

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

ELEANOR ABRAHAM, et al.,)	
)	
<i>Plaintiff,</i>)	
)	
vs.)	CASE NO. SX-11-CV-0000550
)	
ST. CROIX RENAISSANCE GROUP LLLP)	ACTION FOR: DAMAGES • CIVIL
)	
Defendant,)	
_____)	

**SCRG’S RESPONSE TO PLAINTIFFS’ FILING REGARDING
THIS COURT’S FEBRUARY 19TH “SHOW CAUSE” ORDER**

On February 19, 2019, the Court entered an order requiring the Plaintiffs to “**SHOW CAUSE** why this case should not be administratively closed,” asking them to explain whether the claims presented by these Plaintiffs were related, or not, “to the cases being managed under the *In re: Red Dust Claims* master case.”

Plaintiffs filed their timely response on March 12, 2019. The Court also provided for a reply by SCRG, which SCRG hereby respectfully submits.

I. The Question Presented

In ¶ 29 of the Court’s February 19th memorandum, it asked for an explanation of a simple question:

¶29 But whether to coordinate *Eleanor Abraham* along with the other *Red Dust* cases is not clear. And the Court cannot make that determination, and cannot rule on SCRG's motion, until the ***Eleanor* plaintiffs first answer whether *Eleanor Abraham* is a related case to the *Henry-Abednego-Phillip Abraham* line of cases, or whether *Eleanor Abraham* is different from these *Red Dust* cases.** Because, if *Eleanor Abraham* is a different case, coordinating it with the other *Red Dust* cases would not be appropriate. And if it is related, it might have to be dismissed. (Emphasis added).

This Court further stated in ¶ 35:

¶35 If the *Eleanor* plaintiffs are as many *Abednego* plaintiffs as Attorney Rohn could locate after the November 16, 2010 order dismissed SCRG, then this case should be dismissed. Everyone dismissed by the November 16, 2010 order, including SCRG and the *Phillip* plaintiffs, were reinstated into *Abednego* and all plaintiffs, except Laurie L.A. Abednego and Phillip Abraham, were dropped and ordered to file individual complaints, absent which their claims would be dismissed. Eleanor Abraham was not allowed to retain her case file.

In essence this Court concluded that if the claims of the Plaintiffs who did not previously file individual cases are related to the claims to those who have, then this case should be administratively dismissed.

II. The Answer

Plaintiffs answered the question posed by this Court by stating:

Based on the pleadings in this Complaint and those contained in the various complaints consolidated in the In Re Red Dust Master Docket, Plaintiffs are not opposed to an order that requires them to refile individual complaints on behalf of the Plaintiffs in this case under the In Re Red Dust Master Docket.

In short, the Plaintiffs agreed that their claims are related to those cases already pending under the Red Dust Master Docket.

Indeed, as Plaintiffs also noted in their March 12th filing, many named Plaintiffs in this case have already filed new cases that are now under the Red Dust Master Docket, stating in their memorandum as follows:

Plaintiffs agree with Defendant SCRG that there are Plaintiffs in this case that are already part of the In Re Red Dust Master Docket

The fact that many of the Plaintiffs in this case have filed new cases (against SCRG and others) that are now part of the Red Dust Master case confirms they are related, which is consistent with this Court's finding in ¶21 of its February 19th Order that "The *Eleanor* plaintiffs asserted **the same claims** as the *Henry* plaintiffs, the *Abednego* plaintiffs, and

the *Phillip* plaintiffs, pretty much in the same order” and seek the exact same relief.¹

Thus, based on the analysis set forth in this Court's February 19th Order, this case should be administratively closed, as all of the remaining plaintiffs who did not file new complaints, as required by Judge Brady's prior Order, were automatically dismissed.

III. New Complaints

Should this Court conclude otherwise and find that the remaining Plaintiffs should be permitted to file new complaints, the question remains as to whether they should “refile individual complaints or be granted leave to supplement the complaints that were already filed individually in response to a prior court order.” See ¶1 of the February 19th Order.

It is respectfully submitted that any such new complaints should be limited in part to the representations that Plaintiffs' counsel has made to the Court both at the January 24th hearing, as well as in subsequent pleadings, that all claims are now based on discreet, specific events that resulted in acute injuries (rather than long term, chronic injuries) without any claims for medical monitoring or asbestos related claims.² Indeed,

¹ As the Court noted in ¶30, citing *Martinez v. Cargill Meat Solutions*, 2009 U.S. Dist. LEXIS 114029, *2-3 (D. Neb. Dec. 8, 2009), “[C]ases are related when they involve some or all of the same issues of fact or arise out of the same transaction.”

² See, e.g., footnote 1 in Plaintiffs' February 15th filing, a portion of which is attached as Exhibit 1, stating that “Plaintiffs no longer seek any long-term exposure effects, medical monitoring claims or asbestos related claims.”

the new complaints already filed by these *Eleanor* Plaintiffs in the Red Dust Master Case should be amended to reflect these changes as well.

IV. Conclusion

Plaintiffs failed to show cause why the cases were not related. Indeed, as they are clearly related, this case should be dismissed and closed.

Dated: March 14, 2019.



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CERTIFICATE OF SERVICE AND RULE 6-1(e) COMPLIANCE

I hereby certify that this document complies with the page or word limitation set forth in Rule 6-1(e); and that on this 14th day of March, 2019, I served a copy of the foregoing by email, as agreed by the parties, on:

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SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

IN RE: RED DUST CLAIMS

MASTER CASE NO. SX-15-CV-620

**MOTION TO PERMIT USE OF PRIOR DEPOSITIONS PURSUANT TO V.I. R. CIV. P.
32(A)(8)**

Plaintiffs, by and through undersigned counsel, move this Court for an Order permitting the use of depositions taken in the *Henry v. St. Croix Alumina*, 1999-cv-0036, matter as evidence in the individual actions of the Plaintiffs in the *In re Red Dust Claims* pursuant to V.I. R. Civ. P. 32(a)(8).

PROCEDURAL POSTURE

When this matter was originally filed, it was filed as a class action as *Henry v. St. Croix Alumina*, 1999-cv-0036. The Defendants were St. Croix Alumina, LLC, Alcoa, Inc., Glencore, LTD, f/k/a Clarendon, LTD. The class included residents of neighborhoods in the area near St. Croix Alumina that were affected by the negligent and intentional acts of the Defendants. The members of the class were too numerous to be named at that time. The class was certified by the District Court in 1999 under the case *Josephat Henry v. St. Croix Alumina, LLC*, 1999-cv-0036.

After the class was certified, discovery commenced. As part of the discovery, depositions were taken. Approximately eighty-four (84) depositions in total were taken including twenty eight noticed by Plaintiffs, thirty seven noticed by Defendants, one doctor deposition noticed by Plaintiffs and eighteen doctor depositions noticed by Defendants. Of those depositions, several were taken of Defendant St. Croix Alumina employees.



ARGUMENT

Virgin Islands Rule of Civil Procedure 32(a)(8) states when a deposition taken in an earlier action may be used. V.I.R. Civ.P. 32(a)(8). It states in pertinent part:

A deposition lawfully taken, and if required, filed in any federal- or Virgin Islands court action may be used in a later action involving the same subject matter between the same parties, or their representatives or successors in interest, to the same extent as if taken in the later action. V.I.R. Civ.P. 32(a)(8).

In his Order of August 10, 2015, Judge Brady, by allowing Plaintiffs to refile individual complaints and denying Defendants' motions to dismiss ruled that the plaintiffs in *Abedengo* and *Abraham* (now the *In re Red Dust* Plaintiffs) were former members of the class in the *Henry* litigation.

Here, the parties and remaining issues are the same as they were in *Henry*¹. Plaintiffs are members of the former *Henry* class which was decertified. Upon decertification, plaintiffs a new complaint in a mass action and then ultimately were ordered to file individual complaints after the Superior Court's order of August 10, 2015. The Defendants are the same as they were in *Henry*. Significant discovery was performed between 1999 and 2008 when the class was certified. For two years, Plaintiffs and Defendants in *Henry* exchanged voluminous amounts of discovery, and then for five years thereafter, traveled the country obtaining depositions of plaintiffs and defendants (and/or their representatives). Defendants were always represented by counsel and noticed more

¹The issues are actually less complicated as Plaintiffs no longer claim any long-term exposure effects, medical monitoring claims, or asbestos related claims.

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Motion to Permit Use of Prior Depositions Pursuant to V.I. R. 32(a)(8)

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