SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

FRANCIS ANTOINE, **Plaintiff,** **v.** **HESS OIL VIRGIN ISLANDS CORPORATION; AMERADA HESS CORPORATION; EXXON MOBIL CORPORATION as Successor to EXXON CORPORATION; B.P. AMOCO CORPORATION; GARLOCK, INC.; JOHN CRANE f/k/a JOHN CRANE PACKING COMPANY; LITWIN CORPORATION; UNION PUMP COMPANY; ST. CROIX BASIC INDUSTRIES, INC.; ALLTITE GASKET COMPANY; RUBBER & GASKET COMPANY; CERTAINTEED PRODUCTS CORPORATION; FOSTER WHEELER CORPORATION, and RARITAN SUPPLY COMPANY,** **Defendants.**	**CASE NO. SX-05-CV-508** **CIVIL ACTION FOR DAMAGES** **JURY TRIAL DEMANDED**

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HINDS ROACH, DENISE A., JUDGE

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court *sua sponte* following a review of the case file. For the reasons stated below, the Court finds that, notwithstanding certain errors discussed below, this case was dismissed in 2007 and has not been reopened. Consequently, a motion filed in 2012 will stricken and other papers filed in 2014 (a notice and a motion) will also be stricken, but to be refiled and redocketed in another, related case. Background is provided below to place this opinion and order in context.

BACKGROUND

Francis Antoine filed a complaint in the Superior Court on August 10, 2005, claiming that he had developed mesothelioma from exposure to asbestos and other toxic substances while working at the former oil refinery on St. Croix. Hess Oil Virgin Islands Corporation ("HOVIC") and Amerada Hess Corporation ("Hess") were named as defendants. Hess appeared and answered Mr. Antoine's complaint on September 16, 2005. HOVIC did not. Five days later, on September 21, 2005, Mr. Antoine filed a motion to amend his complaint to add twelve more companies as defendants. That same day, September 21, 2005, Mr. Antoine died. Mr. Antoine's death was not suggested on the record, however, until two months later when his former attorney filed a notice on November 10, 2005.

In the interim, Judge Darryl Dean Donohue, Sr., to whom this case was assigned at the time, granted Mr. Antoine's motion on October 19, 2005. Summons issued for the twelve new defendants, but none appeared. Proof of service was filed only for HOVIC. On November 9, 2005—one day ***before*** Mr. Antoine's former counsel gave notice of his client's death and fifty days ***after*** Mr. Antoine had passed away—Hess (joined by HOVIC in a limited appearance) filed a motion to dismiss. Hess argued that "Plaintiff died on September 21, 2005 from causes unknown to these Defendants. To date, Plaintiff's counsel has failed to move this Court to substitute a personal representative to maintain Mr. Antoine's cause of action." (Defs. Hess & HOVIC's Mot. & Memo. in Supp. of Mot. to Dismiss. 2, filed Nov. 9, 2005 (internal citation omitted).) Because a personal representative had not been substituted, Mr. Antoine's complaint had to be dismissed, Hess argued. Id.

HOVIC took a slightly different stance. Citing the Restatement (Second) of Agency § 120 (1957) and the Restatement (Third) of the Law Governing Lawyers § 31(2)(b) (2000), HOVIC argued that

> the death of the Plaintiff terminated the attorney-client relationship in the instant matter. Mr. Antoine's personal representative has the option of reviving the representation with Mr. Antoine's attorney, Mr. Alkon. However, there is no indication that this action has been taken. After Plaintiff's death, Plaintiff's counsel proceeded to serve the Complaint against Defendant HOVIC. Regardless of Attorney Alkon's knowledge of the Plaintiff's death or his good faith, Plaintiff's attorney lacks authority to act on behalf of Mr. Antoine and cannot proceed to serve HOVIC with process.

Id. at 3-4. HOVIC then asked the court to declare service of process invalid.

The next day, November 10, 2005, former counsel for Mr. Antoine filed notice of Mr. Antoine's death. Proof of his death, whether in the form of an obituary notice or a death certificate, was never filed.

A year and a half later, on March 26, 2007, Judge Donohue granted Hess's motion (and presumably HOVIC's as well). The order noted that, pursuant to Section 78 of Title 5 of the Virgin Islands Code, "a party has . . . two years from death to motion the court to continue the action once a personal representative . . . is appointed for the decedent." (Order 1, entered Mar. 27, 2007.) However, Federal Rule of Civil Procedure 25(a) directs that, "once a [s]uggestion of [d]eath is place[d] upon the record, a personal representative must be substituted as a party within 90 days." Id. Because ninety days had passed since the suggestion of death was filed, the court granted Hess and HOVIC's motion and dismissed Mr.

Antoine's case without prejudice. The Clerk's Office entered the order on March 27, 2007, but did not note on the docket that this case was closed.

Meanwhile, after the suggestion of death had been filed, but before Judge Donohue had dismissed this matter, Alicia Francis, also represented by Thomas Alkon, Esq., filed a petition with the Probate Division of the Superior Court to be appointed personal representative of the Estate of Francis Antoine.[1] The Clerk's Office docketed her petition, filed January 18, 2006, opened a miscellaneous probate matter and assigned it case number SX-06-MP-003 and then forwarded the petition to the Honorable Patricia D. Steele, the judge assigned to the Family Division at that time. Two days later, on January 20, 2006, Judge Steele granted the petition and appointed Ms. Francis the personal representative of Mr. Antoine's estate.

Ms. Francis filed a survival action and a wrongful death action in the Superior Court on behalf of Mr. Antoine's survivors and estate on December 13, 2006. Her complaint was assigned case number SX-06-CV-751 and was also assigned at random to Judge Donohue. Like Mr. Antoine, Ms. Francis sued some of the same companies, namely Hess, HOVIC, Garlock, Inc., John Crane, Union Pump Company, Alltite Gasket Company, and Raritan Supply Company. But she also sued Chicago Bridge & Iron Company, Ltd. ("CBIC") and dropped Foster Wheeler Corporation, ExxonMobil Corporation, B.P. Amoco Corporation, Litwin Corporation, and Certainteed Products Corporation. Four years into the litigation, Ms. Francis filed a motion, on September 10, 2010, in the miscellaneous probate matter to resign as personal representative and to have Alvin Canaii appointed in her place. Judge Steele granted the motion on September 24, 2010 and Mr. Canaii became the personal representative of Mr. Antoine's estate. So far as the Court can tell from its review of the related case files, Mr. Canaii has not filed a motion in the 2006 action to substitute himself as the plaintiff. He just began filing documents with his name listed in the caption.

On July 20, 2012, Mr. Antoine's former counsel filed a motion in this case to request a status conference, a scheduling order, and a trial date. Counsel did not move to reopen or to set aside the March 27, 2007 dismissal order. In fact, the motion stated that it was filed on behalf of "the Personal Representative of the Estate of *Antoine Ettienne* [sic]," not Francis Antoine, and explained that the court's assistance was needed because "[*t*]*his case* was filed *in 2006* and without a [d]iscovery [s]chedule the matter has not moved forward at a satisfactory pace." (Pl.'s Mot. for Status Conf., Req. for Sch. Order, and Trial Date 1, filed July 20, 2012 (emphasis added) (bold font and capitalization omitted).) Although the motion named the wrong estate and the wrong filing year, the caption listed the case number for this case and the parties mirrored the complaint as amended after Judge Donohue had granted Mr. Antoine's September 21, 2005 motion to amend. At least one company, CBIC, was listed on the certificate of service, but was never named as a party in this case.

Two more papers were docketed in this case subsequent to the July 20, 2012 motion. On July 25, 2014, Mr. Canaii filed a notice of service and on August 7, 2014, a motion to add additional survivors. Both papers were captioned *Alvin Canaii, as Personal Representative of the Estate of Francis Antoine, Claimant, v. Hess Oil Virgin Islands Corp. and Hess Corporation, Respondents*, but neglected to include any case number. Consequently, a clerk wrote case number "SX-05-CV-508" on each and then docketed and filed both papers in this case.

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[1] Judicial notice is taken of the related cases filed in the Superior Court. Cf. King v. Appleton, 61 V.I. 339, 348 (2014).

A few months later, in February 2015, Judge Harold W.L. Willocks, as the Administrative Judge for the Superior Court

> caused a miscellaneous civil matter to be opened under the caption *In re: Complex Litigation Cases Pending in the District of St. Croix*, case number SX-15-MC-003. Within this miscellaneous matter, the Administrative Judge began holding hearings with counsel for parties in all complex, mass tort cases pending in the St. Croix Division to discuss options for moving the complex cases forward.

Willie v. Amerada Hess Corp., SX-06-CV-202, __ V.I. __, 2017 V.I. LEXIS 37, *9 (Super. Ct. Feb. 28, 2017). Among other steps taken to address the backlog of complex cases, "the Administrative Judge, with the consent of the undersigned and the approval of the Presiding Judge, decided upon a category of cases in which the plaintiff was an estate or had died while his case was pending in the Superior Court." Id. at *10. Because of the uncertainty as to whether some of the cases were still pending but only technically, in that the Clerk's Office had not closed the case on the Superior Court's electronic docketing system, whereas other cases are still pending, in that one or more claims remain to be resolved, the Administrative Judge, in his Reassignment Order, explained that for any case being reassigned, if

> all claims against all parties (including any counterclaims or third-party claims) have been dismissed, settled, or otherwise resolved by and between all parties, then this [Reassignment] Order **SHALL NOT** operate to reinstate such case(s), but shall instead have internal administrative effect only.

(Order 2, entered Aug. 5, 2015, In re: Complex Cases Pending in St. Croix Dist., SX-15-MC-003.[2]) This case, and the case Ms. Francis filed in 2006, were among the toxic tort / estate plaintiff cases reassigned to the undersigned judge.

The only other action relevant to this case is a response Attorney Alkon filed in the In re: Complex Cases matter. The August 5, 2015 Reassignment Order had given counsel leave to identify additional estate plaintiff cases for possible reassignment. Attorney Alkon responded on September 24, 2015 and listed—among other "active cases" either with an estate as the plaintiff or a motion to substitute a personal representative pending—both this case and the 2006 case Ms. Francis filed. (Resp. 1, filed Sept. 24, 2016, In re: Complex Cases, SX-15-MC-003.) To date, nothing further has been filed in this case. The 2006 action is still pending.

DISCUSSION

A civil action is commenced when a complaint is filed and it ends when a judgment is entered—whether on the pleadings, summarily, by default, on consent, or notwithstanding the verdict—or when the complaint is dismissed—whether voluntarily by notice or by stipulation of the parties, or involuntarily for

[2] Following the Supreme Court's decision in Vanterpool v. Government of the Virgin Islands, 63 V.I. 563 (2015), the Presiding Judge ratified and approved the Administrative Judge's reassignments and further reassigned the estate plaintiff cases to this Court, *nunc pro tunc*. (See Order, entered Oct. 19, 2015, In re: Complex Cases, SX-15-MC-003; copy filed in this case on October 21, 2015.)

lack of subject-matter or personal jurisdiction, for failure to state a claim, or failure to prosecute. At issue in this case was another way that a civil action may end, dismissal following the death of a party.

"At common law, all personal injury, or tort, claims ended, or abated, when the person who was injured died or when the person who caused the injury, the tortfeasor, died." Der Weer v. Hess Oil V.I. Corp., 61 V.I. 87, 98 (Super. Ct. 2014) (citations omitted)). Legislatures "had to 'modify what was considered the harsh and unjust rule of common law' and adopt statutes to declare which claims continued after a person's death." Id. at 101 (quoting Moyer v. Phillips, 341 A.2d 441, 442-43 (Pa. 1975)); accord Phillips Petro Co. v. Davis, 174 P.2d 135, 141 (Okla. 1942) ("The inconvenience resulting from the defect in the common-law system of remedies on the death of a party has led to adoption of statutes by the territorial and state Legislatures providing that an action shall not abate on the death of a party where a cause of action survives, or that specified actions or actions for specified causes shall not abate." (citation omitted)). Like the States and other Territories, Virgin Islands law now provides that "[n]o action shall abate by the death . . . of a party . . . if the cause of action survives or continues. In case of the death . . . of a party, the court may at any time within two years . . . on motion, allow the action to be continued by or against his personal representatives." 5 V.I.C. § 78.

In moving to dismiss Mr. Antoine's complaint for failure to substitute a personal representative, Hess was mistaken, as to the law and the facts. Federal Rule of Civil Procedure 25(a) does not (and did not) apply in the Superior Court pursuant to Superior Court Rule 7. See Sweeney v. Ombres, 60 V.I. 438, 443 (2014) (per curiam) ("[I]t is the two-year limitations period in section 78 of title 5 of the Virgin Islands Code, and not the 90-day period in Federal Rule of Civil Procedure 25, that governs substitution of deceased parties in Superior Court proceedings." (footnote omitted) (citing Hodge v. McGowan, 50 V.I. 296, 307-08 (2008) (per curiam)). But even if Rule 25 did apply, ninety days had not yet passed when Hess moved to dismiss Mr. Antoine's complaint. Mr. Antoine died on September 21, 2005. Hess filed its motion on November 9, 2010. Only fifty days had passed, not ninety. Hess's motion was premature.

Hess's motion also came a day before Mr. Antoine's former attorney filed a suggestion of death on the record. Courts in other jurisdictions are divided over whether the former attorney for a deceased client may file the suggestion of death since at common law death terminated the attorney-client relationship.[3] Hess and HOVIC took contradictory positions on this point, arguing on the one hand that

[3] Compare Rende v. Kay, 415 F.2d 983, 985-86 (D.C. Cir. 1969) ("Although the attorney for the defendant was retained to represent the deceased as his counsel, he is not a person who could be made a party, and is not a representative of the deceased party in the sense contemplated by Rule 25(a) (1)." (quotation marks omitted)), and Hoffman v. Cohen, 538 A.2d 1096, 1100 (Del. 1988) ("[T]he suggestion of death by Cohen's attorney was a nullity and ineffective to trigger the ninety-day provision in Rule 25."), with Stoddard v. Smith, 27 P.3d 546, 549 (Utah 2001) ("The express language of rule 25 is silent about who may file a suggestion of death. The rule simply says that once death is suggested upon the record by service of a statement of the fact of death, a motion for substitution must be made within ninety days or the action will be dismissed as to the deceased party. Contrary to the way many federal courts have interpreted their rule 25, our rule 25's language allowing a motion for substitution to be filed by a party or the successors or representatives of the deceased party does not prescribe or limit persons who may file a suggestion of death. We decline to adopt the federal courts' interpretation, and instead hold that the suggestion of death may be filed by the deceased defendant's law firm." (quotation marks and internal

Attorney Alkon failed to timely move to substitute a personal representative for Mr. Antoine and on the other that he lacked any authority to take action in this case. Courts in the Virgin Islands have not considered yet whether Section 78 of Title 5 of the Virgin Islands Code requires that a suggestion of death be placed on record and if so, who can file it and on whom must it be served.[4] Some courts have held that the time to file a motion to substitute does not begin to run until a suggestion of death, or at least a motion to substitute, has been served on the deceased party's representative or successor because courts only have power, or jurisdiction, over the parties to a case. [5] The personal representative or successor must be made a party first before the court acquires jurisdiction over a nonparty.

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citation omitted)). See also Phillips Petro Co., 147 P.2d at 140 ("The general rule is that an action does not abate by the mere fact of the death of a party. There must be a suggestion of death to the court to effect an abatement. (citation omitted)). But see Hoffman, 538 A.2d at 1101 n.4 ("A suggestion of death upon the record is not a prerequisite to a motion for substitution.").

[4] In Hodge, the Supreme Court of the Virgin Islands referenced a suggestion of death on the record, but only in passing and mostly in discussing the posture of the case. See 50 V.I. at 307 ("Miller argues that the trial court erred in dismissing Hodge's claims for failure to prosecute. The record indicates that Hodge died on August 26, 1996, no suggestion of death was filed on her behalf until February 9, 2007, more than ten years after her death."). Hodge did not hold that a suggestion of death was required under Section 78 of Title 5, nor did it adopt the requirement as a rule of procedure for Virgin Islands courts.

[5] See, e.g., Grandbouche v. Lovell, 913 F.2d 835, 836 (10th Cir. 1990) ("The running of the ninety-day limitations period under Rule 25(a)(1) is not triggered unless a formal suggestion of death is made on the record, regardless of whether the parties have knowledge of a party's death. . . . Further, a suggestion of death must be served in accordance with Rule 25(a)(1). . . . [T]he service required by Rule 25(a)(1) on nonparties, specifically the successors or representatives of the deceased party's estate, must be service pursuant to Fed. R. Civ. P. 4." (citations and paragraph break omitted)); Penney v. Speake, 54 So. 2d 709, 712-13 (Ala. 1951) ("The manner of obtaining jurisdiction of the personal representative of a deceased defendant is to cite him to appear. . . . This citation, called a *scire facias* prior to the Code . . . . It must . . . contain the essential qualities of a writ . . . . These essential qualities are, that it must be signed and tested by the clerk, and directed to the sheriff. It must describe the court properly, have proper parties and contain a proper cause of action." (citations and quotation marks omitted)); Cf. Mikkelborg, Broz, Wells & Fryer v. Bean, 985 P.2d 950, 951-52 (Wash. Ct. App. 1999) (service of motion to substitute on personal representative of defendant sufficient though statute requires service by summons). But cf. Ripple v. Wold, 580 N.W. 625, 626 (S.D.1998) ("No personal service was made on a duly authorized personal representative of Maurine H. Ripple, deceased, however, and therefore, the ninety-day limitation period of SDCL 15-6-25(a)(1) was never invoked as to her estate." (footnoted omitted)); see also id. at 626 n.2 ("Personal service of the suggestion of death on the representative achieves a salutary litigation function. It alerts the nonparty to the consequences of death for a pending suit, signaling the need for action to preserve the claim if so desired. In addition to insuring that the decedent's representative has notice of the litigation, a supplemental reason for rejecting service on decedent's attorney alone is based on the law of agency. Because the attorney's power to act ceases with the client's death, counsel has no power to continue or terminate an action on behalf of a dead client." (quotation, paragraph break, and citations omitted)).

Nevertheless, even though Hess filed its motion too soon and was mistaken as to what rule applied, it is inescapable that this case was closed in 2007 when the court dismissed Mr. Antoine's complaint without prejudice. To be sure, the March 27, 2007 Order was also in error because it cited Section 78 of Title 5 but then applied Federal Rule 25. Presumably the court concluded that the filing of the suggestion of death per Rule 25(a) shorted the two-year deadline under Section 78 for moving to substitute a personal representative. If so, that might not have been correct. Cf. Sweeney, 60 V.I. at 443. But more importantly, two years had not passed yet when the March 27, 2007 order issued, whether counted from September 21, 2005 when Mr. Antoine died, from November 9, 2005 when Hess moved to dismiss, or from November 10, 2005 when Mr. Antoine's former attorney filed the suggestion of death. But the remedy was to appeal, not to continue filing papers in the case as if it were still pending. See, e.g., Lowe v. Letsinger, 772 F.2d 308, 311 (7th Cir. 1985) ("Should a judge err through inadvertence or otherwise, a party's remedy is through appellate processes." (citing Pierson v. Ray, 386 U.S. 547, 554 (1967)); cf. Miss. Comm'n on Judicial Performance v. Martin, 921 So.2d 1258, 1265 (Miss. 2005) ("We are required on a regular basis to reverse cases, where scholarly, well-intended judges err in applying the correct law."); In re: Comm'n on Judicial Tenure & Discipline, 916 A.2d 746, 754 (R.I. 2007) ("To safeguard the independence of our judiciary, we take this opportunity to recognize that at times judges err; whether with respect to substantive law, procedural issues, or abuses of discretion, judges make legal mistakes.").

Mr. Antoine died in 2005. This case was dismissed in 2007. Yet, former counsel for Mr. Antoine continues to file papers in this case. The Court acknowledges that the 2014 filings—the July 25, 2014 notice and the August 7, 2014 motion—appear to have been docketed in this case by mistake, but only because counsel failed to include a case number on both papers.[6] Since Alvin Canaii is listed in the caption and was allowed to substitute for Alicia Francis (albeit in the miscellaneous probate matter), the Court concludes that the 2014 filings were docketed in the wrong case. But the July 20, 2012 motion for a status conference was meant to be filed in this case. The caption lists the number of this case and all of the defendants who were added after Judge Donohue granted Mr. Antoine's September 21, 2005 motion to amend his complaint.

The general rule, with exceptions not relevant here, is that motions, notices, and other papers

[6] The only civil action pending in the Jury Trial Division with Mr. Antoine as a plaintiff is this case. Alicia Francis is still listed as the plaintiff in the 2006 action, but not on behalf of, or in addition to, the Estate of Francis Antoine. Having reviewed a number of estate plaintiff cases, the Court takes judicial notice that the practice in the Clerk's Office in the St. Croix District has not been to add the estate as a party plaintiff on the Superior Court's electronic docketing system, even though the estate is technically the plaintiff or the defendant in a survival action. Cf. Island Tile & Marble, LLC v. Bertrand, 57 V.I. 596, 620 (2012) ("But it is the Estate, and not Mrs. Bertrand, that is the plaintiff in this case."). Perhaps if the Estate of Francis Antoine had been added a party to the 2006 action, the 2014 filings would have been docketed in that case. However, because Alvin Canaii did not file a motion for leave to substitute himself in place of Ms. Francis in the 2006 action (only in the 2006 miscellaneous probate matter), technically, no civil action is pending in the Jury Trial Division with Mr. Canaii as the plaintiff. Presumably, the Clerk's Office concluded that the papers Mr. Canaii filed in 2014 were intended for this case. The Court appreciates the efforts of the Clerk's Office in assisting the attorneys, but the better course, where the case number is missing and the caption appears to not correspond to a pending case, may be to reject the paper or to contact the attorney or the party who filed it to determine what case the paper should be docketed in.

cannot be filed in closed cases unless a motion to reopen is filed and granted first. See, e.g., Vizant Techs, LLC v. Whitchurch, No. 16-1824, 2016 U.S. App. LEXIS 23570, *3 (3d Cir. Oct. 27, 2016) ("[M]otions can not be filed in a closed case and that a case must be reopened by order of the court before any motions can be filed."); Ziadeh v. United States, Civ. No. 3:06-CV-386, 2014 U.S. Dist. LEXIS 2645, *8 (E.D. Va. Jan. 9, 2014) ("A litigant may not simply file a motion in a closed case seeking relief years after the case was closed."); Allred v. United States, 2:08-CV-245, 2010 U.S. Dist. LEXIS 47285, *1 (D. Utah May 13, 2010) ("An amended complaint cannot be filed in a closed case, nor can parties be joined in a closed case. The court therefore denies Allred's motion to amend."). Whether through mistake or inadvertence, former counsel for Mr. Antoine is mistaken in believing that this case is still pending. Perhaps an argument could have been made—if any of the other defendants had appeared in this case or if proof of service had been filed—that March 27, 2007 Order only dismissed Hess and HOVIC, since they were the only parties who filed the November 9, 2005 motion to dismiss. Yet, a year and a half passed after Hess filed its motion and before Judge Donohue granted it and none of the other defendants appeared, proof of service was not filed, and no one substituted in place of Mr. Antoine to continue this case. Notwithstanding unresolved questions whether a suggestion of death is or should be or required under Virgin Islands law, when the two-year statutory deadline for substitution of a personal representative begins to run, and what authority if any, an attorney retains following the death of her or his client, cf. In re: Alumina Dust Claims, SX-09-MC-031, 2017 V.I. LEXIS 2, *29 n.11 (Super. Ct. Jan. 10, 2017)—the Superior Court had jurisdiction over this case in 2005 when Mr. Antoine filed his complaint and Judge Donohue had the authority in 2007 to issue the dismissal order. Because the Clerk's Office never closed this case after that order was entered, it has remained open as if it were still pending. It is not.

The time to appeal or to seek reconsideration of the March 27, 2007 has passed. A motion to reopen this case was never filed. Consequently, all of the documents filed after the March 27, 2007 Order must be stricken. Cf. Der Weer v. Hess Oil V.I. Corp., 64 V.I. 107, 127 (Super. Ct. 2016) ("[A] pleading or paper placed on file without right to file it, may, on motion, be stricken from the files; and the court may, *sua sponte*, order such pleading or paper stricken from the files. The court has control of its files and its records, and the object of an order striking pleadings or papers from the files is simply to disencumber the files and the records of the court of papers that are in themselves improper and objectionable, or that are improperly placed on file." (citation and ellipsis omitted)).

For the reasons stated, it is hereby

ORDERED that the Motion for a Status Conference and a Request for a Scheduling Order and the Setting of a Trial Date, filed July 20, 2012 purportedly by Francis Antoine, deceased, is **STRICKEN**. It is further

ORDERED that the Notice of Service, filed July 25, 2014, and the Motion to Add Two Survivors Pursuant to Rule 15(b) and 15(c) of the Federal Rules [of] Civil Procedure, filed August 7, 2014 by Alvin Canaii, as personal representative of the Estate of Francis Antoine, are **STRICKEN**; however, the Clerk shall redocket and refile both papers in case number SX-06-CV-751, *nunc pro tunc*. It is further

ORDERED that the Clerk shall serve a copy of this Memorandum Opinion and Order on counsel of record and then **CLOSE** this case as per the Order entered March 27, 2007.

DONE AND SO ORDERED this 10 day of March, 2017.

DENISE A. HINDS ROACH, JUDGE

ATTEST:
Estrella H. George
Clerk of the Court

By:
Court Clerk Supervisor 3/10/17