

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

IN RE: RED MUD CLAIMS

**MASTER CASE NO. SX-2020-MC-009
COMPLEX LITIGATION DIVISION**

SCRG'S MASTER ANSWER TO THE FIRST AMENDED COMPLAINT

Defendant St. Croix Renaissance Group LLLP ("SCRG") hereby answers the First Amended Complaint filed on December 15, 2020, which is applicable to the all cases filed by any Plaintiff withing the Red Mud Claims Master Case in the Complex Litigation Division, responding to the Master First Amended Complaint as follows:

1. Denied, as the U.S. District Court dismissed these claims before remanding this case.
2. Admit.
3. Admit.
4. Admit.
5. Admit.
6. Deny for lack of knowledge.
7. Admit.
8. Admit.
9. Deny, as SCRG never operated the refinery.
10. Admit.
11. Admit.
12. Admit.
13. Admit.
14. Admit, although the correct date is 2002, not 2005.
15. Admit.
16. Admit.

17. Admit.
18. Admit.
19. Admit.
20. Admit.
21. Admit as to the DPNR directive to Alcoa, but deny this allegation as to what DPNR directed SCRG to do.
22. Admit.
23. Admit.
24. Deny.
25. Admit.
26. Admit.
27. Deny DPNR held SCRG equally accountable for the needed remedial work, but otherwise admit.
28. Admit.
29. Admit.
30. Admit.
31. Admit.
32. Admit.
33. Deny as worded, as this agreement was contingent on Alcoa finishing its remedial work first, as directed by DPNR. Otherwise, Admit.
34. Deny this allegation regarding the phrase "This allowed," as it is not understood in the context in which it is used, but otherwise Admit.
35. Admit.
36. Admit.
37. Deny any such finding was made as to SCRG, but otherwise Admit.
38. Admit.
39. Deny any such statements or findings were made as to SCRG being in violation of any DPNR orders, but otherwise Admit.

40. Admit the referenced suit was filed, which speaks for itself, but otherwise deny as to the characterization of the suit against SCRG and deny that SCRG was ever required to "reduce the red mud piles" as alleged herein.
41. Admit.
42. Deny as to SCRG, as the work was stayed until Alcoa complied with DPNR's orders.
43. Admit.
44. Admit.
45. Admit.
46. Admit.
47. Admit.
48. Deny. DPNR approved Alcoa's plan, not SCRG's plan.
49. Deny as worded.
50. Admit DPNR issued a stop Order to Alcoa's contractor, but deny as worded.
51. Deny as to SCRG, as Alcoa had its contractor revegetate the red mud pile after the contractor had completed the other work approved by DPNR.
52. Admit the first sentence. Deny the second sentence for lack of knowledge of the specific MSDS referenced in this allegation.
53. Admit the first sentence. Deny the second sentence.
54. Deny.
55. Deny.
56. Deny for lack of knowledge as SCRG was not even formed in 1995, although upon information and belief, the allegation is true.
57. Deny for lack of knowledge.
58. Deny.
59. Deny as to SCRG.
60. Deny as to SCRG.
61. Deny.

62. Deny for lack of knowledge as SCRG never operated the "plant."

63. Deny.

64. Deny.

Count I

65. As alleged

66. Deny.

67. Admit.

68. Deny.

69. Deny.

70. Deny.

71. Deny.

72. Deny.

73. Deny.

Count II

74. As alleged.

75. Deny.

76. Deny.

77. Deny.

78. Deny.

79. Deny.

Count III

80. As alleged.

81. Deny.

82. Deny.

83. Deny.

84. Deny.

Count IV

85. As alleged.

86. Deny.

87. Deny.

88. Deny.

89. Deny.

90. Deny.

91. Deny.

92. Deny.

93. Deny.

Count V

94. As alleged.

95. Deny.

96. Deny.

Count VI

97. As alleged.

98. Deny.

99. Admit SCRG has owned the property since 2002, but otherwise Deny.

100. Deny as worded, as Alcoa agreed to do the required remediation work without SCRG's help.

101. Deny.

102. Deny.

103. Deny.

104. Deny.

105. Deny.

- 106. Restatement (Second) of Torts §456 speaks for itself. Otherwise, Deny.
- 107. Restatement (Second) of Torts §905 and §501 speak for themselves. Otherwise, Deny.
- 108. Restatement (Second) of Torts §939 speaks for itself. Otherwise, Deny.
- 109. Deny.
- 110. Deny.
- 111. The holding in the referenced case speaks for itself. Otherwise, Deny.
- 112. Deny.
- 113. Deny.
- 114. Deny.
- 115. Deny.
- 116. Deny.
- 117. Deny.
- 118. Deny.

AFFIRMATIVE DEFENSES

For its affirmative defenses to the allegations in the First Amended Complaint, SCRG states:

FIRST DEFENSE

1. The complaint is barred in whole or in part because some or all of Plaintiffs' claims and causes of action fail to state a claim for which relief may be granted.

SECOND DEFENSE

2. The complaint is barred in whole or in part by the statutes of limitations.

THIRD DEFENSE

3. The complaint is barred in whole or in part because of the doctrine of comparative negligence.

FOURTH DEFENSE

4. The complaint is barred in whole or in part because if the releases alleged in the Complaint occurred and have resulted in harm, all of which SCRG denies, one or more of the releases or threatened releases of a hazardous substance and the damages resulting therefrom were caused solely by acts or omissions of third parties: other than SCRG, an employee or agent of SCRG. SCRG took precautions against foreseeable acts or omissions of those defendants and of such third parties and the consequences that could foreseeably result from such acts or omissions. SCRG took reasonable precautions against foreseeable consequences of any such third party.

FIFTH DEFENSE

5. The complaint is barred in whole or in part because if the releases alleged in the Complaint occurred and have resulted in harm, all of which SCRG denies, some or all the damages alleged to have resulted from releases of substances or hazardous substances were due to acts of the USVI or US Governments or of SCRG acting under lawful orders of the USVI or US Governments. Moreover, to the extent the materials released are alleged to be harmful substances under CERCLA, Plaintiffs' recovery is barred or reduced in proportion to the liability of others under CERCLA.

SIXTH DEFENSE

6. The complaint is barred in whole or in part because Plaintiffs have failed to join indispensable parties necessary for adjudication of its distinct claims, and its action should be dismissed, for example, the Government of the US Virgin Islands.

SEVENTH DEFENSE

7. The complaint is barred in whole or in part because if the releases alleged in the Complaint occurred and have resulted in harm, all of which SCRG denies, one or more of the releases or threatened releases of a hazardous substance and the damages resulting therefrom resulted from one or more permitted uses.

EIGHTH DEFENSE

8. The complaint is barred in whole or in part because if the releases alleged in the Complaint occurred and have resulted in harm, all of which SCRG denies, SCRG may not be held liable for some or all of the damages alleged by Plaintiffs because such damages were specifically identified as an irreversible and irretrievable commitment of the premises and its resources in an applicable permit, environmental impact statement or other comparable environmental analysis, and decisions to grant a permit or license authorized such commitment of natural resources.

NINTH DEFENSE

9. The complaint is barred in whole or in part because some or all of Plaintiffs' claims for damages seek a double recovery.

TENTH DEFENSE

10. The complaint is barred in whole or in part because some or all the releases, costs sought to be recovered and other actions for which relief is sought

in the Complaint, if they occurred, are preempted by the adoption of CERCLA or other federal statutes, and, therefore, are barred.

ELEVENTH DEFENSE

11. The complaint is barred in whole or in part because the real property on which the facility was located was acquired by SCRG after the disposal or placement of the alleged hazardous substances on, in or at the facility by permitted use. At the time SCRG acquired the facility, SCRG did not know or have reason to know that one, some or all the alleged hazardous substances which are allegedly subject to release or threatened release were disposed of on, in or at the facility. This includes acts by the Seller to SCRG (Alcoa/SCA) to hide such conditions and actively deceive SCRG--as found by a jury and upheld with regard to punitive damages by a judge in a proceeding in federal court. The effects of those decisions preclude findings necessary to Plaintiffs' cause.

TWELFTH DEFENSE

12. The complaint is barred in whole or in part because SCRG is not liable under federal and USVI laws as it meets the definition of a *bona fide purchaser*, and/or a *bona fide prospective or actual purchaser* under both federal and Territorial laws.

THIRTEENTH DEFENSE

13. The complaint is barred in whole or in part because SCRG is not liable for indistinguishable releases from contiguous properties, including, but not limited to, the HOVENSA Refinery, Port Authority and WMA sewer and dump facilities.

FOURTEENTH DEFENSE

14.. The complaint is barred in whole or in part because some or all requests for relief have already been discharged or satisfied, because of SCRG's legal actions, such as, but not limited to, the red mud removal, the covering and remediation of the site and restoration pursuant to DPNR and Federal Court orders. Moreover, SCRG has been prohibited from acting, ordered not to act or ordered to act as a part of those other consents or proceedings. Included in this defense is the fact that no relief at equity can be given as to the future claims, as all necessary remedial corrections have been completed—as certified by the DPNR.

FIFTEENTH DEFENSE

15. The complaint is barred in whole or in part because Plaintiffs have failed to fulfill statutory or procedural prerequisites as to some or all of their claims.

SIXTEENTH DEFENSE

16. The complaint is barred in whole or in part because if the releases alleged in Complaint occurred and have resulted in harm, all of which SCRG denies, the harm caused is a divisible harm; accordingly, SCRG cannot be held jointly and severally liable for such harm as it did not cause, as the damages or relief should be allocated. SCRG is entitled to a percentage reduction offset against any recovery

of damages for the amount paid by any other liable party or the equitable share of the liability of any person that has received or will receive a release from liability or covenant not to sue from Plaintiffs, Or which Plaintiffs have failed to bring action in a timely basis.

SEVENTEENTH DEFENSE

17. To the extent Plaintiffs seek to recover money damages for alleged future injuries, such future injuries are speculative, and recovery based thereon would violate SCRG's due process rights.

EIGHTEENTH DEFENSE

18. The complaint is barred in whole or in part because the Complaint lacks sufficient specificity to allow SCRG to understand the claims or assert defenses. Plaintiffs have failed to allege (a) the specific nature of SCRG's involvement, (b) the specific locations where each such release/contamination/injury/act of recovery or remediation occurred, (c) the specific substances released, (d) when the releases occurred, (e) when each injury occurred and (f) which release of what hazardous substance was the sole or substantially contributing cause of such injury (g) by what pathway exposure to the hazardous substance occurred, and (h) the resultant harm.

NINETEENTH DEFENSE

19. The complaint is barred in whole or in part because if the releases alleged in the Complaint occurred and have resulted in harm, all of which SCRG denies, one or more of the releases or threatened releases of a hazardous substance and the damages resulting therefrom were caused by one or more Acts of God.

TWENTIETH DEFENSE

20. The complaint is barred in whole or in part because Plaintiffs are barred from obtaining the relief sought in this action by the doctrines of unclean hands, waiver or equitable estoppel.

TWENTY-FIRST DEFENSE

21. Plaintiffs have accepted remediation and other relief, which has addressed and alleviated some or all of the damages alleged. This includes but is not limited to the cleaning of premises and cisterns.

TWENTY-SECOND DEFENSE

22. The complaint is barred in whole or in part because SCRG has not engaged in processing of bauxite ore or the creation of red mud piles. SCRG has not engaged in any abnormally dangerous activity. SCRG has simply attempted to remediate a brownfield site consistent with the policy of the USVI and US governments.

**TWENTY-THIRD
DEFENSE**

23. The complaint is barred in whole or in part by the equitable doctrine of laches.

**TWENTY-FOURTH
DEFENSE**

24. The complaint is barred in whole or in part because by res judicata, collateral estoppel and/or law of the case, including but not limited to the Memorandum Opinion and Order of the U.S. District Court dismissing some or all of these claims as to SCRG.

**TWENTY-FIFTH
DEFENSE**

25. The complaint is barred in whole or in part by the Plaintiffs "coming to" the nuisance.

**TWENTY-SIXTH
DEFENSE**

26. The complaint is barred in whole or in part because Plaintiffs have failed to mitigate their alleged damages.

**TWENTY-SEVENTH
DEFENSE**

27. The complaint is barred in whole or in part due to the defense of privilege, as SCRG is not liable for activities that either or both of DPNR and/or Plaintiffs either permitted, acquiesced in, or knowingly failed to prohibit and/or prevent while having a duty to do so.

**TWENTY-EIGHTH
DEFENSE**

28. The complaint is barred in whole or in part because Plaintiffs seek injunctive and prospective relief for a situation or condition that has been remediated.

**TWENTY-NINTH
DEFENSE**

29. The complaint is barred in whole or in part because it is unclear whether the Complaint seeks pass through damages regarding violation of environmental permits, even though much, if not all, of the conduct alleged to have been done or not done by SCRG is conduct fully authorized and/or required by statute, regulation and/or administrative Orders and directives issued by DPNR and CZM to SCRG regarding its compliance, including but not limited to ceasing and desisting from certain actions related to the remediation of the Red Mud areas at the SCRG property.

THIRTIETH DEFENSE

30. The complaint is barred due to the doctrine of Force Majeure, as certain events were Acts of God.

THIRTY-FIRST DEFENSE

31. The complaint is barred due to the Plaintiffs' spoliation of evidence.

**THIRTY-SECOND
DEFENSE**

32. The complaint is barred in whole or in part because SCRG is an "innocent land owner" within the meaning of 12 V.I.C. § 551 (g), and is not liable for damages under some or all the claims pursuant to 12 V.I.C. § 555(c)(1).

THIRTY-THIRD DEFENSE

33. The complaint is barred in whole or in part because any contamination is due to contamination and releases from contiguous properties, including but not limited to, the HOVENSA REFINERY. Consequently, SCRG is not liable for damages for such contamination pursuant to 12 V.I.C. § 555(d).

**THIRTY-FOURTH
DEFENSE**

34. The complaint is barred in whole or in part because the statutory limitation period for the actions in this cause includes no acts by SCRG prior to June 22, 2002 -- as it was not an owner or in any way involved with the property until June 22, 2002. Thus, no equitable or other order which is predicated on prior dates can be entered, nor can damages be allowed.

THIRTY-FIFTH DEFENSE

35. SCRG adopts by reference all affirmative defenses hereafter pled by any other Defendant, to the extent applicable to SCRG.

THIRTY-SIXTH DEFENSE

36. SCRG intends to rely upon all other applicable affirmative defenses as may become apparent during discovery in this action and reserves the right to amend its answer accordingly.

**THIRTY-SEVENTH
DEFENSE**

37. The complaint is barred in whole or in part because Plaintiffs' Complaint does not describe its claims or events with sufficient particularity to allow SCRG to ascertain what other affirmative and other defenses may exist, and SCRG therefore reserves the right to assert any and every other defense that may be available to it under the various statutes, regulations and common law theories that they are alleged to have violated or under which they are alleged to have liability.

Wherefore, SCRG respectfully requests that all of these cases filed by the Plaintiffs within the Red Mud Claims Master Case in the Complex Litigation Division be dismissed with prejudice, along with an award of attorney fees and costs as well as any and all other relief this Court deems appropriate.

Dated: December 30, 2020

/s/ Joel H. Holt
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CERTIFICATE OF RULE 6-1 COMPLIANCE

I hereby certify that the foregoing document complies with the page limitation in Rule 6-1(e).

/s/ Joel H. Holt

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of December, 2020, I filed the foregoing with the Clerk of the Court and caused a true and correct copy of the foregoing to be sent via email, to:

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