

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

IN RE: RED DUST CLAIMS

MASTER CASE NO. SX-15-CV-620

RESPONSE IN OPPOSITION TO DEFENDANTS' DISCOVERY MEMORANDUM

Plaintiffs, in the above captioned matter, oppose Defendants' Discovery Memorandum as follows:

First, Defendants' suggestion that the Plaintiffs in the *Henry* case were selected as Plaintiffs' best Plaintiffs is not true. They were simply the first persons who contacted Plaintiffs' counsel and were the named Plaintiffs who brought the suit, originally as a class.

Further, the decision of a Pittsburgh, Pennsylvania District Court judge on summary judgement has no precedential value in this case as that decision is contrary to Virgin Islands Law as established by our own Supreme Court. As this court is aware, a Plaintiff can establish causation in this jurisdiction by establishing what types of ailments are common to an exposure and testimony as to temporal proximity to them having the same symptoms after exposure. The Defendants' own MSDS sheets establish the dangerous nature of the substances that have blown through the Plaintiffs' homes for over 30 years and each time the substance blows through the Plaintiffs' homes, they get the exact symptoms that the substance causes. In the Virgin Islands that is sufficient for causation. Plaintiffs are preparing a motion for declaratory judgement on the issue of what is required for causation under Virgin Islands law. It is suggested that this is a threshold issue that should be certified for the Virgin Islands Supreme Court.

Further, Plaintiffs suggests that the depositions taken in the *Henry* case and the

sworn testimony in that case be applicable to the Defendants that were in that case and made a part of the record in this case. that will cut down on duplicative discovery that is unnecessary.


The Plaintiffs have agreed with Defendants as to a proposed questionnaire for the Plaintiffs to fill out. Due to the hurricanes, many of the Plaintiffs are now stateside and a vast number do not speak English and many do not read or write. As such, 120 days is not practical as a time limit to respond and Plaintiffs suggest 240 days, with the option to seek an extension of time, if necessary.

Virgin Islands law does not allow for dismissal of a party's case for not responding to a questionnaire and Plaintiff does not agree to any such suggestion. The Defendants would have to bring a valid motion for dismissal under Virgin Islands Law and the Plaintiff would have an opportunity to oppose it and the court would have to decide such a motion under applicable law.

Plaintiffs suggest that the threshold issue of the burden of proof of causation will need to be decided, preferably ultimately by the Virgin Islands Supreme Court, before decisions can be made as to how to group Plaintiffs and the need for expert testimony, or not.

RESPECTFULLY SUBMITTED
LEE J. ROHN AND ASSOCIATES, LLC
Attorneys for Plaintiff

DATED: January 18, 2018

BY: 

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CERTIFICATE OF WORD/PAGE COUNT

This document complies with the page or word limitation set forth in Rule 6-1(e).

BY: 

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on January 18, 2018, I caused a true and correct copy of the foregoing to be served via US MAIL upon:

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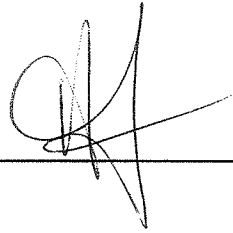
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A handwritten signature in black ink, appearing to be 'W. E. Ellis Jr.', is written over a horizontal line. The signature is stylized and somewhat cursive.