

SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

IN RE: RED DUST CLAIMS.)
_____)
_____)

MASTER CASE NO.
SX-15-CV-620

This Opinion Pertains to All of the Individual)
Cases Coordinated Under this Master Case)
_____)

CASE MANAGEMENT ORDER

UPON CONSIDERATION of this matter and mindful of the just, speedy, and inexpensive disposition of each of the cases consolidated under this master case, the Court now issues this Case Management Order to govern motion practice, discovery and pre-trial procedure in the individual cases grouped under this master case.

1. General Considerations.

(a) Master Case File and Docket. All subsequent orders, motion papers, any other papers that apply to more than one of the cases being managed under this master case file and docket shall bear a caption similar to this Case Management Order (“master case filings”) and designate immediately under the caption the individual case or cases to which it applies, or state that the paper applies to all cases. Master case filings shall, once filed and docketed in the master case, be deemed to have been docketed and filed in the individual cases to the extent such paper is applicable to that case. The parties shall not file, and the Clerk’s Office will not docket, any master case filings in individual cases unless ordered by the Court.

(b) Individual Case Files and Dockets. All subsequent orders, pleadings, motions papers, or other papers that pertain solely to an individual case shall be filed in that individual case with the caption and case number for that case (“individual case filings”). Examples of individual case filings include, but are not limited to, pleadings (including amendments thereto), voluntary or stipulated dismissals, and dispositive motions that do not concern facts or allegations applicable to all of the individual cases. Individual case filings will not be docketed in or deemed filed in the master case.

(c) Objections or Modifications. No party shall lose any substantive right based on their compliance with this Case Management Order. To preserve objections for appeal, any party may, within twenty-eight (28) days from the date of entry of this Order, file a notice, objecting to sections of this Order, proposing modifications to this Order, provided that counsel identifies the section(s) for modification and explains why compliance with this Order would be unduly burdensome or hinder litigation. Filing a notice under this section does not mean the Court will adopt a proposed modification, but failure to file a notice will be deemed as consent to the terms of this Order.

(d) Electronic Service Authorized. In lieu of the methods authorized by Virgin Islands Rule of Civil Procedure 5, the parties are hereby authorized to serve all subsequent pleadings, discovery, motion papers, notices, and all other papers by electronic mail in portable document format (“PDF”) and the Clerk is hereby directed to serve all orders, opinions, and notices on the parties by electronic mail in PDF. The parties are not required to accept service by electronic mail, however, and any party who declines electronic service must serve and file a notice in the master case stating that counsel declines service of papers by electronic mail. All documents served by the parties through electronic mail shall be signed by counsel and contain a certificate of service that lists the name and email address of each recipient which party or parties that person represents. Service by electronic mail shall indicate in the subject or the body of the correspondence, whether the document being served pertains to the master case, one or more individual cases, or both; include a brief description of the document; and state clearly if the document has been or will be filed in the Superior Court. Counsel are reminded that while electronic service is authorized, the Superior Court does not permit electronic filing at this time.

(e) Privacy Protections. All court papers, whether master case filings or individual case filings, shall comply with Virgin Islands Rule of Civil Procedure 5.2 and the Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320d *et. seq.*, as well as any other applicable Federal and Virgin Islands laws governing the release and disclosure of private or confidential information.

(f) Extensions. Given the complexity of this litigation, and in order to reduce motion practice, and notwithstanding the requirement under Virgin Islands Rule of Civil Procedure 6(b)(1), the Court hereby employs the following special procedure as permitted by Virgin Islands Rule of Civil Procedure 16(c)(2)(L). Each party (with Plaintiffs collectively considered as a party) is hereby granted leave to extend any date—whether for serving and filing pleadings (including amendments); serving and filings motions, responses, or replies; or serving or responding to discovery; but not for courts appearances, scheduled depositions, or mediations—three times apiece over the course of this litigation, provided that each pre-approved extension of time is limited to an additional fourteen (14) days, and further provided that the Court has not otherwise directed by separate order. Each party using a pre-approved extension of time must file a notice *before the prescribed deadline has passed* (otherwise court leave must be obtained), informing the Court and the other parties that that party is using a pre-approved extension of time and stating how many pre-approved extensions that party has remaining. One party’s use of a pre-approved extension of time automatically extends any corresponding deadlines for the other parties. Once a party depletes its pre-approved extensions of time, further extensions will be granted only motion showing good cause and filed before the prescribed-deadline has passed.

2. Amendment of Pleadings; Additional Parties.

(a) Amendment of Pleadings. While the Court acknowledges that the Court or the parties may amend their pleadings to conform to the evidence or to address any variance between the pleadings and the evidence adduced at trial as provided by Virgin Islands Rules of Civil Procedure 15 and 15-2, amendments of pleadings before trial will be permitted only by order on appropriate motion. All subsequent amendments of pleadings in the individual cases must comply with Virgin Islands Rule of Civil Procedure 15-1 regarding the delineation of specific changes or supplements to the pleadings and must be filed in the individual cases.

(b) Additional Parties or Cases. Leave to implead or add additional party defendants or to file third-party complaints will be granted only on motion filed in the master case. However, pursuant to Section 1(b) above, amended pleadings and third-party complaints must be filed in the individual cases if permitted. Unless otherwise ordered, and considering that this litigation has been pending in some form since 1999, motions to add additional defendants or motions for leave to file third-party complaints must be filed within 120 days from the date of entry of this order. Requests to add additional individual cases for coordination under this master case may be granted on motion filed in the master case or by stipulation filed in the master case if signed by all parties who have appeared. The terms of this Order shall apply automatically to any parties subsequently added and any cases subsequently grouped under this master case.

3. Motion Papers and Notices.

(a) Motions: Meet and Confer. To avoid unnecessary litigation, counsel are directed to meet and confer before filing any motions, including dispositive motions and motions related to discovery, so that issues are crystalized for the Court and ancillary issues, which the parties can resolve by communicating with each other first, are reduced. For any motion filed in the master case or in an individual case, counsel for the moving party shall certify that a good-faith effort was made to resolve the dispute before moving the Court to resolve it. All motions to compel disclosure or discovery, or for sanctions for failure to participate in discovery, shall comply with Virgin Islands Rules of Civil Procedure 37 and 37-1. Additionally, if a motion or other request is agreed to by the parties or unopposed, the moving party shall so state in the motion. If not all parties agree, the moving party shall indicate which party or parties oppose the relief sought.

(b) Motions: Papers. Pursuant to Virgin Islands Rule of Civil Procedure 6-1(c), only a motion, a response in opposition, and a reply, accompanied by briefs or legal memoranda in support (“motion papers”) shall be served on the parties and filed in the master case or in the individual cases. Any party who desires to join in the relief requested by the moving party or join the opposition put

forth by a non-moving party should do so by filing a notice of joinder (“joining parties”). Where possible, joining parties should seek first to have their arguments or concerns raised and addressed by either the moving party or the non-moving party before filing their own memoranda in support of or in opposition to a motion so as to reduce the overall volume of papers this litigation will generate.

All motion papers shall comply with Virgin Islands Rules of Civil Procedure 6-1(e) concerning page limits. However, the Court hereby extends the time period for filing responses in opposition and replies, along with accompanying memoranda of law, to twenty-eight (28) days from the date the motion or response is served and filed to give the parties additional time to meet and confer per Section 3(a) above.

(c) Motions: Citation of Authority. All motion papers shall comply with Virgin Islands Rule of Civil Procedure 11(b) pertaining to citation of controlling authority. *Accord Cacciamani & Rover Corp. v. Banco Popular de P.R.*, 61 V.I. 247, 251 n.2 (2014) (noting in dicta that “simply citing the Restatements and other non-binding authorities” without discussion of what should be the soundest law for the Virgin Islands may result in sanctions). Motion papers must either cite to, or indicate the absence of, binding precedent from this jurisdiction before relying on persuasive precedent from this jurisdiction or authority from another jurisdiction. Binding precedent includes decisions of the Supreme Court of the Virgin Islands, the Appellate Division of the District Court of the Virgin Islands, and the United States Court of Appeals for the Third Circuit rendered while that court served as the *de facto* court of last resort for the Virgin Islands. *See generally Ernest v. Morris*, 64 V.I. 627 (V.I. 2016); *Najawicz v. People*, 58 V.I. 315 (V.I. 2013); *In re People of the V.I.*, 51 V.I. 374 (V.I. 2009).

(d) Motions and Notices: Attachments and Exhibits. The parties shall not include with, or append or attach to, any notice or motion paper copies of documents previously filed or entered in the master case or an individual case, including but not limited to, pleadings, orders, and motion papers. Attaching such documents unnecessarily increases time and expense involved in preparing, serving, filing, docketing, and processing motion papers and notices. Further, because these documents are part of the court record, a citation to the previously-filed document, by title of the document and date the document was filed, will suffice. However, all documents not previously filed in an individual case or in the master case may be included as an exhibit or attachment to motion papers or notices.

(e) Motions: Oral Argument. Pursuant to Virgin Islands Rule of Civil Procedure 6-1(g), moving parties should indicate in their motion papers whether oral argument is requested.

4. Discovery. Disclosure and discovery shall be governed by Virgin Islands Rules of Civil Procedure 26 through 37-1. General provisions regarding discovery are addressed below. Specific provisions will be addressed in a forthcoming Master Scheduling Order.

(a) General Considerations. Because the “methods of “discovery may be used in any sequence” and because “discovery by one party does not require any other party to delay its discovery,” V.I. R. Civ. P. 26(d)(3)(A)-(B), it follows that delay by one party does not excuse the other parties from complying with their discovery obligations. Instead, discovery is “ideally, a self-executing system” that should invoke “[a] spirit of cooperation between opposing counsel” that generally results in “fewer discovery motions, reduction in the costs of litigation, and conservation of limited judicial resources.” *Mann v. Fernandez*, 615 F. Supp. 2d 1277, 1284 (D.N.M. 2009). *Accord Lebron v. Powell*, 217 F.R.D. 72, 78 (D.D.C. 2003) (noting voluntary and self-executing nature of discovery); *GMAC Bank v. HTFC Corp.*, 248 F.R.D. 182, 185 (E.D. Pa. 2008) (“the rules are largely self-executing.”); *Rickert v. Mitsubishi Heavy Indus., Ltd.*, 929 F. Supp. 380, 385 (D. Wyo. 1996) (“the general rule is that most discovery should be self-executing, and that the remainder of discovery should be conducted quickly and efficiently.”) To this end, counsel are directed to cooperate and further directed to meet and confer informally at least once every three months beginning from the date when the first scheduling order is entered so as to coordinate interrogatories and responses, document requests and production, and depositions (fact and expert).

(b) Discovery Filings. All papers pertaining to discovery, including motion papers and notices, shall be filed in the master case only, except motions that pertain solely to an individual case. Pursuant to Virgin Islands Rule of Civil Procedure 5(d)(1) and *In re: Filing of Discovery Materials*, Misc. No. 4/2001, 2001 V.I. LEXIS 46 (V.I. Terr. Ct. Mar. 28, 2001), only notices of discovery requests and responses, not copies of such materials, shall be filed in the master case. Discovery produced or propounded by any party shall not be filed unless specifically ordered or attached to a motion as an exhibit.

(c) Approval of Expedited Discovery. Permission to take expedited discovery of a plaintiff and a plaintiff’s health care provider is hereby granted if all of the following conditions are present: (1) Plaintiff or a member of Plaintiff’s family is terminally ill; (2) there is an urgent need to record and preserve the testimony because of the gravity of the illness; and (3) Plaintiff has provided medical authorizations and defendants have had an opportunity to conduct a reasonable amount of informal discovery prior to the taking of any deposition.

5. Certification of Interlocutory Orders.

(a) 4 V.I.C. § 33(c). Should any party believe that resolution of a pending motion involves a controlling question about which there is substantial grounds for difference of opinion between the parties, that party may include a request within its motion or response for the Court to consider certifying the order resolving such controlling question for interlocutory appeal to the Supreme Court

of the Virgin Islands as permitted by title 4, section 33(c), of the Virgin Islands Code. Such requests shall comply with Section 3(a) regarding the positions, if any, of the other parties regarding certification.

(b) V.I. R. Civ. P. 54(b). Should the Court enter an order that adjudicates fewer than all of the claims, or the rights and liabilities of fewer than all the parties, the parties may, if appropriate, request that the Court direct entry of final judgment as to those claims or parties, as provided for and allowed by Virgin Islands Rule of Civil Procedure 54(b). *But see Stiles v. Yob*, S. Ct. Civ. No. 2016-0027, 2016 V.I. Supreme LEXIS 23, *10 n.4 (V.I. June 8, 2016) (refusing to “incorporate the Federal Rule 54(b) certification procedure into the jurisprudence” of the Virgin Islands because of 4 V.I.C. § 33(c)).

6. Status Conferences. The Court will hold a status conference every January and July, subject to the Court’s calendar. Except for emergencies, motions will not be heard at any time other than a regularly scheduled status conference. To be argued at a status conference, a motion must be fully briefed, including oppositions and replies, at least four weeks prior. Counsel shall meet and confer (either in person or telephonically) at least two weeks before each regularly-scheduled status conference to attempt to resolve any outstanding disputes, as directed by Section 3(a) above. At least one week before each regularly-scheduled status conference, counsel shall jointly serve and file a notice listing each pending motion, including any to be argued; which case the motion was filed in, i.e., the master case or one or more individual cases; and a brief summary of any other matters the parties intend to raise. Counsel must avoid scheduling depositions in these cases on days when status conferences are scheduled and no deposition shall go forward without leave. Telephonic appearances at status conferences may be allowed on motion.

7. Settlement and Dismissal

(a) Agreements. The parties are under a continuing duty to make prompt disclosure to the Court and, unless excused by the court for good cause shown, to all other parties of the existence of any agreements, stipulations, or understandings, whether formal or informal, absolute or conditional, written or verbal, regarding the settlement of or limitations on their rights, claims, defenses, or liabilities in this litigation. This obligation includes, but is not limited to, matters as “loan receipt” and “Mary Carter” agreements, insurance, and indemnification, contribution, or damage-sharing agreements.

(b) Stipulated Dismissals. To dismiss any party’s claim against another party by stipulation, counsel must comply with Virgin Islands Rule of Civil Procedure 41(a) and obtain the signatures of all parties who have appeared for the dismissal to be effective without court order. *See*

Island Tile & Marble, LLC v. Bertrand, 57 V.I. 596, 613 (V.I. 2012) (“Rule 41(a)(1)(A)(ii) requires that a stipulation contain the signatures of all parties who have appeared. By its own terms, this requires the signature of every defendant who has appeared in a multi-defendant litigation, as well as any third party defendants and intervenors.” (emphasis in original, internal quotation marks omitted)). If fewer than all parties sign, dismissal will be by court order on terms the Court considers proper. See V.I. R. Civ. P. 41(a)(2). However, the settlement of any claims involving minors or estates must be approved by the Court first and a personal representative or guardian *ad litem* may have to appointed or an estate opened before any funds can be released by a settling party. This Order, including any amendments thereto, shall automatically cease to govern any case if all claims, including counterclaims or third-party claims, have been dismissed or settled against all parties by stipulation or court order.

8. Trial. Coordination under a master case for pre-trial purposes is not a determination that the individual cases should be consolidated together, in whole or in part, for trial.

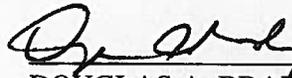
It is further

ORDERED that this Order shall be served on Lee J. Rohn, Esq., Andrew C. Simpson, Esq., Willie C. Ellis, Jr., Esq., Richard H. Hunter, Esq., Rene P. Tatro, Esq., Juliet A. Markowitz, Esq., Joel H. Holt, Esq., Carl J. Hartman, III, Esq., and James L. Hymes, III, Esq.

Dated: July 7, 2017.

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court
By: _____

Court Clerk Supervisor
7/7/17


DOUGLAS A. BRADY
Judge of the Superior Court

CERTIFIED A TRUE COPY

DATE: July 7, 2017
ESTRELLA H. GEORGE
ACTING CLERK OF THE COURT
BY: 
COURT CLERK II