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

IN RE:) CASE NO. SX-15-CV-620
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RED DUST CLAIMS)
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The hearing in the above-entitled action was heard before the Honorable Judge, DOUGLAS A. BRADY, on Thursday, January 18, 2018, in Courtroom No. 211 at approximately 2:09 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

KEEMA R. KRIEGER
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SUPERIOR COURT OF THE V.I.
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1 P R O C E E D I N G S

2 (Thereupon, the proceedings commenced at
3 approximately 2:09 p.m.)
4

5 THE CLERK: IN RE: RED DUST CLAIMS
6 SX-15-CV-620.

7 MS. ROHN: Good Afternoon, Your Honor. Lee
8 Rohn for the plaintiffs in the various cases.

9 THE COURT: Attorney Rohn.

10 MR. HUNTER: Richard Hunter for Glencore
11 Limited with my co-counsel Rene Tatro.

12 THE COURT: Gentlemen.

13 MR. SIMPSON: Good Afternoon, Your Honor.
14 Andrew Simpson on behalf of St. Croix Alumina and ALCOA.

15 THE COURT: Mr. Simpson.

16 MR. HYMES: Good Afternoon, Your Honor. James
17 Hymes for Century Aluminum.

18 THE COURT: Mr. Hymes.

19 MR. HARTMANN: Good Afternoon, Your Honor.
20 Carl Hartmann for SCRG.

21 THE COURT: Good afternoon, everyone. So this
22 is your second court hearing this week, Attorney
23 Simpson.

24 MR. SIMPSON: Not the least.

25 MS. LAWRENCE: I apologize for my lateness,

1 Your Honor.

2 THE COURT: I don't have a fixed agenda so let
3 me just talk and then I'll ask you where you all are and
4 what we need to address. My understanding is we
5 have -- if I can trust SCRG's numbers -- we have 432
6 complaints encompassing 1,376 plaintiffs. All
7 responsive pleadings have been filed with the
8 expectation -- and those are answers from all defendants
9 except Century, which has filed its motion to dismiss,
10 and Glencore International, which as far as I'm aware,
11 has not been served.

12 As to Century's motion to dismiss, I just signed the
13 other day the order that permitted the filing in excess
14 of 20 pages, started the clock running on plaintiff's
15 response, which I believe comes to next week.

16 MS. LAWRENCE: I think the 22nd, Your Honor.

17 THE COURT: Twenty-second. I also have the
18 other matter that I mentioned, Glencore. As far as I'm
19 aware there's no service of process on Glencore
20 International and I believe we did touch on that last
21 time around; not sure substantively what we suggested
22 needed to be done but an order will issue on that, that
23 plaintiffs should show cause why Glencore International
24 should not be dismissed for failure to serve.

25 MR. SIMPSON: Actually, that was your prior

1 order you gave time to show cause.

2 THE COURT: I mean, I didn't remember that
3 specifically. I don't see a written order to that effect
4 and I don't read those specific words in the record of
5 proceedings, so I'll be more precise going forward.

6 I have from the defendants a proposed discovery
7 order with a suggestion that plaintiffs are somewhat in
8 agreement, at least to the questionnaire, but I don't
9 have any affirmative response from the --

10 MS. ROHN: Yes, you do. I called your
11 chambers and I spoke to Ms. Brady and she told me to
12 email it to Iris Cintron, because I was afraid it would
13 get downstairs and not upstairs. And we did that about
14 10:30 this morning.

15 THE COURT: Ms. Cintron tells me that she
16 didn't --

17 LEE ROHN: It would have come from
18 Kareema Jenkins. I have a copy of the email that
19 went.

20 THE COURT: Well anyway, I haven't seen it and
21 I'm not going to try to digest it right now, but why
22 don't you give me your nutshell perspective in what ways
23 it varies from what the defendant have presented.

24 MS. ROHN: Yes, Your Honor. The first issue
25 that seems to have to be addressed at this court, with

1 expert testimony to tie it in?

2 MS. ROHN: It is the plaintiff's position that
3 the Defendant ALCOA and the related entities issued MSDS
4 sheets for this product that said it was dangerous, that
5 it contained the following dangerous chemicals, that
6 these are the symptoms that you will get if you're
7 exposed to it. And that it is not in dispute that it
8 was during the hurricane large amounts of it was
9 dispersed over the neighborhoods of people who we
10 represent, and that thereafter in attempts to rectify
11 the situation it was then several times, multiple times
12 over the last 30 years, reintroduced to these
13 neighborhoods. Every time they took the crust off the
14 top of it then it would blow back into the
15 neighborhoods, and then on each of those events the
16 symptoms that it was said to likely cause were the exact
17 symptoms that the plaintiffs got temporally.

18 Immediately thereafter when the substance dissipated
19 they stop those events. And -- but there are several
20 cases in the Supreme Court that has issues that state
21 that there's not a need for expert opinion if it's a
22 type of symptom you would expect, and it was
23 temporally -- there's a temporal relationship between
24 the two.

25 THE COURT: But in terms -- all of the ground

1 work you've just laid with or without expert testimony
2 that is going to require extensive discovery.

3 MS. ROHN: Correct. But I'm only addressing
4 that their memorandum starts by saying, of course we
5 can't prove our case because we need all these experts,
6 and if we don't have them then the case should be
7 dismissed.

8 THE COURT: All right. That's a few years
9 down the line.

10 MS. ROHN: Well, we believe this is a central
11 issue to this case, so we're preparing a motion for
12 declaratory judgment as to what is the standard proof
13 for causation in this type of instance.

14 THE COURT: Is there such a thing as a motion
15 for declaratory judgment?

16 MS. ROHN: You can have what the law of the
17 case is declared, yes. So -- and we believe that
18 ultimately to save everybody time and energy and money
19 that's an issue that should ultimately be certified to
20 the Supreme Court given how many cases there are. And
21 why go through a trial of four hundred and something
22 lawsuits or however many and have it go to the Supreme
23 Court and say: Oh no, that's the wrong standard of
24 proof.

25 THE COURT: What is the relationship, if any,

1 between these issues and the cases that were dismissed
2 on summary judgment in the District Court?

3 MS. ROHN: The cases that were dismissed on
4 summary judgment in the District Court applied law prior
5 to the Virgin Islands Supreme Court, and the Virgin
6 Islands Supreme Court's *Banks* analysis and before the
7 Virgin Islands Supreme Court adopting certain causation
8 decisions that are contrary to the decisions that were
9 relied on by Judge Barton from Pittsburgh. And we don't
10 believe -- and we know that while the District Court's
11 decision is to be considered, it is not precedential on
12 the Supreme Court.

13 THE COURT: Nor with the Third Circuit.

14 MS. ROHN: So, it would seem given that we
15 know our Supreme Court, on the *Banks* analysis, looks at
16 what's best for the Virgin Islands and doesn't
17 necessarily follow the restatement or anything else
18 that -- other than the precedence in the Virgin Islands
19 and our Virgin Islands view of the law, that we are to
20 get a decision from the Supreme Court on what is on the
21 *Banks* analysis the best law for the Virgin Islands.

22 THE COURT: Okay. And all of that impacts the
23 method by which and extent to which discovery is
24 engaged.

25 MS. ROHN: I don't contend that the

1 questionnaires can't be answered at the same time that
2 is winding its way up. Because even if we were to lose
3 that issue we would still have the issue of the property
4 damage to each of the plaintiffs and the mental anguish
5 from their property damage. So even if we lost that
6 issue we wouldn't lose the whole case. So I think
7 questionnaires should go forth. There are -- there's no
8 way we can get these questionnaires in 120 days.

9 MS. LAWRENCE: Two hundred and forty.

10 MS. ROHN: We ask for 240, and the reason is many
11 of my plaintiffs don't -- not only don't speak English
12 but they don't read or write. And since the hurricane
13 many of them have located to the states. So this is
14 going to be a time consuming burden to try and get done,
15 and it can't get done in 120 days. And it'll be
16 difficult to get done in 240 days, but we certainly
17 could make a good faith effort to do that.

18 The other thing that the defendant recommended is
19 that if we didn't have a questionnaire by 120 days then
20 my clients will automatically be dismissed, and of
21 course that's not allowed in the Virgin Islands. There
22 could be motions to dismiss, but there's a lot of
23 factors that would have to be waived before a decision
24 on whether or not to dismiss a plaintiff in this
25 jurisdiction other than they didn't answer the

1 questionnaire on time. So that's another dispute that
2 we have with them.

3 And then of course we have no difficulty with
4 picking, having a random pick of plaintiffs. We think
5 that the number 150 is too high to then say we're going
6 to now seriatim try 150 cases because the real purpose
7 of trying the first set of cases is to get sort of a
8 bellwether of where the values of the cases are and then
9 take another look at settling. And you don't need 150
10 trials in order to do that, so we think that they ought
11 to be done in groups of 20. You know, the Court can
12 randomly pick 20. We can randomly try 20, take another
13 look at the cases, but 150 is too much.

14 THE COURT: All right. I guess in terms of
15 Mass Court Litigation and bellwether trials these
16 plaintiffs are not so dissimilarly situated to each
17 other that they wouldn't be representative of the group
18 at large. In other words, I don't know if they're all
19 in Clifton Hill, Machuchal, Harvey area or Profit. And
20 to the extent they're in different areas, how different
21 are they. Some of them are alleging property damages,
22 some are alleging personal injury. So can we come up
23 with representative issues?

24 MS. ROHN: I'm not so much suggesting
25 representative plaintiffs as the manner in which trial

1 claims. But in reality -- so I'm not saying if A,
2 who's representative of 50 of the plaintiffs, gets this
3 much money then all 50 of the plaintiffs get that much
4 money. I'm not suggesting that. I am suggesting that
5 if you took randomly 20 plaintiffs, and if you were a
6 defendant trying to protect your client and you saw that
7 the range of verdicts were between this number and this
8 number, depending upon the different variabilities, and
9 you lost all 20 cases and you have damages for all of
10 them, then you would probably go back to your client and
11 say: Well, you need to stop paying me and let's see if
12 we can't get these cases settled.

13 Conversely, if the plaintiffs saw that the
14 jury for some reason didn't want to give damages to
15 plaintiffs deny the claims, certain claims, that would
16 change our settlement posture of what we're looking at
17 to try to settle. So I'm only saying try 20, take a
18 break to look at settlement. If that's successful try
19 20 more, but I think that having to try 150 cases in a
20 row is way too much. And it also may be that when we
21 get these questionnaires filled out that we will be able
22 to designate different type of claims of plaintiffs that
23 are all similar as to exposure, as to how many times
24 they were exposed, how many times they got hit with the
25 red dust.

1 We also have some that had claims for their
2 homes being damaged as a result of trying to water blast
3 their homes to get the red dust out and frying all their
4 appliances. So there may be when the questionnaires are
5 through, an ability to say we can randomly pick from
6 these different types of plaintiffs so that you get a
7 better spectrum, than just randomly picking and getting
8 everybody that only have property damage claims.

9 And the final issue in this case, Your Honor,
10 is that this Court has ruled that each of these cases
11 are dissimilar, can't be brought together and have to be
12 tried individually. There's been no appeal of that.
13 The *pro hac vice* admissions in this case were through
14 the case of *Abednego* at which is soon to be dismissed
15 because he's dead and we have no survivor. And to the
16 extent that this Court has taken the position that each
17 of these cases are different we had to file a separate
18 complaint for each of these cases and had to pay a
19 separate filing fee for each of these cases.

20 And given the Supreme Court is the actual part
21 of the court that has to decide whether or not someone
22 can appear *pro hac vice* in a number of cases that never
23 moved to be in *pro hac vice*, it appears to me that the
24 defendant, to the extent the off-island defense
25 attorneys want to appear in these cases they're going to

1 have to petition the Supreme Court to either request
2 that the Supreme Court allow them to appear in all these
3 individual cases without a new *pro hac vice* request, or
4 the Supreme Court is going to have to say, just like
5 plaintiff had to pay a filing fee for each of these
6 cases, you're going to have to apply and pay a *pro hac*
7 *vice* fee for each of these cases. So we object to the
8 stateside counsel participating in these cases because
9 we think it's in violation of *pro hac vice* statute in
10 the Virgin Islands, which provides if the cases are
11 found to be dissimilar you cannot appear in another case
12 just because you've been allowed in one case. And so
13 that is a fundamental issue in this case as well.

14 MS. LAWRENCE: Just one clarification, Your
15 Honor. The Supreme Court very well might permit the
16 defendants to participate, but I believe this is an
17 issue not for the Court or the parties to just resolve
18 on our own. I believe there should be a petition to the
19 Supreme Court, Your Honor, to resolve this issue.

20 THE COURT: All right. Of course this comes
21 up in context of my question about the plaintiff's
22 response to the discovery plan. So, would you defense
23 counsel like to take your turn and respond to what you
24 just heard?

25 MS. ROHN: Well, that would note that this is

1 a defense counsel who may -- who may be practicing --
2 unauthorize practice of law since he's not admitted in
3 this case.

4 MR. SIMPSON: Do you want me to address that
5 *pro hac vice* issue or anything else?

6 THE COURT: Well, let Mr. Tatro, right?

7 MR. TATRO: Tatro.

8 THE COURT: Tatro. In what case are you
9 admitted?

10 MR. TATRO: Abednego for sure. And we do that
11 as one matter with all the cases.

12 THE COURT: These are consolidated under
13 Abednego so --

14 MS. ROHN: Abednego is going to be
15 dismissed.

16 THE COURT: His individual case. Anyway, I'm
17 not addressing that, but I'm sure thrown into the mix
18 certainly the defense should have a chance to respond.
19 My focus was primarily on the discovery issues.

20 Mr. Tatro, have you seen the plaintiff's written
21 response?

22 MR. TATRO: I have, Your Honor. It's short
23 and the points that are raised are the ones Ms. Rohn
24 addressed to the Court. And I got it this morning about
25 10:30 and I tried to think about it and discussed it

1 with the other defendants and prepared to respond to her
2 points. And hopefully we can move forward.

3 THE COURT: I'll let -- be glad to hear from
4 all of the defense counsel, but what I'm going to do is
5 allow both sides to meet and confer further and try to
6 come up with a plan that works for both. Like I said, I
7 haven't seen what the plaintiffs have to say. I've seen
8 the representation of the defendants. The plaintiffs
9 are pretty much on board, so I'll give you an
10 opportunity to get on board completely. And to the
11 extent you can't then you would show me where the
12 differences are.

13 Go ahead with whatever you'd like to say.

14 MR. TATRO: Thank you, Your Honor. My
15 starting premises is that we're going to be back in six
16 months. The Court indicated that you're going to have
17 us down every six months or so.

18 THE COURT: I'll just go ahead and set that
19 right now, July 26, 2018, at 10 o'clock in the morning.
20 That is a Thursday.

21 MR. TATRO: May I proceed, Your Honor?

22 THE COURT: Yes, go ahead.

23 MR. TATRO: Thank you.

24 With that as the starting premises and taking
25 plaintiff's discussion about 240 days versus ours of 120

1 days, my suggestion is that what we do is we take 180
2 days because we'll all be back together in six months.
3 And I understand Ms. Rohn's and Ms. Lawrence's concern
4 with the people that are off island or who don't read or
5 write English. That obviously isn't everybody.

6 So my suggestion is that we set 180 days as
7 the response date and in 180 days if there is a group of
8 people who are not going to be able to respond within
9 that timeframe the plaintiffs can notify us. We'll meet
10 and confer on an extension for those people who are
11 identified by name; and if we can't agree then when
12 we're here in 180 days in July we'll bring that up with
13 the Court: Say, here's a group of people who hasn't
14 responded. And at that point our request is going to be
15 would there be an order to show cause by the plaintiffs
16 as to why those people should not be dismissed.

17 Then I understand procedurally the way it
18 would normally be is that the defendants would make a
19 motion to dismiss and the plaintiffs would respond, but
20 we're starting out with the discovery order that says,
21 "respond to this questionnaire". The failure to do that
22 -- all this suggestion does is cut out a step, so that
23 if the plaintiff doesn't respond and we haven't agreed
24 to an extension of time, and we're not going to be
25 unreasonable about that, but if we haven't agreed then

1 they can show cause as to why the plaintiffs should not
2 be dismissed. So that's really the only place where I
3 think we're in disagreement there.

4 Her suggestion, with respect to --

5 THE COURT: If there was more standard
6 discovery you'd be looking initially at a motion to
7 compel and then a motion for some type of sanction, and
8 it would be pretty far down the road that you got to a
9 dismissal and Attorney Rohn suggested it'll probably be
10 a Rule 41 dismissal for failure to prosecute as oppose
11 to: Oh, you didn't respond to questionnaire, so
12 goodbye. I think that would be a little tough to sell
13 on appeal.

14 MR. TATRO: And we are whetted to anything
15 like that procedurally. All we're trying to do is what
16 I think the Court has urged us to do is move this case
17 forward, and so trying to cut out a step or two along
18 the way was really the basis for what we were
19 suggesting. Ms. Rohn's discussion about the standard of
20 causation, getting the Virgin Islands Supreme Court to
21 weigh in on that, I think while we're going forward with
22 what we're doing in terms of questionnaires and next
23 steps, and I'll get to the next step questions in a
24 moment, but she can make whatever motions that she wants
25 and try and get something to the Virgin Islands Supreme

1 Court but I don't think that should put our case on hold
2 here. I think we should continue to move forward and do
3 things.

4 THE COURT: As I think, that's what Attorney
5 Rohn said.

6 MR. TATRO: I think she agrees with that, yes.
7 Although what I'm working with is what they've put in
8 front of us this morning and her comments now, but I do
9 think that she's in agreement. The question really is
10 how is she going to get something to the Supreme Court
11 and what is it going to be that is not an advisory
12 opinion, because a motion on something like this really
13 needs the context of what is happening in a particular
14 case.

15 THE COURT: Not to cut you off --

16 MR. TATRO: Sure.

17 THE COURT: I believe there is a Supreme Court
18 case, in essence, says there's a statute by which, I
19 guess, the Superior Court in the first instance and then
20 the Supreme Court can give advisory opinions where there
21 is a referral from counsel; but I'm not -- other than
22 counsel having a vague awareness of that opinion, that
23 statute, I don't know the details. But you know, I'm
24 all for moving this as expeditiously as possible, which
25 generally speaking would suggest that we not get

1 involved in interlocutory appeals, but that's a pretty
2 basic -- anyway, that's still down the road.

3 MR. TATRO: It is. And the reason I was
4 addressing it now, how we T it up, how it gets T'd up
5 could have an influence on the next steps because
6 Ms. Rohn, Attorney Rohn talks about how each of the
7 symptoms, each of the symptoms that all of the
8 plaintiffs experienced are the exact symptoms. Your
9 Honor, I don't have discovery on these people, but based
10 on the *Henry* work that we did that's just not so. And
11 we're not talking about a situation where somebody puts
12 their thumb on the table and they hit it with a hammer
13 and you would say, Oh. That happened right after.
14 You've got a painful thumb right after you hit it with a
15 hammer. It's a very different situation. Here there's
16 numerous alternative causes. There's a vast array of
17 different symptomology, different timing that the
18 plaintiffs that we took discovery of experienced, so
19 when I say --

20 THE COURT: As I hear Attorney Rohn, my
21 understanding is that standard is different from
22 District Court, Third Circuit than the law as it is
23 developing under the Supreme Court, and that proximity
24 in time and space and symptomology is sufficient absent
25 expert testimony. Your presentation to the District

1 Court and the Third Circuit was dependent upon expert
2 evidence, was it not?

3 MR. TATRO: We certainly used expert evidence,
4 but the point I was trying to make now is not so
5 dependent on expert evidence as it is over the
6 difference between this case -- the situation I was
7 talking about with the thumb on the table and the
8 hammer. Then I can understand the standard that
9 Attorney Rohn was talking about because there's not
10 alternative causes. We're not talking about 30 years of
11 different things happening in their lives, their smoking
12 history, the coxsackie virus outbreak, we're not talking
13 about any of that.

14 And in addition, the idea that you can just
15 have exposure, well, why when I'm thumbed with a hammer
16 and my thumb turns blue I know that I've had exposure to
17 a hammer hitting myself on my thumb; but here there's no
18 evidence of the level of exposure that these people had
19 and whether or not that was sufficient so I think that
20 we're talking about something different. And I'm not
21 quivelling with the Virgin Islands standard, I'm just
22 saying in the context of this case how are we actually
23 going to apply it. So if she wants to take something up
24 while we're proceeding with discovery and T it up in a
25 way that's going to advance the ball for us all, we'll

1 respond if it's necessary to respond. We'll do what's
2 necessary, but at this point I think we should focus on
3 how do we go forward with discovery. And if Attorney
4 Rohn initiates some procedure that takes us to the
5 Virgin Islands Supreme Court maybe the issues that I'm
6 raising now will be pertinent, maybe they won't.

7 THE COURT: Are you familiar with any vehicle?
8 Attorney Rohn talked about a motion for declaratory
9 judgment. I mean, I know an action for declaratory
10 judgment, but I've never heard of a motion for
11 declaratory judgment.

12 MR. TATRO: Your Honor, I'm puzzled too to the
13 extent in the last few hours in talking with our
14 co-defense counsel. I tried to puzzle through that, and
15 I don't know of anything per se like that. I think that
16 there may be. You know, I could hypothesize procedural
17 devices which might take her there. If she had a motion
18 for summary judgment that you either granted or denied
19 one of us would then petition to have the question go
20 up, but without a discussion about the facts in a
21 particular case I'm not sure how we can even get to a
22 motion for summary judgment.

23 THE COURT: Well, it's just speculation at
24 this point, but maybe it does have to look at a
25 particular plaintiff or group of plaintiffs and

1 particular evidence and rulings relating to whether or
2 not expert medical exams or expert testimony is
3 necessary. Maybe there are those discovery steps that
4 the basic difference of opinion would give rise to the
5 vehicle. Anyway, interesting to hear it out.

6 MR. TATRO: Yes, and it would, Your Honor, and
7 that's -- I've given you the benefit of the couple hours
8 that I've had with co-defense counsel to digest it.

9 The other part that I wanted to address was
10 our discovery plan goes past the initial responses to
11 the questionnaires and puts in place a program for what
12 happens next. And what Attorney Rohn was saying this
13 morning -- this afternoon is not in her paper and so I
14 didn't know that she was going to suggest 20 or anything
15 other than the 150. But I do think that the 150 is a
16 good number because I don't -- *Henry* proved that they
17 can't proceed on a representative basis. There are
18 differences among them and --

19 THE COURT: One hundred fifty is certainly
20 larger than a bellwether group --

21 MR. TATRO: Your Honor, and this came through
22 our paper and was poorly presented because we're not
23 suggesting that we try 150 cases, but we are suggesting
24 that we work up through the steps that we had and they
25 were pretty limited steps. We wanted to get medical

1 records, take if necessary the depositions of the
2 treating physicians; if necessary, a one-hour deposition
3 of each plaintiff, which is not an onerous thing. I've
4 done many -- in cases done 150 or more of those kinds of
5 depositions, one-hour depositions. And then the Court
6 will be in a position and we will be in a position
7 because I think that's what everybody, that's what the
8 Court wants to get to, is to talk about what happens
9 next. We were not suggesting that we pick 150. We go
10 through these interim steps of pulling their medical
11 records and assessing their medical records and taking
12 one-hour depositions and then go to trial on them.

13 What we said was let's do this: Let's get a
14 pool of 150, work through this, a pretty focused
15 process, and then we'll meet with Court. We meet and
16 confer with plaintiffs; make, I thought, good steps
17 forward and meeting and conferring on the questionnaire
18 and see if we can come up with next steps. But I don't
19 think the 150 -- and I really apologize if it was
20 presented as this is what we want to try, because I
21 don't envision a trial of 150 people at one time.

22 THE COURT: Does that mean you jettison the
23 first suggestion of taking discovery on all 1376
24 plaintiffs?

25 MR. TATRO: Your Honor, I am not jettisoning

1 that, and if that's the Court's order I think that is a
2 way that we could and should proceed. And that's how we
3 presented it and had been presenting it for last six or
4 eight months. We're at peace doing that; but I took
5 away from our last discussion in August that the Court
6 wanted us to think hard about something other than that,
7 so we did think hard about it. But if the Court's
8 inclined to let us do that we're fully prepared to do
9 that.

10 THE COURT: Thank you.

11 MR. TATRO: Mr. Hunter is prepared to discuss
12 that *pro hac vice* issue if the Court will like.

13 THE COURT: Sure. How about on discovery, is
14 there anything else?

15 MS. ROHN: I think one of the things that I
16 raised that I might not have told him is that there were
17 50 or 60 depositions taken in the underlying interim
18 days of the ALCOA employees, the refinery employees, the
19 people who went out in the neighborhoods, what they did.
20 I haven't heard an opposition to it that those
21 depositions would not have to be retaken as to all the
22 defendants that participated in those depositions.

23 MR. TATRO: May I address that briefly, Your
24 Honor? We have SCRG and Century here today and they can
25 speak for themselves. They did not participate in those

1 and ALCOA and Glencore did participate in some of
2 those.

3 THE COURT: Excuse me. Just stop right there.
4 Century guys has a dispositive motion so --

5 MS. ROHN: Century has a dispositive motion
6 and those depositions are not applicable to -- they are
7 not applicable to Renaissance.

8 THE COURT: Renaissance wasn't even --

9 MS. ROHN: No, I understand Renaissance didn't
10 participate but they are not applicable.

11 THE COURT: All right. Sorry to cut you
12 off.

13 MR. TATRO: That's okay.

14 So then I'm not sure what they're asking for. If
15 what they're asking for --

16 THE COURT: Is it appropriate to utilize
17 depositions that have already been taken?

18 MR. TATRO: I guess. I would say as to
19 Glencore, the deposition that were taken of Glencore
20 individuals, I think Ms. Rohn could try and use those
21 against Glencore. I'm not requiring that she depose
22 Glencore, but I don't know that I should be bound for an
23 ALCOA deposition that was taken, or I or my client
24 should be bound upon that. So if she wants to take the
25 risk, I guess that a deposition that she wants to use

1 against Glencore that she took of ALCOA is usable here,
2 I think that's up to her. If she want to retake those
3 that's also up to her. I'm not gonna say one way or the
4 other, and I think ALCOA probably is in the same
5 position vis-a-vis, Glencore.

6 MS. ROHN: Your Honor, in those depositions
7 ALCOA and Glencore participated in all depositions.
8 They asked questions and did cross-examinations.

9 THE COURT: And of course -- is it proper to
10 say that was in the same case or --

11 MS. ROHN: It's the same dispute and the same
12 parties. You can use -- there's already a Supreme Court
13 decision that says that if the parties are the same you
14 can use depositions between the parties that they both
15 participated in, in another matter.

16 THE COURT: This may be not even another
17 matter. This is *Josephat Henry*, right, the original
18 class action --

19 MS. ROHN: Correct.

20 THE COURT: -- deemed not a class action
21 anymore and here we are today.

22 MS. ROHN: Correct. So when most of the
23 depositions were taken they were taken as part of the
24 class action because the class was certified, went up to
25 the Third Circuit, was certified. So all these

1 depositions were taken on behalf of all the people who
2 were in the class.

3 THE COURT: That's good that all of that was
4 preserved rather than 20 years later people have to try
5 to take it again.

6 MR. TATRO: Your Honor, the only thing I
7 would say to that is the first time I heard about this,
8 maybe it was raised last August. I don't remember if it
9 was or not, but the first I heard of it before we filed
10 for this hearing was when we got their paperwork this
11 morning, and I really haven't thrashed that through with
12 the other defendants. So maybe that's something we
13 should do instead of me just up here shooting from the
14 hip.

15 THE COURT: Okay. All right. Thanks.

16 MR. TATRO: Thank you, Your Honor.

17 MR. HARTMANN: Before you move on to the *pro*
18 *hac vice* which doesn't involve SCRG, can I just get two
19 clarifications?

20 THE COURT: Yes, Sir.

21 MR. HARTMANN: Thank you. Carl Hartmann for
22 St. Croix Renaissance Group.

23 First of all, I'd just like to find out what
24 Attorney Rohn means when she said to take the 200 --
25 we're not adverse to changing the times at all, the

1 number of days in the questionnaire, but would that be
2 a rolling production? I suppose Attorney Lawrence and I
3 are probably more interested in this from a practical
4 standpoint than anybody else, but would this be -- we
5 aren't going to get all of them on day 240 --

6 MS. ROHN: We would not do that. As we get
7 the questionnaires and as they are signed we're going to
8 produce it.

9 MR. HARTMANN: Because then we're going to
10 need time to do it and --

11 MS. ROHN: No, we wouldn't do that.

12 MR. HARTMANN: Okay. The second thing I'd
13 like to bring up, and it goes to the discovery plan, is
14 that SCRG has an uncontested motion with regard to
15 consolidation --

16 THE COURT: We'll get to that in a minute.

17 MR. HARTMANN: Oh, okay. Thank you, Your
18 Honor.

19 THE COURT: Anybody else on the defense side
20 regarding discoveries?

21 MR. SIMPSON: No, Your Honor. Mr. Tatro
22 covered it.

23 THE COURT: All right. Rather than require me
24 to sort it out, I am going to require you all to sort it
25 out. We've all got a pass on account of the weather

1 events over the last months in terms of our timing, so
2 arguably these things should have been resolved before
3 today. But let me give you time to go back and work
4 these things out between yourselves, and I'd like to do
5 it -- I'd like to ask you to report back in 15 days,
6 which would be February 2nd. Would that give both sides
7 enough time?

8 MR. SIMPSON: Your Honor, it seems to me with
9 respect to the questionnaires, the first thing that we
10 need to agree upon, because we're very close, we
11 probably could do this in 15 minutes --

12 MS. ROHN: No, I don't think that's quite
13 true. We're at a difference between 150 people and 20
14 people. I think February 2nd would be just fine, Your
15 Honor.

16 THE COURT: All right. So let me ask you
17 to -- or require that you meet and confer and submit
18 something jointly in terms of a discovery plan by
19 February 2, which is two weeks from tomorrow. And to
20 the extent that you have differences then each side can
21 setforth those differences, and we'll take it from
22 there.

23 On discovery, anything else we should address right
24 now?

25 MS. ROHN: Not for the plaintiff.

1 MR. TATRO: Your Honor, if I could, and maybe
2 I've lost the thread here, but I think that we are in
3 agreement that the questionnaires should go out --

4 THE COURT: Well, I'm going to give you 15
5 days to see. I don't want to do a piecemeal. See what
6 you come up with. At worst, we're delaying the
7 distribution to the plaintiffs to 15 days. I thought I
8 read in the defendants' presentation that there was one
9 or two tweaks that were necessary or perhaps --

10 MS. ROHN: They've been done.

11 THE COURT: Okay.

12 MS. ROHN: I've got a tweak -- sorry, Your
13 Honor. I've got a tweak one I think like three or four
14 days ago.

15 THE COURT: I mean, nothing is stopping you
16 from delivering them and having them. I mean, If you
17 report to me on February 2 that we've agreed on the
18 questionnaires, and there have been 1,376 questionnaires
19 have been delivered to the plaintiffs, then great, but
20 I'm not going to order that you do that today. Let me
21 just hear what you come up with collectively by February
22 2 and we'll take it from there; but I will, once --
23 immediately thereafter, to the extent that there is no
24 disagreement about the questionnaire as being a way to
25 garner discoverable information, and yes, promptly that

1 should occur. That should be incorporated into whatever
2 you present to me.

3 MR. TATRO: And your goal is that we have a
4 joint discovery order that we present to you on the 2nd.
5 And if not, we'll put it in complete orders, I guess?

6 MS. ROHN: No. Usually what we do is we put
7 here's what we agreed to on this issue, and this is the
8 defense's position and why; and this is the plaintiff's
9 position and why. It's one document submitted by both
10 parties and then the Court has it all together in one
11 place.

12 THE COURT: Present it in a way that is
13 easiest to understand to the extent that -- put it all
14 on one document, great, but I don't care if it's one
15 document, two thousand documents.

16 MR. TATRO: Very well, now I understand.
17 Thank you.

18 THE COURT: Thank you. I guess the only other
19 thing I have is that motion to consolidate which was
20 filed on August 31, the *Eleanor Abraham* cases that
21 has --

22 MS. ROHN: We don't oppose that, Your Honor.

23 THE COURT: The *Eleanor Abraham* cases are only
24 against SCRG, however, in that motion there's a
25 suggestion that most of those *Eleanor Abraham* plaintiffs

1 are already -- already have complaints filed. That
2 there are, I believe, nine. Why don't you speak to
3 that, Mr. Hartmann.

4 MR. HARTMANN: Thank you, Your Honor. The
5 official numbers now are that out of the plaintiffs
6 there are 255 that were just on *Eleanor Abraham*; 284
7 that are in Red Dust and *Eleanor Abraham*; and 1,088 that
8 are just in Red Dust. That's kind of where we are based
9 on all the documents being in now, the complaints and
10 the answers. So the *Eleanor Abraham* case was simply--
11 how do I put this--the people that were kind of left out
12 of the earlier case for procedural reasons got kind of
13 picked up in a separate case. So it's all the same
14 claims, all the same theories, a lot of same -- as I
15 said, a lot of the same people.

16 THE COURT: But only one-party defendant, and
17 except that the same plaintiffs have sued the other
18 defendants in the original case.

19 MS. ROHN: Only 284.

20 THE COURT: Two hundred and eighty four?

21 MS. ROHN: Yes, 284.

22 MR. HARTMANN: It would be us that would be
23 objecting to that normally, Your Honor, and SCRG isn't.
24 I mean, the one issue where it gets a little complexed
25 Attorney Rohn has already addressed. She said she

1 doesn't intend to use the prior material in terms of
2 depositions and admissions and things like that against
3 -- to seek damages against SCRG, so as long as that's
4 the case we have no concern about the next cases.

5 THE COURT: All right. Well, I'll -- and I
6 want to make sure how is that 288 plaintiffs --

7 MS. ROHN: Two hundred eight four.

8 THE COURT: Two hundred and eighty four
9 plaintiffs --

10 MS. ROHN: I can explain that, Your Honor. So
11 those 284 had a claim against ALCOA, but didn't
12 originally have a claim against SCRG. But they do have
13 a claim against SCRG because they lived in the area
14 during the events that are impacted by the dust.

15 THE COURT: So that the complaint alleged
16 different causes of action?

17 Ms. ROHN: It alleges different -- it alleges
18 different events, different nuisances, in other words,
19 dangerous nuisances from ALCOA, Glencore. And then
20 nuisances -- SCRG is when they purchased the property,
21 they went in and redid the -- the red dust, and that
22 caused red dust in certain of -- and those two are going
23 to be where red dust go back into their homes and they
24 were re-exposed. And then there was some other events
25 where that happened again. So some of those people were

1 also impacted by Glencore and ALCOA.

2 And then there's the other group that were not
3 impacted by Glencore, ALCOA, or did not bring suit
4 against Glencore, ALCOA and are only complaining about
5 the circulation of the red dust by SCRG.

6 MR. HARTMANN: Another way to think of it,
7 Your Honor, is this, that in all the other cases which
8 alleged that there was injury in the original release
9 and that there has been releases since then and that's
10 been complicated, we're just the people who bought the
11 place in 2001/2 time periods. So whatever the
12 continuing injuries and the continuing relief that's
13 being requested in those cases is essentially being
14 requested against us.

15 MS. ROHN: I might make this simpler because
16 none of our plaintiffs are claiming lifetime injuries.
17 They're claiming acute injuries as a result of acute
18 events that lasted somewhere between one or two months,
19 maybe three months. They recovered. We're not claiming
20 cancer, we're not claiming -- these are acute injuries
21 from a dangerous nuisance and then so -- so we're not
22 saying, oh, when we got hit with the original thing we
23 -- we're sick to this day. We do not find any
24 plaintiffs that we believe a valid claim could be made
25 that they are sick to this day. We don't have any

1 future medical monitoring.

2 I think that the *Henry* case was a different
3 case in that regard. There was some belief that there
4 was chromium zits and all that stuff. We're not
5 bringing those cases. We're bringing an event of
6 discharging nuisance into their homes and their
7 cisterns; the ensuing result of that, the damage to
8 their property and their bodies for the time periods
9 that was; and then to the extent that there was then
10 another discharge seven months, eight months later and
11 they had the same problems, and they had that for a
12 period of time, they were claiming damages for that.

13 THE COURT: And all that predates SCRG's
14 existence.

15 MS. ROHN: Correct. But because they are not
16 permanent in nature you can't say: Oh, well, how do you
17 know that's not ALCOA? Because we're not claiming that
18 the problems they have are permanent in nature. We're
19 claiming that they are acute problems. His would be his
20 acute problems, theirs would be their acute problems.

21 MR. HARTMANN: If I may, Your Honor. Another
22 way to look at it is, if we don't do this, if we don't
23 consolidate it, you're going to end up trying the same
24 case by the same plaintiff twice.

25 THE COURT: Or maybe somebody else would be

1 trying it.

2 MR. HARTMANN: I may well not, but I think you
3 will. Thank you, Your Honor.

4 THE COURT: Anything else?

5 Here is what I have -- by the way, defense objected
6 to certain items that were in the case management order
7 a few months ago and I have not yet responded to that.
8 So we'll go ahead and take care of that.

9 As discussed, Century's motion to dismiss,
10 plaintiffs response according to Attorney Lawrence is
11 due January 22, and then any reply in due course. The
12 discovery order we talked about. The parties jointly
13 will present what can be agreed upon, and what can't be
14 agreed upon by 15 days from now which is February 2.

15 We have the next status conference for
16 scheduled 10 a.m., July 26, 2018. The order is going to
17 issue requiring plaintiffs to show cause why Glencore
18 International should not be dismissed for failure of
19 service of process, and I will issue an order regarding
20 the SCRG motion to consolidate with which plaintiffs
21 concur.

22 MS. LAWRENCE: Your Honor, one point, I'm
23 sorry. For the motion to dismiss, can we agree to a
24 20-day extension for the plaintiffs to respond to that
25 motion if the defense don't object?

1 THE COURT: Can you and I agree?

2 MS. LAWRENCE: Can we all agree. May I have
3 an extension please? We have supplemental briefing in
4 the *en banc* that was issued yesterday and I'm having to
5 refocus on that.

6 THE COURT: Attorney Hymes.

7 MR. HYMES: Your Honor, I have no objection to
8 that.

9 MS. LAWRENCE: That would be great. Thank
10 you.

11 THE COURT: Remember in the case management
12 order you all got your three freebies?

13 MS. LAWRENCE: Three free extensions? Thank
14 you, I need this one.

15 MS. ROHN: Three may not be enough, Your
16 Honor. Thank you.

17 THE COURT: Okay. Thank you all very much.

18 (Thereupon, at approximately 2:53 p.m., the
19 proceedings were concluded.)
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CERTIFICATE OF REPORTER

I, KEEMA R. KRIEGER, Official Court Reporter, of the Superior Court of the Virgin Islands, Division of St. Croix, do hereby certify that I reported by machine shorthand, in my official capacity, the hearing *IN RE: RED DUST CLAIMS, SX-15-CV-620*, in said Court, on the 18th day of January, 2018.

I FURTHER CERTIFY that the foregoing pages are a true and accurate computer-aided transcription of my stenotype notes of said proceedings.

I HAVE HEREUNTO subscribed my name, this 2nd day of February 2018.

_____/S/Keema Krieger
KEEMA R. KRIEGER,
Official Court Reporter