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

IN RE: KELVIN MANBODH ASBESTOS LITIGATION SERIES	**ASBESTOS DOCKET**
	MASTER DOCKET NO. 324/1997
KELVIN MANBODH,	
Plaintiff,	**CIVIL NOS. 324/1997 514/1997 16/1998 44/1998**
vs.	
HESS OIL VIRGIN ISLANDS CORPORATION; AMERADA HESS CORPORATION; BORINQUEN INSULATION COMPANY, INC.; RAYTHEON ENGINEERS & CONSTRUCTORS, INC., individually and as successor in interests to LITWIN CORPORATION and LITWIN PAN-AMERICAN CORPORATION; OWENS-CORNING FIBERGLASS CORPORATION; RARITAN SUPPLY COMPANY; individually and as successor in interests to BRIDGE SUPPLY COMPANY; UNION PUMP COMPANY; PITTSBURGH CORNING CORPORATION, individually and as successor to UNARCO INDUSTRIES; MADSEN & HOWELL, INC.; GARLOCK, INC.; GAF CORPORATION, individually and as successor to RUBEROID; FLEXITALLIC GASKET COMPANY; ARMSTRONG WORLD INDUSTRIES; CERTAINTEED PRODUCTS CORPORATION; FOSTER WHEELER CORPORATION, individually and as successor in interests to FORTY-EIGHT INSULATIONS, INC.; 3M a/k/a MINNESOTA MINING & MANUFACTURING COMPANY; WESTINGHOUSE ELECTRICAL CORPORATION; ELLIOT COMPANY, a division of CARRIER; RIGGERS AND ERECTORS INTERNATIONAL, INC.; VIRGIN ISLANDS INDUSTRIAL MAINTENANCE CORPORATION; DRESSER INDUSTRIES, individually and as successor in interests to PACIFIC PUMP, INC.; and SHELL OIL CORPORATION;	**ACTION FOR DAMAGES** **DOCUMENT NO.** 1920
Defendants.	
HESS OIL VIRGIN ISLANDS CORPORATION,	
Third Party Plaintiff,	
vs.	
DRESSER INDUSTRIES, INC., individually and as successor in interests to HARBISON-WALKER	

REFRACTORIES CO.; HARBISON-WALKER)
REFRACTORIES CO.; LOCKHEED MARTIN)
CORPORATION, individually and as successor in)
interests to MARTIN MARIETTA CORPORATION,)
MARTIN MARIETTA ALUMINUM INC. and MARTIN)
MARIETTA ALUMINUM PROPERTIES, INC.;)
MARTIN MARIETTA CORPORATION, individually)
and as successors in interests to MARTIN MARIETTA)
ALUMINUM, INC. and MARTIN MARIETTA)
ALUMINUM PROPERTIES, INC.; MARTIN)
MARIETTA MATERIALS, INC., individually and as)
successor in interests to MARTIN MARIETTA)
CORPORATION, MARTIN MARIETTA ALUMINUM,)
INC. and MARTIN MARIETTA ALUMINUM)
PROPERTIES, INC.; GENERAL ENGINEERING)
CORPORATION FLUOR DANIEL, individually and as)
successor in interests to FLUOR ENGINEERS AND)
CONSTRUCTORS, INC.; FLUOR ENGINEERS AND)
CONSTRUCTORS, INC.; FLUOR CORPORATION;)
A.P. GREEN INDUSTRIES, INC., individually and as)
successor in interests to A.P. GREEN REFRACTORIES)
COMPANY; TUTHILL CORPORATION, individually)
and as successor in interests to COPPUS MURRAY)
GROUP and/or CORPUS TURBINES; ALLTITE)
GASKET COMPANY; JOHN CRANE f/k/a CRANE)
PACKING COMPANY; RUBBER AND GASKET)
COMPANY OF P.R.; AUSTIN INDUSTRIAL, INC. f/k/a)
TECHNICAL MAINTENANCE, INC., AUSTIN TMI,)
INC. and/or AUSTIN INDUSTRIES; KELLOGG)
BROWN & ROOT, a Halluburton Company, individually)
and as successor in interests to BROWN & ROOT)
OVERSEAS, INC.; CBI SERVICES, INC.;)
COMMUNICATIONS SYSTEMS & MAINTENANCE)
CORPORATION; STANDBY POWER SUPPLIES, INC.;)
COMMUNICATIONS SYSTEMS & MAINTENANCE)
CORPORATION; STANDBY POWER SUPPLIES, INC.;)
A.T.I.M.A.; D&M ELECTRIC INC.;)
INSTRUMENTATION & ELECTRICAL SYSTEMS)
SERVICES THE LUMMUS COMPANY; PETROCHEM)
MAINTENANCE & CONSTRUCTION ("PMC"), a)
division of BEACON ELECTRONICS, INC.; REED,)
WIBBLE & BROWN, INC.; ST. CROIX COMPRESSION)
AND ROTATING EQUIPMENT SERVICES, INC.;)
WESTERN INDUSTRIAL PIPING; COMBUSTION)
ENGINEERING, INC.; BORN INC. f/k/a BORN)
ENGINEERING COMPANY; ALFRED CONHAGEN,)
INC.; SAINT-GOBAIN ADVANCED CERAMICS, as)
successor in interests to CARBORUNDUM)
CORPORATION; INDUSTRIAL HOLDINGS)
CORPORATION; CONTROL ASSOCIATES; THE)
DARCOID COMPANY, INC. a/k/a DARCOID RUBBER)
COMPANY; GERARD PACKING & BELTING)
CORPORATION; INSULATION DISTRIBUTORS)
CORPORATION; ISLAND SUPPLY COMPANY;)
LAMONS GASKET COMPANY; RESAL,)

INCORPORATED; GENERAL WELDING WORKS,)
INC., PARSONS CORPORATION, as successor in)
interests to THE RALPH M. PARSONS COMPANY;)
STERLING PACKING & GASKET DIVISION;)
STANDCO INDUSTRIES, INC.; STRAHMAN VALVES,)
INC., CON-RAD, a division of U.S. INDUSTRIES;)
WESTERN SUPPLY COMPANY; INDUSTRIAL)
FABRICATING CO.; P.H. SALES INCORPORATED)
a/k/a JOHN ZINK COMPANY, LLC; POWER PIPE)
AND SUPPLY COMPANY, INCORPORATED; WANER)
CORPORATION; GENERAL ELECTRIC COMPANY;)
STATE INSULATION CORPORATION,)
)
Third Party Defendants.)
)

This Memorandum Opinion is specifically applicable to the following:

FRANCIS LAURENCIN AND MONIQUE LAURENCIN
vs.
HESS OIL VIRGIN ISLANDS CORPORATION, et. al
CIVIL NO. 514/1997

FOSTER JOBITY and JOSSLYN JOBITY
vs.
HESS OIL VIRGIN ISLANDS CORPORATION, et al
CIVIL NO. 16/1998

PERCIVAL DANIEL AND PHYLLIS DANIEL
vs.
HESS OIL VIRGIN ISLANDS CORPORATION, et. al
CIVIL NO. 44/1998

MEMORANDUM OPINION

(October 16, 2002)

THIS MATTER comes before the Court on the Joint Motion of Universal Oil Products Company ("UOP") and Born Inc. ("Born") asking this Court to sever the third party complaints from the trial of the main action. For the reasons more fully set forth below, this Court will grant UOP and Born's Motion to Sever.

FACTUAL BACKGROUND

In May 1997, this lawsuit was filed on behalf of Plaintiff Kelvin Manbodh against Hess Oil Virgin Islands Corporation ("HOVIC"), Litwin Corporation, Litwin Pan-American

Corporation ("Litwin") and some twenty-three other defendants. Discovery in this main action has been ongoing for more than four years, including depositions and substantial document production.

Litwin and HOVIC filed motions seeking leave to file third party complaints in October and November 2001, respectively. In all, some 61 additional companies were brought into this litigation as third party defendants.

On June 4, 2002, UOP and Litwin filed a Motion to Sever the Third Party Complaint from the main action citing complication of the trial and the inadequate amount of time for discovery. Litwin subsequently filed an Opposition to the Motion to Sever, and OUP and Born have filed a reply to Litwin's Opposition.

APPLICATION OF LAW

This Court may sever the third party actions based on notions of convenience and prevention of prejudice pursuant to Federal Rule of Civil Procedure 42(b).[1] This Court has inherent power to "control the disposition of cases on its docket with economy of time and effort for itself, *for counsel* and for litigants . *Landis v. North Am. Co.*, 299 U.S. 248, 254, 57 S.Ct. 163, 165-66, 81 L.Ed. 153 (1936)(emphasis added). Rule 42(b) "supplement[s] this power and entrust[s] the decision of whether issues should be separated for trial to the discretion of the trial court." *United States v. Kramer*, 770 F.Supp. 954, 957 (D.N.J. 1991)(citations omitted).

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[1] Federal Rule of Civil Procedure 42(b) reads:

> Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third- party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States.

Fed. R. Civ. P. 42(b).

A. Complication and Delay of Trial.

This Court has broad discretion to sever the Third party Complaint when the addition of several defendants would work to delay and complicate the main action and foster jury confusion. *See Shockley v. Hoechst Celanese Corp.*, 132 F.R.D. 429 (D.S.C. 1990).

In *Shockley*, the original action was a relatively simple case with relatively few defendants. The *Shockley* court felt the addition of 26 more third party defendants and issues of contribution would unduly prolong and complicate the trial. *See id.* at 432 - 433.

In *Kramer*, the primary defendants filed third party claims against more than 500 third party defendants seeking contribution. *See Kramer*, 770 F.Supp. 954 at 956. The third party defendants moved to sever the third party claims pursuant to Federal Rule of Civil Procedure 42(b). *See id.* at 957.

The court in *Kramer* ruled in favor of severance largely because it felt the "third party contribution claims would unduly complicate and overburden any trial of the primary suit." *Id.* at 959.

The third party contribution claims in the instant case pose the same danger to the trial of the main action. The original action still involves some ten original defendants. The addition of more than sixty third party defendants would produce substantial delay. Furthermore, the issues to be tried in the main action - personal injury due to asbestos exposure - are complex enough themselves. Trying wholly dissimilar claims of contribution and indemnification in the same trial would most certainly cause complication and jury confusion.

Accordingly, the joint Motion to Sever must be granted.

B. Adequate Time for Discovery.

This Court is also concerned with the time in which the Third Party Defendants have to prepare their defense. The first trial of the main action is scheduled to commence November 4, 2002. The original complaint against HOVIC, Litwin and approximately twenty-three other defendants in the instant case was first filed in 1997. The Third Party Complaints against some 68 third party defendants were not filed until November, 2001, or later.

Pursuant to this Court's Case Management Order II, one week of each month is reserved for taking depositions. UOP and Litwin state that, by the time the third party defendants were brought into this case, all of these weeks were committed for depositions by the original parties. (UOP and Born Response, at 5). UOP and Born further claim that document requests propounded to Litwin remain unanswered.

Perhaps the most telling evidence of the amount of time needed in this case is that HOVIC and Litwin have moved this Court for an adjournment of the November 4, 2002 trial date. "While the parties have perticipated in extensive discovery to ready this matter for trial, pre-trial discovery is not complete and cannot be completed by November 4, 2002, despite everyone's best efforts." (HOVIC Motion to Adjourn at 5).

Regardless of how this Court rules on HOVIC's Motion to Adjourn, the issue of adequate time for discovery is apparent. If more than four years of discovery is insufficient as to the main action, certainly half as much time is insufficient to prepare the third party actions.

Severance of the Third Party Complaint from the main action is necessary in order for UOP and Born to participate in the general discovery process, conduct its own specific discovery and investigation and prepare an adequate defense.

Accordingly, the joint Motion to Sever must be granted.

CONCLUSION

The joint Motion to Sever is based on the time constraints involved in preparing its defense for trial. UOP and Born claim they cannot adequately participate in the discovery process and prepare a defense by the November 4, 2002 trial date. This Court agrees.

Furthermore, the addition of the third party defendants and the third party claims to the main action would unnecessarily prolong and complicate this trial.

Therefore, pursuant to Federal Rule of Civil Procedure 42(b), and in the interest of efficiency and convenience, this Court grants Universal Oil Products Company and Born Inc.'s joint Motion to Sever.

MARIA M. CABRET
Presiding Judge

ATTEST:
DENISE D. ABRAMSEN
Clerk of the Court
By:
Clerk
Dated: 10/17/02