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

ESTATE OF JOSEPH HENRY by LUCY MICHEAU as EXECUTRIX; and MARTIN EMMANUEL, Plaintiffs, v. HESS OIL VIRGIN ISLANDS CORP. (HOVIC); HOVENSA, LLC; AMERADA HESS CORP.; LITWIN CORP., individually and as successor in interest to Litwin Pan-American Corp.; RIGGERS and ERECTORS INTERNATIONAL, INC.; RARITAN SUPPLY CO., individually and as successor in interest to Bridge Supply Co.; VIRGIN ISLANDS INDUSTRIAL MAINTENANCE CORP.; FLUOR ENGINEERS & CONSTRUCTORS, INC.; 3M a/k/a/ MINNESOTA MINING & MANUFACTURING CO.; A.W. CHESTERTON CO.; CERTAINTEED PRODUCTS CORP.; CRANE CO.; FOSTER WHEELER CORP.; GARLOCK SEALING TECHNOLOGIES, LLC, f/k/a GARLOCK, INC.; GENERAL ELECTRIC CORP.; INGERSOLL RAND CORP.; JOHN CRANE CO.; UNION CARBIDE CORP.; YARWAY CORP.; and JOHN DOE DEFENDANTS, Defendants.	CIVIL NO. 609/2004 ACTION FOR DAMAGES JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER is before the Court on a motion by Defendants HOVIC, Hovensa, LLC, and Amerada Hess Corporation (collectively "Defendants") for disqualification of Attorney Lee

Rohn, counsel to Plaintiffs Joseph Henry and Martin Emmanuel. Defendants seek disqualification of Rohn pursuant to Rule 1.9 of the Model Rules of Professional Conduct, contending matters substantially related to the instant matter.

Disqualification of an attorney pursuant to Rule 1.9 is warranted where the following two-prong test is satisfied: (1) the party seeking disqualification is a former client and (2) the subject matter of the present lawsuit is "the same or substantially related" to the matter in which the former client was represented. *See Bluebeard's Castle, Inc. v. Delmar Marketing*, 886 F.Supp. 1204, 1207-09 (D.V.I. 1995); *see also In re Corn Derivatives Anti-Trust Litigation*, 748 F.2d 157, 162 (3rd Cir. 1984); *Brice v. Hess Oil Virgin Islands Corp.*, 769 F.Supp. 193, 195 (D.V.I. 1990). In this matter, it is uncontroverted that Bryant & Associations employed Rohn from 1985 until 1987, during which time Rohn represented HOVIC and Amerada Hess. Thus, the first prong of the Rule 1.9 test requiring the establishment of a prior attorney-client relationship is satisfied. The remaining and key consideration in this case is whether Rohn's representation of HOVIC and Amerada Hess is substantially related to the instant matter so as to meet the second prong of the Rule 1.9 analysis.

In determining whether there is a substantial relationship here, the Court must consider three factors: (1) the nature and scope of the earlier representation; (2) the nature of the present lawsuit; and (3) the possibility that the client might have disclosed confidences during the earlier representation that could be relevant and detrimental to the present action. *See Bluebeard's Castle, Inc.*, 886 F.Supp. at 1209. In this matter, it is further uncontroverted that Rohn defended HOVIC and Amerada Hess in toxic tort cases involving exposure to asbestos at the Hess oil refinery and various negligence claims relating thereto.[1] Similar to Rohn's prior representation, the instant action is a toxic tort case involving exposure to asbestos at the Hess oil refinery and negligence claims of failure to warn, failure to take appropriate safety measures and failure to

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[1] Rohn's prior representation wherein she defended HOVIC and Amerada Hess in toxic tort litigation include but are not limited to the matters of *Joseph v. HOVIC, et al.*, Civil No. 89/1986 (V.I. Super. Ct.) and *Purjet v. HOVIC, et al.*, Civil No. 284/1984 (V.I. Super. Ct.).

provide safety instructions. While Rohn asserts that the present litigation is factually distinct from her prior representation of Defendants HOVIC and Amerada Hess, Rohn fails to support her assertion or otherwise demonstrate any factual distinction, which would make moot her continuing duties to former clients under Rule 1.9.

Furthermore, the present toxic tort case, like the prior representation, involves allegations of exposure to asbestos occurring during the time of and predating Rohn's prior representation. More specifically, Plaintiffs Henry and Emmanuel allege that they were diagnosed with illnesses consistent with a diagnosis of asbestosis, said illnesses resulting from exposure of asbestos during their employment at the Hess oil refinery. Plaintiff Henry's employment at the Hess oil refinery extended from 1976 until 1989, and Plaintiff Emmanuel worked at the Hess oil refinery from 1987 until 2002. Accordingly, Plaintiffs allegations of exposure to asbestos predates and encompasses the time period of 1985 until 1987 wherein Rohn defended HOVIC and Amerada Hess. This fact is particularly significant because the present litigation will necessarily call into question the policies, procedures, actions and confidences of Defendants HOVIC and Amerada Hess at the time and predating the time Rohn acted as their counsel in toxic tort actions similar to the instant action.

The provisions of Rule 1.9 are for the protection of former clients, namely to guard former clients from the possibility that confidential information gained through representation will be used against them.[2] In consideration thereof, the Court cannot in good conscious permit Rohn to continue to litigate this matter knowing that she would have been privy to information during her prior representation that will necessarily be at issue in this matter, namely policies, procedures, actions and confidences of Defendants HOVIC and Amerada Hess at the time of Plaintiffs' instant allegations. The premises considered and the Court being otherwise fully advised, it is hereby

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[2] *See Alexander v. HOVIC & Hovensa, LLC*, Civ. No.603/2000, memo. op. (V.I. Super. Ct., September 25, 2001) (wherein the Court disqualified Rohn from litigating a toxic tort action, holding that the subject matter of the case was substantially related to the work Rohn performed for HOVIC in previous litigation.) In addition, Rohn has been disqualified from litigating other similar actions, including *Peter v. HOVIC*, Civil No. 408/1994 (V.I. Super. Ct.).

ORDERED that the Motion to Disqualify Plaintiffs' Counsel is **GRANTED**; it is further

ORDERED that the instant action is stayed for thirty (30) days from the date of this order so that Plaintiffs may retain substitute counsel.

Dated: October 26th, 2005

Edgar D. Ross
Superior Court Judge

ATTEST:
Denise D. Abramsen
Clerk of the Court

By: Chief **Deputy Clerk** 10/26/05

CERTIFIED TO BE A TRUE COPY
THIS 27th day of Oct 20 05
Denise D. Abramsen
CLERK OF THE COURT
By Court Clerk II