

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)
_____)

INTERIM SCHEDULING ORDER

HAVING GRANTED additional time to file answers or otherwise respond to the individual complaints, and having granted additional time to file individual complaints, the Court now issues this interim scheduling order to govern the litigation before discovery commences:

First, because this litigation is an extension of the class action previously pending in the District Court of the Virgin Islands in the case of *Josephat Henry, et al. v. St. Croix Alumina, LLC, et al.*, case number 1999-cv-0036, and because St. Croix Alumina, LLC, Alcoa, Inc., and Glencore, Ltd. previously appeared answered the complaint filed in that action, *see Cianci v. Chaput*, 64 V.I. 682, 690 n.2 (V.I. 2016) (courts can take judicial notice of the contents of other courts' dockets), Defendants St. Croix Alumina, LLC, Alcoa, Inc., and Glencore, Ltd. shall file answers to each individual complaint within twenty-eight (28) days from the date the last individual complaint is served and filed or—if no additional complaints are filed—no later than Friday, September 1, 2016. Defendants may serve their answers electronically on the other parties per Section 1(d) of the Case Management Order.

Second, insofar as the Court can discern from its review of the docket for *Henry*, Century Aluminum Company (“Century”) and St. Croix Renaissance Group, LLLP (“SCRG”) were not named as parties in that action. While filing an answer can result in certain defenses such as personal jurisdiction, venue, and the like being waived *see, e.g.*, V.I. R. Civ. P. 12(h)(1), in this case, each Defendant, including Century and SCRG, waived these preliminary defenses long ago. *See, e.g., Abednego v. St. Croix Alumina, LLC*, 63 V.I. 153, 179 (V.I. Super. Ct. 2015) (“[B]y not asserting in their respective motions to dismiss the complaint for failure to state a claim for relief a challenge to personal jurisdiction, the Alumina Defendants, on February 19, 2010, and SCRG, on February 22, 2010, abandoned this defense.” (citing Fed. R. Civ. P. 12(h)(1))). Accordingly, Century and SCRG shall either file answers to each individual complaint per the same deadline stated above for the other Defendants, or a motion to dismiss for failure to state a claim for relief, unless previously-filed as discussed further below.

Third, because Defendants previously filed dispositive motions in *Laurie L.A. Abednego, et*

al. v. St. Croix Alumina, LLC, et al., case number SX-09-CV-571, and/or in *Phillip Abraham, et al. v. St. Croix Alumina, LLC, et al.*, case number SX-11-CV-163, each Defendant shall file a notice in the master case within fourteen (14) days from the date of entry of this order:

- (1) identifying by date-and-time stamp (a) each dispositive motion that Defendant filed; (b) which case(s) the motion(s) were filed in; (c) whether any other party joined the motion(s); and (d) what relief was sought and on what grounds, e.g., dismissal based on lack of subject matter jurisdiction; and
- (2) explaining whether Defendant (a) stands on the motion papers previously filed; (b) wants leave to supplement previously-filed motion papers, or (c) will withdraw a previously-filed motion from *Abednego* and/or *Abraham* and revise and refile it in the master case.

Fourth, because “[t]his litigation is complex, nuanced, and may soon get even more complicated,” (Mem. Op. 16, entered July 7, 2017), and because the Court intends to manage this litigation in a systematic way, the Court directs as follows with regards to motion practice. Notwithstanding any previously-filed motions, the Court will entertain motions in the following sequence: (1) motion for a more definite statement (Defendants); (2) motion to dismiss for failure to state a claim for relief (SCRG and Century only); (3) motion to strike (Plaintiffs); and (4) motion for judgment on the pleadings (Defendants, after individual complaints have been answered).

Should any Defendant file a motion for a more-definite statement or a motion to dismiss for failure to state a claim for relief, that Defendant’s time to file answers will be extended for twenty-one (21) days from the date the motion is denied, or twenty-one days from the date more definite statements are served and filed. Counsel are directed to Virgin Islands Rule of Civil Procedure 11(b) regarding motions for a more definite statement and motions to strike, specifically Rule 11(c)(3), because the Court will not hesitate in ordering counsel to show cause if the Court finds that these motions were filed to cause unnecessary delay, to harass, or to increase the costs of this litigation. Motions shall be filed according to the following time-line:

- (1) motion for a more definite statement – on or before Friday, August 4, 2016;
- (2) motion to dismiss for failure to state a claim for relief – on or before Friday, August 4, 2016, assuming Century and/or SCRG chose to withdraw any previously-filed motions. If leave to supplement is requested, the Court will revise the deadline by separate order;
- (3) motion to strike – within twenty-eight (28) days after a Defendant has served and filed its answers in all individual cases; and
- (4) motion for judgment on the pleadings – within twenty-eight (28) days from the date the preceding motions have been resolved.

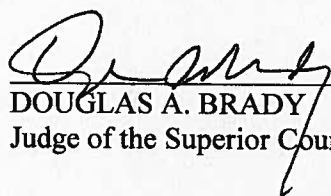
Fifth, because filing a motion does not necessarily suspend deadlines or excuse the parties from complying with court deadlines, and further because “the *Henry* plaintiffs exchanged discovery

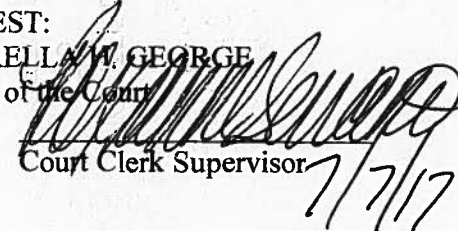
with the defendants over the first two years of the litigation, namely between 1999 and 2001, and then for about five more years, the parties traveled the country deposed fact and expert witnesses,” *Abednego*, 64 V.I. 186-87 (brackets, quotation marks, and citations omitted), there should be no reason for delaying discovery in these cases. However, the Court will hold a preliminary Rule 16 conference first on **August 2, 2017 at 10:30 in Courtroom No. 211.**

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.


DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court
By: 
Court Clerk Supervisor 7/7/17

CERTIFIED A TRUE COPY

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