

FOR OFFICIAL PUBLICATION

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

ELEANOR ABRAHAM; PHILLP ABRAHAM; RATCLIFFE)	CASE NO. SX-11-CV-550
ABRAHAM; ELIZABETH ABREU; EDELMIRO ACOSTA;)	
MARTHA ACOSTA; TOMAS J. ACOSTA; TOMAS)	
ACOSTA, JR.; YAMARIS ACOSTA; CHARMAINE N.)	ACTION FOR DAMAGES
ALBERT, individually and as parent to minors)	
AUSTIN B. ANDRE, BEVINGTON R. ANDRE, CHRIS L.)	
ANDRE and FELICHA C. ANDRE; DAVIDSON)	COMPLEX LITIGATION DIVISION
ALDONZA, individually and as parent to minors)	
ABIGAIL ALDONZA, BRIANNER ALDONZA, BRYSON)	
ALDONZA, and RUTHLIN ALDONZA; CHRISTINA)	
ALEXANDER; OLIVE ALEXANDER; ANASTASIA)	
ALPHONSE; BRIAN ALPHONSE; KELVIN ALPHONSE;)	
JULITA ANDREW; JEROME ANTHONY; VIOLET)	
ANTHONY; PRISCILLIA ANTOINE; CAMILLE ARJUNE;)	
IAN ARJUNE; HECTOR M. ARROYO, JR.; HECTOR M.)	
ARROYO, SR.; MARIA C. ARROYO; MARILYN ARROYO;)	
PAULA ARROYO; PETRA ARROYO; CHRISTOPHER)	
ATHILL; MERKEY R. AUGUSTE; DENIS J. AUGUSTINE;)	
AWILDA AYALA; CARMELA AYALA; EVANGELISTA J.)	
AYALA, JR.; EVANGELISTA J. AYALA, SR.; JAHAIRA)	
AYALA; JESUS M. AYALA; MANUEL AYALA; ROSANDA)	
AYALA, individually and as parent to minors JASON)	
A. AYALA and JESUS AYALA, JR.; MELVINA A.)	
BARNARD; SANDRA BARNARD, individually and as)	
parent to minor TREJUAN CONCEPCION; SHAWN)	
BARNARD; LEONOR BARNARD-LIBURD, individually)	
and as parent to minor MILLINA PARRIS; AKIMA)	
BENJAMIN; ALIE BENJAMIN; ASHSBA BENJAMIN;)	
YVETTE BENJAMIN, individually and as parent to)	
minors ASHEMA HARRIS and JOSEPH N. HARRIS;)	
CATHERINE BERAS; LULILA BERAS; ANDRIA BONIT;)	
TIMOTHY BONIT; CARLO J. BOULOGNE; ALEXIS)	
BRIGHT; EDRED BROOKS; LESTROY BRIGHT; IVA T.)	
BROWN; GWENETH BROWNE; SYLVIA BROWNE;)	
GEORGE O. BRYAN, JR.; KAYLA K. BURGOS; IMOGEN)	
CAINES; AURA E. CANDELARIO; FRANCISCO J.)	
CARMONA; WILFREDO CARMONA, JR.; LAO CARMEN)	
CARRASQUILLO; AMPARO CARRASQUILLO,)	
individually and as parent to minor JAHVAN J.)	
NAVARRO; ANGEL MARIO CARRASQUILLO; JULIO A.)	
CARRASQUILLO; LEISHA L. CARRASQUILLO,)	

individually and as parent to minors MARCUS A.)
NOLASCO, JR. and EDILBERTO ANTHONY)
VILLANUEVA, III; SHERMAINE CARTIER; VALENTIN)
CEDENO; JOHANNA CEPEDA; LUZ CEPEDA,)
individually and as parent to minor ANTHONY)
CEPEDA; REGALADO CEPEDA, III; REGALADO)
CEPEDA, IV; REGALADO CEPEDA, JR.; VITALIENNE A.)
CHASSANA; JOSEPH CHRISTOPHE; MARYANNA)
CHRISTOPHE; ANA CIRLIO; SONIA N. CIRLIO;)
TUWANDA CLARKE; SKITTER CLERCIN; CELESTIN)
CLOVIS; REGINA J. CLOVIS; THEOPHILIUS COBB;)
VERONICA COBB; RAYMOND CODRINGTON; IVETTE)
COLON; LUIS R. COLON; LENDALE CORDICE, JR.;)
DOMINGO CORON; MARIA P. CORREA; CHRISTINA)
CRUZ; MARIA CRUZ; ORLANDO CRUZ; ALFREDO)
CUENCAS, JR.; ADREA Y. DANIEL; CAMMIE O. DANIEL;)
CYRIL DANIEL, JR.; STANLEY DANIEL; SUZETTE)
DANIEL; FRANCIS DAVID; RUBY C. DAVID; ENRIQUE)
DAVIS; MERCEDES DAVIS; SAMUEL DAVIS; GLADYS)
DAVIS-FELIZ, individually and as parent to minor)
ERIC O. DAVIS; ELIE DEJESUS; THEODORE M.)
DEJESUS; KEVIN F. DELANDE; MATTHEW DENIS;)
MARY DENNIE; NKOSI B. DENNIE; ELIZABETH)
DIAZ;FIADALIZO DIAZ; MAUD DREW; BENJAMIN)
DURAND; DAVID DURAND; FENNELLA DURAND,)
individually and as parent to minors JASI R.)
COUREURE and SHOMALIE C. COUREURE; GWENETH)
DURAND; JAMAL R. DURAND; KISHMA R. DURAND;)
RUDOLPH DURAND; RUDOLPH DURAND, JR.;)
BRANDON C. DUVIVIER; LEARA EDWARD,)
individually and as parent to minor NEGES COOPER;)
PATRICK EDWARD; VIRGINIA ESTEPHANE; CARLTON)
ETTIENNE; MADONA ETTIENNE, individually and as)
parent to minors KAREEM ETTIENNE and JADY)
SYLVAIN; SYLVIA EVELYN; ALANE K. FELIX; ALVIN)
FELIX; DOMINGO FELIX; EDYMARIE FELIX;)
HYACINTH M. FELIX; ISABEL FELIX; ISIDORO FELIX;)
JASMINE FELIX; MARIA B. FELIX; MARIUS F. FELIX;)
MATHILDA FELIX; SASHA MARIE FELIX, individually)
and as parent to minors TAHEYRAH FELIX, DANI)
MARIE HOSPEDALES, DENNIS K. HOSPEDALES, and)
DESTANI L. HOSPEDALES; NEESHAWN FERDINAND;)
PEARLINE FERDINAND; RENEE FERDINAND; RINEL)
FERDINAND; JOSE ANTONIO FULGENCIO; DELIA)

FLAVIEN; KENYAN FONTENELLE; LUIS M.)
FULGENCIO; NILSA CRUZ FULGENCIO; MARTHA)
GARCIA; ALCENTA GEORGE; AMOS GEORGE;)
CHARLES GEORGE; INEZ GEORGE; LUCIA M. GEORGE;)
SHARON E. GILL; GEORGE GLASGOW; WILHEMINA)
GLASGOW; ANGEL LUIS GOMEZ; VERNON GREEN;)
CHARLES GREENAWAY; VERONICA GREENAWAY;)
WENDELL GROUBY; MARGARITA GUADALUPE;)
ALCIDES GUERRERO; CASIANO GUERRERO,)
individually and as parent to minor VERONICA)
HANES; KENISHA C. HENDRICKSON, individually and)
as parent to minors ZAQUAN ALMESTICA, JAH)
JONAS, and ZARYAH JONAS; JOSEPHAT HENRY;)
LUCILLE HENRY; MARY HENRY; MARIA HEPBURN;)
EDMOND HODGE; VERA IRWIN; STELLA B. ISAAC;)
VERRALL ISAAC; JANET C. JACOBS, individually and)
as parent to minor JUSTIN J. JOSEPH; BARBARA)
JAIRAM; KELMAN JAIRAM; AKEEM JAMES; KAREEM)
JAMES; SYBIL JAMES; GEORGE JEAN-BAPTISTE; LISA)
JEAN-BAPTISTE; MAGDALENA JEAN-BAPTISTE,)
individually and as parent to minors TAMERA JEAN-)
BAPTISTE and TIA JEAN-BAPTISTE; ALFRED JOHN,)
JR.; ESTRELLITA MARIE JOHN; IGNATIUS JOHN;)
YAHMILLIA JOHN; JOHN JORDAN; INGEMA KHAN;)
EMILY J. KITURE, individually and as parent to)
minors KISH'MARIE V. CARMONA, WILMARICE S.)
CARMONA, and E'MARLEY CARMONA; JANICE)
KITURE; LUCINA KITURE; BARBARA KNIGHT;)
CASSANDRA LAFORCE; JOSEPH LAFORCE, JR.;)
FERMIN LEBRON, JR.; MARILUZ LEBRON; JOHN B.)
LEO; HERBERT LEONCE; LEONARD LIBURD;)
VERONICA LLANOS, individually and as parent to)
minor VERONIQUE LLANOS; CARMEN M. LOPEZ,)
individually and as parent to minors JASHIRA M.)
LOPEZ and ALLOY O. ALLEN, JR.; MAISHALEEN)
LOPEZ; MIGUEL A. LOPEZ; MIGUEL A. LOPEZ, JR.;)
MYRNA LOPEZ; APREEL LUBIN; JOEL PATRICK)
LUBIN; JONAH NEWELL LUBIN; BEVERLY ANN LUBIN-)
DUMAN; CORALI LUGO, individually and as parent to)
minors GISELLE LUGO and MARC A. LUGO; JERGE L.)
LUGO; KRYSTAL LUGO; EJAJIE MALAYKHAN; SHAM)
MALAYKHAN; SURAJ MALAYKHAN; ANA)
MALDONADO; CYNTHIA MARK; HUMBERTO)
MARTINEZ; ANDREA MARTINEZ; CONCEPTION)

MARTINEZ; LYNNETTE MARTINEZ, individually and)
as parent to minor JOSE E. VAZQUEZ, JR.; RAMON)
MARTINEZ; ALFORD MATTHEW; ASIAH MATTHEW;)
ESTINE MATTHEW; EUPHELIE MATTHEW; MARIA)
MATTHEW; MARTIN MATTHEW; MICHAEL L.)
MATTHEW; SHIRLEY (LA FORCE) MATTHEW;)
CHAMARIE MAYNARD; MARIA MAYNARD; NADEEN V.)
MAYNARD, individually and as parent to minor)
NADEAN V. WALTERS; JOSE REYES MELENDEZ;)
ANDREA MIRANDA; MIGUEL MIRANDA; CLAIRE-)
MINA MITCHELL; CLARIE-MINA A. MITCHELL; JANICE)
MITCHELL, individually and as parent to minor)
QUEANA MITCHELL; NANCY MITCHELL; SHARON)
MITCHELL; MELWYN MOE; MARIA LUZ MORALES;)
ERSILIE MORRIS; SENNET E. MORRIS; CATHERINE)
MORTON; JULIAN E. MORTON, JR.; MONROE)
MORTON; CARMEN NAVARRO, individually and as)
parent to minor CRISTINA RUIZ; LUZ D. NAVARRO;)
MARCO A. NAVARRO; MARIA NAVARRO, individually)
and as parent to minors GILBERTO NAVARRO and)
GILMARIE NAVARRO; MARIA MERCEDES NAVARRO;)
NELSON NAVARRO; JOAN NICHOLAS; LATOYA Y.)
NICHOLAS; SANDY NICHOLAS; DORETTE F.)
NOORHASAN; LENNOX E. NOORHASAN; SHANE)
ANTONIO NOORHASAN; MARILYN NYACK; WILBURN)
O'REILLY; ALVIN PAIGE; ARA PAIGE, individually and)
as parent to minor IAN BURKE; CARMEN AMARO)
PARRILLA, individually and as parent to minors)
CHRISTIAN PARRILLA, JR., MIGUEL J. PARRILLA, and)
NATACHA PARRILLA; DELORES I. PARRILLA,)
individually and as parent to minor ROBERTO)
PARRILLA, JR.; JOEL PARRILLA; JUAN PARRILLA;)
ORLANDO PARRILLA; RAQUEL PARRILLA; PEDRO)
JUAN PARRILLA; ROBERTO PARRILLA, SR.; SONIA M.)
PARRILLA; TARA PARRILLA; WILFREDO PARRILLA;)
ORLIMAGELYS PARRILLA; DELORES PARRILLA-)
FERDINAND; CANDIS M. PEMBERTON; MAJARIE C.)
PEMBERTON; MARCO GARCIA PENA; CARLOS A.)
PEREZ; CARLOS ALBERTO PEREZ; CARMEN L. PEREZ;)
JORGE A. PEREZ; JOSE M. PEREZ; NAISHMA K. PEREZ;)
NYDIA PEREZ, individually and as parent to minor)
PAULA Y. PEREZ; TUWANDA PEREZ; VICTOR M.)
PEREZ; XAVIER M. PEREZ; YAMILEISY PEREZ;)
YARITZA PEREZ; YLONIS J. PEREZ; YOMAR A. PEREZ;)

ZALEMIE Y. PEREZ; AMERICA PEREZ-AYALA,)
individually and as parent to minors NEISHALEE)
PEREZ and VICTOR MANUEL PEREZ, III; ARTHUR)
PHILLIP; MARTIAL PHILLIP; MARVA PHILLIP;)
MARVIN PHILLIP; TERRY M. PHILLIP; JOSE PICART;)
DEMETRIO A. PILIER, individually and as parent to)
minors LIZANDRO PILIER and LIZANGEL PILIER;)
CRIPSON PLASKETT; DILIA PLASKETT, individually)
and as parent to minor ANGELA S. VENTURA;)
WILLIAM A. PLASKETT; CORNELIA POLIDORE;)
KERISCIA POLIDORE; LAWRENCE POLYDORE;)
MISCELDA PRESCOTT; KIMBEL PRESIDENT;)
KIMBERLY PRESIDENT; GODFREY G. PREVILE;)
MIGDALIA PROFIL; DAVID PRYCE; PHILBERT PRYCE,)
JR.; ISABELLA N. QUILDAN; KAREEM QUILDAN; IRIS)
M. QUINONES; JOSE WILLIAM QUINONES; RUTH A.)
QUINONES; SILA QUINONES; ANDRES MERCADO)
RAMIREZ; BRUNILDA RAMOS; DANIEL RAMOS;)
GABRIEL RAMOS; JORGE RAMOS; JOSEFINA RAMOS;)
MARCELA RAMOS; ERIDANIA REYES; EVARISTO)
REYES; FRANCISCA C. REYES, individually and as)
parent to minors NAYOSHE REYES; JUAN A. REYES;)
JUANICO REYES; MAXIMO GUERRERO REYES;)
WANDA J. REYES; LAURENCEA RICHARDSON;)
MARILYN RICHARDSON, individually and as parent)
to minor JOVON GONZAGUE; CECILIA RIOS; ANA)
CELIA RIVERA; BEATRICE RIVERA; BELKIS RIVERA;)
EBONY RIVERA; MIRIAM RIVERA; SANDRO RIVERA;)
JESSICA C. ROBLES; BENJAMIN ROBLES, JR.;)
BENJAMIN ROBLES, SR.; ELISE ROBLES; ISMAEL)
ROBLES; IVETTE ROBLES; JOSE LUIS ROBLES;)
MARTINA L. RODNEY; JULIO RODRIGUEZ; LILLIAN R.)
RODRIGUEZ, individually and as parent to minor)
MIGUEL A. RODRIGUEZ; MIGUELY RODRIGUEZ;)
AKEEL ROGERS; PABLO ROJAS; FRENANDO L.)
ROLDAN; JEREMY L. ROLDAN; ANGELA PAGAN)
ROSARIO; NEELIA ROSS; JOANNE RUIZ, individually)
and as parent to minors ANGELO J. CARMONA,)
ALAIKA E. GREENIDGE, ALLEN H. GREENIDGE, JR.,)
TALAIYA A. GREENIDGE, and TAKIMA T. RUIZ; RUT)
RUIZ, individually and as parent to minor JAHLLIAH T.)
LEO; CARMEN SALDANA; EDDIE ADNER SALDANA;)
EDWIN SALDANA; RAQUEL SALDANA, individually)
and as parent to minor KRYSTAL MARAGH; ANGEL)

ALBERTO SANCHEZ; EDITH SANCHEZ; JOSE ALBERTO)
SANCHEZ; JOSE E. SANCHEZ; JOSE ROBERTO)
SANCHEZ; ANGEL L. SANES; JOSHUA SANES; MIGUEL)
ANGEL SANES; YADIRA SANTANA; JOSE LANSO)
SANTIAGO; ARTEMIA SANTIAGO; CARLOS L.)
SANTIAGO; CHAYANNE SANTIAGO; ELIEVER)
SANTIAGO; LYDIA SANTIAGO; MAYNALYS SANTIAGO;)
ANGELICA SANTOS; RAMONA SANTOS; THERESITA)
SANTOS; MARIA SERRANO; MARTHA SERRANO;)
MARTIN SERRANO, JR.; GRETA SHALTO; JEANETTE)
SHAW-JACOBS; HELEN SHIRLEY; RAMISHA SLATER,)
individually and as parent to minor BRANDON T.B.)
WILSON, II; KEISHA P. SMITH; KEVIN E. SMITH;)
NATASHA SMITH; JENNIFER SOTO; JEREMY SOTO;)
JORGE SOTO; LUIS ENRIQUE SOTO, individually and)
as parent to minor LUIS E. SOTO; MARIA L. SOTO;)
ROSA SOTO; ANTHONY ST. BRICE; CLAUDIA)
STEVENS; JEREMIAH C. STUBBS, individually and as)
parent to minor MARIAH C. STUBBS; ANNETTE J.)
TAYLOR; BERYL E. TAYLOR; DEBBIE R. TAYLOR;)
ALITA V. THEOPHILUS; MARSHA THOMAS,)
individually and as parent to minors TAMIREA N.)
TANIS and TANIS, NAHOMEY; TORRES, JOSE)
MANUEL, JR.; TORRES, LINDA; CARMEN VALENTINE;)
SANTIAGO O. VALENTINE, JR.; VASQUEZ, NOEMI S.;)
VEGA, EFRAIN; VEGA, LUIS FELIX JR.; VEGA, LUZ)
DELIA, individually and as parent to minors)
SHANLEY T. VEGA and FRANSHESKA VEGA; LUIS)
FELIX VEGA; FERMIN VEGAS LEBRON; CARMEN R.)
VELEZ; CORPORINA VELEZ; JOSE R. VELEZ.; JOSE)
RAMON VELEZ; MARGARITA VELEZ; MIGUEL ANGEL)
VELEZ; NORMA VELEZ; YESENIA VELEZ; ANGEL L.)
VENTURA; ANNA MARIA VENTURA; CARLOS)
VENTURA, JR.; CARMEN L. VENTURA; EDNA)
VENTURA; JOSE MIGUEL VENTURA; KARLA)
JEANETTE VENTURA; NOELIA SOTO VENTURA;)
XIOMARA I. VENTURA, individually and as parent to)
minor DIANE N. DENIS; SHELIA L. VILLANUEVA;)
CLAYTON WILLIAMS; IDELFONSA WILLIAMS; URMIA)
WILLIAMS; ALFRED WILSON; BRANDON T.B.)
WILSON; CINDY WILSON, individually and as parent)
to minor JUSTIN RIVERA; DIANA N. WILSON,)
individually and as parent to minor SHAEDEAN N.)
ROLDAN; DUNN WILTSHIRE; ETHELBERT)

**WILTSHIRE; GREGG WILTSHIRE; HERMINE
WILTSHIRE, individually and as guardian to minor
CHRISTINA WILTSHIRE; and PETER WILTSHIRE,**

Plaintiffs,

v.

ST. CROIX RENAISSANCE GROUP LLLP,

Defendant.

Cite as: 2019 VI SUPER 15

Appearances:

LEE J. ROHN, ESQ.

RHEA R. LAWRENCE, ESQ.

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For Plaintiffs

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For Defendant St. Croix Renaissance Group, LLLP

MEMORANDUM OPINION

MOLLOY, Judge.

¶1 **BEFORE THE COURT** is a motion filed by Defendant St. Croix Renaissance Group, LLLP ("SCRG") to consolidate this case with several hundred other cases being coordinated under a

master case. Because the procedural history of this case and the other cases overlap, the Court must withhold ruling on SCRG's motion at this time and order the plaintiffs to show cause in writing why this case should not be administratively closed or, in the alternative, why everyone except Eleanor Abraham should not be either dropped from this case and ordered to refile individual complaints or granted leave to supplement the complaints that were already filed individually in response to a prior court order. *See generally Abednego v. St. Croix Alumina, LLC*, 63 V.I. 153 (Super. Ct. 2015).

I. BACKGROUND

¶2 On Monday, September 21, 1998, Hurricane Georges, struck St. Croix as a category two storm. "Georges (pronounced Zhorzh) was the second deadliest and second strongest hurricane within the Atlantic basin during the 1998 season. Its 17 day journey resulted in seven landfalls, extending from the northeastern Caribbean to the coast of Mississippi, and 602 fatalities – mainly in the Dominican Republic and Haiti." John L. Guiney, *Preliminary Report: Hurricane Georges 15 September – 01 October 1998*, Nat'l Hurricane Ctr., Nat'l Oceanic & Atmospheric Admin. (Jan. 5, 1999), available at http://www.nhc.noaa.gov/data/tcr/AL071998_Georges.pdf (last visited Jan. 18, 2019). The damage Georges caused to St. Croix gave rise to this case ("*Eleanor Abraham*"), and three other cases – *Josephat Henry, et al. v. St. Croix Alumina, LLC, et al.* ("*Henry*"), *Laurie L.A. Abednego, et al. v. St. Croix Alumina, LLC, et al.* ("*Abednego*"), and *Phillip Abraham, et al. v. St. Croix Alumina, LLC, et al.* ("*Phillip Abraham*") (collectively "*Red Dust cases*") – as well a master case, *In re: Red Dust Claims*, which the Superior Court recently opened to coordinate the *Red Dust* cases.

¶3 To give some context, the following facts, alleged in the complaint, are assumed to be true, but only for purposes of the Opinion and only to provide a historical backdrop:

For about thirty years, an alumina refinery located near thousands of homes on the south shore of the island of St. Croix was owned and/or operated by a number of

entities. The facility refined a red ore called bauxite into alumina The byproduct of the alumina refining process used at the St. Croix refinery is a red substance called bauxite residue, or “red mud” or “red dust,” which is indistinguishable in color and texture from bauxite. Red mud causes damages to real and personal property. Red mud causes significant physical injuries. . . . From the beginning of the alumina refinery’s operations, hazardous materials, including chlorine, fluoride, TDS, aluminum, arsenic, molybdenum, and selenium, as well as coal dust and other particulates were buried in the red mud, and the red mud was stored outdoors in open piles that at times were as high as approximately 120 feet and covered up to 190 acres of land. The piles of red mud erode into the environment if they are not secured by vegetation or retaining walls. For years, the uncovered piles often emitted fugitive dust when winds blew across the refinery and on the frequent occasions when bulldozers ran over them. . . . The bauxite was stored in a steel A-frame structure with plastic sheets hung down the sides, called the bauxite storage shed. In 1995, Hurricane Marilyn hit St. Croix and damaged the roof of the bauxite storage shed, which allowed the dusty bauxite to be blown out of the shed.

(Compl. ¶ 461, 465-69 (paragraph breaks omitted).) Three years later, Georges hit St. Croix and exacerbated the damage to the refinery and further scattered red dust across the island. *Cf. Henry v. St. Croix Alumina, LLC*, 99-cv-036, 2009 U.S. Dist. LEXIS 80830, *13-14 (D.V.I. Aug. 28, 2009) (“It is undisputed . . . that hurricane-strength winds tore holes in the steel roof of the bauxite shed during Hurricane Georges, allowing a large quantity of bauxite to escape. In 1995, Hurricane Marilyn also blew portions of roofing from the Refinery’s bauxite shed.”).

A. *Josephat Henry, et al. v. St. Croix Alumina, LLC, et al.*

¶4 Approximately five months after Georges, Alicia “Chucky” Hansen, Josephat Henry,¹ Kay Williams, Sylvia Browne, and Angel L. Parilla (the “Henry Plaintiffs”) filed a complaint in the Territorial Court of the Virgin Islands, captioned as *Senator Alicia “Chucky” Hansen, et al. v. St. Croix Alumina, LLC, et al.* The complaint, pled as a class action, alleged that Hansen, as a member of the

¹ Josephat Henry’s name was inadvertently transposed on the February 5, 1999 complaint as Henry Josephat. The scrivener’s error was later corrected, but many documents, orders, and opinions still cite the case as *Henry Josephat, et al. v. St. Croix Alumina, LLC, et al.*

Legislature of the Virgin Islands, sued as representative of the people of the Virgin Islands, and the others sued on behalf of neighborhoods and neighborhood associations in which persons “down wind of the Alumina Refinery Plant” were impacted when red dust was released from the refinery. (Compl. ¶3, filed Feb. 5, 1999, *Alicia Hansen, et al. v St. Croix Alumina, LLC, et al.*, SX-99-CV-080.²) The *Henry* Plaintiffs named St. Croix Alumina, LLC (“SCA”), Alcoa, Inc. (“Alcoa”), and Glencore, Ltd. (“Glencore”) as defendants, sought damages and injunctive relief on asserted eight claims.³ SCA removed the case to the District Court on March 5, 1999, where it remained until the parties stipulated thirteen years later to a judgment of dismissal.

¶5 After *Abednego* was removed to federal court, but before the 2012 judgment was entered, the *Henry* Plaintiffs amended their complaint several times to add and drop certain named plaintiffs.⁴ Hansen, for example, was dismissed without prejudice in 2000, causing the caption to be

² The Court takes judicial notice of the cases filed in the Territorial Court, the Superior Court, and the District Court, as well as the papers filed in those cases. See *King v. Appleton*, 61 V.I. 339, 348 (2014); *Cianci v. Chaput*, 64 V.I. 682, 690 n.2 (2016).

³ Maintaining an abnormally dangerous condition (count one), negligence per se (count two), public nuisance (count three), private nuisance (count four), negligence (as to St. Croix Alumina and Alcoa) in attempting to abate the nuisance (count five), intentional infliction of emotional distress (count six), negligent infliction of emotional distress (count seven), and negligence (count eight). Count nine erroneously “claimed” punitive damages.

⁴ The *Henry* Plaintiffs filed a motion to amend on May 24, 1999, which was granted on May 25, 1999. The amended complaint was filed a day later, on May 26, 1999. The *Henry* Plaintiffs filed another motion to amend on January 13, 2000, which was granted on August 7, 2000. See *Josephat v. St. Croix Alumina, LLC*, 99-cv-036, 2000 U.S. Dist. LEXIS 13102, *40 (D.V.I. Aug. 7, 2000). The second-amended complaint was filed on August 8, 2000. Although the first- and second-amended complaints are not available through the federal court’s electronic docket, the second-amended complaint was attached to another document filed in the case. Per the caption of the second-amended complaint, Maude Drew, Antonia Cruz, Martha Acosta, Rosemond Harper, Jose Berrios, individually and as father of Miguel Sanes, and Wilhelmina Glasgow joined the *Henry* Plaintiffs, including Senator Alicia “Chuck” Hansen and Angel L. Parrilla, both of whom had been named as plaintiffs since the February 5, 1999 complaint filed in the Territorial Court. Both had also been dismissed on motion before leave to file a second-amended complaint was granted. That is, the second-amended complaint should have removed Hansen and Parrilla. Because it did not, the *Henry* Plaintiffs filed another motion to amend on January 18, 2002, which was granted on March 5, 2002. The third-amended complaint dropped Hansen entirely, dropped Parrilla—but only from the caption, not the body—and also dropped Rosemond Harper and Miguel Sanes (neither of whom were dismissed by motion), but added Samantha Viera, represented by her mother Wilhelmina Glasgow, Mercedes Rosa, Julian St. Brice, George Rodriguez, individually and on behalf of his sons, Amando and George, Sonya Cirilio, Raquel Tavaréz, Neftali Camacho, individually and on behalf of his son, Angel, Eyajie Malaykhan, and Cheddie Kelshall. Other class representatives were later dismissed by stipulation filed on July 27, 2004 and approved

changed to *Josephat Henry, et al. v. St. Croix Alumina, LLC, et al.* (“Henry”) More importantly, the District Court granted the *Henry* plaintiffs’ request to certify a class as well as several subclasses. *See Josephat*⁵ *v. St. Croix Alumina, LLC*, 99-cv-036, 2000 U.S. Dist. LEXIS 13102, *45 (D.V.I. Aug. 7, 2000) (“Plaintiffs have met the prerequisites of Rule 23, the Court will certify Plaintiffs’ class and subclasses. However, the Court may modify or decertify either the class or any one of the subclasses, if, at a later date, it appears appropriate to do so.”).

¶6 Initially, the class included

[a]ll individuals who, as of September 21, 1998, resided, worked, and/or owned property located in the following six communities adjacent to and downwind from the St. Croix Alumina Refinery Plant—the [neighborhoods] of Harvey and Clifton Hill and the estates of Barren Spot, Profit, Clifton Hill, and La Rein [sic]—who, due to Defendants’ conduct with regard to the containment and storage of red dust containing bauxite and red mud, suffered damages and/or injuries as a result of exposure during and after Hurricane Georges to red dust and red mud blown during Hurricane Georges.

Henry v. St. Croix Alumina, LLC, 99-cv-036, 2008 U.S. Dist. LEXIS 43755, *5 (D.V.I. June 3, 2008); *see also id.* at *5-8 n.2 (defining medical monitoring, property damage, personal injury, and punitive damages subclasses). The class parameters remained largely unchanged for several years. Then in 2006, the District Court

decertified all subclasses but held that liability for personal injury and/or property damage as well as whether punitive damages are appropriate, as an initial matter, may be determined on a class-wide basis. Plaintiffs then submitted a revised trial plan divided into two phases. In Phase 1, plaintiffs would litigate liability and the possibility of a punitive damages multiplier on a class-wide basis, and afterward, in

the same day. *Cf. Henry v. St. Croix Alumina, LLC*, 99-cv-036, 2009 U.S. Dist. LEXIS 93866, *3 (D.V.I. Oct. 7, 2009) (“[T]he court included plaintiffs Jose Berrios, Julian St. Brice, and Antonia Cruz among the twenty named plaintiffs in its order. In 2004, when this case was assigned to another judge, these three plaintiffs were dismissed from the action. Accordingly, we will remove them from this court’s August 28, 2009 Order.”). If the third-amended complaint was amended further to reflect the dismissals of Parilla, Berrios, St. Brice, and Cruz, the pleadings are not reflected on the federal court’s docket, so far as the Court can tell.

⁵ *See, supra*, note 1.

Phase II, individual plaintiffs would have the opportunity to prove individual causation and all damages issues independently in separate trials. In December, 2007, the district court set forth in an order that the current certification status of the class and the absence of subclasses make the formulation of a workable trial plan cumbersome, and chose to revisit the class certification and subclass decertification decisions.

Id. (quotation marks, ellipsis, brackets, and citations omitted). Revisiting the class certification decisions ultimately resulted in decertification.

¶7 In a June 3, 2008 memorandum and order, the District Court concluded that, “based on the now more developed state of the record, the original determination of class action status is no longer valid.” *Id.* at *23 (citation omitted). The District Court then “decertif[ied] the previously certified class in its entirety.” *Id.* A new class was certified comprising

[a]ll persons who currently reside, work, and/or own property in the [neighborhoods] of Harvey and Clifton Hill and the estates of Barren Spot, Profit, Clifton Hill, and La Reine who, because of the presence of bauxite and red mud on the St. Croix Alumina Refinery Plant property due to defendants’ conduct, could suffer personal injuries or property damage in the future as a result of exposure to that bauxite and red mud.

Id. at *35. The new class was limited only to prospective relief, i.e., persons who “seek cleanup, abatement or removal of the substances currently present on the refinery property.” *Id.* (“We expressly deny certification of plaintiffs’ claim for injunctive relief to the extent that they request cleanup, abatement or removal of substances lying elsewhere on the island of St. Croix.”); *see also Henry v. St. Croix Alumina, LLC*, 416 F. App’x 204, 206 (3d Cir. 2011) (“In June 2008, Chief Judge Bartle decertified the Rule 23(b)(3) class and re-certified a Rule 23(b)(2) class to its current composition, individuals who currently reside, work and or own property in a number of neighborhoods adjacent to an alumina refinery, St. Croix Alumina, and who could suffer personal injuries or property damage in the future as a result of the current storage and containment of

bauxite at the refinery.” (quotation marks omitted)). Litigation continued on the class claims and the tort claims of the individual *Henry* Plaintiffs until 2014, when the United States Court of Appeals for the Third Circuit issued its decision affirming the 2012 judgment. *See generally Henry v. St. Croix Alumina, LLC*, 572 F. App’x 114 (3d Cir. 2014).

B. Laurie L.A. Abednego, et al. v. St. Croix Alumina, LLC, et al.

¶8 In response to order decertifying the class, approximately 2,900 former class members (the “*Abednego* Plaintiffs”) joined together on December 3, 2009 and file a complaint in the Superior Court of the Virgin Islands, captioned *Laurie L.A. Abednego, et al. v. St. Croix Alumina, LLC, et al.* The *Abednego* Plaintiffs asserted the same eight claims as the *Henry* plaintiffs and named the same three defendants: SCA, Alcoa, and Glencore. Among the 2,900 *Abednego* plaintiffs were Eleanor Abraham and Phillip Abraham.

¶9 Six days after filing their complaint, specifically on December 9, 2009, the *Abednego* Plaintiffs amended their complaint to add SCRG as a defendant. “Other than adding a fourth defendant, the amended complaint . . . did not add any additional plaintiffs or assert additional claims for relief.” *Abednego*, 63 V.I. at 161. But the amended complaint did allege additional facts, namely that the damage to the alumina refinery from Hurricane Georges caused asbestos to become exposed and friable and “blow about the neighborhoods down wind from the refinery for at least ten (10) years causing Plaintiffs to inhale asbestos and otherwise be exposed to asbestos.” (First-Amended Compl. ¶ 2934, filed Dec. 9, 2009, *Abednego, et al. v. St. Croix Alumina, LLC, et al.*, SX-09-CV-571.) This was the first time that asbestos exposure was claimed and that SCRG was named as a party.

¶10 Alcoa removed *Abednego* to the District Court where “[l]itigation continued . . . for more than a year before that court determined that it lacked subject matter jurisdiction and remanded the case

back to the Superior Court.” *Abednego*, 63 V.I. at 161. The background of what occurred in the District Court were summarized elsewhere. *See generally id.* at 162-70. That background need not be revisited here, except for two points—the amendments to the complaint and the dismissal of SCRG prior to remand—which may be dispositive of the concerns raised in this Opinion.

¶11 In the District Court, the *Abednego* Plaintiffs moved for leave to file a second-amended complaint to “add two new defendants—Glencore International AG and Century Aluminum Company” (“GI” and “Century,” respectively) based on “recently discovered evidence.” (Pls.’ Mot. for Leave to File Second Amend. Compl. 1, filed Sept. 1, 2010, ECF No. 66, *Abednego v. Alcoa, Inc.*, 1:10-cv-099 (D.V.I.)) They also asked for leave to add “additional factual allegations [that] might assist the parties and the Court throughout the development of this case” because *Abednego* “shares parties, facts and considerable evidence with the *Henry* litigation.” *Id.* at 7. Over the objection of Glencore and SCRG, the District Court granted leave on October 4, 2010. Further amendments were later required, but not by choice.

¶12 Because *Abednego* was a spinoff of *Henry*, and because SCRG was not a party to *Henry*, counsel for SCRG questioned whether all 2,900 *Abednego* plaintiffs had authorized their attorney, Lee J. Rohn, Esq. (“Attorney Rohn”), to file suit against SCRG and further, whether they had retained her. This, in turn, prompted the District Court to inquire into the issue. *See Abednego v. Alcoa, Inc.*, 10-cv-009, 2010 U.S. Dist. LEXIS 110732, *2-3 (D.V.I. Oct. 5, 2010) (“Based on a press release issued by plaintiffs’ counsel and filed with the court, we [i.e., the District Court] had serious concerns about whether she had representation agreements with all 2,895 plaintiffs at the time the complaint was filed. Needless to say, an attorney may enter an appearance only for those parties whom he or she has authority to represent. As a result, on April 26, 2010, the court ordered plaintiffs’ counsel to file

an affidavit The court also ordered that the affidavit contain a statement as to whether each representation was effected orally or by a signed writing.” (citations omitted)). Attorney Rohn was able to produce retainer agreements for all but 198 *Abednego* plaintiffs. The “retainer agreements . . . did not authorize [her to sue] . . . SCRG,” however. *Abednego v. Alcoa, Inc.*, 10-cv-009, 2010 U.S. Dist. LEXIS 134170, *8 (D.V.I. Dec. 16, 2010). Consequently, the District Court, on November 16, 2010, granted a motion SCRG filed to dismiss the claims of the 198 plaintiffs (the “198 Plaintiffs”) against all defendants including SCRG and to dismiss the remaining plaintiffs’ claims against SCRG only, both for the same reason: lack of authority to sue. *See id.* at *9 (“The order struck 198 plaintiffs, dismissed SCRG . . . [and] directed that plaintiffs’ counsel was to file by December 1, 2010 a Third Amended Complaint.”).

¶13 The 198 Plaintiffs immediately moved for reconsideration, which the District Court denied. *See id.* They also moved for certification pursuant to Federal Rule of Civil Procedure 54(b) to appeal the dismissal to the United States Court of Appeals for the Third Circuit. That too was denied. With leave to appeal and reconsideration denied, the 198 Plaintiffs then joined together on April 4, 2011 and filed a complaint in the Superior Court of the Virgin Islands. Approximately three weeks earlier, the District Court remanded *Abednego*—but without the 198 plaintiffs or SCRG—after determining that it lacked subject-matter jurisdiction. *See generally Abednego v. Alcoa, Inc.*, Civ. No. 10-009, 2011 U.S. Dist. Ct. 27892 (D.V.I. Mar. 17, 2011).

C. *Phillip Abraham, et al. v. St. Croix Alumina, LLC, et al.*

¶14 Because the 198 plaintiffs were dismissed from *Abednego*, their complaint—captioned *Phillip Abraham, et al. v. St. Croix Alumina, LLC, et al.*—named SCA, Alcoa, and Glencore as defendants as well as GI and Century, two companies the District Court had allowed the *Abednego* plaintiffs to

name as defendants before it remanded the case to the Superior Court. But the 198 Plaintiffs (hereinafter also the “*Phillip* plaintiffs”) did not name SCRG as a defendant. The *Phillip* Plaintiffs did refer to SCRG. (See, e.g., Compl. ¶¶ 214, filed Apr. 4, 2011, *Phillip Abraham, et al. v. St. Croix Alumina, LLC, et al.*, SX-11-CV-163 (“As a term of the 2002 sale of the refinery to SCRG, and as further established by a subsequent amendment of the PSA, Defendants ALCOA and SCA retained liability arising out of any alleged failure to secure materials at the refinery, including but not limited to bauxite, “red dust” and “red mud” and a right of access to remediate the red mud piles.”); see also *id.* ¶ 255 (“SCRG attempted to conceal the fact it had friable asbestos in the plant and left it there for years.”).) But they did not name SCRG as a defendant in the caption of their complaint and summons never issued for SCRG. But cf. *Mitchell v. Gen. Eng’g Corp.*, 67 V.I. 271, 284 (Super. Ct. 2017) (“The caption of an action is only the handle to identify it and ordinarily the determination of whether or not a defendant is properly in the case hinges upon the allegations in the body of the complaint and not upon his inclusion in the caption.” (quotation marks, brackets, and citation omitted)).

¶15 Eight months after the 198 Plaintiffs commenced *Phillip Abraham*, the Court (Donohue, P.J.) issued an order warning that their claims were subject to dismissal for failure to timely serve. Summons had issued for all named defendants, but proof of service was not filed, nor had any of the defendants appeared. The *Phillip* Plaintiffs responded to the order by filing a motion for an extension of time to serve, asserting that, because the District Court concluded that it lacked subject matter jurisdiction, its “decision to dismiss [them] from *Abednego* is void as a matter of law.” (Pls.’ Mot. for Leave to Serve Defs Pursuant to Rule 4(m) Out of Time 1-2, filed Jan. 12, 2012, *Phillip Abraham, et al. v. St. Croix Alumina, LLC, et al.*, SX-11-CV-163). The *Phillip* Plaintiffs then advised the Court that they would also be filing a motion in *Abednego* to have them reinstated as plaintiffs into

that case, “making the issue of untimely service in this case ultimately moot if that motion is granted.” *Id.* at 2.

¶16 *Abednego* and *Phillip Abraham* were reassigned to the same judge who issued an August 10, 2015 Memorandum Opinion granting the *Phillip* plaintiffs’ motion and vacating the District Court’s order dismissing them from *Abednego*. Setting the November 16, 2010 Order aside was necessary, the Court (Brady, J.) concluded, because

[t]he remedy for any error in how the claims of some 198 people were brought was not to punish them for the actions of their purported attorney by dismissing their claims, but rather to sever their claims and allow them time to obtain counsel (either the same or different) or to proceed *pro se*.

Abednego, 63 V.I. at 178; see also *id.* at 184-85 (“Because *Pueblo of Santa Rosa* clearly expressed concern over the proper remedy in cases brought by an attorney who may lack authority, and considering that Attorney Rohn may have owed a continuing duty to all former class members, and further since *DirecTV* clearly directed that dismissing a claim would be improper if it result[ed] in the claim . . . [being] blocked by the statute of limitations, the District Court’s November [16], 2010 order must be set aside.”).

¶17 But whether to also vacate the November 16, 2010 order in its entirety was not as straightforward. SCRG had been dismissed outright from *Abednego* and was not named as a defendant by the *Phillip* plaintiffs. Nevertheless, once SCRG learned of their motion, it filed a response – in opposition only if the *Phillip* Plaintiffs (also referred to as the “Former Plaintiffs” in the August 10, 2015 Opinion) were also “request[ing] that all of their claims, including those against SCRG, be reinstated.” *Id.* at 173. SCRG’s query went unanswered, however, because the *Phillip* plaintiffs did not respond, prompting the Court to take issue with their silence in part because of consequences of vacating the November 16, 2010 order in its entirety, rather than just vacating that portion that

dismissed the 198 Plaintiffs because Attorney Rohn could not produce retainer agreements. *See id.* Vacating the order in its entirety would reinstate the 198 Plaintiffs and also reinstate SCRG as a defendant.

¶18 Given the uncertainty, the Court elected to err on the side of caution. The Court took judicial notice that “Attorney Rohn [had] filed a third red dust action in the Superior Court, but only against SCRG and with only 500 individual plaintiffs (approximately) not 2,800.” *Id.* That “third red dust action” was *Eleanor Abraham*. But it appeared to be “a different case with different plaintiffs,” *id.*, the Court observed. Believing that any uncertainty would soon be resolved, the Court opted to rewind the clock and vacate the November 16, 2010 Order in its entirety, partly because “the third red dust case . . . [*Eleanor*] *Abraham*, [was] brought on behalf of many more plaintiffs than the 198 individuals dismissed by the November [16], 2010 order.” *Id.* at 184 (quotation marks omitted); *see also id.* (“Considering that the Former Plaintiffs failed to respond to SCRG when it asked in its opposition about the scope of their motion to vacate—it is entirely possible that all of the plaintiffs (including the Former Plaintiffs) have abandoned any claims against SCRG that may have been part of the former *Henry* class action or this litigation when first filed in 2009. Or perhaps some may have joined the [*Eleanor*] *Abraham* matter. Because the Court simply cannot tell at this time, the safer course—considering the statute of limitations—is to vacate the November [16], 2010 order in its entirety and . . . allow the plaintiffs to refile individual, verified complaints and the defendants, including SCRG, to raise any defenses not already waived.”) Once the November 16, 2010 Order was set aside, the *Phillip* plaintiffs were reinstated into *Abednego* and dropped. All but Mr. Abednego and Mr. Abraham, who were allowed to retain their case numbers, were ordered to refile individual complaints, or their claims would be dismissed.

D. *In re: Red Dust Claims*

¶19 In furtherance of the August 10, 2015 opinion, the Court (Brady, J.) directed the Clerk's Office to open the *In re: Red Dust Claims* master case so that the individual cases to be refiled could be coordinated. After granting the plaintiffs additional time to comply with the severance order, *see In re: Red Dust Claims*, SX-15-CV-620, __ V.I. __; 2017 V.I. LEXIS 98, *3-6 (V.I. Super. Ct. July 7, 2017) (first extension); *id.* at *27-35 (second extension), approximately 400 cases, with over 1,300 individual plaintiffs, were filed. All the plaintiffs named SCA, Glencore, Alcoa, GI, Century, and SCRG as defendants and each complaint referred to Hurricane Georges, red dust, friable asbestos, the 1999 class action case, and toxic substances disbursed downwind from the former alumina refinery.

E. *Eleanor Abraham, et al. v. St. Croix Renaissance Group, LLLP*

¶20 As noted earlier, Eleanor Abraham and approximately five hundred others (the "*Eleanor* plaintiffs") joined together on December 13, 2011 to file a complaint in the Superior Court of the Virgin Islands against SCRG because SCRG had "owned and/or operated the refinery from 2002 to the present." (Compl. ¶ 463.) The *Eleanor* plaintiffs did reference some of the alleged wrongdoings of SCRG's predecessors, however. *See, e.g., id.* ¶ 470 ("Previous owners ALCOA and St. Croix Alumina added red dust, coal dust and other particulates to the materials left behind by Virgin Islands Alumina Company, Glencore, Ltd., Glencore International AG, and Century Aluminum Company, the former owners and/or operators of the refinery, and continued to stack and store them in huge uncovered piles."). But the gravamen of their complaint focused on SCRG. *E.g., id.* ¶ 471 ("When SCRG purchased the refinery it had knowledge of the potential for red mud releases. It was aware of the loose bauxite and piles of red mud and knew that those substances had the propensity for particulate dispersion when exposed to wind and that the refinery was in close proximity to

thousands of residential dwellings. It knew that every time there was a strong wind the toxic substances in the piles would be dispersed into the air, where they were inhaled by Plaintiffs, deposited onto Plaintiffs' persons and real and personal properties, and deposited into the cisterns that are the primary source of potable water for many Plaintiffs.").

¶21 The *Eleanor* plaintiffs asserted the same claims as the *Henry* plaintiffs, the *Abednego* plaintiffs, and the *Phillip* plaintiffs, pretty much in the same order: maintaining an abnormally-dangerous condition (count one), public nuisance (count two); private nuisance (count three), intentional infliction of emotional distress (count four), negligent infliction of emotional distress (count five), and negligence (count six). They demanded compensatory and punitive damages⁶ as well as an "injunction requiring that Defendant cease and desist all activities that result in pollutants being discharged and further requiring a cleanup of all pollutants and the removal of the piles of 'Red Dust,' coal dust, and particulates and hazardous substances." *Id.* at 38.

¶22 SCRG appeared on January 30, 2012 and filed a motion to sever the plaintiffs' claims into individual suits and a motion for a more definite statement. But three days later, SCRG removed the case to the District Court of the Virgin Islands and answered the complaint. In the District Court, the *Eleanor* plaintiffs moved for leave to amend their complaint to correct certain misspellings of plaintiffs' names and to "add additional factual allegations [that] might assist the parties and the Court throughout the development of this case." (Pls.' Mot. For Leave to File First Amend. Compl. 4, filed Mar. 15, 2012, ECF No. 5, *Eleanor Abraham, et al. v. St. Croix Renaissance Group LLLP*, 1:12-cv-011 (D.V.I.).) Mirroring the motion to amend that was filed in *Abednego*, the *Eleanor* plaintiffs also

⁶ Count seven erroneously "claimed" punitive damages. Punitive damages is not a cause of action or claim for relief. *See, e.g., Anthony v. FirstBank V.I.*, 58 V.I. 224, 227 n.4 (2013).

proffered that the additional facts would be helpful because the *Eleanor Abraham* case “shares parties, facts and considerable evidence with the *Henry* and *Abednego* litigations, of which Defendant SCRG was *once a party*.” *Id.* (emphasis added). How much overlap with *Henry* and *Abednego* was not explained.

¶23 The District Court granted the *Eleanor* plaintiffs’ motion on August 1, 2012. The amended complaint was filed the next day.⁷ SCRG responded to the amended complaint with the same two motions—for severance and for a more definite statement—notwithstanding that it had previously answered the initial complaint. Plaintiffs then filed a motion to remand on October 24, 2012, which the District Court granted, over SCRG’s opposition, on December 7, 2012.⁸ *See generally Abraham v. St. Croix Renaissance Group LLLP*, 12-cv-11, 2012 U.S. Dist. LEXIS 173648 (D.V.I. Dec. 7, 2012), *aff’d* 58 V.I. 788 (3d Cir. 2013). The case was not immediately remanded to the Superior Court, however, because SCRG petitioned the United States Court of Appeals for the Third Circuit for permission to appeal the remand order pursuant to section 1453(c)(1) of title 28 of the United States Code. The Third Circuit granted leave to appeal the remand order, *see Abraham*, 58 V.I. at 795, but affirmed on May 17, 2013. SCRG then petitioned the Supreme Court of the United States for a writ of certiorari, which that Court denied on January 13, 2014. *See St. Croix Renaissance Group, LLLP v. Abraham*, 134 S. Ct. 898, 898 (2014).

⁷ Plaintiffs later filed a notice on August 7, 2012 to withdraw and refile their amended complaint “to correct typographical errors.” (Pls’ Not of Withdrawal of Pls’ First Amend Compl. 1, filed Aug 7, 2012, ECF 21, *Abraham*, 1:12-cv-011.) If leave to withdraw and refile a pleading is necessary, it was not requested or obtained beforehand. However, since SCRG did not object, the Court assumes that the First Amended Complaint, as revised and refiled on August 7, 2012 in the District Court, remains the operative complaint in this case.

⁸ The Clerk of the District Court reassigned *Eleanor Abraham* on October 12, 2012, to the same judge who had presided over *Henry* and *Abednego*.

¶24 Once *Eleanor Abraham* returned to the Superior Court of the Virgin Islands, the Presiding Judge reassigned it to the same judge presiding over *Abednego* and *Phillip Abraham* since the complaint “assert[ed] claims on behalf of multiple plaintiffs allegedly related to or arising from exposure to ‘red dust.’” (Order 1, entered Apr. 21, 2016.) After *Eleanor Abraham* had been reassigned and the *Abednego* and *Philip* plaintiffs had refiled their individual complaints and the *Red Dust* master case was opened, the Court (Brady, J.) scheduled a status conference held jointly in the master case and in *Eleanor Abraham*. During that hearing, the Court questioned whether *Eleanor Abraham* should be “folded into” the master case, (Hr’g Tr. 42:14 (Aug. 2, 2017)), if “Eleanor Abraham and her five hundred people are . . . part of the group of 1360 Plaintiffs” dropped from *Abednego*. *Id.* at 42:18-20. Counsel for the plaintiffs disagreed, contending that “[t]hey’re different cases. They cannot be joined [. . .] different hurricanes. One was one hurricane, the other was another hurricane.” *Id.* at 42:21-24. Plaintiffs’ counsel further represented that one of the cases “started in 1995 and one started in 1998.” *Id.* at 43:7-8.

¶25 Counsel for SCRG disputed plaintiffs’ counsel’s representations:

If you read the *Eleanor Abraham* complaint it alleges events from '97, I believe on. And St. Croix Renaissance Group didn't even buy the property until 2002. So if you read it, it reads similar to the *Peter* [sic] *Abraham* and *Abednego* cases. And if you look at the Plaintiffs, the names that are back on, many of them are from the *Eleanor Abraham* case who weren't in the other two cases. So I don't understand why half of the Plaintiffs are part of this. I think the filings you made [presumably referring to Plaintiffs’ counsel] made them part of this. If not then you guys are all over this docket.

Id. at 43:17-44:2. The Court attempted to shed some light, explaining that it thought that *Eleanor Abraham* was filed by the *Abednego* plaintiffs because what

happened in the District Court was that the hundred and ninety-eight *Phillip Abraham* Plaintiffs were eliminated from that case because they had no retainer agreements. And the *Eleanor Abraham* five hundred Plaintiffs were eliminated only as to SCRG because the retainer agreements permitted the lawsuit to be filed against named

Defendants but SCRG was not named. And that's how they got out of that case. And that's what prompted the new lawsuit, *Eleanor Abraham* and five hundred people versus SCRG.

Id. at 49:24-50:9. But plaintiffs' counsel disagreed, reiterating that *Eleanor Abraham* involved different claims than those at issue in *Abednego*. The connection, if any, between *Eleanor Abraham* and the other *Red Dust* cases went unexplained.

¶26 On August 31, 2017, SCRG filed its motion to consolidate. The *Eleanor* plaintiffs did not file a response.

II. DISCUSSION

¶27 As an initial matter, the Court must deny SCRG's motion insofar as it seeks consolidation in the true sense whereby two or more cases merge for a time and effectively becoming a consolidated case. Consolidation of hundreds of individual cases is not appropriate. Furthermore, because a master case is not really a true case, "the consolidation of *Eleanor Abraham* . . . into the pre-trial Master Case . . . *In RE Red Dust*," (Mot. at 1-2), is even more inappropriate. *Cf. Edwards v. Hess Oil V.I. Corp.*, 66 V.I. 218, 227 (Super. Ct. 2017) ("[A] master case is not truly a case, but a means to another end (controlling litigation, disposing of cases, economy of time)."). So, SCRG's request for consolidation must be denied.

¶28 But SCRG also notes "the difference between consolidation for trial and consolidation for pre-trial handling," *id.* at 2 n.2, and explains that, in the alternative, it "wishes to achieve the same level of consolidation that has been afforded to the *Abednego* and *Phillip Abraham* plaintiffs." *Id.* What has been afforded to the *Abednego* and *Phillip* plaintiffs is pre-trial coordination via a master case and docket. So, even though SCRG speaks of consolidation, the Court construes its motion for consolidation as a motion to coordinate. *Cf. Edwards*, 66 V.I. at 225 ("[C]onsolidation results in two

or more cases being joined for hearing or trial, whereas coordinating multiple cases under a master case does not. The master case does not proceed to trial. Rather, the individual cases consolidated, or coordinated, under it do.” (quotation marks, brackets, ellipsis, and citations omitted)).

¶29 But whether to coordinate *Eleanor Abraham* along with the other *Red Dust* cases is not clear. And the Court cannot make that determination, and cannot rule on SCRG’s motion, until the *Eleanor* plaintiffs first answer whether *Eleanor Abraham* is a related case to the *Henry-Abednego-Phillip-Abraham* line of cases, or whether *Eleanor Abraham* is different from these *Red Dust* cases. Because, if *Eleanor Abraham* is a different case, coordinating it with the other *Red Dust* cases would not be appropriate. And if it is related, it might have to be dismissed.

¶30 Different cases can be related – when a new case is filed that is “substantially similar to a prior case . . . that has been dismissed” or when two or more cases “[a]rise from the same or substantially identical transactions, happenings or events” and likely will “[r]equire a determination of the same or substantially identical questions of law and/or fact” and “duplication of labor if heard by different judges.” *Bravo v. Super. Ct. of Los Angeles Cty*, 57 Cal. Rptr. 3d 910, 912 n.2 (Cal. Ct. App. 2007) (quotation marks and citation omitted). Many courts have promulgated rules that require counsel to identify related cases. *See id.* (quoting Los Angeles Cty. Super. Ct. R. 7.3(f)(1));⁹ *see also Am. Direct Mktg., Inc. v. Azad Int’l, Inc.*, 783 F. Supp. 84, 86 (E.D.N.Y. 1992) (“Cases are related if the facts or legal issues are sufficiently similar so that a substantial saving of judicial resources would likely result from consolidation.” (quotation marks omitted): *accord Martinez v. Cargill Meat Solutions*, 2009 U.S. Dist. LEXIS 114029, *2-3 (D. Neb. Dec. 8, 2009) (“[C]ases are related

⁹ Renumbered as Rule 3.3(f), effective July 1, 2017.

when they involve some or all of the same issues of fact or arise out of the same transaction.” (citing D. Neb. Gen. R. 1.4(a)(4)(C)(iii) (2009 ed.)).

¶31 To date, the Virgin Islands Judiciary has not promulgated a rule mandating that counsel identify related cases at the trial court level. *But cf.* V.I. R. App. P. 22(a)(3)(i) (appellate briefs must include “ a statement of whether this case or proceeding has been before the Supreme Court previously, and whether the party is aware of any other case or proceeding that is in any way related , which has been completed, is pending, or is about to be presented to before the Supreme Court or any other court, state or federal.”). However, the Superior Court of the Virgin Islands has established the Complex Litigation Division and “[i]mplicit within the establishment of a complex litigation division was the recognition of the need for a centralized approach to the cases assigned to the Complex Litigation Division and a mandate that they receive the continuous and extensive judicial management necessary to their efficient administration.” *Victor v. Hess Oil V.I. Corp.*, SX-05-CV-790, ___ V.I. __; 2018 V.I. LEXIS 118, *9 (V.I. Super. Ct. Oct. 30, 2018) (quotation marks and citation omitted). But for courts to manage their cases efficiently, they should know if any cases are related. *Cf. Habitat Educ. Ctr., Inc. v. Kimbell*, 250 F.R.D. 390, 396 (E.D. Wis. 2008) (“[I]n applying the related case doctrine, courts should consider whether assigning cases to the same judge would further the efficient administration of justice.”); *In re: Marshall*, 291 B.R. 855, 859 (Bankr. C.D. Cal. 2003) (“The purpose of assigning related cases to the same judge is to promote judicial efficiency and to avoid the necessity of a new judge learning a complex factual scenario from the beginning.”).

¶32 Here, it appears at first glance that *Eleanor Abraham* is related to the other *Red Dust* cases. Recall that *Abednego* was filed by the former members of the *Henry* class action after the federal court decertified the class. *Abednego* was also removed to federal court where 198 plaintiffs were

dismissed because Attorney Rohn could not produce retainer agreements for them. SCRG was also dismissed for similar reasons, because she could not show authority to sue SCRG. Hence, all the *Abednego* plaintiffs' claims were dismissed against SCRG. *Phillip Abraham* was filed shortly thereafter but only by the 198 Plaintiffs and without SCRG as a defendant. *Eleanor Abraham* followed afterward, but not with 198 plaintiffs suing SCRG. Instead, over 500 plaintiffs are named in *Eleanor Abraham*, but they only sued SCRG.

¶33 If *Eleanor Abraham* is not related to the *Henry-Abednego-Phillip-Abraham* line of cases—meaning it is not as many *Abednego* plaintiffs as Attorney Rohn could get in touch with after the November 16, 2010 dismissal order—then it begs the question why they attached to their complaint approximately 450 documents entitled “Client Data Sheets” showing their interaction with the Law Offices of Rohn and Carpenter.¹⁰ Recall that SCRG was dismissed from *Abednego* only because *Abednego* was an offshoot of *Henry* and Attorney Rohn’s retainer agreements for a 1999 class action case did not address her authority to sue SCRG, a company that “owned and/or operated the refinery from 2002 to the present.” (Compl. ¶ 463.) If *Eleanor Abraham* was, in fact, a different case, unrelated to the *Red Dust* cases, submitting “proof” showing that the plaintiffs had been in contact with their attorney before filing their complaint certainly is atypical.¹¹

¶34 But counsel for the *Eleanor* plaintiffs maintains that the *Henry-Abednego-Phillip-Abraham* cases and the *Eleanor Abraham* case involve “two different discharges” and are two “different cases.”

¹⁰ Attorney Rohn was a member of the Law Firm of Rohn and Carpenter at the time *Eleanor Abraham* was filed.

¹¹ Admittedly, the Superior Court of the Virgin Islands does require attorneys and self-represented litigants to provide their contact information to the Clerk’s Office when they first appear in a case. *Cf.* V.I. R. Civ. 3-1(c). And if similar information had accompanied the *Abednego* and *Phillip Abraham* complaints, the documents attached to the *Eleanor Abraham* complaint would not stand out. But similar information was not attached to the *Abednego* or *Phillip Abraham* complaints. And the practice in the Clerk’s Office of the Superior Court did not change between when *Abednego* and *Phillip Abraham* were filed and when *Eleanor Abraham* was filed. So, submitting “proof” showing that, before the complaint was filed, the plaintiffs had been in contact with their attorney makes sense when juxtaposed with the earlier challenge to counsel’s authority to sue SCRG.

(Hr'g Tr. 42:21-22.) Yet, SCRG argues in its motion that "the parties have acted as if these matters are consolidated." (Mot. 2.) The question left unanswered after the status conference and SCRG's motion is, is *Eleanor Abraham* an offshoot of *Abednego*, and in turn an offshoot of *Henry*. Or, does *Eleanor Abraham* just involve similar facts as the *Red Dust* cases, but the cases are different enough that they are not related. The answer to these questions may be dispositive here.

¶35 If the *Eleanor* plaintiffs are as many *Abednego* plaintiffs as Attorney Rohn could locate after the November 16, 2010 order dismissed SCRG, then this case should be dismissed. Everyone dismissed by the November 16, 2010 order, including SCRG and the *Phillip* plaintiffs, were reinstated into *Abednego* and all plaintiffs, except Laurie L.A. Abednego and Phillip Abraham, were dropped and ordered to file individual complaints, absent which their claims would be dismissed. Eleanor Abraham was not allowed to retain her case file.

¶36 Furthermore, none of the plaintiffs to any of the cases being discussed in this opinion responded to the August 10, 2015 opinion in which the Court questioned the connection between *Abednego*, *Phillip Abraham*, and *Eleanor Abraham*. No one objected to reinstating SCRG as a defendant because *Eleanor Abraham* was pending. No one objected to naming SCRG as a defendant in the 400 some individual complaints were later refiled because *Eleanor Abraham* was pending.

¶37 Clearly, *Eleanor Abraham* shares facts with the *Red Dust* cases because they all concern claims that toxic substances were released into the air from the former alumina refinery on St. Croix. The question is are the cases related. It is possible that SCRG just happens to be a party-defendant in two different cases: the *Henry-Abednego-Phillip Abraham* line of cases, being coordinated under the *Red Dust Claims* master case, and the *Eleanor Abraham* case. If that's correct, it means the *Eleanor* plaintiffs are not former members of the *Henry* class action and, therefore, coordinating this

case with the Red Dust cases may not be efficient. It also means that the *Eleanor* plaintiffs have improperly joined together to file a case.

¶38 Multiple persons may join in one action as plaintiffs, but there must be “at least one question of law or fact common to all plaintiffs” and all plaintiffs in the case must assert the same claims “jointly, severally, or in the alternative” “with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences.” *Alleyne v. Diageo USVI, Inc.*, SX-13-CV-143, __ V.I. __; 2018 V.I. LEXIS 92, *27-28 (V.I. Super. Ct. Sept. 10, 2018) (quotation marks and citations omitted). In other words, “each plaintiff must assert the same right or rights to relief against every defendant concerning the same transaction or occurrence, or series of transactions or occurrences.” *Id.* at __; 2018 V.I. LEXIS 92 at *29-30 (citation omitted). It is not enough that all the plaintiffs assert the same claim, however. Rather, those who join as plaintiffs in the same action must be seeking redress of the same injury. A hundred people riding in the same automobile that collides into another vehicle can join as plaintiffs in the same action because they all have the same claim, it arose out of the same transaction, and questions of law and fact will be common. But a hundred people driving a hundred different automobiles each of which happens to collide with the same vehicle cannot join as plaintiffs in the same action. Although their claims may be the same, and facts and legal questions may be common, the circumstances giving rise to the claims are different.

¶39 Superior and Territorial Court judges have raised concerns about multiple plaintiffs joining together in the same complaint, particularly where multiple plaintiffs join in the same action to assert personal injury claims. *See, e.g., Alleyne*, __ V.I. __; 2018 V.I. LEXIS 92; *Abednego*, 63 V.I. 153; *Alexander v. HOVIC*, Civ. No. 323/1997 *et seq.*, 1998 V.I. LEXIS 36 (V.I. Terr. Ct. 1998). Whether this case is different than the other cases, *Abednego*, *Alleyne*, and *Alexander*, in which the trial court

concluded that joinder of multiple plaintiffs in the same action was improper and unworkable must be addressed if *Eleanor Abraham* is in fact a different case and not an offshoot of *Abednego*.

III. CONCLUSION

¶40 For the reasons stated above, the Court must withhold ruling on SCRG's motion at this time. Either this case is related to *Abednego* or it is not related but rather is a different case. If it is related, then it should be dismissed because everyone dismissed from *Abednego* were reinstated and all plaintiffs were ordered to refile individual complaints. If it is not related, the *Eleanor* plaintiffs must show cause why the Court should not follow *Alleyne*, *Abednego*, and *Alexander* and drop everyone except Ms. Abraham and sever their claims and order them to refile individually. An appropriate order follows.

Date: February 19, 2019.

ATTEST:

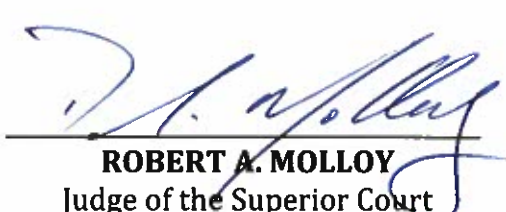
ESTRELLA H. GEORGE

Clerk of the Court

By: 

Court Clerk

Dated: 2/19/19


ROBERT A. MOLLOY
Judge of the Superior Court