

FOR OFFICIAL PUBLICATION

SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

HENRY GEORGE and AGATHA GEORGE,

Plaintiffs,

v.

HESS OIL VIRGIN ISLANDS CORPORATION; AMERADA
HESS CORPORATION; BORINQUEN INSULATION
COMPANY, INC.; LITWIN CORPORATION; LITWIN PAN-
AMERICAN CORPORATION; OWENS-CORNING
FIBERGLASS CORPORATION; RARITAN SUPPLY
COMPANY, individually and as successor-in-interest to
BRIDGE SUPPLY COMPANY; UNION PUMP COMPANY;
PITTSBURGH CORNING CORPORATION, individually
and as successor-in-interest to UNARCO INDUSTRIES;
MADSEN & HOWELL, INC.; GARLOCK, INC.; GAF
CORPORATION, individually and as successor-in-
interest to RUBEROID; FLEXITALLIC GASKET
COPMANY; ARMSTRONG WORLD INDUSTRIES;
CERTAINTED PRODUCTS CORPORATION; FOSTER
WHEELER CORPORATION, individually and as
successor-in-interest to FORTY-EIGHT INSULATIONS,
INC.; 3M a/k/a MINNESOTA MINING &
MANUFACTURING COMPANY; WESTINGHOUSE
ELECTRIC CORPORATION; INGEROLL RAND
COMRPORATION; ELLIOTT COMPANY, a division of
CARRIER; RIGGERS & ERECTORS INTERNATIONAL, INC.;
VIRGIN ISLAND INDUSTRIAL MAINTENANCE
CORPORATION; DRESSER INDUSTRIES, INC.; PACIFIC
VALVES; and SHELL OIL CORPORATION,

Defendants.

HESS OIL VIRGIN ISLANDS CORPORATION,

Third-Party Plaintiff,

v.

DRESSER INDUSTRIES, INC., individually and as
successor-in-interests to HARBISON WALKER

CASE NO. SX-98-CV-199

COMPLEX LITIGATION
DIVISION

JURY TRIAL DEMANDED

* * *

Coordinated Under: *In re:*
Kelvin Manbodh Asbestos
Litigation Series, Master Case
No. SX-97-CV-324

REFRATORIES CO.; HARBISON WALKER)
REFRATORIES 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)
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.; FLUOR)
CORPORATION; TUTHILL CORPORATION individually)
and as successor-in-interests to COPPUS MURRAY)
GROUP and/or individually and as successor-in-)
interests to COPPUS TURBINES; ALLTITE GASKET)
COMPANY; JOHN CRANE f/k/a CRANE PACKING)
COMPANY; RUBBER & GASKET COMPANY OF PUERTO)
RICO; 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.; INSTRUMENTATION &)
ELECTRICAL SYSTEMS SERVICES; THE LUMMUS)
COMPANY; ST. CROIX COMPRESSION AND ROTATING)
EQUIPMENT SERVICES, INC.; BORN INC. f/k/a BORN)
ENGINEERING COMPANY; ALFRED CONHAGEN, INC.;)
SAINT-GOBAIN ADVANCED CERAMICS, 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; RESAL,)
INC.; PARSONS CORPORATION, as successor-in-)
interests to THE RALPH M. PARSONS COMPANY;)
STERLING PACKING & GASKET DIVISION; STANDCO)
INDUSTRIES, INC.; STRAHAM VALVES, INC.; CON-RAD, a)
division of U.S. INDUSTRIES; P.H. SALES Inc. a/k/a P.H.)

SALES COMPANY; JOHN ZINK COMPANY a/k/a JOHN)
ZINK COMPANY LLC; ZINCLAHOMA, INC.; 3M PUERTO)
RICO, INC.; VIACOM, INC. f/k/a WESTINGHOUSE)
ELECTRIC 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 and STUBBS OVERBECK &)
ASSOCIATES, INC.; CDI ENGINEERING SOLUTIONS, as)
successor-in interests to CDI ENGINEERING GROUP, CDI)
ENGINEERING, INC., CDI STUBBS OVERBECK and)
STUBBS OVERBECK & ASSOCIATES, INC.; CDI)
ENGINEERING GROUP, as successor-in-interests to CDI)
ENGINEERING, INC., CDI STUBBS OVERBECK and)
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 INC., a division of AMERICAN HOIST AND)
DERRICK CORPORATION; AMDURA CORPORATION)
f/k/a AMERICAN HOIST AND DERRICK CORPORATION;)
TEREK AMERICAN CRANE CORPORATION, as successor-)
in-interests to AMERICAN CRANE CORPORATION AND)
AMDURA CORPORATION f/k/a AMERICAN HOIST AND)
DERRICK; ELLIOTT TURBO MACHINERY COMPANY,)
INC.; and CARRIER CORPORATION,)

Third-Party Defendants.)

LITWIN CORPORATION,)

Third-Party Plaintiff,)

v.)

UNIVERSAL OIL PRODUCTS COMPANY; CHICAGO)
BRIDGE & IRON, N.V.; PORTILLA CORPORATION; RESCO)
PRODUCTS, INC.; RESAL, INC.; EXXON MOBIL)
CORPORATION, as successor-in-interest to MOBIL OIL)
CORPORATION; BORN INC. f/k/a BORN ENGINEERING)
COMPANY; PARSONS COMPANY; DARCOID COMPANY;)
RUBBER & GASKET COMPANY OF PUERTO RICO;)
AMERICAN CYANAMID; ONDEO NALCO, as successor-in-)

interest to NALCO CHEMICAL COMPANY; OPTIMIZED)
PROCESS FURNACES, INC.; CDI CORPORATION, as)
successor-in-interest to STUBBS-OVERBECK, INC.; and)
G.C. BROACH COMPANY,)
)
Third-Party Defendants.)
)
)
MADSEN & HOWELL, INC.,)
)
Third-Party Plaintiff,)
)
v.)
)
PARKER-HANNIFIN CORPORATION,)
)
Third-Party Defendant.)
)
)

Cite as: 2019 VI Super 150

Appearances:

THOMAS ALKON, ESQ.

Law Office of Thomas Alkon, P.C.
Christiansted, VI 00822
For Henry and Agatha George

CARL A. BECKSTEDT, III, ESQ.

Beckstedt & Associates
Christiansted, VI 00820
For Hess Oil Virgin Islands Corporation and Amerada Hess Corporation

CAROLYN F. O'CONNOR, ESQ. (pro hac vice)

Wilson Elser Moskowitz Edelman & Dicker
Newark, N.J. 07102
For Hess Oil Virgin Islands Corporation and Amerada Hess Corporation

W. MARK WILCZYNSKI, ESQ.

Law Office of W. Mark Wilczynski, P.C.
St. Thomas, VI 00804
*For Litwin Corporation, Litwin Pan-American Corporation, Ohmstede, Ltd., Madsen & Howell, Inc.,
and John Crane*

JAMES L. HYMES, III, ESQ.

Law Office of James L. Hymes, P.C.
St. Thomas, VI 00802

For Litwin Corporation, Litwin Pan-American Corporation, St. Gobain Advanced Ceramic, Foster Wheeler Corporation, and Viacom, Inc. f/k/a Westinghouse Electric Corporation

RICHARD H. HUNTER, ESQ.

Hunter & Cole
Christiansted, VI 00820

For Born, Inc., Childers Products Company, Universal Oil Products Company, Elliott Company, Inc., Tuthill Corporation, CertainTeed Products Corporation, Raritan Supply Company, Optimized Process Furnaces, Inc., and Strahman Valves

MICHAEL J. SANFORD, ESQ.

RYAN STUTZMAN, ESQ.

Sandford Amerling & Associates
Christiansted, VI 00822

For Garlock, Inc., Union Pump Company, Virgin Islands Industrial Maintenance Corporation, Riggers & Erectors International, Inc., P.H. Sales, Inc., Austin Industrial, Inc., Austin TMI, Inc., and Resal, Inc.

DOUGLAS L. CAPDEVILLE, ESQ.

Law Offices of Douglas Capdeville, P.C.
Christiansted, VI 00822

For Alltite Gasket Company, Control Associates, G.C. Broach Company, and Owens Corning Fiberglass Corporation

DONNA L. HARVEY, ESQ. (pro hac vice)

Harvey Law, LLC
Oviedo, FL 32765

For Owens Corning Fiberglass Corporation

KEVIN A. RAMES, ESQ.

SEMAJ I. JOHNSON, ESQ.

Law Office of Kevin A. Rames, P.C.
Christiansted, VI 00822

For Exxon Mobil Corporation and Shell Oil Company

MATTHEW A. ROSSI, ESQ. (pro hac vice)

Mayer Brown LLP
Washington, DC 20006
For Shell Oil Corporation

BERNARD C. PATTIE, ESQ.

Law Offices of Bernard C. Pattie, P.C.

Christiansted, VI 00820

For CDI Corporation, CDI Engineering Group, CDI Engineering Solutions, Stubbs Overbeck & Associates, American Cyanamid Company, Brown Fintube Company, Koch Engineering Co., John Zink Company, and Zinklahoma, Inc.

GERALD J. PETROS, ESQ. (*pro hac vice*)

Hinkley, Allen & Snyder LLP

Providence, RI 02903

For American Cyanamid Company

JOHN H. BENHAM, ESQ.

Law Office of John H. Benham, P.C.

St. Thomas, VI 00801

For Borinquen Insulation Company, Fluor Engineers & Constructors, Inc., Fluor Corporation, Darcoid Company, Amdura Corporation, Sterling Packing & Gasket Division, Standco Industries, Inc., Ingersoll-Rand Company, Nalco Company, and Resco Products, Inc.

SUSAN J. COLE, ESQ. (*pro hac vice*)

Bice Cole Law Finn

Coral Gables, FL 33134

For Darcoid Company, Gerard Packing & Belting Corporation, and Resco Products, Inc.

SHARON L. CAFFREY, ESQ. (*pro hac vice*)

Duane Morris LLP

Philadelphia, PA 19103

For Borinquen Insulation Company

SIMONE R.D. FRANCIS, ESQ.

Ogletree, Deakins, Nash, Smoak & Stewart, LLC

St. Thomas. VI 00802

For 3M, Lockheed Martin Corporation, Martin Marietta Corporation, Martin Marietta Materials, 3M Puerto Rico, and Süd-Chemie, Inc.

EUGENIO W.A. GÉIGEL-SIMOUNET, ESQ.

GS Law Offices P.C.

Gallows Bay, VI 00824

For Rubber & Gasket Co. of P.R.

CAROL G. HURST, ESQ.

Carol G. Hurst. P.C.

St. Thomas, VI 00802

For Bigelow-Liptak Corporation

MARK D. HODGE, ESQ.

Hodge & Hodge

St. Thomas, VI 00802

For CBI Services, Inc., Chicago Bridge & Iron, N. V., and Parsons Infrastructure & Technology Group

EDWARD JACOBS, ESQ.

Jacobs Law & Mediation Center

Christiansted, VI 00820

For St. Croix Compressor & Rotating Equipment Services

LUIS E. DUBON, III, ESQ.

Cancio, Nadal, Rivera, Diaz & Berrios

San Juan, PR 00936

For Portilla Corporation

ANDREW C. SIMPSON, ESQ.

Law Office of Andrew C. Simpson, P.C.

Christiansted, V.I. 00820

For Parker-Hannifin Corporation

MEMORANDUM OPINION

MOLLOY, Judge.

¶1 **THIS MATTER** is before the Court *sua sponte* following a review of the file. For the reasons given below, all pleadings and other papers filed after March 6, 1998 along with all orders entered after the same date must be stricken and this case administratively closed. The Plaintiffs, Henry and Agatha George (hereinafter “Plaintiffs” or “the Georges”), voluntarily dismissed their claims on March 6, 1998, before any defendant served an answer or filed a motion for summary judgment. This action terminated immediately and neither the Court nor the parties could undo it. *See Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 611 (2012) (“[I]f a plaintiff effectuates an unconditional voluntary dismissal pursuant to Federal Rules 41(a)(1)(A)(i) or (ii), the action terminates immediately upon filing the appropriate notice with the Clerk of the Superior Court, and neither the judge nor the plaintiff will possess the ability to undo the dismissal.”) Everything that has occurred subsequently in this case, or in the master case pertaining to this case, was a nullity, including the

third-party complaints and crossclaims filed by Hess Oil Virgin Islands Corporation ("HOVIC"), Litwin Corporation ("Litwin"), and Madsen & Howell, Inc. ("M&H"), all of which must be dismissed.

I. DISCUSSION

¶2 On January 29, 1998, the Georges filed a complaint in the then-Territorial Court of the Virgin Islands related to Mr. George's alleged exposure to asbestos during the time when he worked at the St. Croix oil refinery operated then by Hess Oil Virgin Islands Corporation ("HOVIC"). Mrs. George claimed loss of consortium. Together, they named approximately twenty companies as defendants and sued for damages. HOVIC and Litwin Corporation ("Litwin") were among the companies named as defendants. The Clerk's Office opened a new case and assigned it at random to the docket of the Honorable Edgar D. Ross.

¶3 A little over a month after the Plaintiffs commenced this action, but before any Defendant had appeared, the Plaintiffs, on March 6, 1998, filed a notice of dismissal, which states the following:

NOW COME the plaintiffs in the above-captioned action, by and through their counsel, and hereby enter this **NOTICE OF DISMISAL** without prejudice pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure. No adverse party has filed an answer or a motion for summary judgment. As a result, this action is hereby **DISMISSED WITHOUT PREJUDICE**.

Although no appearances have been made by counsel for the Defendants listed in the caption of this Complaint, Plaintiffs' counsel has served the attorneys commonly known to represent these Defendants in other related actions. (See attached Certificate of Service).

(Pls.' Notice of Dismissal. 2, filed Mar. 6, 1998.) The certificate of service reflects hand-delivery of the Notice on the following attorneys: Richard H. Hunter, Esq., Richard E. Daley, II, Esq., George H. Logan, Esq., James L. Hymes, III, Esq., Britain H. Bryant, Esq., Felice M. Quigley, Esq., Kevin A. Rames, Esq., Michael J. Sanford, Esq., and Douglas L. Capdeville, Esq.; and delivery by mail to J. Bruce Welch, Esq., Matthew J. Duensing, Esq., John H. Benham, Esq., John R. Coon, Esq., C. Michael Evert, Jr., Esq., Donna L. Harvey, Esq., and W. Mark Wilczynski, Esq.

¶4 Despite having been served with the notice of dismissal, Garlock, Inc. nonetheless answered on March 25, 1998, followed by Litwin and Litwin Pan-American Corporation (hereinafter "Litwin Pan-Am") on April 1, 1998; by Westinghouse Electric Corporation (hereinafter "Westinghouse") and Owens-Corning Fiberglass Corporation on April 23, 1998; by Ingersoll-Rand Company on April 24,

1998; by Union Pump Company (hereinafter "Union Pump") on April 27, 1998; by Shell Oil Company (hereinafter "Shell") on April 28, 1998; by Borinquen Insulation Company, Inc. (hereinafter "Borinquen") on April 30, 1998; by Raritan Supply Company on May 7, 1998; and by Virgin Islands Industrial Maintenance Corporation (hereinafter "IMC"), and Riggers and Erectors International, Inc. on May 22, 1998 (hereinafter "Riggers & Erectors"). Additionally, between March 11, 1998 and February 2, 2001, counsel for the Georges filed proof of service on several defendants.

¶5 In the interim, several defendants jointly noticed the Court, on June 30, 1998, that they had served a master set of interrogatories and a master request for documents on the Plaintiffs' counsel on June 26, 1998. Then, on April 24, 2001, the Court (Cabret, P.J.) issued an order, entered *nunc pro tunc* to June 22, 2000, to manage several hundred cases under a master case and docket, *In re: Kelvin Manbodh Asbestos Litigation Series*, 324/1997. The roster of cases attached to the Case Management Order No. 2, which was submitted to the Court as a proposed order, included this case among all the cases grouped together for pre-trial coordination.

¶6 Litigation continued in this case and the in other individual cases primarily under the master case, with various motions, stipulations, and orders pertaining to this case occurring in the master case. A third case management order, dated September 15, 2003, entered September 16, 2003, set deadlines for settling defendants to amend their answers to assert crossclaims or implead third-parties. Litwin and HOVIC both asserted crossclaims against several co-Defendants and impleaded many other companies as third-party defendants. But their crossclaims and third-party complaints were not initially filed in in this case, but in the four cases initially selected for trial.

¶7 Nothing further occurred in this specific case until 2014, when the Court (Willocks, J.) issued the following order on January 22, 2014, entered April 14, 2014:

THIS MATTER is before the Court *sua sponte* upon review of the file. Plaintiff Henry George filed this action in 1998 against twenty-nine Defendants, alleging personal injury from exposure to asbestos and asbestos-containing products. Agatha George also joined in her husband's lawsuit, filing a claim for loss of consortium. On March 6, 1998, Plaintiffs filed a notice of voluntary dismissal without prejudice as to all Defendants, pursuant to Federal Rule of Civil Procedure 41(a)(1)(i). That notice of voluntary dismissal terminated this case as to all Defendants and was effective immediately upon filing. *See generally Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 609-11 (2012). Nonetheless, the parties and the Court have since proceeded as if this matter remains open.

For example, [certain] Defendants . . . appeared and filed Answers to Plaintiffs' Complaint after Plaintiffs purportedly served notice of voluntary dismissal. Additionally, the Court, in its April 24, 2001 Case Management Order No. 2 (Doc. # 1102), [grouped] this matter for discovery purposes along with more than two hundred other cases under the *In re: Kelvin Manbodh Asbestos Litigation* [Series] master [case and] docket. Moreover, despite having voluntarily dismissed this case on March 6, 1998, Plaintiffs purportedly entered into settlement agreements with certain Defendants, later filing stipulated dismissals which were granted by the Court. For example, Mr. & Mrs. George's claims were purportedly dismissed with prejudice as to Defendant 3M in an August 18, 1999 Order, Defendant Raritan Supply Company in a September 27, 1999 Order, Defendant Union Pump Company in a June 22, 2000 Order, Defendant Garlock, Inc. in a September 13, 2000 Order, and Defendant Westinghouse Electric Corporation in a January 15, 2003 Order[, all issued in the *Manbodh* master case].

Given the number of individual cases . . . [grouped] under the *Manbodh* docket as well as the volume of pleadings, motions, and other documents filed in all of the . . . cases, the Court acknowledges the possibility that the parties either overlooked the March 6, 1998 dismissal or perhaps intended to have it withdrawn. Accordingly, it is hereby

ORDERED that **within twenty-eight (28) days** from the date of entry of this Order the parties shall inform the Court as to the status of this individual case. It is further

ORDERED that a copy of this Order be served upon Plaintiffs' counsel as well as all counsels of record who have appeared in the *Manbodh* cases.

(Order 1-3, entered Apr. 14, 2014 (parenthetical citations to the record omitted).)

¶8 HOVIC and Amerada Hess Corporation ("Hess") responded to the January 22, 2014 Order two days after it was entered:

The individual file for this 1998 case cannot be presently located. No Answer for Hess or HOVIC was filed in the individual case.

There is, however, a settlement agreement dated January 16, 2003, which as has been located, in which this lawsuit was settled. . . .

Pursuant to that Settlement Agreement executed by . . . [HOVIC, Hess, St. Croix Petrochemical Corporation, Fisher-Hess Construction Company, Inc., HOVENSA, L.L.C., Litwin, Litwin Pan-Am, Riggers & Erectors, and Borinquen and the Georges], the Plaintiff and Plaintiff's spouse were paid a confidential sum certain. Plaintiffs' case had been [grouped under] . . . *In re: Kelvin Manbodh Asbestos Litigation Series*, Master Docket No. 324/1997, and Plaintiffs were paid.

(Def's. Hess & HOVIC's Resp. to Ct. Order dated Jan. 26 [sic], 2014 at 1, filed Apr. 16, 2014.)

¶9 Counsel for Garlock, Union Pump, Riggers & Erectors, and IMC also responded. In his June 25, 2014 response, counsel explained that "Sanford Amerling & Associates reports that it has no records for any actions taken by it on behalf of . . . any named defendants . . . for which companies the firm has appeared in other toxic tort cases." (Rep't of Counsel 1, filed June 25, 2014.) None of the other parties responded.

¶10 Notwithstanding the concerns the April 14, 2014 Order raised, the Georges filed a stipulation with Litwin and Litwin Pan-Am on January 26, 2017, to dismiss their claims with prejudice because "they have been amicably resolved." (Jt. Mot. to Dismiss 1, filed Jan. 26, 2017.) Westinghouse also filed notice on February 9, 2017, stating that it had "settled with the Plaintiffs, Henry and Agatha George, but [wa]s still a Third-Party Defendant for contractual indemnity brought against it by Hovic [sic] in this case." (Def. Westinghouse's Not. 1, filed Feb. 9, 2017.) And on April 9, 2018, Litwin and Bigelow-Liptak Corporation filed a joint motion to dismiss Litwin's third-party claims with prejudice. Litwin and HOVIC were allowed to file one third-party complaint each within the *Manbodh* master case but relating to all the individual cases grouped under the master case, presumably including this case.

¶11 Then, on April 12, 2018, the Court (Willocks, J.) issued an order in *Manbodh*, which resolved several motions pertaining to the third-party litigation. Litwin's and HOVIC's crossclaims and third-party claims were severed and they were ordered to refile their third-party claims and crossclaims in each Plaintiff's case. In an October 17, 2019 Memorandum Opinion, the Court explained its decision to "sever[] the third-party claims of Litwin and HOVIC and all crossclaims asserted as third-party claims and order[] them both to refile their cross- and third-party claims within each Plaintiff's individual case." *In re: Kelvin Manbodh Asbestos Litig. Series*, 69 V.I. 394, 404 (Super. Ct. 2018). The Court explained that it was "compelled" to set aside certain prior orders that had deemed the third-party complaints and crossclaims HOVIC and Litwin filed in four cases "'applicable to all cases listed on Exhibit A of Case Management Order No. 3 . . .'" *Id.* at 448. The reason why was because "[c]rossclaims and third-party claims must 'arise out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action.'" *Id.* at 445 (brackets and emphasis

omitted) (quoting Fed. R. Civ. P. 13(g) (2003 ed.)). “[B]ecause the circumstances giving rise to each Plaintiff’s action are different,” *id.* at 448, the Court concluded that Litwin and HOVIC had to re-plead their third-party claims and their crossclaims separately within each Plaintiff’s case.

¶12 In another Opinion, dated September 18, 2018, issued in furtherance of another order entered April 12, 2018, the Court (Willocks, J.) explained the basis for its decision to grant M&H an extension of time to serve its fourth-party complaint. *See generally In re: Kelvin Manbodh Asbestos Litig. Series, SX-97-CV-324, et seq.*, 2018 V.I. LEXIS 96 (V.I. Super. Ct. Sep. 19, 2018). But the Court expressly limited leave to “the *Manbodh, Laurencin, Daniel, and Jobity* cases only.” *Id.* at *21. *Manbodh, Laurencin, Daniel, and Jobity* were the first four cases selected for trial.

¶13 In response to the April 12, 2018 order, Litwin filed its Crossclaims and its Second Amended Third-Party Complaint in this case on August 17, 2018. M&H filed a Third-Party Complaint on October 5, 2018. And HOVIC filed a Restated Third Amended Third-Party Complaint in this case on October 9, 2018. Several co-Defendants and Third-Party Defendants responded by filing notices, motions, and answers, including IMC, Resal, and Austin Industrial, Inc., all of whom answered the third-party complaints and counterclaimed. Additionally, M&H filed a motion on October 11, 2018 in the *Manbodh* master case, requesting leave to file a third-party complaint in over 200 individual cases, including this case, which M&H opposed on November 2, 2018.¹

II. DISCUSSION

¶14 The two persons who commenced this action for damages, Mr. and Mrs. George, opted to voluntarily dismiss their claims against all Defendants on March 6, 1998. Because none of the Defendants had answered or moved for summary judgment, this case terminated when the notice of dismissal was filed, and no amount of paper filed afterward could keep it open because “[f]iling of the notice of dismissal automatically terminates the suit and itself closes the file.” *Bertrand*, 57 V.I. at 610 (citation omitted); *accord Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 394 (1990) (“Rule 41(a) permits a plaintiff to dismiss an action without prejudice only when he files a notice of dismissal before the defendant files an answer or motion for summary judgment and only if the plaintiff has never previously dismissed an action ‘based on or including the same claim.’ Once the

¹ The Presiding Judge of the Superior Court designated this case as complex, transferred it to the Complex Litigation Division, and reassigned it to the undersigned judicial officer by order dated January 10, 2019, entered February 15, 2019.

defendant has filed a summary judgment motion or answer, the plaintiff may dismiss the action only by stipulation, or by order of the court, 'upon such terms and conditions as the court deems proper.'" (citations omitted)).

¶15 "Rule 41(a)(1) as it was drafted simplifies the court's task by telling it whether a suit has reached the point of no return. If the defendant has served either an answer or a summary judgment motion it has; if the defendant has served neither, it has not." *Manze v. State Farm Ins. Co.*, 817 F.2d 1062, 1065 (3d Cir. 1987) (quoting *Winterland Concessions Co. v. Smith*, 706 F.2d 793, 795 (7th Cir. 1983)). Accordingly, "should the question arise, whether an answer or motion for summary judgment has in fact been filed prior to the filing of a notice of dismissal," *Bertrand*, 57 V.I. at 610 (citation omitted), the Superior Court may make that determination. *Id.* But beyond resolving ancillary issues, "[a]ny further action or order by the court [after a voluntary dismissal is filed] is neither necessary nor of any effect." *Id.* (citation omitted). See *Yearwood Enters., Inc. v. Antilles Gas Corp.*, 69 V.I. 863, 870 (2018) ("[T]he Superior Court is not divested of jurisdiction to consider a motion for attorneys' fees and costs simply because that motion is filed after, rather than before, a plaintiff files a notice of dismissal . . .").

¶16 Here, none of the defendants answered or moved for summary judgment *before* March 6, 1998, when the notice of dismissal was filed. In fact, all the answers and other filings came *afterward*. However, many cases grouped under the *Manbodh* master case were originally filed by multiple plaintiffs. See generally *Alexander v. HOVIC*, 323/1997 *et seq.*, 1998 V.I. LEXIS 36, *2 (V.I. Terr. Ct. Jan. 23, 1998) ("This matter concerns 235 plaintiffs filing a total of 13 cases against 30 defendants."). All but the first-named plaintiff in each case were dropped and ordered to refile individually. See *id.* For this reason, the Court examined the complaint at issue in *Alexander* to see if the Georges were named as plaintiffs. If they had been, their March 6, 1998 notice of dismissal would not have been self-executing, because many defendants had answered before the *Alexander* order issued. But the Georges were not among those ordered to refile individually. And now ancillary issues were raised in this case either. Ancillary issues would not keep a case open, however. Cf. *Yearwood Enters.*, 69 V.I. at 869 ("[M]otions for costs or attorney's fees are independent proceedings supplemental to the original proceeding and not a request for a modification of the original decree,' and so 'even years after the entry of a judgment on the merits' a federal court could

consider an award of counsel fees.” (quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990)). But it might explain why the parties continued to file in this case. It does not. Instead, the Georges effected an unconditional voluntary dismissal on March 6, 1998, which everyone, including the Clerk’s Office, has ignored. This Court cannot.

¶17 The April 14, 2014 Order questioned whether “the parties either overlooked the March 6, 1998 dismissal or perhaps intended to have it withdrawn.” (Order 3.) Only Hess, HOVIC, Garlock, Union Pump, Riggers & Erectors, and IMC responded. But in their response, neither Hess nor HOVIC expressed any concern that they settled with the Georges in 2003 – **four years after** the Georges voluntarily dismissed their claims. And rather than respond as ordered, Litwin, Litwin Pan-Am, and the Georges instead filed a joint motion, on January 26, 2017, to dismiss the same claims that were dismissed **eighteen years earlier**. Similarly, once Litwin filed its Second Amended Third-Party Complaint, IMC did not move to strike, citing the March 6, 1998 notice and the April 14, 2014 Order. Instead, IMC counterclaimed against Litwin. M&H to proceed to file a third-party complaint in this case,² even though its October 11, 2018 motion remains still pending.

¶18 Just as “[n]o amount of time can render a void judgment valid,” *Ernest v. Morris*, 64 V.I. 627, 539 (2016), no amount of paper can keep a closed case open. Moreover, “motions, notices, and other papers cannot be field in closed cases unless a motion to reopen is filed and granted first.” *Antoine v. Hess Oil V.I. Corp.*, SX-05-CV-508, 2017 V.I. LEXIS 44, *14 (V.I. Super. Ct. Mar. 10, 2017). And defendants cannot file crossclaims or third-party complaints in closed cases. *See Antoine*, 2017 V.I. LEXIS 44 at *14 (“An amended complaint cannot be filed in a closed case, nor can parties be joined in a closed case.” (citation omitted)); *accord Pemberton v. Patton*, 757 F. App’x 689, 691-92 (10th Cir. 2018) (“Before amending a complaint after its dismissal, a plaintiff must first successfully move to reopen his case under Rule 59(e) or Rule 60(b). Plaintiff has failed to do so here. Nor can he proceed on his other motions in a closed case. Thus, as the district court advised, he may file a new complaint (and any subsequent motions) only by opening a new case with the appropriate filing fee.” (citations omitted)); *Muldoon v. C. J. Muldoon & Sons Corp.*, No. 12-P-1222, 2013 WL 1953758, *1 (Mass. Ct. App. May 14, 2013) (“There is no merit to the plaintiff’s appeal, as an amended

² Although M&H moved for leave to file a fourth-party complaint, it filed a third-party complaint once leave was granted. *Cf. In re Kelvin Manbodh Asbestos Litig. Series*, 2018 V.I. LEXIS 96, at *9 (“M&H did not explain the delay or why it filed a Fourth-Party Complaint when it had requested, and the Court had granted, leave to file a third-party complaint.”).

complaint cannot be filed in a closed case.”): *In re: Marriage of Mersman*, 2015 Iowa App. LEXIS 715, *16 (Iowa Ct. App. Aug. 5, 2015) (“Even if we quibble with the district court’s terminology that there is no right to intervene in a ‘closed case,’ the sentiment is a correct statement of the law.”); *State v. Fidler*, No. 15-1648, 2016 Iowa App. LEXIS 499, *2 (Iowa Ct. App. May 11, 2016) (“Fidler’s filing of post-trial motions years later in a closed case does not revive the time to appeal from the final judgment and create appellate jurisdiction where it otherwise would not exist.”).

¶19 The Court notes that the Georges may have voluntarily dismissed this case because the joined with twenty-nine others to file a complaint in the District Court of the Virgin Islands on February 2, 1998, against many of the same companies including Hess, Litwin, Litwin Pan-Am, and M&H. That case, *Victor Emanuel, et al. v. Amerada Hess Corp., et al.*, 1:98-cv-00010 (D.V.I.), was eventually transferred to the United States District Court for the Eastern District of Pennsylvania by the United States Judicial Panel on Multidistrict Litigation.³ Thomas H. Hart, III, Esq. and James A. Meaney, Esq., both pf the law firm of Alkon Rhea & Hart, were counsel for the *Manbodh* plaintiffs as well as the District Court plaintiffs. Faced with having to refile more than 100 individual complaints in the Territorial Court in response to the *Alexander* order, and new cases in the District Court of the Virgin Islands, it is possible that counsel inadvertently filed the Georges’ case in the wrong forum.

¶20 But whatever reason the Georges’ had for dismissing this case, it closed twenty-one years ago, which begs the question, who is driving this litigation? It is not the Georges. They settled long ago, and their remaining claims were dismissed by the United States District Court for the Eastern District of Pennsylvania on October 29, 2009, for failure to prosecute. The Court does acknowledge that the bulk of the litigation in this case involving the Georges, mostly stipulations for dismissal and orders approving them, occurred in the *Manbodh* master case. But that only contributed to the confusion because a master case is just a mechanism for coordinating cases. The Georges had no claims to dismiss in *Manbodh*. The claims they asserted were assigned case number 199/1998 and voluntarily dismissed shortly after the Clerk’s Office opened their case.

¶21 The parties were served with the March 6, 1998 notice and reminded of it on April 14, 2014. No one explained why litigation continued in a closed case. No one moved to reopen. *Contra*

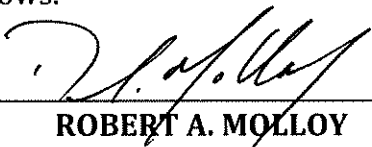
³ Cf. *Cianci v. Chaput*, 64 V.I. 682, 690 n.2 (2016) (courts may take judicial notice of PACER documents).

Bertrand, 57 V.I. at 611. Although the Clerk's Office accepted these recent pleadings – as well as all the answers, motions, and stipulations filed after March 6, 1998, the Court has no option but to dismiss the crossclaims and the third-party claims and strike all papers filed after the notice of dismissal. *Cf. Bertrand*, 57 V.I. at 611 (“[T]he action terminates immediately . . . and neither the judge nor the plaintiff will possess the ability to undo the dismissal.”). This case passed the point of no return twenty-one years ago. *Manze*, 817 F.2d at 1065.

III. CONCLUSION

¶22 For the reasons stated above, the Court concludes that this case closed on March 6, 1998 when the Plaintiffs effected an unconditional notice of dismissal. None of the defendants had answered or moved for summary judgment. Accordingly, the third-party complaints and crossclaims filed in 2018 must be dismissed, and all papers filed after March 6, 1998 stricken. *Accord Antoine*, 2017 V.I. LEXIS 44 at *16. An appropriate order follows.

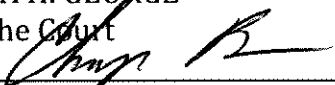
Date: October 24, 2019



ROBERT A. MOLLOY
Judge of the Superior Court

ATTEST:

ESTRELLA H. GEORGE
Clerk of the Court

By: 

Court Clerk

Dated: 10/24/2019