. Virgin Islands. Ms. Rohn has previously represented HOVIC in similar personal injury litigation while employed as an associate in the law office of Attorney Britain H. Bryant. Ms. Rohn was employed by Mr. Bryant from the summer of 1985 until the summer of 1987.”). For similar reasons, Garlock Sealing Technologies, LLC (“Garlock”) also moved to disqualify the Law Offices of Rohn & Cameron because Anna Washburn, Esq. had represented Garlock, before Rohn & Cameron hired her. Garlock sought to impute her disqualification to Attorney Rohn and her firm. In many instances, before these motions had been decided, the Hess Defendants and Garlock further moved to impute Attorneys Rohn’s and Attorney Washburn’s disqualifications to the Plaintiffs’ stateside counsel, Theodore H. Huge, Esq. (“Attorney

Huge”) and the law firm he worked for at the time, Motley Rice LLC, as well as J. Russell B. Pate, Esq. (“Attorney Pate”), another local attorney who appeared as co-counsel for several Plaintiffs after the cases went inactive for a time. The Hess Defendants and Garlock also moved to stay the proceedings until the disqualification motions were resolved, which were joined by several defendants and granted in a few instances.

¶5 On the merits, the Superior Court judges consistently disqualified Attorney Rohn because of her past attorney-client relationship with Hess and HOVIC. *See generally Estate of Henry v. Hess Oil V.I. Corp.*, Civ. No. 609/2004, 2005 V.I. LEXIS 38 (V.I. Super. Ct. Oct. 26, 2005); *Theodule v. Hess Oil V.I. (HOVIC)*, Civ. No. 604/2004, 2005 V.I. LEXIS 39 (V.I. Super. Ct. Oct. 31, 2005), *recons. denied*, 2006 V.I. LEXIS 45 (V.I. Super. Ct. Sept. 5, 2006); *McKenzie v. Hess Oil V.I. (HOVIC)*, SX-06-CV-653, 2013 V.I. LEXIS 101 (V.I. Super. Ct. Jan. 30, 2013). In at least two instances, Attorney Rohn was disqualified because of Attorney Washburn’s conflict. *See Denis v. Hess Oil V.I. Corp.*, 48 V.I. 100 (Super. Ct. 2006); *Alexander v. Hess Oil V.I. Corp.*, SX-04-CV-602, 2006 V.I. LEXIS 46 (V.I. Super. Ct. Oct. 31, 2006). One judge refused to disqualify Attorneys Huge and Pate in part because “double imputation . . . is heavily criticized by courts.” *Farrell v. Hess Oil V.I. (HOVIC)*, 57 V.I. 50, 65 (Super. Ct. 2012) (carrying “imputation-on-an-imputation to its logical terminus could lead to extreme results in no way required to maintain public confidence in the law. Such a rule would be unsound logically and indefensible practically.” (ellipsis and footnoted citation omitted)). The consequence of these disqualification motions is that only one case, *Estate of Wigley*, ventured past the pleading phase.

¶6 When the complaints were filed, the Clerk’s Office assigned the cases among the judges of the Superior Court at random, according to established practice. Yet, notwithstanding the numerous references in later disqualification motions to the identical motions filed in earlier cases, and several

requests to supplement later motions with copies of recently-issued decisions disqualifying Attorneys Rohn or Washburn, the parties never asked the Presiding Judge of the Superior Court to reassign all the cases to the same judge. As a result, the disqualification motions were addressed on a case-by-case basis, which resulted in confusion and delay. Attorney Rohn would be disqualified, either directly or indirectly through Attorney Washburn. But that did not put the issue to rest because the subsequent motions seeking to impute her disqualification to Attorney Huge and Attorney Pate remained pending. To further complicate matters, Attorney Huge opened his own law firm, which prompted Motley Rice to move to withdraw because the firm lacked an attorney licensed to practice law in the Virgin Islands. In later cases, mainly those filed in 2005 and 2006, Attorney Rohn appeared on behalf of the plaintiffs, which then triggered another round of disqualification and stay motions.

¶7 Nevertheless, and notwithstanding the cloud over counsel's authority to act—*cf. Grimes v. District of Columbia*, 794 F.3d 83, 90 (D.C. Cir. 2015) (“Once a party moves to disqualify an adverse party's counsel, the district court may not entertain a dispositive motion filed by the very counsel alleged to be conflicted until the court has first determined whether that counsel is disqualified.”)—several Defendants entered into stipulations with the Plaintiffs to dismiss their claims, both with and without prejudice. For example, all Plaintiffs stipulated with Durabla Manufacturing Company to dismiss their claims. In all but two instances, Clemco Industries, Inc. was dismissed for lack of personal jurisdiction. Hess, HOVIC, and HOVENSA, LLC were also dismissed voluntarily by several plaintiffs. Other plaintiffs' claims were dismissed against several defendants with prejudice when the Court (Brady, J.) granted motions to dismiss for failure to prosecute in *Estate of Henry* and *Denis*.

¶8 Believing that the complaints in *Estate of Henry* and in *Denis* had been dismissed for failure



to prosecute as to all parties, not those who moved or who joined the motion, *contra Watts v. Two Plus Two, Inc.*, 54 V.I. 286, 290 n.1 & 291 (2010), Litwin and the Third-Party Defendants who had appeared in *Estate of Henry* and in *Denis* entered into stipulations to dismiss the third-party complaints with prejudice. Litwin's third-party complaints remain pending in *George* and in *Alexander*. Litwin's third-party claims also remain pending in all four cases—as do the Plaintiffs' claims in all but four cases—against the John Doe defendants. Yet, to date, neither Litwin nor the Plaintiffs have moved to amend the proceeding to name the John Doe defendants.

### DISCUSSION

¶9 Claims can be asserted against fictitious defendants. *See* Terr. Ct. R. 26, *reprinted in* V.I. Ct. Rules Ann. (2005 ed.), *renamed by, In re: Order Amending Rules of Terr. Ct. of the V.I.*, Misc. No. 30/2005, 2005 V.I. LEXIS 34, \*1 (V.I. Super. Ct. Mar. 3, 2005) (replacing “territorial” with “superior”); *see also* Super. Ct. R. 26, *reprinted in* V.I. Ct. Rules Ann. (2006 ed.), *repealed by, In re: Amendments to the Rules Gov. the Super. Ct. of the V.I.*, ST-17-MC-19, 2017 V.I. LEXIS 60, \*1 (V.I. Super. Ct. Apr. 6, 2017), *as approved by*, Prom. No. 2017-006, 2017 V.I. Supreme LEXIS 23 (V.I. Apr. 7, 2017); *accord* V.I. R. Civ. P. 8-1. “Doe defendants ‘are routinely used as stand-ins for real parties until discovery permits the intended defendants to be installed.’” *Hindes v. FDIC*, 137 F.3d 148, 155 (3d Cir. 1998) (quoting *Scheetz v. Morning Call, Inc.*, 130 F.R.D. 34, 36 (E.D. Pa. 1990)); *accord Farrell v. Votator Div. of Chemetron Corp.*, 299 A.2d 394, 398 (N.J. 1973) (“[I]f the defendant’s true name is unknown to the plaintiff ‘process may issue against the defendant under a fictitious name’ and . . . prior to judgment, the plaintiff shall on motion ‘amend his complaint to state defendant’s true name.’” (quoting N.J. Ct. R. 4:26-4)).

¶10 Former Territorial Court Rule 26, which was in effect when the 2004 cases were commenced,

and Superior Court Rule 26, in effect when the 2005, 2006, and 2009 cases were commenced, as well as Virgin Islands Rule of Civil Procedure 8-1, which is in effect now, all provide that “[i]f a defendant's true name is unknown to the plaintiff, process may issue against the defendant, designating that party by a fictitious name and giving an appropriate description sufficient to identify the defendant.” V.I. R. Civ. P. 8-1; *accord* Super. Ct. R. 26 (“If the defendant's true name is unknown to the plaintiff, process may issue against the defendant, designating him by a fictitious name and giving an appropriate description of defendant sufficient to identify him.”).

¶11 Here, the Plaintiffs and Litwin sued several defendants designated as John Doe Defendants (Plaintiffs) and as John Does 1 through 4 (Litwin). In the silica cases, the Plaintiffs describe the John Doe Defendants as

unknown companies which supplied or manufactured sand or sandblasting equipment to work sites in St. Croix at which the Plaintiff workers worked and were exposed to silica dust. John Doe Respiratory Defendants are unknown companies which supplied or manufactured products commonly known as dust masks, cartridge respirators, air-fed hoods and non air-fed hoods.

(Compl. ¶ 18, *McKenzie, et al. v. Hess Oil Virgin Islands Corp., et al.*, SX-06-CV-653.) Likewise, in the asbestos cases, the Plaintiffs describe the John Doe Defendants as

companies which supplied, manufactured or produced asbestos-containing products for installation at work sites in St. Croix at which the Plaintiff workers worked and were exposed to asbestos-containing products. These John Doe Defendants are unknown to Plaintiffs as of the date of this Complaint and are grouped as John Doe Supplier Defendants, John Doe Distributor Defendants and John Doe Manufacturer Defendants.

(First. Am. Compl. ¶ 29, *Estate of Henry, et al. v. Hess Oil V.I. Corp., et al.*, SX-04-CV-609.) And in the four cases in which Litwin filed third-party complaints—*Alexander, Denis, Estate of Henry*, and *George*—Litwin described John Does 1 through 4 as “foreign corporations that were doing business in the U.S. Virgin Islands at all times relevant.” (Third-Party Compl. ¶ 14, *Alexander, et al. v. Hess Oil*

*V.I. Corp., et al., SX-04-CV-602.*) Specifically, John Does 1 through 4 are alleged to have

manufactured or supplied defective or unreasonably dangerous chattels, defective products and/or performed defective or unreasonably dangerous work upon land or buildings as a result of which Third Party Plaintiff and Third Party Defendant may both be liable to Plaintiffs. In particular, the actions of **JOHN DOE DEFENDANTS** included, but were not limited to, the fact that they sold and/or supplied protective equipment, i.e. dust masks, that were inadequate in protecting Plaintiffs from exposure to catalyst, asbestos and other harmful, hazardous and/or toxic dust, fibers, particles and/or materials.

(Third-Party Compl. ¶ 99, *Estate of Henry, et al. v. Hess Oil V.I. Corp., et al., SX-04-CV-609.*)

¶12 For purposes of this Opinion only, the Court assumes that these allegations substantially complied with the requirement that the plaintiffs “giv[e] an appropriate description sufficient to identify the [fictitiously-named] defendant[s].” V.I. R. Civ. P. 8-1. The concern now is that process has not issued to date for any John Doe defendant. *Cf.* 1 V.I.C. § 41 (“‘process’ signifies a writ or summons issued in the course of judicial proceedings.”). And “the true name[s] of the defendant[s]” have not been “set forth” yet. V.I. R. Civ. P. 8-1. In other words, more than a decade after these cases commenced, neither the Plaintiffs nor Litwin has taken any steps to identify even one John Doe defendant’s true name, notwithstanding that John Does must be identified before a final order can issue.

¶13 The Supreme Court of the Virgin Islands has not had occasion yet to consider the impact of John Doe defendants on appeals to that Court. However, courts in other jurisdictions have held that the trial court’s failure to resolve claims against John Doe defendants renders the appeal interlocutory. *E.g., Jones v. Huckabee*, 213 S.W.3d 11, 13 (Ark. 2005) (“In this case, there is neither a final order as to the John Does 1-20, nor is there a 54(b) certification. For that reason, we have no jurisdiction to hear this case and we dismiss it without prejudice so that the circuit court may enter an order as to the remaining defendants, John Does 1-20.” (citing *Moses v. Hanna’s Candle Co.*, S.W.3d

725 (Ark. 2003)); *KAS Enters., Inc. v. City of St. Louis*, 121 S.W.3d 262, 264 (Mo. Ct. App. 2003) (“On the record presented, we find that the trial court did not dispose of KAS’s claims against defendant John Does, nor did it make a determination that there was no just reason for delay under Rule 74.01(b). Therefore, the judgment is not final and is not appealable. As a result, we have no jurisdiction, and we dismiss.”); *Kohout v. Church of St. Rocco Corp.*, 2008-Ohio-1819, ¶¶ 8-9 (Ct. App.) (“[T]here is no evidence in the record that the Kohouts intended to abandon their claims against the John Doe defendants. The court’s order, therefore, is not final and appealable. Accordingly, this appeal is dismissed.” (paragraph break omitted)); *see also Massaro v. Tincher Contracting LLC*, No. 1013 EDA 2008, \_\_\_ A.3d \_\_\_, 2019 WL 668838, \*2 (Pa. Super. Ct. Feb. 19, 2019) (“An order that grants summary judgment in favor of Tincher, but leaves unresolved Appellant’s claims against John Doe 1-10 is ordinarily not an appealable order. . . . Therefore, because Appellant’s claims remain outstanding against John Doe 1-10, and Appellant failed to request permission to appeal, we quash.”); *Phila. Indem. Ins. Corp. v. Box*, No. 05-02-01555-CV, 2003 Tex. App. LEXIS 2714, \*5-6 (Tex. Ct. App. Mar. 28, 2003) (“[F]or purposes of determining whether a judgment is final, claims against a John Doe defendant must be treated no differently than claims against a named defendant. The default judgment did not dispose of Box’s claims against John Doe Corporation and, thus, was not final.” (citation omitted)).

¶14 Virgin Islands Rule of Civil Procedure 8-1 is in accord with these authorities because it provides that “no final judgment shall be entered until such order has been made” “set[ting] forth the true name of the defendant” “on motion and notice.” *Accord Isaac v. Crichlow*, 63 V.I. 38, 47 n.5 (Super. Ct. 2015) (“[A] final judgment may not be entered until an order substituting the true name of the fictitious defendant has been issued.” (citing Super. Ct. R. 26)); *Bank of N.S. v. Dore*, 57 V.I. 105,

114 (Super. Ct. 2012) (“The language of Rule 26 clearly provides that a fictitious name may be used in a pleading to designate a defendant for the purpose of bringing suit and the issuance of process. The same rule just as clearly provides that a final judgment may not be entered until an order substituting the true name of the fictitious defendant has been issued.”).

¶15 In all the cases grouped under this master case, claims, including third-party claims, are pending against John Doe defendants. Until the John Doe defendants are identified, however, none of the cases grouped under this master case can be closed and none of the orders entered will be final. Yet, the Plaintiffs and Litwin have not taken any steps to date to amend the proceedings to set forth the true names of these John Doe defendants. In fact, in two instances, Litwin stipulated to dismiss its third-party complaints with prejudice against all third-party defendants who had appeared in those cases without also voluntarily dismissing its claims against John Does 1 through 4. Litwin and the Plaintiffs may be under the impression that the inclusion of John Doe defendants is of no moment. That is incorrect. The question now is how to proceed.

¶16 If the Plaintiffs and Litwin had listed John Doe defendants in the caption without making any allegations or asserting any claims, the Court could just disregard them. *Cf. Abels v. State Farm Fire & Cas. Co.*, 770 F.2d 26, 30 (3d Cir. 1985) (“The clearest cases for disregarding Doe defendants are those in which the complaint merely includes Does in the caption, without any charging allegations.”). Claimants occasionally include Doe defendants “out of ‘superstition’ rather than any actual hope of obtaining a judgment.” *Id.* (citing *Grigg v. S. Pac. Co.*, 246 F.2d 613, 620 (9th Cir. 1957)); *cf. Dore*, 57 V.I. at 113 (“Scotiabank, in an apparent effort to guard against any future collateral attack on a favorable judgment, names ‘John Doe’ as a fictitious defendant in its complaint, and now seeks a default judgment against that entity.”).

¶17 But Litwin and the Plaintiffs not only described who the John Does are, they also identified the relationships the John Does have to the other parties and sought relief from them. (*E.g.*, Third-Party Compl. ¶ 106, *Alexander*, SX-04-CV-602 (indemnification claim) (“Third Party Plaintiff is entitled to indemnity from **JOHN DOE DEFENDANTS** for any and all sums paid . . . including attorneys’ fees in defense of said action and in the prosecution of this instant action.”); First Am. Compl. ¶ 44, *Estate of Henry*, SX-04-CV-609 (supplying dangerous chattel claim) (“At all times relevant to this action, the supplier and distributor Defendants, i.e. Raritan Supply Company, and other John Doe Supplier Defendants and John Doe Distributor Defendants, and the Premise Defendants, i.e. HOVIC, HOVENSA and Amerada Hess, supplied or distributed asbestos-containing products to work sites at which Plaintiff workers were exposed to asbestos and asbestos-containing products.”). Consequently, the Court cannot conclude that the inclusion of these John Doe defendants is a “sham” that can be disregarded. *Cf. Abels*, 770 F.2d at 30-31.

¶18 “The use of John Doe defendants is permissible . . . until ‘reasonable discovery permits the true defendants to be identified.’ If reasonable discovery does not unveil the proper identities, however, the John Doe defendants must be dismissed.” *King v. Mansfield Univ. of Pa.*, No. 1:11-CV-1112, 2014 U.S. Dist. LEXIS 103469, \*1 n.1 (M.D. Pa. July 28, 2014) (citing *Blakeslee v. Clinton Cnty.*, 336 F. App’x 248, 250 (3d Cir. 2009)). Faced with the same issue here, i.e., delay in identifying fictitious parties, federal district courts within the Third Circuit have used Rule 21 of the Federal Rules of Civil Procedure to drop John Doe defendants. *See Adams v. City of Camden*, 461 F. Supp. 2d 263, 271 (D.N.J. 2006) (“District Courts in the Third Circuit have used this Rule to exclude John Doe parties from an action when appropriate.” (citing *Hightower v. Roman, Inc.*, 190 F. Supp. 2d 740, 754 (D.N.J. 2002); *Atl. Used Auto Parts v. City of Philadelphia*, 957 F. Supp. 622, 625 (E.D. Pa. 1997))); *see*

also *King v. Mansfield Univ. of Pa.*, No. 1:11-CV-1112, 2014 U.S. Dist. LEXIS 127612, \*29 (M.D. Pa. Sep. 12, 2014) (collecting cases).

¶19 Courts in the Virgin Islands have also dismissed John Doe defendants after enough time passed and the fictitious defendants had not been named. *E.g.*, *Gerard v. Dempsey*, SX-09-CV-076, 2016 V.I. LEXIS 115, \*24-25 (V.I. Super. Ct. Aug. 22, 2016); *see also Der Weer v. Hess Oil V.I. Corp.*, 60 V.I. 91, 97 n.5 (Super. Ct. 2014) (fictitious third-party defendants dismissed for failure to comply with Superior Court Rule 26). But Virgin Islands courts also must give the parties notice first, before raising and deciding a dispositive issue. *Cf. Hughley v. Gov't of the V.I.*, 61 V.I. 323, 334 n.6 (2014) (“As we have previously explained, the Superior Court's right to raise questions as to its jurisdiction *sua sponte* does not grant it a corresponding license to adjudicate the jurisdictional issue without first providing the parties with a right to be heard.” (citations omitted)); *accord Gerard*, 2016 V.I. LEXIS 115 at \*24-25 (ordering plaintiff to show cause why John Doe defendants should not be dismissed); *Isaac*, 63 V.I. at 47 n.5 (directing plaintiff to name the John Doe defendants); *Der Weer v. Hess Oil Virgin Islands Corp.*, SX-2005-CV-274, 2014 WL 3974508, \*3 (V.I. Super. Feb. 21, 2014) (same regarding third-party John Doe defendants). In one instance, a Superior Court judge dismissed the fictitious defendants without notice, but in ruling on a default judgment motion and because the plaintiff had failed to identify them before seeking judgment. *See Dore*, 57 V.I. at 115 (“‘By the plain language of [Super. Ct. R 26] plaintiff is precluded from taking judgment against a fictitious defendant.’ Therefore, Scotiabank’s motion for default judgment against Defendant John Doe will be denied, and this matter dismissed as against that fictitious party.” (quoting *Stegmeier v. St. Elizabeth Hosp.*, 571 A.2d 1006, 1011 (N.J. Super. Ct. App. Div. 1990) (brackets in original))).

¶20 Although the Superior Court of the Virgin Islands is not a federal district court within the

Third Circuit, Virgin Islands courts have often looked for guidance to the decisions of the courts within the Third Circuit. This Court believes that the approach taken by the district courts in the Third Circuit is sound. Like the Federal Rule, Rule 21 of the Virgin Islands Rules of Civil Procedure also provides that “the court may at any time, on just terms, add or drop a party” “[o]n motion or on its own.” *Accord Atl. Used Auto Parts*, 957 F. Supp. at 625 (“Rule 21 of the Federal Rules of Civil Procedure allows this Court to drop parties on ‘its own initiative at any stage of the action and on such terms as are just.’” (quoting Fed. R. Civ. P. 21)). But just terms in the Virgin Islands require giving the parties notice before the court takes a dispositive action on its own. *Cf. Hughley*, 61 V.I. at 334 n.6.

¶21 In this instance, given the amount of time that has passed, and considering that Litwin dismissed its third-party claims in half of the cases, the Court will drop all John Doe defendants from the cases grouped under this master case and dismiss all claims against them unless the Plaintiffs and Litwin show cause otherwise. Dropping the John Doe defendants may be premature because “a reasonable period of discovery” never commenced due to the delay caused by the disqualification motions, which did not allow “the true defendants to be identified.” *Blakeslee*, 336 F. App’x at 250 (quotation marks and citations omitted). But considering too that Litwin and the Plaintiffs have either forgotten about the John Doe defendants or thought their inclusion would have no impact on these cases, they may have ceased their efforts to identify them. Whether Litwin and the Plaintiffs should proceed with their claims against the John Doe defendants is not for this Court to say. Whether they can proceed is. And failure to respond will be construed as consent to dropping all John Doe defendants and dismissing all claims against them. *Cf. Hinds*, 137 F.3d at 155 (“The case law is clear that fictitious parties must eventually be dismissed, if discovery yields no identities, and



that an action cannot be maintained solely against Doe defendants.” (quotation marks and citations omitted)).

### CONCLUSION

¶22 John Doe defendants cannot be ignored when claims for relief are asserted against them. “Doe Defendants remain parties . . . unless and until they are formally dismissed either by stipulation of the parties or by order of this Court.” *Atl. Used Auto Parts*, 957 F. Supp. at 625 (citations omitted). Here, all the John Doe defendants, including the third-party John Doe defendants, are still parties to most cases grouped under this master case because they have not been named or dismissed. The inclusion of fictitious defendants in a case precludes the trial court from entering a final judgment and may render any appeal interlocutory. Given the amount of time that has passed, the Court will put the onus on the Plaintiffs and Litwin to show cause why the John Doe defendants should not be dropped from these cases. An appropriate order follows.

**Date:** March 25, 2019

**ATTEST:**

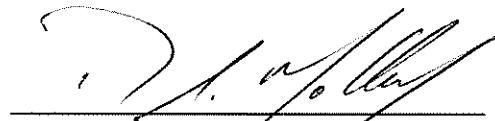
ESTRELLA H. GEORGE

Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 3/25/2019

  
**ROBERT A. MOLLOY**  
Judge of the Superior Court

**SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX**

<b>IN RE: SANDBLASTER SILICOSIS CASES.</b>	)	<b>MASTER CASE NO. SX-19-MC-023</b>
<hr/>	)	<b>COMPLEX LITIGATION DIVISION</b>
	)	
This Order Pertains to all John Doe	)	
Defendants.	)	
<hr/>	)	

**ORDER**

**AND NOW**, for the reasons stated in the accompanying Memorandum Opinion, it is hereby

**ORDERED** that the Plaintiffs and Defendant / Third-Party Plaintiff Litwin Corporation shall **INFORM** the Court by **NOTICE** served and filed in the master case **no later than Monday, April 15, 2019**, whether, in any case grouped under this master case, they intend to pursue claims asserted against any John Doe defendants and if yes, as to which case or cases. The Plaintiff(s) and/or Defendant / Third-Party Plaintiff Litwin Corporation shall further **ESTIMATE** by when the true name of the John Doe defendant(s) should be known, and a Rule 8-1 motion filed. It is further

**ORDERED** that the failure of any Plaintiff and Defendant / Third-Party Plaintiff Litwin Corporation to **RESPOND** will be **CONSTRUED** as **CONSENT** to the dropping of all John Doe Defendants and to the dismissal of all claims (including third-party claims) against all John Doe Defendants.

**DONE AND SO ORDERED.**

**Date:** March 25, 2019

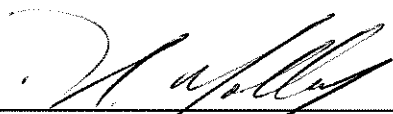
**ATTEST:**

ESTRELLA H. GEORGE

Clerk of the Court

By:   
Court Clerk Supervisor

Dated: 3/25/2019

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**ROBERT A. MOLLOY**  
Judge of the Superior Court