



trial Master Case, SX-15-CV-620 captioned *In RE Red Dust* (the "620 Master Case").<sup>2</sup>

The commentary to the new rules stresses that the intent is "providing broad discretion for the court to act where multiple actions involve "a common question of law or fact."

As is noted below, nine (9) Plaintiffs in the 620 Master Case are not in the *Abednego* or *Phillip Abraham* actions -- they were only in the *Eleanor Abraham* action. Thus, the only reason they are already in the 620 Master Case is because Plaintiffs, like everyone else has been both thinking and acting as though the consolidation already has taken place. Moreover, as will also be discussed, the complaints in the *Abednego*, *Phillip Abraham* and *Eleanor Abraham* cases not only have many of the same plaintiffs - - but also allege many of the same injuries in the identical time periods.

### **I. Historical Lead Up to a Separate "Eleanor Abraham" Case**

The Court and parties are all familiar with the original *Josephat Henry* case. Because of rulings in that case, on December 3, 2009 the *Abednego* case (SX-09-CV-571) was filed by approximately 2529 plaintiffs -- including 2226 adults and 303 minors. That complaint alleged not only past damages but continuing injuries that have extended over the full period of the *Eleanor Abraham* case (2002-present.) For all of the time periods applicable to the *Eleanor Abraham* case, the damages of both the *Abednego* and *Eleanor Abraham* plaintiffs are thus identical. See Second Amended

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<sup>2</sup> In the alternative, because SCRG is mindful that this Court has discussed the difference between consolidation for trial and consolidation for pre-trial handling pursuant to V.I. R. Civ. P. 16(c)(2)(L) in *Edwards v. Hess Oil Virgin Islands Corp.*, SX-15-CV-382, 2017 WL 2814041, at \*4 (V.I. Super. June 29, 2017), it notes that it only wishes to achieve the same level of consolidation that has been afforded to the *Abednego* and *Phillip Abraham* plaintiffs -- under either Rule.

Complaint, Sept 1, 2010, at page 178 (seek a prospective "injunction requiring that defendants cease and desist all activities that result in pollutants being discharged and, further requiring a cleanup of all pollutants and removal of the piles of "Red Dust", coal dust and particulates, costs and fees and such other relief as this Court deems fair and just.")

Because of procedural developments in *Abednego*, approximately 201 plaintiffs filed the *Phillip Abraham v. SCA et al.* action on April 4, 2011. That complaint alleged not only past damages but continuing injuries that have extended over the full period of the *Eleanor Abraham* case (2002-present.) For all of the time periods applicable to the *Eleanor Abraham* case, the damages of both the *Phillip Abraham* and *Eleanor Abraham* plaintiffs appear to be substantially identical.

Because SCRG was "let out" of the underlying cases by the federal court while on removal, the *Eleanor Abraham* case was filed by approximately 509 plaintiffs on December 13, 2011. That complaint alleges not only events that occurred after the purchase of the property by SCRG in 2002 -- but also, at ¶¶ 467-470 recites the historical insults to the property and neighbors and goes on, at ¶¶ 473-478 seeks to hold SCRG liable for not mitigating, correcting and remediating the identical past activities that will be litigated in *Phillip Abraham* and *Abednego* cases. Approximately 309 of the 550 *Eleanor Abraham* plaintiffs or about 60% are also in *Abednego*.

Thus, the parties have acted as if these matters are consolidated -- which they probably would have been if the *Eleanor Abraham* file was not in transit because of the Third Circuit appeal.

## II. The Numerical and Fact Overlap Between the Plaintiffs in the Four Cases

As noted above, there are approximately 9 Plaintiffs who are in just the *Eleanor Abraham* case and the new 620 Master Case. But more to the point, approximately 187 of the 509 plaintiffs are only in that one case. That means that 322 of those plaintiffs are already in one or more of the other cases.

### Conclusion

Many of the plaintiffs are the same in these cases. The injuries come from what plaintiffs seek to describe as one really long single event. The time periods for the damages are identical for the years 2002 to the present. The types of damages to properties are identical. The types of alleged medical injuries are not only identical but possibly indistinguishable. In other words not only is consolidation advisable -- it is probable that these are necessary parties. Thus, in the absence of any opposition by Plaintiffs, the motion should be granted.

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**Joel H. Holt, Esq. (Bar # 6)**  
*Counsel for Defendant SCRG*  
Law Offices of Joel H. Holt  
2132 Company Street,  
Christiansted, VI 00820  
Email: holtvi@aol.com  
Tele: (340) 773-8709  
Fax: (340) 773-8677

**Carl J. Hartmann III, Esq. (#48)**  
*Co-Counsel for Defendant SCRG*  
5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820  
Email: carl@carlhartmann.com

### CERTIFICATE OF SERVICE

I hereby certify that this document complies with the page or word limitation set forth in Rule 6-1(e) and that on this 30<sup>th</sup> day of August, 2017, I served a copy of the foregoing by mail and email, as agreed by the parties, on:

**James L. Hymes, III, Esq.**  
P.O. Box 990  
St. Thomas, VI 00804-0990  
Tel: (340) 776-3470  
Fax: (340) 775-3300  
Email: jim@hymeslawvi.com

**Lee J. Rohn, Esq.,**  
Lee J. Rohn & Associates  
1101 King Street  
St. Croix, VI 00820  
Tel: 340-778-8855  
Fax: 340-773-2954  
Email: lee@rohnlaw.com

**Bernard C Pattie, Esq.**  
Law Offices of Barnard C.Pattie P.C.  
1138 Kings Street Suite 204  
St Croix, VI 00820  
Tel. 340-692-7717  
Fax: 340-692-7719  
Email: b.pattie@bcppc.com

**Andrew C. Simpson, Esq.,**  
Bryant, Barnes & Simpson, P.C.  
47 King St. 2nd Fl.  
PO Box 4589  
Christiansted, St. Croix, VI 00822-4589  
Tel. 340-773-2785  
Fax 773-5427  
E-mail vilegal@viaccess.net

**Willie C. Ellis, Jr., Esq .**  
Hawkins Parnell Thackston & Young  
LLP  
303 Peachtree Street NE, Suite 4000  
Atlanta, GA 30308

**Richard H. Hunter, Esq.,**  
Hunter, Colianni, Cole & Bennett  
Pentheny Bld., 3rd. Flr.  
1138 King Street, Suite 301,  
Christiansted, St. Croix, VI 00820  
340-773-3535  
Fax 778-8241  
E-mail hcctlaw@aol.com

**Rene Pierre Tatro**  
**Juliet A. Markowitz, Esq.**  
Tatro Tekosky Sadwick LLP  
660 S. Figueroa Street, Suite 1450  
Los Angeles, CA 90017  
213-225-7171  
Fax: 213-225-7151  
Email: renetatro@ttsmlaw.com

**David J. Cattie**  
Ogletree, Deakins, Nash, Smoak &  
Stewart Llc  
The Tunick Building Suite 201  
1336 Beltjen Road  
St. Thomas, VI 00802  
340-714-1235  
Fax: 340-714-1245  
Email:  
david.cattie@ogletreedeakins.com

