

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

IN RE: CATALYST LITIGATION

Master Docket No.

SX-05-CV-799

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

JOHN BULLY,

Plaintiff

v.

Individual Docket No.

SX-05-CV-812

HESS OIL VIRGIN ISLANDS CORP., et al.,

Defendants

ALEXANDER EMILE,

Plaintiff

v.

Individual Docket No.

SX-05-CV-806

HESS OIL VIRGIN ISLANDS CORP., et al.,

Defendants

JULIEN MCSWEEN,

Plaintiff

v.

Individual Docket No.

SX-05-CV-847

HESS OIL VIRGIN ISLANDS CORP., et al.,

Defendants

RICHARD MAXWELL,

Plaintiff

v.

Individual Docket No.

SX-05-CV-846

HESS OIL VIRGIN ISLANDS CORP., et al.,

Defendants

MEMORANDUM OPINION

THIS MATTER came before the Court on Defendant Hess Corporation (hereinafter "Hess") and Hess Oil Virgin Islands Corp.'s (hereinafter "HOVIC") Objection to Certain of Plaintiffs' Witnesses to be called by Deposition, filed June 29, 2010. On July 7, 2010, Plaintiffs filed an Opposition to Defendants' Objection. On July 7, 2010, Defendants filed a Reply to Plaintiffs' Opposition.

FACTS

Plaintiffs filed this action against Defendant HOVIC and Defendant Hess,¹ alleging that they developed mixed dust pneumoconiosis as a result of occupational exposure to catalyst at Defendant HOVIC's refinery on St. Croix, U.S. Virgin Islands. Plaintiffs allege that Defendants possessed and/or exercised control over the work site and assert claims for negligence/premises liability and supplying chattel dangerous for intended use.

DISCUSSION

Defendants object to Plaintiffs' intention to introduce the prior depositions of John Piwonka, Richard Vick, Rene Sagebien and Orville Henderson into testimony at trial. The deposition testimonies of Richard Vick and Rene Sagebien were later withdrawn from Plaintiffs' Exhibit List. *See* Plaintiffs' Opposition to Defendants' Objection at 3.

Using Depositions in Court Proceedings

Fed. R. Civ. P. 32(a), provides that:

(1) *In General.* At a hearing or trial, all or part of a deposition may be used against a party on these conditions: (A) the party was present or represented at the taking of the deposition or had reasonable notice of it; (B) it is used to the extent it would be admissible under the Federal Rules of Evidence if the deponent were present and testifying; and (C) the use is allowed by Rule 32(a)(2) through (8).

...

¹ Plaintiffs also filed this action against other defendants but Plaintiffs have reached a settlement with these defendants out of court.

(8) *Deposition Taken in an Earlier Action.* A deposition lawfully taken and, if required, filed in any federal- or state-court action may be used in a later action involving the same subject matter between the same parties, or their representatives or successors in interest, to the same extent as if taken in the later action. A deposition previously taken may also be used as allowed by the Federal Rules of Evidence. *Emphasis added.*

According to Plaintiffs' Amended Exhibit List, Plaintiffs intend to use (1) the January 12, 1987 Deposition of John Piwonka, taken in the matter of *Belin v. HOVIC* and (2) the January 30-31, 2002 Deposition of Orville Henderson, taken in the matter of *In Re: Kelvin Manbodh Asbestos Litigation Series*. The subject matter and parties involved in *Belin* and *In Re: Manbodh* are not the same as this case. Defendant Hess was not a party to the *Belin* litigation. Although both Defendants were parties to *In Re: Manbodh*, the subject matter of that litigation did not involve catalyst (such as catalyst exposure, safety/respiratory policies concerning catalyst, etc.). As a result, John Piwonka and Orville Henderson's depositions from the prior action are not admissible at trial.

CONCLUSION

The Court finds the subject matter and the parties involved. Accordingly, the Court will grant Defendants' Objection to Certain of Plaintiffs' Witnesses and exclude the deposition testimonies of John Piwonka and Orville Henderson.


DONE and so ORDERED this 9th day of July, 2010.

ATTEST:

Venetia Harvey-Velazquez
Clerk of the Court

By: 
Deputy Clerk
Court Supv.

Dated: 7/9/10


HAROLD W. L. WILLOCKS
Judge of the Superior Court