

DIVISION OF ST. CROIX

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) ASBESTOS DOCKET
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) MASTER DOCKET NO.: 324/1997

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) CIVIL NO. 324/1997

CIVIL NO. 324/1997

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

ORDER DENYING THIRD-PARTY DEFENDANTS' MOTIONS FOR A MORE DEFINITE STATEMENT

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PROPERTIES, INC.; MARTIN MARIETTA CORPORATION,)
individually and as successor 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.; FLUOR)
DANIEL, individually and as successor in interests to FLUOR)
ENGINEERS AND CONSTRUCTORS, INC.; FLUOR ENGINEERS)
AND CONSTRUCTORS, INC.; FLOUR 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 COPPUS 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 Halliburton)
Company, individually and as successor in interests to BROWN &)
ROOT OVERSEAS, INC.; CBI SERVICES, 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.; 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, as successor in)
interests to CARBORUNDUM 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 P.H. SALES COMPANY; JOHN ZINK COMPANY a/k/a)
JOHN ZINK COMPANY, ZINCLAHOMA, INC.; POWER PIPE)
AND SUPPLY COMPANY, INCORPORATED; WANER)
CORPORATION; 3M a/k/a MINNESOTA MINING &)
MANUFACTURING COMPANY; VIACOM, INC. f/k/a)
WESTINGHOUSE ELECTRIC CORPORATION; STATE)
INSULATION CORPORATION; UNIVERSAL OIL PRODUCTS)
a/k/a UOP; CDI CORPORATION, as successor in interests to CDI)
ENGINEERING SOLUTIONS; CDI ENGINEERING GROUP, CDI)
ENGINEERING, INC., CDI STUBBS OVERBECK, STUBBS)
OVERBECK & ASSOCIATES, INC.; CDI ENGINEERING)

SOLUTIONS, as successor in interests to CDI ENGINEERING)
GROUP, CDI ENGINEERING, INC., CDI STUBBS OVERBECK,)
STUBBS OVERBECK & ASSOCIATES, INC.; CDI ENGINEERING)
GROUP, as successor in interests to CDI ENGINEERING, INC., CDI)
STUBBS OVERBECK, STUBBS OVERBECK & ASSOCIATES,)
INC.; BROWN FINTUBE COMPANY; KOCH ENGINEERING CO.,)
as successor in interests to BROWN FINTUBE COMPANY;)
OHMSTEDE MACHINE WORKS, a/k/a OHMSTEDE, INC.; BROS)
INCORPORATED, a division of AMERICAN HOIST AND)
DERRICK; TEREK AMERICAN CRANE CORPORATION, as)
successor in interests to AMERICAN CRANE CORPORATION and)
AMDURA CORPORATION f/k/a AMERICAN HOIST AND)
DERRICK; AMDURA CORPORATION f/k/a AMERICAN HOIST)
AND DERRICK.)

Third Party Defendants.)
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LITWIN CORPORATION and LITWIN PAN-AMERICAN)
CORPORATION,)

Third Party Plaintiffs,)

UNIVERSAL OIL PRODUCTS COMPANY; CHICAGO BRIDGE)
AND IRON, N.V., individually and as successor in interest to)
CHICAGO BRIDGE AND IRON; BIGELOW LIPTAK; A.P. GREEN)
INDUSTRIES, INC.; PORTILLA CORPORATION; RESCO)
PRODUCTS, INC.; DRESSER INDUSTRIES, INC., individually and)
as successor in interest to HARBISON-WALKER REFRACTORIES)
COMPANY; INSULATION DISTRIBUTORS CORPORATION;)
RESAL INC.; EXXON-MOBIL CORPORATION, as successor in)
interest to MOBIL OIL COMPANY; SHELL OIL COMPANY;)
GENERAL ENGINEERING CORPORATION, individually and as)
successor in interest to REED WIBLE & BROWN, INC.; KATALCO)
CORPORATION; BORN INC. f/k/a BORN ENGINEERING)
COMPANY; PARSONS CORPORATION, as successor in interest to)
the RALPH M. PARSONS COMPANY; ALLTITE GASKET CO.,)
INC., THE DARCOID COMPANY, INC., a/k/a DARCOID RUBBER)
COMPANY; RUBBER AND GASKET COMPANY OF PUERTO)
RICO; AMERICAN CYANIMID COMPANY; SUD-CHEMIE, INC.,)
as successor in interest to UNITED CATALYSTS INCORPORATED;)
CHRIS ANDERSON CONSTRUCTION AND MATERIALS)
COMPANY, as successor in interest to CHRIS ANDERSON)
MATERIALS; CONMACO/RECTOR L.P., as successor in interest to)
CONMACCO; CHILDERS PRODUCTS COMPANY; ONDEO)
NALCO, as successor in interest to NALCO CHEMICAL)
COMPANY; ACME CANVAS AND ROPE COMPANY; A/C PIPE,)
INC., OPTIMIZED PROCESS FURNACES, INC.; STUBBS-)
OVERBECK, INC.; G.C. BROACH COMPANY; JOHN DOES I)
through 4; VIRGIN ISLANDS INDUSTRIAL MANAGEMENT)
CORPORATION;)

Third Party Defendants.)
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MEMORANDUM ORDER

THIS MATTER is before the Court on Third-Party Defendants John Crane, Inc.'s, Tuthill Corporation's, and Rubber & Gasket Co. of Puerto Rico's¹ Motions for a More Definite Statement (Doc. Nos. 1396, 1525, 2086). Third-Party Plaintiff Hess Oil Virgin Islands Corporation (hereinafter "HOVIC") filed oppositions to these motions (Doc. Nos. 1553, 1575, 2094). Rubber and Gasket Co. of Puerto Rico filed a belated reply² to HOVIC's opposition (Doc. No. 2098). Third-Party Defendants Virgin Islands Industrial Management Corporation ("VIIMC") (Doc. No. 1831) and Austin Industrial ("Austin") (Doc. No. 1832) joined Tuthill Corporation's Motion for a More Definite Statement. For the following reasons, we deny each motion for a more definite statement.

The standard of review governing a motion for a more definite pleading in the Superior Court is found in Rule 12(e) of the Federal Rules of Civil Procedure.³ TERR. CT. R. 31. The decision of whether to grant a motion for a more definite statement lies entirely within the discretion of the trial court. *Hobson v. Gov't of the Virgin Islands*, 20 V.I. 413, 417 (Terr. Ct. 1984) (internal reference omitted). This standard is distinct from the one associated with Rule 12(b)(6)⁴ of the Federal Rules of Civil Procedure concerning a motion to dismiss, though the

¹ Rubber and Gasket Co. of Puerto Rico filed its motion under the caption "Rubber and Gasket Co. of Puerto Rico's Motion to Make Court Order of December 19, 2002 Extensive to Rubber & Gasket Co. of Puerto Rico," (Doc. No. 2086), though it is properly treated as a motion for a more definite statement.

² Rubber and Gasket Co. of Puerto Rico filed a Motion for Extension of Time, on February 20, 2003. Although the Court did not rule upon the Motion, Rubber and Gasket Co. of Puerto Rico filed its Reply on March 4, 2003.

³ Federal Rule of Civil Procedure 12(e) provides, in relevant part:

If a pleading to which a responsive pleading is permitted is *so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading*, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired.

FED. R. CIV. P. 12(e) (emphasis added)

⁴ Federal Rule of Civil Procedure 12(b) provides, in relevant part:

vague or ambiguous nature of a pleading may be the basis for granting either and parties often assert prayers for relief in the alternative. 5C CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 1376 (3d ed. 2004). Since Rule 12(e) was amended in 1948 to narrow its scope, courts have been hesitant to grant motions for more definite statements because of the potential for abuse of the rule as a mechanism for receiving discovery before parties are entitled to such information. *Id.* Consequently, seldom is granting a motion for more definite pleading appropriate. Believing that attempts by Third-Party Defendants in this matter are similarly infirm, we deny their requested relief.

A party may file a motion for a more definite statement when necessary to aid in its preparation of an answer. 5C CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 1376. There is nothing in this Complaint that prevents any of the parties from providing “a simple denial as permitted by Rule 8(b), with a pleading that can be interposed in good faith or without prejudice to [the litigant],” as has already been done by several Third-Party Defendants to HOVIC’s Complaint, including Third-Party Defendant Tuthill Corporation.⁵ *Id.* In arriving at this decision, this Court is mindful that there is some assurance of the legitimacy of the Complaint provided for by Territorial Court Rule 29, through which Federal Rule 11 applies, because the attorney filing the pleading is required to affirm through signature his or her good faith. FED. R. CIV. P. 11.

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion...(6) failure to state a claim upon which relief can be granted...

FED. R. CIV. P. 12(b). A motion to dismiss should only be granted where plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Fleming ex rel. Fleming v. Whirlpool Corp.*, 301 F.Supp.2d 411, 414 (D.V.I. App. Div. 2004).

⁵ There are numerous answers filed in the docket from Third-Party and Cross-Claim Defendants to HOVIC’s Complaint. See e.g., Doc. Nos. 1504-1507, 1539, 1542, 1599, 1811, 1872, 1889, and 2060.

To this end, none of parties before the court satisfy the stringent requirements for the grant of a motion for a more definite statement. In John Crane, Inc.'s Motion, it claims that HOVIC's failure to differentiate between the numerous third-party defendants with respect to specific acts/omissions, dangerous conditions at the HOVIC refinery, contracts, purchase orders, the existence of warranties, the breaches of warranties and the manners of the alleged breaches with respect to Count I, makes this pleading susceptible to attack. John Crane, Inc. further suggests that Count II suffers from similar infirmities, asserting that HOVIC's purported statement of legal conclusions in lieu of facts, against the backdrop of nearly forty (40) years of course of dealing, is wholly unacceptable. Finally, John Crane, Inc. takes umbrage with Counts III, IV, and V of HOVIC's Third-Party Complaint, focusing on the unexplained exclusion of a limited pool of third-party defendants from these counts and the failure to attach as exhibits documents evidencing alleged agreements or insurance policies.

Tuthill Corporation also suggests that the Complaint is impermissibly vague so as to prevent the framing of meaningful answers and affirmative defenses because of HOVIC's failure to identify specific contracts, purchase orders, or their terms including, parties, dates, products supplied, materials installed and warranties made with respect to Counts I and II.⁶ Yet Tuthill Corporation filed answers to HOVIC's Complaint shortly after filing this Motion, without further comment. Such action suggests that HOVIC's Complaint was not vague enough to warrant Tuthill's requested relief.

Finally, in Rubber and Gasket Co. of Puerto Rico's Motion, it seeks to extend the ruling of this Court, granting then Cross-Claim Defendant Ingersoll Rand Company's Motion for a

⁶ Tuthill's Motion for More Definite Statement only concerns Counts I and II. It was not named in Counts III, VI, or V in HOVIC's original Third-Party Complaint, though they have been subsequently added to Counts III and IV. This Court anticipates that it would make similar arguments regarding the additional counts.

More Definite Statement (Doc. No. 2071), to its dispute with HOVIC. This Motion suffers from several shortcomings. The Order granting Ingersoll Rand Company's Motion applied only to the HOVIC's Cross-Claim, specifically Count III (Contractual Indemnification), not HOVIC's Third-Party Complaint. In addition, whereas HOVIC's original Cross-Claim did not contain the specific language of the indemnification agreement nor the dates such language was purportedly included in those agreements, Count III of both HOVIC's Third-Amended Third-Party Complaint and Cross-Claim now do. HOVIC has effectively complied with the limited ruling of this Court, with respect to its Cross-Complaint and gone further, with respect to Third-Party Complaint. To extend the ruling to Rubber and Gasket at this time would be an exercise in futility.⁷

Although broad, the allegations of HOVIC's Third-Party Complaint with respect to third-party defendants are not impermissibly vague. A general complaint will likely, to HOVIC's detriment, beget a general answer. There is no need to extend the pleadings period any further. HOVIC has already amended its Third-Party Complaint on three (3) occasions without substantially addressing many of the concerns embodied in these Motions for More Definite Statement. Forcing HOVIC to amend its pleading at this time will not achieve any measure of expediency or clarity that could not be accomplished through the website discovery mechanism already mandated for use in Case Management Order No. 3 (Doc. No. 2136) and this Court's Order of October 4, 2004 (Doc. No. 2429).⁸ Should information become available that raises a

⁷ Given this disposition, this Court need not rule on whether the Rubber and Gasket Co. of Puerto Rico's Motion was procedurally improper.

⁸ The same holds true for the Order relating to HOVIC's Third Amended Cross-Claim (Doc. No. 2431). Although this Motion specifically concerns HOVIC's Third Party Complaint, HOVIC's Cross-Claim would be subject to the same analysis. Therefore, Cross-Claim Defendants shall be entitled to the same relief discussed herein.

potential affirmative defense not previously known to be available to a third-party defendant due HOVIC's broad allegations, that party may file an amended answer reflecting such new findings.

The above decision notwithstanding, HOVIC, however, is not free disregard the specific details sought and defects complained of in these motions for more definite statement. Such information shall be provided to third-party and cross-claim defendants, though not necessarily in the complaint. Due to the large volume of information and complex nature of this proceeding, this Court favors the use of electronic databases over a paper amendment to the pleadings as a means of addressing such concerns. HOVIC shall explain the nature of its relationship with Third-Party Defendants/Cross-Claim Defendants, as a basis for liability, through the website, by including the following, but not be limited to: (1) copies of specific contracts/purchase orders/warranties/insurance policies or if not available, information identifying dates, terms, products supplied, materials installed, facilities and other facts necessary to clarify the extent of the association; (2) facts supporting HOVIC's claim of specific breaches of agreements and the dates obligations to individual plaintiffs arose; (3) facts showing what share of the obligation should have been paid by each of the parties with respect to Count I of HOVIC's Third-Party Complaint and Cross-Claim, (4) facts establishing that the defendant paid no part of the obligation or if some payment was made, or that the payment was less than the defendant's pro-rata share with respect to Count I; (5) facts demonstrating that if a settlement was made, it was reasonable and in good faith, with respect to Count I; and (6) facts identifying the existence of a demand for indemnity, its purported refusal and the accompanying dates of such events, with respect to Counts II, III, IV, and V.

The Court having considered the pleadings and being advised in the premises, it is hereby

ORDERED that John Crane, Inc.'s Motion for a More Definite Statement, concerning HOVIC's original Third-Party Complaint is DENIED; it is further

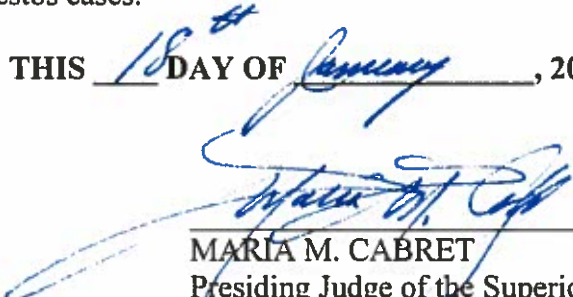
ORDERED that Tuthill Corporation's Motion for a More Definite Statement, joined by VIIMC and Austin, concerning HOVIC's original third-party complaint is DENIED; it is further

ORDERED that Rubber and Gasket Co. of Puerto Rico's Motion to Make Court Order of December 19, 2002 Extensive to Rubber & Gasket Co. of Puerto Rico (Doc. No. 2086), essentially a motion for more definite statement concerning HOVIC's original third party complaint, is DENIED; it is finally

ORDERED that Rubber and Gasket Co. of Puerto Rico's Motion for Extension of Time (Doc. No. 2096) is DENIED as moot, since this Court is denying Rubber & Gasket Co. of Puerto Rico's underlying motion.

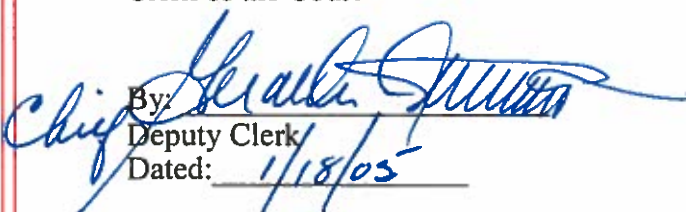
ORDERED that copies of this Order are to be directed to Attorneys for Plaintiffs, and all defense attorneys in these asbestos cases.

IT IS SO ORDERED THIS 18th DAY OF January, 2005.



MARIA M. CABRET
Presiding Judge of the Superior
Court of the Virgin Islands

ATTEST:
Denise Abramsen
Clerk of the Court


By: _____
Deputy Clerk
Dated: 1/18/05