

SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

IN RE: KELVIN MANBODH ASBESTOS LITIGATION SERIES.¹

MASTER CASE NO.
SX-97-CV-324

KELVIN MANBODH,
FRANCIS AND MONIQUE LAURENCIN,
FOSTER AND JOSSLYN JOBITY,
PERCIVAL AND PHYLLIS DANIEL,

PLAINTIFFS,

V.

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 FIBERGLAS 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 ELECTRIC CORPORATION; INGERSOLL RAND CORPORATION; ELLIOTT COMPANY, A DIVISION OF CARRIER; RIGGERS AND ERECTORS INTERNATIONAL, INC.; VIRGIN ISLANDS INDUSTRIAL MAINTENANCE CORPORATION; DRESSER INDUSTRIES, INC., INDIVIDUALLY AND AS SUCCESSOR IN INTERESTS TO PACIFIC PUMP, INC.; AND SHELL OIL CORPORATION,

DEFENDANTS.

CASE NOS.
SX-97-CV-785²
SX-97-CV-514
SX-98-CV-016
SX-98-CV-044

ACTIONS FOR DAMAGES

JURY TRIALS
DEMANDED

¹ By order dated and entered April 12, 2018, the Court *sua sponte* amended the caption to *In re: Kelvin Manbodh Third-Party Asbestos Litigation Series* to better reflect the nature of this litigation. The Order addressed herein preceded that amendment. Accordingly, this Opinion retains the original caption.

² By order dated and entered April 12, 2018, the Court directed the Clerk's Office to assign a new number to *Kelvin Manbodh v. Hess Oil Virgin Islands Corporation, et al.* to differentiate the court papers that pertain only to Mr. Manbodh's case from those that pertain to the master case. *Cf. In re: Alumina Dust Claims*, 67 V.I. 172, 196 (Super. Ct. 2017) ("[A] master case should not share the same case number as one of the individual cases in the event that the individual case is terminated prior to the termination of the remainder of the litigation." (quotation marks and citation omitted)).

HESS OIL VIRGIN ISLANDS CORPORATION,

THIRD-PARTY PLAINTIFF,

v.

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 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. 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.; 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, INCORPORATED; PARSONS CORPORATION, AS SUCCESSOR IN INTERESTS TO THE RALPH M. PARSONS COMPANY; STERLING PACKING & GASKET DIVISION; STANDCO INDUSTRIES, INC.; STRAHMAN VALVES, INC.; CONRAD, A DIVISION OF U.S. INDUSTRIES; P.H. SALES INCORPORATED A/K/A P.H. SALES COMPANY; JOHN ZINK COMPANY A/K/A JOHN ZINK COMPANY, ZINCLAHOMA, INC.; 3M A/K/A MINNESOTA MINING & MANUFACTURING COMPANY;

**ACTION FOR
CONTRIBUTION,
INDEMNIFICATION, AND
BREACH OF CONTRACT**

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, 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; AND AMDURA CORPORATION F/K/A AMERICAN HOIST AND DERRICK,

THIRD-PARTY DEFENDANTS.

LITWIN CORPORATION,

THIRD-PARTY PLAINTIFF,

v.

UNIVERSAL OIL PRODUCTS COMPANY; CHICAGO BRIDGE AND IRON, N.V., INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO CHICAGO BRIDGE AND IRON; BIGELOW-LIPTAK; PORTILLA CORPORATION; RESCO PRODUCTS, INC.; INSULATION DISTRIBUTORS CORPORATION; RESAL, INCORPORATED; EXXON MOBIL CORPORATION, AS SUCCESSOR IN INTEREST TO MOBIL OIL COMPANY; SHELL OIL CORPORATION; GENERAL ENGINEERING CORPORATION IN ITS OWN INTEREST 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.; DARCOID INTERNATIONAL CORPORATION; RUBBER AND GASKET COMPANY OF PUERTO RICO; AMERICAN CYANAMID COMPANY; SÜD-CHEMIE, INC. AS SUCCESSOR IN INTEREST TO UNITED CATALYSTS INCORPORATED; CHRIS ANDERSON CONSTRUCTION AND MATERIALS COMPANY, IN ITS OWN INTEREST AND 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; ALC PIPE, INC.; OPTIMIZED

**ACTION FOR
CONTRIBUTION AND
INDEMNIFICATION**

**PROCESS FURNACES, INC.; STUBBS-OVERBECK, INC.; G.C. BROACH
COMPANY; JOHN DOES 1 THROUGH 4; AND VIRGIN ISLANDS
INDUSTRIAL MAINTENANCE CORPORATION,**

THIRD-PARTY DEFENDANTS.

MADSEN & HOWELL, INC.,

FOURTH-PARTY PLAINTIFF,

V.

PARKER-HANNIFIN CORPORATION,

FOURTH-PARTY DEFENDANT.³

**ACTION FOR
CONTRIBUTION AND
INDEMNIFICATION**

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³ Since re-designated as a third-party complaint. The caption mirrors the accompanying orders. *Cf. supra*, note 1.

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For Parker-Hannifin Corporation

MEMORANDUM OPINION

WILLOCKS, Administrative Judge

BEFORE THE COURT are the following motions: (1) a motion to consolidate this case with *Litwin Corporation v. Universal Oil Products Company, et al.*, case number SX-05-CV-056 (hereinafter “*UOP*” or “the *UOP* case”), filed by Defendant / Third-Party Plaintiff Litwin Corporation (hereinafter “*Litwin*”); (2) a motion filed by Defendant / Third-Party Plaintiff Hess Oil Virgin Islands Corporation (“*HOVIC*”) for reconsideration or, in the alternative, for clarification of an October 21, 2005 Order denying a motion to consolidate this case with *Hess Oil Virgin Islands Corporation v. Fluor Daniel, et al.*, SX-05-CV-165 (hereinafter “*Fluor*” or “the *Fluor* case”); and (3) a renewed motion filed by *HOVIC* to consolidate *Manbodh* and *Fluor*. On April 12, 2018, the Court denied *Litwin*’s motion to consolidate, denied *HOVIC*’s motion for reconsideration, but granted its request for clarification, and denied *HOVIC*’s renewed motion for consolidation. The Court also severed the third-party claims of *Litwin* and *HOVIC* and all crossclaims asserted as third-party claims and ordered them both to refile their cross- and third-party claims within each Plaintiff’s individual case. This Opinion follows to provide the basis for those Orders. *Cf. People v. Armstrong*, 64 V.I. 528, 534 (2016) (“[T]he Superior Court possesses an obligation to explain the reasons for its decision in order to enable effective appellate review by this Court.”) (quoting *Brown v. People*, 56 V.I. 695, 702 (2012)).

FACTUAL AND PROCEDURAL BACKGROUND

Kelvin Manbodh, Percival and Phyllis Daniel (hereinafter “the Daniels”), Francis and Monique Laurencin (hereinafter “the Laurencins”), and Foster and Josslyn Jobity (hereinafter “the Jobitys”) sued *HOVIC* and *Litwin*, among other companies, for damages, claiming exposure to asbestos and other toxic substances at the St. Croix oil refinery owned and operated by *HOVIC*.

The Daniels (and eighteen others) initially joined in the Complaint Manbodh filed. The Laurencins filed separately, but seventeen others joined in their Complaint. The Jobitys (along with sixteen others) had joined in a complaint filed by Louis & Mary L. Alexander. Further “group” complaints were filed the same year (1997) by other refinery workers (many of whom were joined by their wives), all asserting identical claims against the same companies: negligence, recklessness, and intentionally wrongful acts (count one), supplying a chattel dangerous for its intended use (count two), battery (count three), and fraudulent concealment (count four). The women, wives of the workers, sued for the loss of consortium (count six). The Plaintiffs also demanded punitive damages.

On December 11, 1997, the Court (Cabret, A.J.) *sua sponte* severed the claims of everyone except the first-named Plaintiff in each complaint and ordered the others to refile individual complaints. After the Complaints were refiled, the Court designated Kelvin Manbodh’s case as the master case and grouped the other cases under it to manage all pending and future asbestos cases together. *Manbodh, Laurencin, Jobity, and Daniel* were selected to be tried first, with trial scheduled to commence on November 4, 2002. Motions seeking permission to file third-party complaints had to be filed twelve months before the scheduled trial date of any particular action. *In re: Kelvin Manbodh Asbestos Litig. Series*, SX-97-CV-324, et seq., 2018 V.I. LEXIS 96, *4-6 (V.I. Super. Ct. Sept. 19, 2018) (footnotes, citations, quotation marks, and brackets omitted).

Litwin, HOVIC, and Madsen & Howell, Inc. (hereinafter “M&H”)⁴ later moved for leave to file third-party complaints.⁵ “In all, some 61 additional companies were brought into this litigation as third party defendants.” *In re: Kelvin Manbodh Asbestos Litig. Series*, Master Docket No. 324/1997, 2002 V.I. LEXIS 51, *1 (V.I. Terr. Ct. Oct. 16, 2002). Through their third-party complaints, Litwin, HOVIC, and M&H seek common law indemnification and contribution. HOVIC also seeks contractual indemnification, breach of contract for failure to obtain insurance and breach of contract for failure to name HOVIC as an additional insured. Between October 22 through 24, 2002, Litwin, HOVIC, and HOVIC’s parent corporation, Amerada Hess Corporation (hereinafter “Hess”), held a global mediation

⁴ The background of M&H’s third-party / fourth-party complaint was addressed in a separate opinion. See generally *In re: Kelvin Manbodh Asbestos Litig. Series*, SX-97-CV-324, et seq. 2018 V.I. LEXIS 96 / 2018 WL 4522183 (V.I. Super. Ct. Sept. 19, 2018).

⁵ Litwin Pan-American Corporation (“Litwin Pan-American”) and Litwin Corporation were co-defendants and, initially, co-third-party plaintiffs as well. However, Litwin Pan-American was dismissed from *Manbodh, Laurencin, Jobity, and Daniel* in December 2002 because it lacked “the capacity to sue” when it joined Litwin in filing a third-party complaint. (Order 3, entered Dec. 19, 2002). See *id.* at 3 n.3 (Litwin Pan-American “no longer exist[ed] as a corporate entity because it was dissolved on December 30, 1996.” (quotation marks and citation omitted)).

in Miami, Florida, following which they and the Plaintiffs entered into “a confidential settlement agreement . . . involving 211 Territorial Court plaintiffs and 147 District Court plaintiffs making asbestos claims.” (Hr’g Tr. 8:9-12 (May 4, 2005).) Approximately a year later, HOVIC and Litwin motioned for leave to amend their third-party complaints.

Litwin’s Motion to Amend its Third-Party Complaint

In its August 25, 2003 Motion to Amend Third-Party Complaint, Litwin explained that, initially, it only filed “third party complaints in the cases of Plaintiffs Percival Daniels, Foster Jobity, Francis Laurencin, and Kelvin Manbodh” because they were the first cases slated for trial. (Third-Party Pl. Litwin Corp.’s Mot. to Amend Third-Party Compl. 4, filed Aug. 25, 2003.) However, once all Plaintiffs had agreed to settle, Litwin sought leave to assert its third-party claims as to “all Plaintiffs in the In Re: Kelvin Manbodh Asbestos Litigation Series, Master Docket No. 324/1997.” *Id.* “Without adding the[] additional parties,” Litwin argued, it would “be unable to fully seek contribution for monies paid to settle claims based in part on the actions of these additional parties.” *Id.* at 6.

The Court (Cabret, P.J.) initially granted Litwin’s Motion to Amend on September 17, 2003, but then vacated that order to allow the parties to respond.⁶ Shell Oil Company (“Shell”) and General Engineering Company (“GEC”), two of Litwin’s co-Defendants, objected because they had settled with many of the Plaintiffs and therefore, were dismissed from those cases. Litwin’s proposed Amended Third-Party Complaint sought to add Shell and GEC back into the case, but as third-party defendants. “Litwin cannot bring a third-party action,” GEC argued. (Def. GEC’s Opp’n Supp. Mem. to Litwin’s Mot. for Leave to Amend 3d Party Compl. 5-6, filed Oct. 20, 2003.) “Litwin could have filed a cross-claim against GEC, in those cases in which it was a co-defendant with Litwin,” GEC asserted, but “not a third-party complaint. The reason being that procedurally it is impossible to bring

⁶ Case Management Order No. 3 had given all “settling defendants” until September 30, 2003 “to amend their existing pleadings to implead additional parties as third-party defendants or to amend the existing Third Party Complaints or cross claims” and opponents forty-five days to response. (Case Mgmt. Order No. 3, entered Sept. 16, 2003.)

a third-party complaint against a co-defendant.” *Id.* Shell raised similar objections. (*Cf.* Shell’s Obj. to Third-Party Pl. Litwin Corp.’s Mot. to Amend Third-Party Compl. 2, filed Oct. 8, 2003 (“Litwin did not object to those dismissals [with the First-Party Plaintiffs] at the time the motions were made.”).)

Universal Oil Products (“UOP”) and Born, Inc. (hereinafter “Born” or “Born, Inc.”), two of Litwin’s Third-Party Defendants, objected on similar grounds. UOP objected in part because Litwin sought leave to “assert contribution and indemnity claims against UOP not just with respect to the Kelvin Manbodh lawsuit . . . but also with respect to 357 other ‘asbestos’ claims which Litwin Corporation allegedly settled.” (UOP & Born, Inc.’s Opp’n to Litwin Corp’s Mot. to Amend Third-Party Compl. 5, filed Oct. 8, 2003.) “Yet there is not one allegation in the proposed First Amended Third-Party Complaint specific to any one plaintiff,” UOP argued. *Id.* “Not one settling plaintiff is identified who allegedly was injured as a result of exposure to catalyst supplied by UOP.” *Id.* Born, Inc. raised similar concerns. *Cf. id.* at 6 (“No allegations are made in the proposed First Amended Third-Party Complaint with respect to Born Inc. stating when Born Inc. took the actions or inactions complained of or caused the damage or harm that it allegedly caused; how whatever it is that Born Inc. is alleged to have done caused any harm to any of the 358 plaintiffs; or how it is that the actions or inactions of Born Inc. made Litwin Corporation liable to each of these 358 plaintiffs.”).

Replying, Litwin highlighted the overall history of the *Manbodh* litigation and specifically, what immediately preceded its August 25, 2003 Motion to Amend its Third-Party Complaint:

Kelvin Manbodh was selected, with the consent of all then involved parties, as the first test case in this voluminous litigation series prior to the April 24, 2001 Case Management Conference that set both a discovery schedule and a targeted trial date of November 4, 2002. At that Case Management conference, this Court acknowledged Manbodh as the test case in order to focus discovery from that point forward on the factual issues and allegations concerning Manbodh’s alleged exposure history. As the first test case for all pending Virgin Islands’ asbestos cases, Kelvin Manbodh’s case was of paramount importance in delineating issues and facts profoundly impacting the cases to follow. While this Court never issued a written order setting November 4, 2002, as the trial date, all parties conducted themselves in accordance with both this understanding and the Court’s indication that dispositive motions would be addressed prior to the targeted November 4, 2002 trial date.

Litwin originally brought third-party actions pursuant to Section IV(D)(4) of this Court's April 24, 2001 Case Management Order No. 2 mandating that "[m]otions seeking permission to file third-party complaints shall be filed at least twelve months prior to the scheduled trial date of *any particular action*." On July 27, 2001, this Court entered a stipulated order establishing that the three alternate cases after Kelvin Manbodh would be prioritized in the order of Francis Laurencin, Foster Jobity, and Percival Daniel. Litwin filed its original third-party complaints in these four actions soon thereafter in October of 2001. Since Manbodh was scheduled for trial in November of 2002, Litwin, based upon discovery conducted up to October of 2001, filed third-party complaints in these four actions against the parties, including UOP, named in Litwin's original third-party complaints. Litwin filed third-party complaints only against those third-party defendants, including UOP, for which it had information relating to the four plaintiffs whose actions were set for trial. Litwin did not move to add claims and additional parties in the period prior to the scheduled trial date of November 4, 2002, due to the clear understanding that the Court would only address facts and claims in the four cases scheduled for trial. At the time of filing of Litwin's initial third-party complaints, it was clearly the position of this Court and the parties to treat each plaintiff's claim separately. It was not until the claims were settled earlier this year that it became possible to conglomerate the claims into one pleading such as Litwin has brought before this Court. (Litwin's Mem. of Law in Supp. of Reply to Opp'n to UOP & Born 5-7, filed Oct. 28, 2003 (parentheticals and footnote omitted).)

Litwin's co-Defendant Virgin Islands Industrial Maintenance Corporation (hereinafter "IMC") filed a Motion for Leave to File a Surreply.⁷ In its Surreply, IMC echoed the same point GEC and Shell had raised, that "third party complaints may be filed 'if a person who was not an original party is summoned under the provisions of Rule 14.'" (IMC's Surreply to Litwin Corp.'s Reply 3, filed Nov. 4, 2003 (quoting Fed. R. Civ. P. 7(a)).) "IMC was a named defendant in the original, main cause of action," IMC explained. *Id.* So "Litwin's proposed Third Party Complaint, amended to include claims against IMC, is not properly brought before the Court." *Id.* Litwin should have crossclaimed, not filed a third-party complaint, IMC argued.

HOVIC's Motions to Amend its Third-Party Complaint

HOVIC met with similar objections when it sought leave to amend its Third-Party Complaint.⁸ UOP and Born both argued against leave to amend in part because "HOVIC *still* ha[d] not identified

⁷ Litwin opposed IMC's Motion and also filed a Motion to Strike IMC's surreply brief. Because the points IMC raised helped shed light on the status of this litigation, the Court's April 12, 2018 Order denied Litwin's Motion and granted IMC's Motion, deeming its Surreply Brief timely filed.

⁸ HOVIC initially filed a first-amended third-party complaint on September 16, 2003, but without an accompanying motion.

or alleged any contract, purchase order or other document which purportedly requires *any* of the numerous Third-Party Defendants, let alone either UOP or Born Inc., to indemnify HOVIC with respect to any settlements HOVIC may have entered into in 358 asbestos lawsuits.” (UOP & Born’s Opp’n to HOVIC’s Mot. for Leave to Amend Third-Party Compl. 3, filed Oct. 8, 2003.) Hence, HOVIC’s contractual indemnification claims were vague, they contended. HOVIC’s breach of contract claims were as well. “[N]ot one contract is identified” in the third-party complaint, UOP and Born argued. “There is no reference to when any of these numerous contracts was entered into, or even that any of the unidentified contracts were in effect at the time that any of the 358 worker/plaintiffs allegedly was harmed.” *Id.* at 5.

HOVIC’s co-Defendant, 3M, also opposed granting leave to amend, but not because HOVIC’s third-party claims were vague. Rather, 3M opposed granting HOVIC leave for the same reasons that GEC and UOP opposed granting Litwin leave – because 3M was a First-Party Defendant. “3M settled every case filed against it in the then-Territorial Court. Releases have been executed and Stipulations have been filed in those cases that 3M was named a defendant.” (Def. 3M’s Opp’n to HOVIC’s Mot. for Leave to File First Am. Third-Party Compl. 2, filed Nov. 10, 2003 (footnote omitted).) Consequently, “HOVIC can not pursue a Third Party Complaint against 3M based on common law indemnification and/or contribution,” 3M countered, and allowing the amendment “as against 3M would be frivolous and . . . futile.” *Id.* at 2-3 (footnote omitted).

HOVIC did not wait for the Court to rule. Instead, HOVIC filed a motion for leave to file a second amended third-party complaint. The motion was filed on April 28, 2004, the same day the Court held a status conference. During the status conference, Richard E. Daley, II, Esq. (“Attorney

Once the motion was filed on September 29, 2003, the Court (Cabret, P.J.) granted the motion by order entered October 8, 2003. However, because that order was issued in contravention of the case management order, *see, supra*, note 5, HOVIC, UOP, and Born stipulated that the October 8, 2003 Order should be vacated so other parties could respond. So that the record is clear, the Court will approve the stipulation and vacate the October 8, 2003 Order by separate order of even date.

Daley”), former counsel for M&H and other parties, opposed both Litwin and HOVIC’s motions to amend, arguing that,

if discovery is going to be manageable to any extent as this litigation goes on, both Litwin and HOVIC would have to file a third-party complaint in each of the docketed cases which the plaintiffs themselves filed because the facts and circumstances underlying the settlement between Litwin and HOVIC and each of those 241 plaintiffs was extremely different from case to case, and to combine the discovery with respect to the settlements as to 360 or 241 Territorial Court plaintiffs under one caption is going to make it extremely hard to manage . . . (Hr’g Tr. 17:21-18:5, Apr. 28, 2004.)

Carolyn F. O’Connor, Esq., co-counsel for HOVIC, countered that

the plaintiffs originally attempted to file one pleading, the Court . . . did not allow that. Mainly because there was a filing fee issue. . . . They were all identical; just different plaintiffs. . . . When we settled these cases, we settled them [e]n mass . . .

. . . The question [now is] are we going to put form over substance? Are we going to move forward and try to mediate these cases as to the third-party defendants . . . ? If the Court requires us to do this, we, in fact, will file separate complaints, separate third-party complaints as to each and every single one of them If counsel insist that we file separate actions in all 211, not 241 or 255 – 211 Territorial Court cases, then we would do that on a timely basis, but that is form over substance. *Id.* at 21:2-22:21.

Born later opposed HOVIC’s April 28, 2004 Motion on similar grounds as those articulated against Litwin’s Motion. But Born also echoed the new concerns Attorney Daley had raised about the management of the cases. Allowing HOVIC to file an amended Third-Party Complaint in the master case would usher in

a hodgepodge of various causes of action against 52 companies, and with respect not just to a settlement which HOVIC allegedly made with Mr. Manbodh but also with respect to settlements which HOVIC is alleged to have made with the plaintiffs in the 210 other lawsuits filed in the Territorial Court during the years 1997, 1998, 1999, 2000 and 2001. (Born’s Opp’n to HOVIC’s Mot. for Leave to File Second Amended Third-Party Compl. 2, filed May 24, 2004.)

In reply to Born and other Third-Party Defendants, HOVIC conceded that both its First Amended and Second Amended Third-Party Complaints were “submitted as a Consolidated Complaint applicable to all 211 [T]erritorial [C]ourt cases.” (HOVIC’s Jt Reply to Born Inc., Chicago Bridge & Iron Co., & Parson Corp.’s Opp’n to HOVIC’ Mot. for Leave to File Second Amended Third Party Compl. 15, filed June 10, 2004.) But HOVIC surmised that “[i]mplicit in the Court[‘s] grant of

HOVIC's Motion to File a First Amended Third Party Complaint, [wa]s the Court's approval of the Consolidated format." *Id.* HOVIC did ask the Court for direction, however, "as to whether the proposed Consolidated Second Amended Complaint is acceptable for all 211 Territorial Court cases," and accepted that if "the Court decide[d] otherwise, HOVIC will file separate pleadings in the other 210 cases." *Id.* Litwin joined HOVIC's Reply on June 25, 2004.

Five days later, but before the Court had ruled on HOVIC's April 28, 2004 Motion for Leave to File a Second-Amended Third-Party Complaint, HOVIC filed a Motion for Leave to File a Third Amended Third-Party Complaint.

* * *

By Orders dated October 4, 2004 (entered October 5, 2004), the Court granted Litwin's August 25, 2003 Motion for Leave to file an Amended Third-Party Complaint as well as HOVIC's June 30, 2004 Motion for Leave to File a Third Amended Third-Party Complaint. To ameliorate concerns the parties had raised about "case-specific information for each individual plaintiff," (Order 1, entered Oct. 5, 2004), the Court allowed Litwin and HOVIC to post information on a website the parties had created to coordinate discovery within the first-party litigation. The October 4, 2004 Order rejected (without an accompanying opinion) the concerns the opposing parties had raised about re-adding dismissed Defendants as Third-Party Defendants and about asserting third-party claims rather than crossclaims against dismissed co-Defendants.

The UOP Case

On February 2, 2005, Litwin filed a complaint in the Superior Court of the Virgin Islands "for contribution and indemnification allegedly related to 159 lawsuits filed in the District Court of the Virgin Islands." *The Litwin Corp. v. Univ. Oil Prods. Co.*, SX-05-CV-056, 69 V.I. ____, ____; 2018 V.I. LEXIS 102, *2 (V.I. Super. Ct. Sept. 26, 2018). "Litwin and other companies were sued by persons claiming to have been exposed to asbestos and other toxic substances at the former oil refinery operated by Hess Oil Virgin Islands Corporation on St. Croix." *Id.* at ____; 2018 V.I. LEXIS 102 at *2-3. Litwin

had settled with the 159 District Court plaintiffs at the same global mediation held in Miami that resulted in settlement with the *Manbodh* plaintiffs. “[T]o recoup some of the monies paid to settle with the Claimants” in the District Court cases, *id.* at ___; 2018 V.I. LEXIS 102 at *3, Litwin’s 2005 complaint sought contribution and indemnification against UOP and others who allegedly supplied Litwin with asbestos- or catalyst-containing products.⁹ *See id.* at ___; 2018 V.I. LEXIS 102 at *3 (“Litwin seeks contribution and indemnification related to the tortious actions, inactions, and representations, of the Defendants who (according to Litwin) were the ultimate cause of the Claimants’ injuries” because the “Defendants produced, designed, manufactured, supplied, distributed, or sold products containing asbestos, catalyst, refractory, or other harmful and hazardous and toxic substances, which Litwin used at the former oil refinery.” (internal citations omitted)).

The Fluor Case

Like Litwin, HOVIC also filed a complaint in the Superior Court of the Virgin Islands. In its March 29, 2005 Complaint, HOVIC asserts claims for common law contribution, common law indemnification, contractual indemnification, breach of contract for failure to obtain insurance, and breach of contract for failure to name HOVIC as an additional insured.¹⁰ HOVIC (like Litwin) filed the *Fluor* case to recoup monies it paid to settle with the 159 District Court plaintiffs.

⁹ Named as Defendants in the February 2, 2005 Complaint are: UOP; Chicago Bridge & Iron, N.V., individually and as successor-in-interest to Chicago Bridge & Iron; Bigelow-Liptak; Portilla Corporation; Resco Products, Inc.; Resal, Inc.; Exxon Mobile Corporation as successor-in-interest to Mobil 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; Darcoid International Corporation; Rubber & Gasket Company of Puerto Rico; American Cyanamid Company; Süd-Chemie, Inc., as successor-in-interest to United Catalysts Inc.; Chris Anderson Construction & Materials Company, individually and as successor-in-interest to Chris Anderson Materials; Childers Products Company; Ondeo Nalco, as successor-in-interest to Nalco Chemical Company; Acme Canvas & Rope Company; A/C Pipe, Inc.; Optimized Process Furnaces, Inc.; Stubbs-Overbeck, Inc.; G.C. Broach Company; Virgin Islands Industrial Maintenance Corporation; and John Does 1 through 4.

¹⁰ Named as defendants in HOVIC’s March 29, 2005 Complaint are Fluor Daniel, individually and as successor-in-interest to Fluor Engineers & Constructors, Inc.; Fluor Engineers & Constructors, Inc.; Flour Corporation; 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 & Gasket Company of Puerto Rico, Inc.; 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; Born Inc. f/k/a Born Engineering Company; Saint-Gobain Advanced Ceramics, as successor-in-interests to Carborundum Corporation; Control Associates; The Darcoid Company, Inc. a/k/a Darcoid Rubber Company; Gerard

The Clerk's Office of the Superior Court of the Virgin Islands randomly assigned *UOP* to the Honorable Darryl Dean Donohue, Sr. and *Fluor* to the Honorable Maria M. Cabret.

* * *

On June 6, 2005, HOVIC filed a motion in *Manbodh* to consolidate the *Fluor* case with the *Manbodh* cases, notwithstanding that the Court (Cabret, P.J.) had “ruled from the bench” during a May 4, 2005 status conference “that parties wishing to recover . . . settlement monies should follow the same procedures that were followed in the previous asbestos cases.” *In re: Kelvin Manbodh Asbestos Litig. Series*, Master Case No. 324/1997, 2005 V.I. LEXIS 40, *4 n.1 (V.I. Super. Ct. Oct. 21, 2005). In other words, the Court explained, because “Oliver Abraham [wa]s the first-named claimant listed in exhibit A from the *Abraham Series* of cases filed in the District Court of the Virgin Islands concurrently with the *Kelvin Manbodh Asbestos Litigation Series* in the then Territorial (now Superior) Court,” *id.* at *4 n.2, the Court ruled that “the complaint would only be accepted in the name of the first party listed.”¹¹ *Id.*

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.; Strahman 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 a/k/a Minnesota Mining & Manufacturing Company, 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, 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 Inc., a division of American Hoist & Derrick; Certainteed Products Corporation; Elliott Company, a division of Carrier; Foster Wheeler Corporation, individually and as successor-in-interests to Forty-Eight Insulations, Inc.; Garlock, Inc.; 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.; Pacific Valves; Raritan Supply Company, individually and as successor-in-interests to Bridge Supply Company; Union Pump Company; St. Croix Compression & Rotating Equipment Services; John Does/Jane Does *et al.*, and/or John Doe, Inc., *et al.*

¹¹ Hereinafter “the *Abraham* series of cases” and the “*Abraham* Plaintiffs” refers to the 159 cases listed as Exhibit A to the complaints filed in *UOP* and *Fluor*.

By order dated October 21, 2005 (entered October 25, 2005), the Court reduced its bench ruling to writing, denying HOVIC's motion to consolidate *Fluor* with *Manbodh*. *See id.* at *3 ("Consolidation at this time is inappropriate. There are matters in Civ. No. 165/2005 that must be resolved before a consolidation of any kind may even be considered."). After the Court had ruled from the bench that "the same procedures" had to be followed, i.e., 159 individual complaints filed and filing fees paid for each, but before the Court reduced that ruling to writing on October 21, 2005, Litwin filed a motion, on July 22, 2005, to consolidate the *UOP* case with the *Manbodh* cases. Litwin's July 22, 2005 Motion for Consolidation is technically still pending. Further, in response to the October 21, 2005 Order, HOVIC filed, on November 8, 2005, a motion for reconsideration or, in the alternative, for clarification, which Born opposed on November 23, 2005, followed by 3M and 3M Puerto Rico, Inc. (hereinafter "3M Defendants"), as well as CBI Services, Inc. (hereinafter "CBI") on November 28, 2005.

* * *

Ten years later, this Court, in its administrative capacity, held a number of hearings concerning all complex civil litigation cases still pending in the District of St. Croix. Prompted by those hearings, HOVIC, on July 27, 2015, filed a renewed motion to consolidate *Fluor* with *Manbodh*. Tuthill Corporation, a Defendant in the *Fluor* case and a Third-Party Defendant in the *Manbodh* cases, and UOP jointly opposed HOVIC's renewed motion on July 29, 2015, followed on August 10, 2015 by CBI and Parsons Infrastructure & Technology Group (hereinafter "PITGI"), Defendants in the *Fluor* case and Third-Party Defendants in the *Manbodh* cases. Lockheed Martin Corporation, also a Defendant in the *Fluor* case and a Third-Party Defendant in the *Manbodh* cases, as well as 3M joined in the arguments made by UOP and Tuthill by notices filed on August 12, 2015, HOVIC filed its reply to UOP and Tuthill's Opposition on August 12, 2015 and, on August 21, 2015, filed a motion (unopposed by CBI or PITGI) for an extension of time to file its reply to CBI and PITGI, which HOVIC filed on September 11, 2015.

By Orders dated and entered April 12, 2018, as modified in part by Orders dated April 16, 2018 and entered April 17, 2018, the Court granted IMC's November 3, 2003 Motion for Leave to File a Surreply Brief, denied Litwin's November 13, 2003 Motion to Strike IMC's Surreply Brief, denied Litwin's July 22, 2005 Motion to Consolidate *UOP* with *Manbodh*, denied HOVIC's November 8, 2005 Motion as to reconsideration, but granted it as to the request for clarification, and denied HOVIC's July 27, 2015 Renewed Motion to Consolidate. The Court also vacated the Orders dated October 4, 2005 and entered October 5, 2005

as to the provisions deeming (1) Defendant / Third Party Plaintiff Hess Oil Virgin Islands Corporation's Third-Amended Third Party Complaint; (2) Defendant / Third Party Plaintiff Litwin Corporation's Amended Third Party Complaint; and (3) Defendant Hess Oil Virgin Islands Corporation's Third-Amended Crossclaims – applicable to all cases listed on Exhibit A of Case Management Order No.3, In re Kelvin Manbodh Asbestos Litigation Series, Master Docket No.: 324-1997. (Order 1, entered Apr. 12, 2018.)

Litwin and HOVIC's third-party claims were severed from all cases except Kelvin Manbodh's case, to be refiled in each Plaintiff's case, but also to "**NAME ONLY** those persons who **WERE NOT** named as a Defendant by the Plaintiff in that case" and who "is, was, or may be liable to [Litwin or HOVIC] . . . for all or part of that Plaintiff's claim(s)." *Id.* at 1-2. The Court also severed all claims asserted by Litwin or HOVIC as third-party claims against co-Defendants and ordered both to refile crossclaims in each Plaintiff's case. Litwin and HOVIC were each given forty-five days to comply.

During a status conference held the next day, April 13, 2018, the Court allowed counsel to raise any objections or concerns to the April 12, 2018 Orders. Counsel for CBI and PITGI requested, because the April 12, 2018 Orders were issued in advance of the forthcoming opinions, that the time to request reconsideration run from the date the opinion is entered. Counsel for HOVIC asked for ninety days to refile the crossclaims and third-party complaints. The Court granted both requests from the bench, giving Litwin and HOVIC 120 days to review, prepare, serve, and refile individual crossclaims and third-party complaints in each Plaintiff's case. The Presiding Judge of the Superior

Court subsequently reassigned *UOP* and *Fluor* to the undersigned judge due to the similarity of claims and parties with the cases grouped under *In re: Kelvin Manbodh Asbestos Litigation Series*.

DISCUSSION

A. Litwin's Motion to Consolidate *UOP* with *Manbodh*

In its Motion to Consolidate Cases,¹² Litwin asserts that *UOP* and *Manbodh* “involve[] the [same] legal and factual questions of whether, and to what extent,” the Defendants in *UOP* and the Third Party Defendants in *Manbodh* “are liable to Litwin under theories of Contribution and Indemnification for the amounts Litwin paid to settle the underlying claims.” (Litwin's Mot. to Consolidate Cases 2, filed July 22, 2005 (hereinafter “Consolidation Mot.”).) “Consequently, this is a textbook example of an instance when separate actions involve a ‘common question of law or fact’ because Litwin's separate action[] involve[s] the exact same legal theories arising from the exact same

¹² At the time when Litwin filed its Motion, “[c]onsolidation of cases in the Superior Court [wa]s governed by Federal Rule of Civil Procedure 42, as applied through Superior Court Rule 7, ‘because there [wa]s no local rule, statute, or precedent from the Supreme Court addressing the same subject matter.’” *Ayala v. Lockheed Martin Corp.*, 67 V.I. 290, 305 (Super. Ct. 2017) (brackets omitted) (quoting *Appleton v. Harrigan*, 61 V.I. 262, 271 n.10 (2014)). The Supreme Court of the Virgin Islands subsequently promulgated the Virgin Islands Rules of Civil Procedure. *See generally In re: Adoption of the V.I. Rules of Civ. P.*, S. Ct. Prom. No. 2007-001, 2017 V.I. Supreme LEXIS 22, *1-2 (V.I. Apr. 3, 2017) (effective March 31, 2017). Now, consolidation of cases is governed by Virgin Islands Rule of Civil Procedure 42. Although the former rule and the current rule are identical, *compare* V.I. R. Civ. P. 42(a), *with* Fed. R. Civ. R. 42(a), the Court will nonetheless apply the Virgin Islands rule to Litwin's motion even though this Court has previously concluded that the Virgin Islands Rules of Civil Procedure apply to all “action[s] pending on the effective date” the rules (or amendments to the rules) take effect, not motions pending as of such date. *E.g.*, *The Litwin Corp.*, 69 V.I. at ___ n.2; 2018 V.I. LEXIS 102 at *6 n.2 (“[T]his Court has concluded that ‘rather than reaching back in time, Rule 1-1 must require that the rules in effect prior to March 31, 2017 continue to govern motions pending as of that date, but for all motions filed after March 31, 2017, the new rules will apply unless application to the case (not a particular motion) would be unjust or infeasible.’” (brackets omitted) (quoting *Jones v. Lockheed Martin Corp.*, 68 V.I. 158, 184 n.9 (Super. Ct. 2017)). Those cases concerned whether the movant had complied with the rule that governed when the motion was filed. *See* 69 V.I. at ___; 2018 V.I. LEXIS 102 at *9 (different standards applied based on when motion was filed). Applying new rules to old motions would be unjust if it “move[s] the proverbial goal posts” after the motion is filed. *Id.* (quotation marks, brackets, and citation omitted); *accord Gen. Star Indem. Co. v. V.I. Port Auth.*, 49 V.I. 995, 998 n.2 (D.V.I. 2008) (“[I]t would be unreasonable to expect General Star to rely on a rule that had not yet been enacted in calculating the due date for its reconsideration motion. As such, the Court finds that it would work injustice to apply the amended Local Rule 6.1 in calculating the time for filing General Star's motion for reconsideration.”). In this instance, notwithstanding that “[t]he Court took under advisement the decision whether to invoke Virgin Islands Rule of Civil Procedure 1-1,” *Manbodh*, 2018 V.I. LEXIS 102 at *10 n.9, and even though the analysis for and against consolidation might not differ since the rules are identical, *cf. id.*, the Court, nevertheless, will apply the Virgin Islands Rule of Civil Procedure 42 because the gist of Litwin's motion concerns how these “action[s] pending” should be managed. V.I. R. Civ. P. 1-1(c). In other words, the focus here is not on past action, i.e., whether a motion is properly before the court, which necessarily entails determining whether the rules in effect at the time the motion was filed were complied with. Rather, the focus here is on future action, i.e., whether *Manbodh* and *UOP* should be consolidated going forward. In that instance, this Court believes the Virgin Islands rule of procedure should be applied.

factual circumstances.” *Id.* at 3. Litwin argues further, that consolidation will also “serve the administration of justice,” *id.* at 4, because *Manbodh* and UOP “involve the same plaintiff (Litwin), an identical factual setting (a dispute over who should right pay for the costs of settling asbestos plaintiffs’ claims), and . . . the same witnesses, documents and exhibits.” *Id.* Finally, Litwin asserts that any potential confusion “can be reduced by the use of cautionary instructions to the jury and verdict sheets outlining the claims of each plaintiff.” *Id.* at 5 (quotation marks omitted) (citing *Hendrix v. Raybestos-Manhattan, Inc.*, 776 F.2d 1492, 1495 (11th Cir. 1985)). By contrast, “the risk of inconsistent adjudications in the two Litwin matters is significant . . . and therefore inconsistent rulings would be particularly egregious.” *Id.* “[T]he burden on the parties and witnesses would [also] be onerous,” Litwin argues, “if they were forced to appear twice to rehash the same claims and factual scenarios.” *Id.* Thus, since ““considerations of judicial economy favor consolidation,”” *id.* (quoting *Johnson v. Celotex Corp.*, 899 F.2d 1281, 1285 (2d Cir. 1990) (other citation omitted), “judicial economy and the efficient and fair administration of justice require that Litwin’s actions be consolidated.” *Id.*

In opposition to consolidation, PITGI and Chicago Bridge & Iron, N.V. (hereinafter “CBINV”) offer three counterarguments.¹³ First, *UOP* is not properly before the Court, they argued, because Litwin did not follow the Court’s May 4, 2005 bench ruling directing Litwin to file a separate case for each *Abraham* Plaintiff and pay the appropriate filing fees. (See PITGI’s Opp’n to Mot. to Consolidate 3, filed Aug. 3, 2005 (citing Super. Ct. R. 5) (“[U]ntil there is compliance with Presiding Judge Cabret’s aforesaid directive, the second Litwin action [*UOP*] is not properly before the Court and cannot be consolidated with [*Manbodh*].”).) Next, PITGI argues that Litwin failed to meet “its burden of showing the requisite commonality of issues to warrant the requested wholesale consolidation.” *Id.*

¹³ Although citations are to the PITGI’s Opposition, CBINV filed an Opposition the same day that raised the same points and arguments. The Court trusts that, in the future, parties represented by the same counsel will join together in filing their motions papers, rather than burden the Court and the Clerk’s Office with duplicate motion papers that make the exact same points.

at 2. “[T]he types of diseases are not all the same, as the discovery had thus far indicates that some plaintiffs claim asbestosis, others claim mesothelioma, some simply claim cancer, and some claim other types of harm.” *Id.* at 4. Further, “it is not at all clear from Litwin’s motion,” PITGI contends, “that all of the plaintiffs, in the above-captioned matter or in the second Litwin action, were injured at the same site.” *Id.* “While it seems that almost all plaintiffs worked at the HOVIC oil refinery, some plaintiffs worked at the nearby aluminum plant, and other plaintiff[s] worked at both sites.” *Id.* Finally, “the *Manbodh* litigation already is in a confused state of affairs,” PITGI asserts, and “its consolidation with the second Litwin action could only lead to utter disorder, and delay the progression of both cases.” *Id.*

Litwin counters that *UOP* is properly before the Superior Court because the Superior Court has “subject matter jurisdiction” and “jurisdiction *in personam* over PITGI and all other defendants pursuant to the Virgin Islands Long-Arm statute.” (Litwin’s Reply to PITGI’s Opp’n 2-3, filed Aug. 15, 2005 (hereinafter “Consolidation Reply”).)¹⁴ Consolidating *UOP* with *Manbodh* would “increase efficiency,” Litwin counters, “while eliminating the risk of inconsistent adjudications.” *Id.* PITGI and CBI have “distort[ed] . . . the context of this motion by asserting that Litwin has initiated ‘211 third-party actions’ and seeks to ‘add another 159’ via this consolidation.” *Id.* at 5. “However, what is actually happening . . . is that Litwin is seeking to consolidate **one** contribution and indemnity action with **one other** contribution and indemnity action.” *Id.* Consolidating *UOP* and *Manbodh* would serve “the efficient administration of justice,” Litwin contends, because “only one judge and one courtroom would be tied up instead of two, the knowledge of the case and its history would be seated in a single judge and discovery processes would cover the entire range of defendants and underlying claimants in a single, unified process.” *Id.* at 5-6.

¹⁴ Like PITGI and CBINV, Litwin filed two identical replies, rather than a consolidated reply.

Litwin is correct that consolidating cases may be proper when two or more “separate actions involve a ‘common question of law or fact.’” (Consolidation Mot. 3 (quoting Fed. R. Civ. P. 42(a)).) *Accord* V.I. R. Civ. P. 42(a); *cf. Yusuf v. Estate of Hamed*, ST-17-CV-384, 2018 V.I. LEXIS 41, *6 (Super. Ct. Apr. 5, 2018) (“[C]onsolidation . . . avoid[s] the duplication of discovery and inconsistent adjudication of common factual issues.” (footnote omitted)). But consolidation does not “completely merg[e] the constituent cases into one.” *Hall v. Hall*, 138 S. Ct. 1118, 1125 (2018).¹⁵ Rather, consolidation simply “enabl[es] more efficient case management while preserving the distinct identities of the cases and the rights of the separate parties in them.” 138 S. Ct. at 1125; *accord Ayala v. Lockheed Martin Corp.*, 67 V.I. 290, 302 (Super. Ct. 2017) (“Consolidating cases together is generally viewed ‘as a matter of convenience and economy in administration, but does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another.’” (quoting *Tremcorp. Holdings, Inc. v. Harris*, 65 V.I. 364, 370 (2016))). For that reason, whether to consolidate cases is left to the sound discretion of the court. *See Gayanich v. Gayanich*, S. Ct. Civ. No. 2017-0065, 69 V.I. ___, ___ n.5; 2018 V.I. Supreme LEXIS 19, at *21 n.5 (V.I. July 18, 2018) (“[T]he Virgin Islands Rules of Civil Procedure, adopted April 3, 2017, provides the trial court broad discretion to consolidate actions that involve a common question of law or fact for convenience, to avoid prejudice, or to expedite and economize proceedings.” (citing V.I. R. Civ. P. 42(a)-(b))); *accord Edwards v. Hess Oil V.I. Corp.*, 66 V.I. 218, 224 (Super. Ct. 2017) (“Superior Court judges have discretion to consolidate their cases together.” (citing V.I. R. Civ. P. 42(a))).

¹⁵ Because the federal rules and the Virgin Islands rule are identical, the Court consults federal case law as well as Virgin Islands precedent for guidance. *Cf. Slack v. Slack*, S. Ct. Civ. No. 2017-0033, 2018 V.I. Supreme LEXIS 17, *8 (V.I. July 5, 2018) (“[T]he body of case law construing th[e federal] rule may properly be considered in construing [the Virgin Islands rule].” (citations omitted)); *see also Wilson v. Hess Oil V.I. Corp.*, 67 V.I. 523, 534 (Super. Ct. 2017) (“Where a new rule retains or incorporates a prior rule, whether a federal rule, a District Court local rule, or a Superior Court rule, and where local case law has addressed a prior rule, this Court believes—absent precedent to the contrary or a compelling reason to depart from such prior case law—that courts should look to this body of law first to harmonize our case law.”).

But consolidation is not the only option available, partly because “[c]onsolidation means different things in different contexts.” *In re: Cases Removed to the Dist. Ct. of the V.I.*, Nos. SX-98-CV-109, *et seq.*, 2016 V.I. LEXIS 154, at *26 n.17 (Super. Ct. Sep. 21, 2016) (citations omitted). Cases can be joined together, or consolidated, solely for a hearing or for oral argument in addition to being joined together for trial. *See* V.I. R. Civ. P. 42(a)(1) (“If actions before the court involve a common question of law or fact, the court may . . . join for hearing or trial any or all matters at issue in the actions.”); *see also* *Appleton v. Harrigan*, 61 V.I. 262, 272 (2014) (*de facto* consolidation for trial promoted judicial economy because the cases “concerned the same transaction and were governed by the same evidence.” (citation omitted)); *cf.* *Murrell v. People*, 54 V.I. 327, 333 n.3 (2010) (explaining that two appeals involving the same defendant were “consolidated . . . for the sole purpose of oral argument.”); *Simon v. Ponteen*, SX-05-CV-348, *et seq.*, 2015 V.I. LEXIS 23 (V.I. Super. Ct. Mar. 4, 2015) (joining multiple proceedings together in one opinion). Joining cases together to resolve dispositive motions is also another option, but possibly not when “the facts in dispute differ among the individual cases.” *Ayala*, 67 V.I. at 309.

Short of formal consolidation, cases can also be coordinated together. *Cf.* V.I. R. Civ. P. 42(a)(3) (“If actions before the court involve a common question of law or fact, the court may . . . issue *any other orders* to avoid unnecessary cost or delay.” (emphasis added)). In other words, “even though ‘courts speak of cases as consolidated for pretrial purposes under a master case and docket, coordination might be a better term to use, particularly in reference to complex or mass tort cases involving multiple plaintiffs suing the same or similar defendants for the same or similar injuries.’” *Edwards v. Hess Oil V.I. Corp.*, 66 V.I. 218, 225 (Super. Ct. 2017) (quoting *In re: Cases Removed*, 2016 V.I. LEXIS 154 at *28 n.17). And this is what the Court (Cabret, A.J.) did “in May 1997, consolidated in a single docket, *In re Kelvin Manbodh Asbestos Litigation Series*, lawsuits filed on behalf of Plaintiff Kelvin Manbodh and 210 additional parties against HOVIC, Westinghouse Electric Corporation and some twenty-six other defendants.” *In re: Kelvin Manbodh Asbestos Litig. Series*,

Master Docket No. 324/1997, 2006 V.I. LEXIS 36, *3 (V.I. Super. Ct. Aug. 31, 2006) (parenthetical omitted). Time has since clarified, however, that consolidation, i.e., merging the 211 cases into one, is not what the Court intended. *Cf. Hall*, 138 S. Ct. at 1125 (2018) (“From the outset, we understood consolidation not as completely merging the constituent cases into one, but instead as enabling more efficient case management while preserving the distinct identities of the cases and the rights of the separate parties in them.”). Courts open “master case[s] as a judicial convenience so that multiple cases with similar claims or parties can be coordinated under a common case file and docket and litigation streamlined and simplified.” *In re: Alumina Dust Claims*, 67 V.I. 172, 195 (Super. Ct. 2017) (citation omitted). This is what the Court intended by opening a master case under *Manbodh*.¹⁶ To now consolidate *UOP* and *Manbodh* together would only bring more confusion and delay.

Coordinating *UOP* with the *Manbodh* cases might promote judicial economy. In that aspect, Litwin is correct. Assigning related cases to the same judge can be more efficient because the judge then has knowledge of both cases and their respective procedural histories and can “issue any other orders” short of formal consolidation “to avoid unnecessary cost or delay.” V.I. R. Civ. P. 42(a)(3). But Litwin did not ask to have *UOP* reassigned to the same judge assigned to *Manbodh* so they could be managed simultaneously.¹⁷ *Cf. Vanterpool v. Gov’t of the V.I.*, 63 V.I. 563, 574 n.4 (2015) (“[O]nce

¹⁶ “Different cases cannot share the same case number,” however. *Alumina Dust Claims*, 67 V.I. at 196. Utilizing Kelvin Manbodh’s individual case file and number as the master case was in error. To remedy the same error in another case in which an individual plaintiff’s case number and file was designated as the master case file and docket, this Court “directed the Clerk’s office to assign a new case number to the master case file and docket.” *Id.* (footnote omitted). Given the potential for confusion over what papers should have been filed in the individual cases versus in the master case, the Court also “directed the Clerk’s Office to determine which papers should be re-docketed under the new master case number, which papers should remain within [the plaintiff’s individual case], and whether any papers do not concern either [the master case or the individual plaintiff’s case] and should be stricken from the master case and re-docketed in the individual cases.” *Id.* (footnote omitted). There, disentangling the master case from the individual case was straightforward. Here, however, because the master case has been open for over twenty years, the Clerk would be faced with the insurmountable task of disentangling thousands of papers, the lion’s share of which were filed in the master case. Hence, the Court concluded that the more appropriate remedy for the *Manbodh* master case was to have the Clerk assign a new case number to Kelvin Manbodh’s case file and have the pleadings, orders, and other papers that pertain solely to his case redocketed and refiled under that new case number.

¹⁷ The Clerk’s Office initially assigned *UOP* at random to the Honorable Darryl Dean Donohue, Sr., while *Manbodh* was assigned to the Honorable Maria M. Cabret. Recently, the Presiding Judge of the Superior Court reassigned *UOP* to the undersigned judge “due to similarity of claims and parties with the cases grouped under the *In re: Kelvin Manbodh Asbestos*

a case has actually been assigned to a judicial officer, no individual other than the assigned judicial officer (through recusal) or the Presiding Judge (through exercise of the statutory reassignment power) may interfere with that assignment.”). Rather, Litwin asked for consolidation. But contrary to Litwin’s assertions, consolidation would not promote judicial economy.

Litwin is incorrect. *Manbodh* and *UOP* are not two actions. As PITGI and CBINV point out, Litwin has 211 third-party complaints pending in the *Manbodh* series of cases. PITGI and CBINV are also correct insofar as they note that *UOP* really is 159 cases (the *Abraham* series of cases), even though only one complaint was filed. Furthermore, once the May 4, 2005 bench ruling is enforced, *UOP* will mushroom into 158 more cases. Consolidating the *Abraham* series of cases with the *Manbodh* series of cases so that one jury hears both cases at the same time would also mean adding another 318 counts (159 counts of common law contribution and 159 counts of common law contribution, i.e., two counts each for every *Abraham* plaintiff) to the 422 counts Litwin already has pending within its Amended Third-Party Complaint (one count of common law contribution and one count of common law indemnification for each of the 211 *Manbodh* plaintiffs). Litwin overlooks that M&H also has third-party claims pending within the *Manbodh* series of cases, albeit only in *Manbodh*, *Jobity*, *Daniel*, and *Laurencin*, the first four bellwether cases selected for trial. HOVIC too has third-party claims pending in all *Manbodh* cases and renewed its motion, addressed below, to consolidate *Fluor* with *Manbodh*. Like Litwin, HOVIC wants to merge its third-party and crossclaims in the *Manbodh* series of cases with its first-party claims in *Fluor*, but which arose from settling the 159 *Abraham* cases. It is somewhat preposterous to think that consolidating *UOP* and *Manbodh* for trial would serve “the efficient administration of justice.” (Consolidation Reply 5.) True, “only one judge

Litigation Series master case.” The *Litwin Corp.*, 69 V.I. at ____; 2018 V.I. LEXIS 102 at *5. Neither the Superior Court nor the Territorial Court

and one courtroom would be tied up instead of two,” *id.*, but that trial might go on for months if not years.

The problem here, as explained further below, is that Litwin and HOVIC are proceeding under the misapprehension that when the Court granted them leave to amend their third-party complaints, it somehow transformed the *Manbodh* master case into one action. But there was no authority in 2004, nor is there now in 2018, that permits third-party plaintiffs “to conglomerate the[ir] claims into one pleading,” (Litwin’s Mem. of Law in Supp. of Reply to Opp’n to UOP & Born, Inc. 7), especially not a pleading filed in a master case because “a master case is not a true case, but rather a mechanism used to coordinate one or more aspects of litigation across a number of different cases.” *Alumina Dust Claims*, 67 V.I. at 196 n.17. For this reason, the Court denied Litwin’s motion to consolidate.

B. HOVIC’s Motion for Reconsideration or, in the Alternative, for Clarification

In its Motion,¹⁸ HOVIC asks the Court to reconsider the October 21, 2005 Order denying the motion to consolidate *Manbodh* with *Fluor* or, in the alternative, to clarify that order. Specifically, HOVIC seeks reconsideration or clarification of the “rationale of the Court in the denial of HOVIC’s Motion for consolidation.” (HOVIC’s Recons. Mot. 2, filed Nov. 8, 2005 (hereinafter “Recons. Mot.”).) The “rationales,” which HOVIC claims the Court’s denial was based on are:

1. The issue of subject matter jurisdiction has not yet been decided as to the *HOVIC v. Flour* case and therefore consolidation is premature.
2. HOVIC has allegedly failed to comply with an Oral Order of the Court on May 4, 2005 regarding the proper filing procedure for the *HOVIC v. Flour* [sic] case.
3. Given HOVIC’s failure to file individual actions for each of the District Court Plaintiff Actions, the Court considers the *HOVIC v. Flour* [sic] case to be only one case, that of Oliver Abraham, the first named claimant. The consolidation of the *Abraham* case with the *Manbodh* cases may not serve significant judicial economy interests.
4. The Complaint in the *HOVIC v. Flour* [sic] case allegedly reflects a different basis for the assertion of common law contribution and indemnification: that the

¹⁸ Local Rule of Civil Procedure 7.4, promulgated by the District Court of the Virgin Islands, governed reconsideration when HOVIC filed its motion. See D.V.I. Local R. Civ. P. 7.4 (hereinafter “LRCi”), reprinted in V.I. Ct. Rules Ann. 443 (2006 ed.); see also *The Litwin Corp.*, 69 V.I. at ____ n.2; 2018 V.I. LEXIS 102 at *6 n.2 (explaining that rules in effect when motion was filed continue to apply); accord *Hagley v. Hendricks*, S. Ct. Civ. No. 2007/26, 2007 V.I. Supreme LEXIS 8, *4-5 & n.1 (V.I. Dec. 28, 2007) (Rule 7.4 governed reconsideration pursuant to Superior Court Rule 7).

settlement provides the ground for contribution and indemnification. *Id.* (quotation marks omitted).

Regarding the first rationale, HOVIC counters that the pending motions in *Fluor* challenging the Superior Court's subject matter jurisdiction had been fully briefed. By contrast, the October 21, 2005 Order had observed that "arguments have been leveled that this court lacks subject matter jurisdiction. Currently, motions to that effect, for dismissal and summary judgment, are pending, though not fully briefed," *Manbodh*, 2005 V.I. LEXIS 40 at *3, and then concluded that "[t]heir resolution must precede any consolidation." *Id.* Accordingly, since the motions in *Fluor* were, in fact, fully briefed "prior to the Court's decision of October 21, 2005," (Recons. Mot. 3), the decision denying consolidation was in error.

Regarding the second rationale, HOVIC contends that the transcript of the May 4, 2005 hearing

reveals and supports HOVIC's understanding of the Court's direction, namely that defendants should and would be filing Motions regarding subject matter jurisdiction in the *HOVIC v. Flour* [sic] case and that the Court would determine subject matter jurisdiction before determining the necessity for filing 148 separate complaints and paying 148 separate filing fees. *Id.* at 4.

Furthermore, "HOVIC was not required to pay such a fee in the *Manbodh* case," HOVIC points out, because the Third-Party Complaints were "filed in the first four cases set for trial. Then, by virtue of Case Management Order of the Court in the *Manbodh* cases, the Complaint was applied to the remainder of the Superior Court cases set forth in Exhibit A to the Order." *Id.* at 5. To make HOVIC now "pay over \$7,000.00 in potential filing fees and . . . fil[e] separate complaints as to each original plaintiff's case," *id.* at 4, would be "overly burdensome" and "a waste of time and money for HOVIC," *id.*, if the Court ultimately concluded that it lacked subject matter jurisdiction. Accordingly, insofar as the May 4, 2005 bench ruling regarding the filings of separate cases underlies the October 21, 2005 Order denying consolidation, the Court should reconsider that decision, HOVIC argues.

Regarding the third rationale, HOVIC contends that judicial economy would be furthered, not hampered, if the *Manbodh* cases were consolidated with the *Fluor* case

There was one mediation in the settlement of the HOVIC cases and one settlement resulted. The distinction in the cases is simply whether the plaintiffs filed in Territorial or District Court. There is no greater example of the need for consolidation, the discovery will be exactly the same as it relates to each of the defendants. The discovery will be exactly the same as it relates to HOVIC. The judicial economies of consolidation cannot and should not be denied when one views this as a case seeking contribution and indemnification for the reasonable settlement of 359 cases concerning exposure to asbestos at the HOVIC refinery. *Id.* at 5-6.

Thus, the defendants and the causes of action (contribution and indemnification) are the same between all the cases, judicial economy supports consolidation, HOVIC argues.

Finally, regarding the last rationale, HOVIC questions the Court's assessment of its causes of action. In the October 21, 2005 Order, the Court had concluded that "the Complaint itself reflects a different basis for the assertion of common law contribution and indemnification: that the settlement provides the ground for contribution and indemnification." 2005 V.I. LEXIS 40 at *4. HOVIC says that it "cannot determine why the Court believe[d] HOVIC's theory of contribution and indemnification," *id.* at 6, differed between the *Manbodh* cases and the *Fluor* case. (Recons. Mot. 6.) "[T]he two pleadings are identical," HOVIC argues. *Id.* "In both cases our argument is that the settlement of the matter provides the grounds for contribution and indemnification." *Id.*

In opposition, Born counters that "HOVIC's motion is without merit and must be denied." (Born, Inc.'s Opp'n to Recons. Mot. 2, filed Nov. 23, 2005.) "Presiding Judge Maria M. Cabret properly exercised her discretion," Born argues, "and held that HOVIC had failed to meet its burden for establishing the propriety of consolidation of its third-party claims and crossclaims in *Manbodh* with another lawsuit, *HOVIC v. Fluor Daniel, et al.*" *Id.* Furthermore, "[t]here is no assertion by HOVIC, nor could there be, that Presiding Judge Cabret's Order is clearly erroneous, or that there has been either a change in controlling law or new evidence." *Id.*

The 3M Defendants agree with Born: "HOVIC does not assert the existence of any new controlling law, and . . . cites no new evidence." (3M Defs.' Opp'n to Recons. Mot. 2, filed Nov. 28, 2005.) Instead, HOVIC argues "'manifest injustice . . . will result.'" *Id.* (quoting Recons. Mot. 2). Yet,

“HOVIC cites no decisional law or other authority construing this standard.” *Id.* at 3. “Instead, it is clear that HOVIC merely disagrees with this Court. The points of disagreement neither individually, nor collectively, evidence manifest injustice.” *Id.* Additionally, HOVIC also “fails to identify anything contained within the October 21 Order that is ‘unclear,’ as opposed to its painstaking recitation of the portions with which it disagrees.” *Id.* at 7.

CBI joined the 3M Defendants and Born in opposing HOVIC’s motion. Like them, CBI Services does not find anything unclear about the Court’s bench ruling, which advised “counsel for HOVIC [to] ‘[f]ollow the same procedures that was followed in the other cases.’” (CBI’s Opp’n to Recons. Mot. 3, filed Nov. 28, 2005 (quoting Hr’g Tr. 88:3-4 (May 4, 2005)).) Those procedures, CBI, explains

were summarized earlier in the proceeding . . . wherein Presiding Judge Cabret stated . . . “I will take the complaint that you filed and I will accept the first person that is on the caption as a defendant. That was the rule of the first-party complaint with regard to the filing fees for each and every plaintiff.” *Id.* (quoting Hr’g Tr. 86:19-23 (May 4, 2005)).

“Even if one were to accept HOVIC’s arguments,” CBI states, “it is still beyond dispute that HOVIC’s complaint in the second indemnity case [*Fluor*] was valid only as to the first-named Claimant’s case.” *Id.* Consequently, “this Court’s decision to deny consolidation unquestionably was correct because, as the Court had expressly rejected all other Claimants’ cases, their cases were not ‘ . . . pending before the court . . . ‘ as required by Fed. R. Civ. P. 42(a).” *Id.*

HOVIC did not file a reply.

Pursuant to Local Rule 7.4, “[a] party may file a motion asking a judge . . . to reconsider an order or decision made by that judge Such motion shall be filed within ten (10) days.” LRCi 7.4. The grounds for seeking reconsideration under Rule 7.4 are limited to “intervening change in controlling law,” “availability of new evidence, or” “the need to correct clear error or prevent manifest injustice.” *Id.* HOVIC sought reconsideration on the last ground: the need to prevent manifest injustice. Many “cases use the term manifest injustice to describe the result of a plain error.” *Cabrita Point Dev.*,

Inc. v. Evans, 52 V.I. 968, 975 (D.V.I. 2009) (quotation marks, brackets, ellipsis, and citation omitted).

“Manifest injustice has also been defined as an error in the trial court that is direct, obvious, and observable.” *Id.* (quotation marks and citations omitted). But there is no “clear error or manifest injustice . . . when a litigant merely disagrees with the court.” *Bostic v. AT&T of the V.I.*, 45 V.I. 553, 559 (D.V.I. 2004) (citation omitted); *accord In re: Infant Sherman*, 49 V.I. 452, 457 (2008) (“A motion for reconsideration is not a second bite of the apple.”). After considering HOVIC’s arguments, as well as the overall record, including the transcript of the May 4, 2005 hearing, the Court denied reconsideration because the opponents are correct: HOVIC cannot point to any clear or obvious injustice that would result from the Court not reconsidering, i.e., reversing, the October 21, 2005 Order.

First, as noted above and in the October 21, 2005 Order, “actions *may be consolidated* when they involve a common question of law or fact. This rule is discretionary, not mandatory.” *Manbodh*, 2005 V.I. LEXIS 40 at *1 (emphasis added) (internal citation omitted). Even though the Court “consolidated in a single docket . . . lawsuits filed on behalf of Plaintiff Kelvin Manbodh and 210 additional [plaintiffs] against HOVIC, Westinghouse Electric Corporation and some twenty-six other defendants,” *Manbodh*, 2006 V.I. LEXIS 36 at *3 (parenthetical omitted), consolidation was not intended. But even if consolidation was intended in 1997 when 211 cases were grouped together under *Manbodh*, injustice would not be visited upon HOVIC by the refusal to grant HOVIC’s Motion to Consolidate *Fluor* with *Manbodh*.

HOVIC might have been on firmer footing if *Fluor* (like *UOP*) was just another case. In that case, subjecting the same parties represented by the same attorneys to “competing deadlines and possibly conflicting scheduling orders,” *Edwards*, 66 V.I. at 232, could border on an abuse of discretion. Managing 212 cases under a master docket might not be more burdensome than managing 211 cases. But *Fluor* is not just another case, a point HOVIC acknowledged in one of the Replies it filed in support of its Consolidation Motion. There, HOVIC argued that consolidation was proper because the cases are similar.

The lawsuits were filed in the Territorial Court of the U.S. Virgin Islands (approximately 211 cases in total) and in the District Court of the U.S. Virgin Islands (approximately 149 cases in total). The District Court cases were later transferred to the MDL in Pennsylvania. HOVIC entered into a confidential joint settlement agreement with all Claimants in both the Territorial and District Court actions. The settlement has resulted in the final resolution of all claims Claimants could bring against HOVIC and the Defendants named herein. Following the settlement, HOVIC filed two actions seeking contribution and indemnification from the parties who were responsible for mining, milling, designing, manufacturing, selling, marketing, distributing and/or installing asbestos-containing products to the HOVIC refinery. One action was filed against cross claim and third party defendants in the Territorial Court actions. As these claims were filed as part of the 211 plaintiffs' actions, the Court consolidated the actions into one action for contribution and indemnification. The other action filed by HOVIC related to the District Court actions. As the plaintiffs' actions in the District Court were already resolved, HOVIC did not file its claims for contribution and indemnification in each of the 149 personal injury actions, nor did HOVIC file separate claims for contribution and indemnification in each of the 211 Territorial Court actions. Instead, it filed one action for contribution and indemnification in the Superior Court of the Virgin Islands under docket number SX-05-CV-0000165. HOVIC now seeks to consolidate this one action with the present consolidated action, Master Docket No. 324/1997, thus rejoining all cases settled together. (Def. / Third-Party Pl. HOVIC's Mem. in Further Supp. of its Mot. to Consolidate the *Fluor* case with the Instant Action 2-3, filed July 1, 2005 (paragraph break omitted).)

HOVIC's Reply shows that HOVIC (like Litwin) views *Manbodh* as one case. The economy of consolidating another case, *Fluor*, with *Manbodh* is apparent to HOVIC because both cases assert the same claims (contribution, indemnification, and breach of contract) against the same (or mostly the same) parties. But *Manbodh* and *Fluor* are not two cases. Rather, they are 211 and 159 "cases" respectively, and once consolidated would total over 370 "mini-suits" within the same master case.

HOVIC concedes that the gist of *Fluor* is an attempt to recoup monies paid to settle the 159 District Court cases. And technically, HOVIC is correct that only one civil action is pending: the *Fluor* case. But like *UOP*, *Fluor* is not really just one case because the claims HOVIC asserted in *Fluor* arise out of the settlement of the *Abraham* series of cases. So, even though HOVIC commenced one civil action, HOVIC effectively asserted within that one action 954 causes of action—six counts, one for each *Abraham* plaintiff—against some fifty or so defendants. The evidence necessary to prove where and when Oliver Abraham may have been exposed to asbestos or other toxic substances, whether HOVIC potentially could have been liable, and what portion of HOVIC's "fault" should now be borne

by the *Fluor* Defendants—all this makes it clear that this Court did not err in denying HOVIC’s June 6, 2005 Motion to Consolidate *Fluor* with *Manbodh*. For these reasons, the Court denied HOVIC’s November 8, 2005 Motion to Reconsider.

However, even though reconsideration was not warranted, the Court nonetheless granted HOVIC’s request for clarification because, admittedly, the October 21, 2005 Order was somewhat unclear. The October 21, 2005 Order had concluded that HOVIC had failed to do as directed: follow the same procedures as in *Manbodh* when filing *Fluor*. But HOVIC was never ordered to file individual complaints. It is true that in the Superior Court of the Virgin Islands oral orders are enforceable pending reduction to writing. *See* Super. Ct. R. 5. But no order issued in *Fluor* to that effect. But more importantly, objections had been raised during the May 4, 2005 hearing against having HOVIC (and Litwin) file individual complaints.

One attorney objected because she was admitted *pro hac vice* in the *Manbodh* case and would then be precluded from appearing in the *Abraham* series of cases if another 158 cases would be forthcoming. *Cf.* Super. Ct. R. 301 (“Extended practice on a *pro hac vice* basis is hereby expressly prohibited and any attorney desirous of undertaking more than three (3) total appearances shall seek regular admission to the Bar in order to share the burdens of local practice.”), *reprinted in* V.I. Ct. Rules Ann. (2005 ed.), *rescinded by In re: Order Prom. Rules for the Super. Ct. of the V.I.*, Misc. No. 4-2008, 2008 V.I. LEXIS 23, *1 (V.I. Super. Ct. Apr. 11, 2008). Another attorney questioned whether the United States Judicial Panel on Multidistrict Litigation had jurisdiction over some of HOVIC’s claims since the *Abraham* series of cases had been filed in federal court. (*Cf.* Hr’g Tr. 85:2-12 (May 4, 2005) (“Judge Christian wrote the opinions that said in tort claims against multiple defendants that the [common law] contribution and indemnity claims . . . were pending . . . by implication and that only contractual indemnity claims had to be expressly pleaded between multiple defendants, so I wouldn’t want the Superior Court to possibly be in a position where it would be assuming jurisdiction of a matter that’s already before the panel.”).

Since these issues had been raised prior to the Court issuing its October 21, 2005 Order, HOVIC sought clarification. In HOVIC's mind, requiring it to "pay over \$7,000.00 in potential filing fees and . . . fil[e] separate complaints as to each original plaintiff's case," (Recons. Mot. 4), would be "overly burdensome" and "a waste of time and money for HOVIC," *id.*, if *Fluor* were to be dismissed for lack of subject matter jurisdiction. HOVIC would have then paid thousands of dollars in filing fees unnecessarily. These concerns (as well as those raised by others for and against severance) do not fall on deaf ears. But courts cannot circumvent procedural rules and standard practices because a complaint may fail to state a claim for relief, or because a court may lack subject matter jurisdiction, or because an attorney's appearance on a *pro hac vice* basis in subsequent cases may be limited. Appearing *pro hac vice* is a privilege not a right. *Cf. In re: Application of Shores*, 59 V.I. 994, 1002 (2013) (*per curiam*) (citing *In re: Admission of Alvis*, 54 V.I. 408, 416 (2010) (*per curiam*); *Leis v. Flynt*, 439 U.S. 438, 443-44 (1979)). There no right to have an advisory opinion address whether a claim has merit or whether a court has subject matter jurisdiction before a complaint is filed.

HOVIC is correct insofar as the October 21, 2005 Order was unclear as to whether the Court was suggesting that HOVIC should "follow the same procedures that were followed in the previous asbestos cases," *Manbodh*, 2005 V.I. LEXIS 40 at *4 n.1, or ordering HOVIC to follow those procedures. If the Court did intend to order that it would accept the *Fluor* complaint only "in the name of the first party listed," *id.* at *4 n.2, that order was unclear and may have been in error. Three reasons support this conclusion.

First, "the name of the first party listed" in the Complaint was *Fluor*, technically. But of course, that's not what the Court meant. Instead, what the May 4, 2005 bench ruling and the October 21, 2005 Order both intended to convey was that any claims asserted in *Fluor* concerning the settlement of any person's case other than Oliver Abraham had to be filed separately. "The Court [had] ruled from the bench that parties wishing to recover the settlement monies should follow the same procedures that were followed in the previous asbestos cases." *Id.* Since "Oliver Abraham [wa]s the first-named

claimant listed in exhibit A from the *Abraham Series* of cases filed in the District Court of the Virgin Islands,” *id.*, HOVIC (and Litwin) had to follow the same procedures as the *Manbodh* Plaintiffs did, which was to file one complaint for each plaintiff, but for the *Abraham* series cases. That was not clear. Second, the May 4, 2005 hearing was held in *Manbodh*, not in *Fluor* or UOP. The clerk did not call the *Fluor* case. Counsel for *Fluor* did not appear. Hence, the ruling from the bench may not have been an order, strictly-speaking, as to *Fluor*.^{19,20} Third, and most importantly, *Fluor* had already been filed more than a month before the May 4, 2005 hearing occurred. Directing that “the complaint would only be accepted in the name of the first party listed,” *id.* at *4 n.2, might have implicated the statute of limitations. *Cf. Abednego v. St. Croix Alumina, LLC*, 63 V.I. 153, 183 (Super. Ct. 2015) (“[W]hen dropping and dismissing a party, rather than severing the relevant claim will result in the claim being blocked by the statutes of limitations, a court must choose to sever the claim, rather than to drop the party, because that is the just option.” quotation marks and citation omitted)). The safer course would

¹⁹ Courts have recognized that the failure to adhere to the formalities associated with opening and convening court do not necessarily invalidate what transpired. *Cf. Warren v. Hunt*, 21 So. 939, 941 (Ala. 1896) (“All that is intended to be accomplished by calling a case ordinarily is to invite the attention of the parties to it with a view to judicial action upon it; and all this is a fact accomplished without sounding the cause when the parties are immediately before the court intent upon and asking and consenting to the rendition of judgment. Moreover, no degree of publicity at the moment of action could subserve any possible end, where the parties themselves are present and alive to what is transpiring, since nobody else could be heard to raise any objection or make any suggestion in the premises. And, so it is obviously immaterial whether such judgment is sought and rendered during one week or another of the court, during the ‘civil week’ or the ‘criminal week.’”); *State v. Taylor*, 316 S.E.2d 225, 226–27 (N.C. 1984) (“We are of the opinion that defendant’s hypertechnical argument that court was not reopened because the sheriff failed to recite the familiar litany, ‘Oyez, Oyez, Oyez,’ to formally declare the opening of court is without merit.”). But in this instance, the concern would be over notice if any of the parties to UOP or to *Fluor* were not represented in court on May 4, 2005 since notice was not given that either case would be considered.

²⁰ In the October 21, 2005 Order, the Court explained that “[t]he Court [had] ruled from the bench [on May 4, 2005,] that parties wishing to recover the settlement monies should follow the same procedures that were followed in the previous asbestos cases.” *Manbodh*, 2005 V.I. LEXIS 40 at *4 n.1. However, this “ruling” about consolidating the *Abraham* cases (UOP and *Fluor*) with the *Manbodh* cases came in response to remarks made by counsel for Litwin regarding UOP. Attorney Daley questioned whether the Court’s bench ruling “applie[d] to both third-party plaintiffs,” (Hr’g Tr. 86:13-14), and the Court said that it did. But UOP was assigned to the Honorable Darryl Dean Donohue, Sr., not to the Honorable Maria M. Cabret. Judge Cabret also served at that time as the Presiding Judge of the Superior Court, however. Whether her May 4, 2005 bench ruling was rendered in her administrative or judicial capacity is unclear. If rendered as a judge assigned to a case, then the May 4, 2005 bench ruling was a nullity as to UOP because UOP was assigned to Judge Donohue and no judge can “issu[e] an order in a case assigned to another judge.” *Vanterpool*, 63 V.I. at 573. If rendered in her administrative capacity as Presiding Judge of the Superior Court, then the May 4, 2005 bench ruling was not rendered in a specific case, but as a practice for the Superior Court of the Virgin Islands in general. The scope of the May 4, 2005 bench ruling is an important issue, but one the Court need not resolve in this Opinion.

have been to order that all claims in *Fluor* other than those pertaining to Oliver Abraham were severed and to direct HOVIC to refile 158 complaints for each of the other *Abraham* plaintiffs. (*Cf.* CBI & PITGI’s Resp. to HOVIC’s Renewed Mot. for Consolidation 4-5, filed Aug. 10, 2015 (hereinafter “CBI & PITGI Renewed Opp’n”) (“[W]ith the sole exception of Oliver Abraham, HOVIC has never filed a complaint or paid a filing fee for any District Court plaintiff listed on Exhibit ‘A’ of the *Fluor* Complaint. The alleged settlements, which are the basis for the *Fluor* case, were purportedly entered on or before the date of filing the *Fluor* Complaint in 2005. At this point, over ten years later, the statute of limitations has expired on any claims, whether under common law or contract based upon any of those alleged settlements with the sole possible exception of HOVIC’s claims based upon its alleged settlement with Oliver Abraham.”).) Since no order was issued in *Fluor* after the May 4, 2005 bench ruling and before the October 21, 2005 Order, HOVIC requested clarification, which the Court granted.

C. HOVIC’s Renewed Motion to Consolidate *Fluor* with *Manbodh*

In its renewed motion for consolidation, HOVIC repeats that both *Manbodh* and *Fluor* “involve common questions of law and fact, similar parties, and arise out of the global settlement of 359 actions involving 211 *Manbodh* plaintiffs and 148 *Flour* [sic] plaintiffs, all of whom alleged exposure while working at the refinery.” (HOVIC’s Renewed Mot. to Consolidate 1, filed July 27, 2015.) Therefore, “[b]ecause both actions involve common questions of law and fact and arise out of the global settlement of 359 actions,” HOVIC “respectfully . . . request[s] that the Court enter an Order pursuant to Rule 42(a) of the Federal Rules of Civil Procedure consolidating these matters.” *Id.* at 2. The reason HOVIC cites for renewing its motion to consolidate is the May 2015 status conference this Court held within the civil miscellaneous case:

At the last status conference in May 2015, this Court indicated that it wished to move these matters forward and off its docket. To that end, the Court indicated that it would be referring the *Manbodh* matter to mediation. Since the *Fluor* matter involves other plaintiffs allegedly exposed to asbestos who also worked at the HOVIC refinery, consolidation of these matters could help move this matter to its ultimate resolution as

well. Since both matters were consolidated for purposes of discovery and settlement, the third party action can and should be consolidated due to the prevalence of common parties, in addition to common issues of law and fact.

Id. at 2. Like *Simon*, 2015 V.I. LEXIS 23, *Benjamin v. Eastern Airlines, Inc.*, 18 V.I. 516 (D.V.I. 1981), and *Richardson v. Virgin Islands Housing Authority*, 18 V.I. 351 (D.V.I. 1981), HOVIC argues that *Manbodh* and *Fluor* involve “common issues of law and fact . . . [and] common parties.” *Id.* at 3. Hence, *Fluor* should be consolidated with *Manbodh*, HOVIC asserts.

Tuthill and UOP “strongly” argue against consolidation. (UOP and Tuthill Corp.’s Opp’n 1, filed July 29, 2015 (hereinafter “UOP & Tuthill Renewed Opp’n”).) They point out that “*Manbodh* relates to HOVIC’s settlements with a group of asbestos claimants who filed suit in the then Territorial Court of the Virgin Islands whereas *Fluor* relates to Amerada Hess Corporation’s settlements with a separate group of asbestos claimants who filed suit in the District Court of the Virgin Islands.” *Id.* (footnotes omitted). Yet, HOVIC “failed to disclose to the Court in its motion that HOVIC was not a party in any of the District Court cases which Amerada Hess settled.” *Id.* UOP and Tuthill further contend that “HOVIC did not pay anything to settle any of those cases, nor should it have since it had not been sued. In fact, had the District Court plaintiffs added HOVIC to their cases the District Court would have lost diversity of citizenship jurisdiction.” *Id.* UOP and Tuthill then refer the October 21, 2005 Order and note that “[n]one of the matters pointed to by Presiding Judge Cabret in her Order Denying Consolidation have since been resolved.” *Id.* at 2. Further, “[n]ot only has HOVIC failed to attach[] Presiding Judge Cabret’s October 21, 2005 Order to its present Motion, it has failed to present any argument as to why that Order should be overruled now.” *Id.*

CBI and PITGI echo the arguments of Tuthill and UOP. They too note that “[n]one of the . . . factors, which were the basis for the Court’s denial of HOVIC’s Original Motion have changed. Motions are still pending challenging subject matter jurisdiction in *Fluor*. HOVIC has never filed complaints or paid filing fees for the other underlying District Court plaintiffs.” (Renewed Opp’n 4.) But CBI and PITGI further contend that “consolidation is now futile in light of the expiration of the

statute of limitations on every claim related to the underlying District Court plaintiffs with the sole exception of Oliver Abraham.” *Id.* at 5.

In reply to UOP and Tuthill, HOVIC counters that it “is the [real] party in interest who filed the third party action in both the *Manbodh* and *Fluor* matters.” (HOVIC’s Reply to Tuthill & UOP Opp’n 2, filed Aug. 12, 2015.) “HOVIC is the party who seeks damages for contribution, indemnity, and breach of contract based upon the global settlement of 359 actions, involving 211 *Manbodh* plaintiffs and 148 *Fluor* plaintiffs, all of whom alleged exposure while working at the refinery.” *Id.* In reply to CBI and PITGI, HOVIC counters first, that consolidation would avoid the “additional time requirements and expenses resulting from separate trials because both trial and discovery could be completed simultaneously and would in fact, save the parties and the Court time and expenses by avoiding any duplication of effort.” (HOVIC’s Reply to CBI & PITGI’s Resp. 2, filed Sept. 11, 2015.) HOVIC acknowledges that CBI and PITGI oppose consolidation because “the District Court plaintiffs all have distinctive ‘employment histories, distinct underlying purported exposure, distinct underlying damages stretching over distinct periods of time over several decades, located in various distinct areas of the HOVIC refinery, and for various distinct purported illnesses.’” *Id.* at 3-4 (quoting Renewed Opp’n 2 n.2)). But HOVIC counters that “the salient point that CBI [and PITGI] overlook[] is that all of the 359 plaintiffs in the *Manbodh* and *Fluor* actions had distinct cases involving the above factors, however that did not stop this Court from consolidating those matters for discovery and settlement purposes.” *Id.* at 4. HOVIC further argues that it “does not believe that the Court directed it to pay separate filing fees until *after* it resolved the issue of subject matter jurisdiction.” *Id.* at 5 (emphasis added). Finally, consolidation is not futile, HOVIC argues, because “[t]here is . . . no order by this Court dismissing the other claims, only a verbal order that the issue has been deferred. Thus, there are no statute of limitations implications.” *Id.* at 6.

After having reviewed the motion papers and the overall record (including the *Fluor* case),²¹ the Court concluded that HOVIC's motion must be denied. Two reasons compelled that conclusion.

First, HOVIC failed to cite any authority governing the renewal of a motion previously denied. That alone warrants a denial. See LRCi 11.1(b) ("By signing a motion or supporting memorandum or brief, an attorney certifies to the Court that . . . the applicable law in this jurisdiction has been presented *before* law from another jurisdiction is cited.") (applicable via Super. Ct. R. 7);²² accord V.I. R. Civ. P. 6-1(a)(1) ("All motions must . . . state with particularity the grounds for seeking the order, including a concise statement of reasons and citation of authorities.").

[I]t is a prerequisite of any motion or filing with the court that some legal authority that supports the proposition of a particular party be cited or that some nonfrivolous argument be made for the extension, modification or reversal of existing law or the establishment of new law. This serves to ensure that the filings made by a party are in good faith, have a solid legal foundation and are not wasteful of the time or resources of the court or other concerned parties. This requirement is fundamental to the motion practice of the law and without it, procedural confusion and chaos would rule. It cannot be overlooked. *V.I. Daily News v. Publ. Servs. Comm'n*, 45 V.I. 139, 145 (Terr. Ct. 2002).

HOVIC did cite some authority in support of consolidation, but not authority regarding when a trial court can revisit a matter it previously ruled on. That was improper. *Cf. Antilles Sch., Inc. v. Lembach*, 64 V.I. 400, 428 n.13 (2016) ("[T]here is absolutely no basis in any of this Court's precedents for the proposition that attorneys are not required to fully brief all questions of law relevant to the issues that are being litigated.").

At the time when HOVIC filed its renewed motion, there was no authority in the Virgin Islands addressing whether a party can renew a motion. Subsequently, the Supreme Court of the Virgin Islands

²¹ "[C]ourts can take judicial notice of their own cases." *Goodwin v. Fawkes*, 67 V.I. 104, 107 n.2 (Super. Ct. 2016) (explaining *King v. Appleton*, 61 V.I. 339, 348 (2014), parenthetically).

²² At the time when HOVIC filed its motion, Local Rule of Civil Procedure 11.1 applied in the Superior Court of the Virgin Islands through Superior Court Rule 7. *Cf. Benjamin v. Coral World VI, Inc.*, ST-13-CV-065, *et seq.*, 2014 V.I. LEXIS 35, *10 n.38 (V.I. Super. Ct. June 12, 2014) ("[L]itigants are reminded of the requirements of LRCi 11.1. By signing a motion or supporting memorandum, an attorney certifies that the applicable law in this jurisdiction has been cited, including authority for or against the position being advocated by counsel." (citation omitted)), *cited approvingly in Cacciamani & Rover Corp. v. Banco Popular de P.R.*, 61 V.I. 247, 251 n.2 (2014), and *Percival v. People*, 62 V.I. 477, 491 (2015).

sanctioned the filing of a renewed motion. *See generally Armstrong*, 64 V.I. at 533-36. But the Court refused to characterize renewed motions the same as motions for reconsideration. *See id.* at 534 (“Nevertheless, we conclude that the People’s argument that the renewed motion . . . should be treated similarly to a motion for reconsideration, lacks merit.”). By declining to equate renewal with reconsideration, *Armstrong* implicitly held that the showing necessary to obtain relief on a renewed motion is not as high as on a motion for reconsideration. *Cf. id.* at 534 (rejecting argument that “a renewed motion to suppress should be treated ‘similar to a motion for reconsideration,’ and should be granted only if there is ‘(1) an intervening change in the controlling law; (2) the availability of new evidence, or; (3) the need to correct clear error or prevent manifest injustice.’” (quoting Appellant’s Br.12)). Hence, “[r]enewal and reconsideration are similar, but not the same.” *People v. Hatcher*, 68 V.I. 362, 376 (Super. Ct. 2018) (citing *Armstrong*, 64 V.I. at 534)). Although *Armstrong* implicitly recognized that a party may renew a motion, *Armstrong* did not address what standard governs renewed motions. Hence, before explaining why HOVIC’s renewed motion was denied, the Court must first explain how it reached that conclusion, which necessarily requires addressing what standard governs a renewed motion and why HOVIC failed to meet it.

Virgin Islands courts have routinely allowed parties to renew dispositive as well as non-dispositive motions. *See, e.g., Hatcher*, 68 V.I. at 376-77 (denying renewed motion to continue trial); *People v. Laurencin*, 48 V.I. 304, 305 (Super. Ct. 2007) (granting renewed motion for bench trial); *Bookworm, Inc. v. Tirado*, 44 V.I. 300, 301 (Terr. Ct. 20020 (granting renewed motion for summary judgment); *Sunny Isle Church of Christ v. Francis*, No. 175/1985, 1985 V.I. LEXIS 39, *2 (V.I. Terr. Ct. Oct. 23, 1985) (granting renewed motion for preliminary injunction); *Bainville v. V.I. Water & Power Auth.*, No. 1624/81, 1983 V.I. LEXIS 86 (V.I. Terr. Ct. June 21, 1983) (denying rather than rejecting renewed motion for summary judgment); *cf. Gov’t of the V.I. v. Thomas*, 5 V.I. 276, 278 (Mun. Ct. 1966) (objecting to the terms stipulated to for renewed motion to suppress). Only one court has discussed what standard should govern. In *Hatcher*, the Superior Court adopted the following

standard: “a motion is renewed when the circumstances on which the earlier motion was made have changed.” 68 V.I. at 376-77 (citations omitted).

As with *Armstrong*, other jurisdictions have recognized that the trial court may consider a renewed motion.²³ *E.g.*, *Food Serv. Distribs., Inc. v. Barber*, 429 So. 2d 1025, 1027 (Ala. 1983) (“[A] court may reconsider its ruling on a motion for summary judgment and may correct an erroneous ruling at any time before final judgment.” (citing *Roach v. Village of Winnetka*, 10 N.E.2d 356 (Ill. 1937))); *Premium Distrib. Co. v. Nat’l Distrib. Co.*, 278 S.E.2d 468, 469 (Ga. Ct. App. 1981) (“[I]t is within the discretion of a trial judge to consider a renewed motion for summary judgment even without an expansion of the record.”); *JPMorgan Chase Bank, N.A. v. Bluegrass Powerboats*, 424 S.W.3d 902, 909 (Ky. 2014) (“There is nothing in the law that prevents a litigant from renewing a motion to the trial court before finality of the case. Until a final judgment is entered, all rulings by a court are interlocutory, and subject to revision.”); *cf. Farber v. Bay View Terrace Homeowners Assn.*, 46 Cal. Rptr. 3d 425, 430 (Ct. App. 2006) (“Denial of a motion without prejudice impliedly invites the moving party to renew the motion at a later date, when he can correct the deficiency that led to the denial.”); *accord Webber v. Scarano-Osika*, 943 N.Y.S.2d 240, 242 (App. Div. 2012) (“To prevail upon a motion to renew, a party must proffer both new facts not offered on the prior motion that would change the prior determination and reasonable justification for the failure to present such facts on the prior motion.” (ellipses and citations omitted)). *But cf. Catskill Dev., L.L.C. v. Park Place Entm’t Corp.*, 204

²³ Excluded from the Court’s analysis are cases addressing the legal standard for renewing a motion for judgment as a matter of law, for a directed verdict, or for judgment of acquittal. The right to renew such motions is well established and, in many instances, mandatory to preserve the issue for appellate review. *E.g.*, V.I. R. Civ. P. 50(b); V.I. R. Crim. P. 29(c)(1); *cf. Gov’t of V.I. v. Williams*, 8 V.I. 359, 361 (3d Cir. 1971) (“This Court has held in the past that in the absence of a motion for judgment of acquittal, the sufficiency of the evidence may not be questioned on appeal, except when there is plain error.” (citations omitted)); *Yohannon v. Keene Corp.*, 924 F.2d 1255, 1262 (3d Cir. 1991) (“On sufficiency, the failure to move for a directed verdict at the close of all evidence does more than limit an aggrieved party’s remedy to a new trial. In this Circuit, it wholly waives the right to mount any post-trial attack on the sufficiency of the evidence.” (citations omitted)); *accord Vuitch v. Furr*, 482 A.2d 811, 813 n.2 (D.C. 1984) (“Appellants did not make a motion for judgment notwithstanding the verdict, Super. Ct. Civ. R. 50 (b), and therefore, this court is without power to direct entry of a judgment for appellants as they request.” (citations omitted)); *State v. Noyes*, 114 A.3d 1156, 1168 (Vt. 2015) (failure to renew motion for judgment of acquittal at the close of all evidence waives appellate review of the sufficiency of the evidence).

F. Supp. 2d 647, 648 (S.D.N.Y. 2002) (“[P]laintiffs filed a ‘motion to renew’ (a form of motion recognized by New York State’s Civil Practice Law and Rules, but nowhere mentioned in the Federal Rules of Civil Procedure.”). However, some courts have cautioned against the unlimited renewal of previously-denied motions, particularly in jurisdictions where cases rotate between judges. *Cf. Curtin v. Koskey*, 282 Cal. Rptr. 706, 708 (Ct. App. 1991) (“This issue requires reconciliation of two established rules. On the one hand, a decision on a motion is not *res judicata*, and the trial court has jurisdiction to reconsider a prior ruling or to entertain a renewal of a previous motion. On the other hand, one trial court judge may not reconsider and overrule a ruling of another judge.” (citations omitted)); *Goldey v. Trs. of the Univ. of Pa.*, 675 A.2d 264, 266 (Pa. 1996) (“[O]ne judge should not ordinarily overrule the interlocutory decision of another judge of the same court in the same case.” (citing *Okkerse v. Howe*, 556 A.2d 827, 831 (Pa. 1989)). *But cf. id.* at 267 (“Where the motions differ in kind, as preliminary objections differ from motions for judgment on the pleadings, which differ from motions for summary judgment, a judge ruling on a later motion is not precluded from granting relief although another judge has denied an earlier motion. However, a later motion should not be entertained or granted when a motion *of the same kind* has previously been denied, *unless intervening changes in the facts or the law* clearly warrant a new look at the question.” (second emphasis added)). Other courts have cautioned against renewed motions because of the increased potential for delay. *Cf. Mac’s Car City, Inc. v. Am. Nat’l Bank*, 532 A.2d 1302, 1305 (Conn. 1987) (“[I]t is within the trial court’s discretion to consider a renewed motion for summary judgment that has previously been denied where, as here, additional or new evidence has been submitted which was not before the court in ruling upon the earlier motion for summary judgment. We must caution, however, that our holding today should not be construed to condone future unnecessary piecemeal litigation brought on by the repeated filing of successive motions for summary judgment.” (internal citations omitted)); *see also Union Storage & Transfer Co. v. Smith*, 58 N.W.2d 782, 786 (N.D. 1953) (“There is no good reason why a defendant who has a right to so full a hearing on a motion should be allowed, when he is defeated, to

renew the same motion, on the same facts, without presenting any proof to entitle him to a rehearing, unless the same judge grants the rehearing to correct some error in his former decision.” (quotation marks and citations omitted)); *Tardif v. Hellerstedt*, 226 P.2d 908, 909 (Wash. 1951) (“Although the granting or denying of a motion during the progress of an action does not, in the strict sense, render the matter *res judicata*, still, upon motions, as upon trials, public policy and the proper expedition of the business of the court require that there must be an end to litigation, and, in the absence of a showing of good cause, the reagitation of the same question on the same state of facts will not normally be allowed.”). A few jurisdictions require that the movant obtain leave beforehand. See *Henderson v. Nat'l Mut. Cas. Co.*, 187 P.2d 508, 510 (Kan. 1947) (“Ordinarily a party is not permitted to file successive motions seeking the same relief after the first motion has been overruled but must include all such requested relief in his first motion. A second motion under such circumstances ordinarily may be filed only after first obtaining leave of court.” (citation omitted)); cf. 56 Am. Jur. 2d *Motions, Rules, and Orders* § 41 (2010) (“A trial court may have jurisdiction to entertain a renewal of a previous motion, which, in some states, may require a motion for leave to renew.” (footnotes omitted)).

After considering the practices of other jurisdictions, and mindful that, in the Virgin Islands, renewal and reconsideration should not be conflated, this Court concludes that leave does not have to be obtained before a renewed motion can be filed. If leave had to be obtained beforehand, HOVIC’s renewed motion technically would not be properly before the Court. But more importantly, requiring leave beforehand would also mean requiring a motion to make another motion since “[a]ny application—whether orally or in writing—made to a court or judge for the purpose of obtaining a ruling or order directing some act to be done in favor of the applicant in a pending case is a motion.” *Der Weer v. Hess Oil V.I. Corp.*, 64 V.I. 107, 128-29 (Super. Ct. 2016) (quotation marks, brackets, and citations omitted). It would also mean no fewer than three motions on the same issue: the initial motion, the motion (or request) for leave to file a renewed motion, and the renewed motion itself. Just as “at some point briefing on motions must end,” *Daniel v. Borinquen Insulation Co.*, SX-98-CV-192, *et*

seq., 2017 V.I. LEXIS 117, *16 (V.I. Super. Ct. July 28, 2017) (citations omitted), so must motions regarding the same issue.

The Court does not believe that a motion can be renewed at any time for any reason. *Cf. Lopez v. Larson*, 153 Cal. Rptr. 912, 917 (Ct. App. 1979) (“[A] court may in its discretion permit a renewal of the motion and reconsider its original ruling *even if the factual basis* for the motion to renew or reconsider *is the same* as that supporting the original motion.” (emphasis added) (citations omitted)). If, in the Virgin Islands, “[r]enewal and reconsideration are similar, but not the same,” *Hatcher*, 68 V.I. at 376 (citations omitted), and if “reconsideration is an ‘extraordinary’ remedy not to be sought reflexively or used as a substitute for appeal,” *Infant Sherman*, 49 V.I. at 458 (quoting *Bostic*, 45 V.I. at 557), then renewal cannot be held a lower standard. There is no doubt that “the common law confers trial courts with the discretion to revise any interlocutory order at any time prior to entry of a final judgment.” *Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 609 (2012) (citation omitted). But the question here is not whether and when the Superior Court can revisit its prior orders, rather the question is what the movant must show to prevail on a renewed motion since. The Court agrees with the standard adopted in *Hatcher*: a motion may be renewed only “when the circumstances on which the earlier motion was made have changed.” 68 V.I. at 376-77 (citing *Armstrong*, 64 V.I. at 535-36; *Carnegie Mellon Univ. v. Hoffman La Roche, Inc.*, 148 F. Supp. 2d 1004, 1010 n.4 (N.D. Cal. 2001); V.I. R. Crim. P. 29(c)(1); and V.I. R. Civ. P. 50(b)). In order to prevail on a renewed motion, the movant must show first, that the circumstances that led to the denial of the prior motion have changed and second, that the movant is now entitled to the relief requested in the earlier motion. HOVIC failed to satisfy either ground here.

As UOP and Tuthill pointed out in their Opposition, “[n]one of the matters pointed to by Presiding Judge Cabret in her [October 21, 2005] Order Denying Consolidation have since been resolved.” (UOP & Tuthill Renewed Opp’n at 2.) In fact, HOVIC too acknowledged, when it filed its Renewed Motion to Consolidate, that its Motion to Reconsider was still pending. (See HOVIC’s Reply

to UOP & Tuthill's Opp'n at 2 ("Tuthill and UOP fail to mention that HOVIC moved to reconsider that Order in November 2005, and that Motion remains pending."); *see also* HOVIC's Reply to CBI & PITGI's Opp'n at 4 ("HOVIC filed a Motion to Reconsider on November 8, 2005, attempting to clarify statements made by the Court at the May 4, 2005 hearing versus those in her [sic] Order dated October 21, 2005. While CBI states the 'motion to reconsider was denied,' that is simply untrue as the issues raised by HOVIC in that Motion remain outstanding." (footnote omitted)).) Yet HOVIC also dismissed the fact that its Motion for Reconsideration remained pending. (HOVIC's Reply to Tuthill & UOP's Opp'n at 2 ("*Regardless of the pending motions*, the Court should consolidate the *Manbodh* and *Fluor* third party matters." (emphasis added)).)

This Court holds that a renewed motion is not properly before the court when a motion for reconsideration or clarification is still pending. HOVIC should have requested a ruling on its November 8, 2005 Motion for Reconsideration. It did not. The only thing that changed between November 8, 2005, when HOVIC filed its Motion for Reconsideration, and July 27, 2015, when HOVIC filed its Renewed Motion for Consolidation is the judge assigned to the case.²⁴ Admittedly, ten years passed and "the *Manbodh* cases had been inactive for some time No discovery has taken place, no motions have been decided That is not uncommon in complex, multi-party litigation." *Manbodh*, 2018 V.I. LEXIS 96 at *18 (quotation marks and citations omitted). But the passage of time alone cannot demonstrate a change in the circumstances that led to the denial of its June 6, 2005 Motion to Consolidate.

²⁴ Although the undersigned judge inherited the docket of cases assigned to the Honorable Francis J. D'Eramo who in turn inherited the docket assigned to the Honorable Maria M. Cabret, Judge D'Eramo, on July 9, 2007, recused himself from *Fluor* because his former law firm was one of the many counsel of record in the case. Fluor was then reassigned at random to the Honorable Darryl Dean Donohue, Sr., and, following his retirement, to the Honorable Robert A. Molloy, until April 18, 2018, when Presiding Judge Michael C. Dunston sua sponte reassigned *Fluor* and *UOP* to the undersigned judge because of their similarity to the *Manbodh* cases. Moreover, because the prior Presiding Judges of the Superior and Territorial Courts had not reassigned all individual *Manbodh* cases to the same judge, which could be problematic, cf. *Vanterpool*, 63 V.I. at 573, Presiding Judge Dunston reassigned all individual *Manbodh* cases to the undersigned judge on March 21, 2017 once the Honorable Douglas A. Brady recused himself on January 11, 2017 from all individual *Manbodh* cases.

Second, and “[r]egardless of the pending motions,” (HOVIC’s Reply to Tuthill & UOP’s Opp’n at 2), HOVIC’s Renewed Motion had to be denied because HOVIC could not prevail on the merits of its underlying motion, i.e., to consolidate *Fluor* and *Manbodh*. The concerns that compelled the Court to deny Litwin’s Motion to Consolidate Cases also compelled the Court to deny HOVIC’s Renewed Motion to Consolidate. But more importantly, HOVIC has acknowledged that it was never a party to the *Abraham* series of cases because the *Abraham* plaintiffs did not sue HOVIC. Therefore, Fluor is markedly different than *Manbodh* or even *UOP* because whether contribution and indemnification are recognized in the Virgin Islands and if so, in which contexts, are fundamental questions still unanswered post *Banks*. Cf. *In re: Refinery Dust Claims*, SX-06-CV-78, 2016 V.I. LEXIS 48, *16 (V.I. Super. Ct. May 3, 2016) (“The proposed third-party complaint was filed before *Banks v. International Rental & Leasing Corp.*, 55 V.I. 967 (V.I. 2011). While contribution and indemnification were viable causes of action in the U.S. Virgin Islands pre-*Banks*, to date, there are no binding decisions in the Virgin Islands addressing whether these claims are still viable post-*Banks*. This question—whether contribution and indemnification should continue to be recognized in this jurisdiction—must be addressed.”). Even before *Banks*, however, Virgin Islands law was unclear whether common law contribution could be maintained as crossclaim. E.g., *Willie v. Amerada Hess Corp.*, 66 V.I. 23, 62 (Super. Ct. 2017) (discussing *Brooks v. Jackson*, Civ. No. 87-1987, 1979 U.S. Dist. LEXIS 15407 (D.V.I. Mar. 23, 1979), and *Martin v. Frett*, 17 V.I. 474, 482 (D.V.I. 1980)). (Cf. Hr’g Tr. 85:2-12 (May 4, 2005) (questioning whether the federal judicial panel on multidistrict litigation has jurisdiction over contribution and indemnification claims). Even the viability of contractual indemnification was not completely put to rest before *Banks*. Cf. *Dominic v. Hess Oil V.I. Corp.*, 624 F. Supp. 117, 119 (D.V.I. 1985) (“CS&M’s contention that the agreement in question, which indemnifies HOVIC against its own negligence, is void against public policy, would come as a surprise to the Third Circuit. This appellate court has resolved so many disputes involving these agreements, that the public policy issue has long been put to rest.” (citing *E. Airlines, Inc. v. Ins. Co.*

of *N. Am.*, 758 F.2d 132 (3d Cir. 1985)). Likewise, whether the party claiming indemnification had to show some amount of potential liability was also unclear. *Cf. Hess Oil V.I. Corp. v. Firemen's Fund Ins. Co.*, 22 V.I. 139, 145 (D.V.I. 1986) (“[T]he Third Circuit has yet to rule whether an indemnitee, such as HOVIC, need only show potential liability to recover from an indemnitor Other circuits have allowed the indemnitee who settles with the injured party to secure indemnification upon proof of its potential liability.”). If HOVIC was not named as a defendant in the *Abraham* series of cases, it would not have been potentially liable. HOVIC may have attempted to subrogate itself in place of certain defendants in the *Abraham* cases. *Cf. Topa Equities v. Bared Jewelers of the V.I.*, 44 V.I. 271, 286 (Terr. Ct. 2002) (“Subrogation is designed to facilitate the placement of the burden of debt on the party who should bear it.” (quotation marks, brackets, and citations omitted)), *rev'd on other grounds*, 46 V.I. 274 (D.V.I. App. Div. 2004). But even then, “[t]he local law in the Virgin Islands is murky at best on the applicability of the doctrine of equitable subrogation.” 44 V.I. at 286 (ellipsis omitted) (quoting *Prime Hospitality Corp. v. Gen. Star Indem. Co.*, 41 V.I. 284, 287 (D.V.I. 1999)). A Banks-analysis will be necessary to determine how and whether *Fluor* should proceed. To consolidate *Fluor* (with all the questions already raised and still to be raised) with *Manbodh* (with over twenty years of litigation history) is not appropriate.

D. Severance

Litwin's arguments for consolidation as well as HOVIC's argument for reconsideration and for renewing its motion for consolidation highlight the uncertainty that has beset these cases. For this reason, and because the Court erred in allowing HOVIC and Litwin to assert their crossclaims and third-party claims in a “consolidated complaint” or a “conglomerated” complaint, the Court *sua sponte* severed the claims. Even “well-intended judges err,” however. *Antoine v. Hess Oil V.I. Corp.*, SX-05-CV-508, 2017 V.I. LEXIS 44, *13 (V.I. Super. Ct. Mar. 10, 2017) (quotation marks and citation omitted). Partly for this reason, “the common law confers trial courts with the discretion to revise any interlocutory order at any time prior to entry of a final judgment.” *Island Tile & Marble, LLC*, 57 V.I.

at 609 (citation omitted). Since third-party claims and crossclaims are not interchangeable, the Court was compelled to remedy its own error. *Cf. Castillo v. St. Croix Basic Servs., Inc.*, SX-09-CV-299, 2010 V.I. LEXIS 141, *7-9 (V.I. Super. Ct. Feb. 9, 2010) (“It is well-settled that a court has discretion to correct its own errors and spare appellate courts from the burden of unnecessary proceedings.” (citations omitted)).

The best tonic for things complex is a dose of simplicity and that simplicity is found by returning to basics. A plaintiff files a complaint. A defendant files an answer. Answers must include compulsory counterclaims, see V.I. R. Civ. P. 13(a)(1), and may include permissive crossclaims “if the claim arises out of the transaction or occurrence that is the subject matter of” the plaintiff’s case, but only “against a coparty.” V.I. R. Civ. P. 13(g). Crossclaims cannot be asserted against nonparties and cannot be asserted “by one who is not a party to the action.” 6 Charles A. Wright, Arthur R. Miller, *et al.*, *Federal Practice & Procedure* § 1431 (3d ed. 2010) (footnotes omitted). And “[n]o crossclaim may be brought against a person who has been eliminated or who has withdrawn from the action, since that person no longer is a party.” *Id.* (footnote omitted). To state a claim against “a nonparty,” a defendant must file a third-party complaint. But a “third-party plaintiff cannot bring a third-party action against someone who already is a party in the suit.” *Id.* § 1431 (footnote omitted).

Crossclaims and third-party claims must “aris[e] 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.” Fed. R. Civ. P. 13(g) (2003 ed.) (emphasis added); *see also* Fed. R. Civ. P. 14(a) (2003 ed.) (“At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff *for all or part of the plaintiff’s claim* against the third-party plaintiff.” (emphasis added)); *accord* 6 Wright & Miller, *Federal Practice & Procedure* § 1402 (Rule 13(g) “permits the assertion of crossclaims that obviously are *as closely related* to the action as are those that arise out of the transaction or occurrence upon which the original

action is predicated.” (emphasis added)); *id.* § 1446 (“[T]hird-party claim[s] may be asserted under Rule 14(a)(1) *only when* the third party’s liability is in some way dependent on the outcome of the main claim or when the third party is secondarily liable to the defending party.” (emphasis added) (footnotes omitted)). In other words, third-party litigation, also known as impleader or vouching in,²⁵ is proper only “when the basis of the third-party claim is indemnity, subrogation, contribution, express or implied warranty, or some other theory.” 6 Wright & Miller, *Federal Practice & Procedure* § (footnotes omitted); *accord* V.I. R. Civ. P. 14(a)(1) (“A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it.”). But if third-party claims are “*separate or independent from* the main action, impleader will be denied.” 6 Wright & Miller, *Federal Practice & Procedure* § 1446 (footnote omitted).

The crucial characteristic of a Rule 14 claim is that defendant is attempting to transfer to the third-party defendant the liability asserted against defendant by the original plaintiff. The mere fact that the alleged third-party claim arises from the same transaction or set of facts as the original claim is not enough. In this connection, impleader under Rule 14(a) should not be confused with interpleader under Rule 22. *Id.* (footnotes omitted).²⁶

By bringing nonparties into a suit, the defendant (now as the third-party plaintiff) must be trying “to transfer to the third-party defendant all or part of the liability *asserted against him* by the original plaintiff.” *In re: One Meridian Plaza Fire Litig.*, 820 F. Supp. 1492, 1496 (E.D. Pa. 1993) (emphasis added); *accord* *Resolution Trust Corp. v. Farmer*, 836 F. Supp. 1123, 1129 (E.D. Pa. 1993) (“To assert a claim properly under Rule 14, the third-party plaintiff must implead a person against whom it can assert a claim of joint or secondary liability arising from the original plaintiff’s claim against the third-

²⁵ See *Black’s Law Dictionary* 871 (10th ed. 2014) (defining impleader as “[a] procedure by which a third party is brought into a lawsuit, esp. by a defendant who seeks to shift liability to someone not sued by the plaintiff. Fed. R. Civ. P. 14. – Also termed *third-party practice*; *vouching in*.”).

²⁶ Interpleader concerns only ownership of property. See *Black’s Law Dictionary* 943 (10th ed. 2014) (defining interpleader as “[a] suit to determine a right to property held by a . . . disinterested third party (called a *stakeholder*) who is in doubt about ownership and who therefore deposits the property with the court to permit interested parties to litigate ownership.”); See also, for example, Virgin Islands Rule of Civil Procedure 22(b), which incorporates Section 1391 of Title 5 of the Virgin Islands Code concerning interpleader actions concerning notes, bonds, certificates, insurance policies, or other instruments of value.

party plaintiff.”). However, because “[i]mpleader is limited to claims against third parties that are derivatively based on the original plaintiff’s claim,” the defendant “cannot use impleader to avoid liability . . . by claiming a third party is *solely* responsible for Plaintiff’s damages.” *J&J Sports Prods., Inc. v. Tolentino*, No. 1:10-cv-02089-LJO-SKO, 2011 U.S. Dist. LEXIS 131029, *7 (E.D. Cal. Nov. 14, 2011) (citing *United States v. One 1977 Mercedes Benz*, 708 F.2d 444, 452 (9th Cir. 1983)). “In other words, a third party claim is not appropriate where the defendant and putative third party plaintiff says, in effect, ‘It was him, not me.’” *Watergate Landmark Condo. Unit Owners’ Ass’n. v. Wiss, Janey, Elstner Assocs., Inc.*, 117 F.R.D. 576, 578 (E.D. Va. 1987).

Like third-party litigation, crossclaims between co-parties, initially not permitted at common law,²⁷ also must “involve[] many of the same factual and legal issues present in the main action” brought by the plaintiff. 6 Wright & Miller, *Federal Practice & Procedure* § 1432 (footnote omitted). “Unrelated claims would require a separate lawsuit.” V.I. R. Civ. P. 13 rpтр note.

The purpose of Rule 13(g) is to permit a defendant to state as a cross-claim a claim against a co-defendant growing out of the transaction or occurrence that is the subject matter of the original action or relating to any property that is the subject matter of that action, and to permit a plaintiff against whom a defendant has filed a counterclaim to state as a cross-claim against a co-plaintiff a claim growing out of the transaction or occurrence that is the subject matter of the counterclaim or relating to any property that is the subject matter of that counterclaim. This, we think, is the clear intent of the language of the rule. . . . [A] cross-claim is intended to state a claim which is ancillary to a claim stated in a complaint or counterclaim which has previously been filed against the party stating the cross-claim. *Danner v. Anskis*, 256 F.2d 123, 124 (3d Cir. 1958)

Additionally, impleader “is proper only when a right to relief exists under the applicable substantive law; if it does not, the impleader claim must be dismissed. If, for example, the governing law does not recognize a right to contribution or indemnity, impleader for these purposes cannot be allowed.” 6

²⁷ See 6 Wright & Miller, *Federal Practice & Procedure* § 1401 (explaining that some state legislatures had authorized crossclaims between defendants) (“[S]ome [state] codes also provided for crossclaims by which one defendant could assert a claim against a codefendant. These claims were similar to the cross-bill permitted in equity and were subject to the traditional equity restriction that they could not introduce matter distinct from that presented in the original suit.” (footnote omitted)).

Wright & Miller, *Federal Practice & Procedure: Civil* § 1446 (footnotes omitted). The same holds for crossclaims.

The law applicable to crossclaims and third-party claims reveals why HOVIC and Litwin are in error when they refer to *Manbodh* as one action or one case. (*Cf.* HOVIC’s Reply in Supp. of Consolidation Mot. 2 (“Following the settlement, HOVIC filed two *actions*.” (emphasis added)).) That simply is not correct. HOVIC filed one action: the *Fluor* case. Litwin filed one action: the *UOP* case. But the *Manbodh* Plaintiffs filed approximately 211 actions and the *Abraham* Plaintiffs filed approximately 159 actions. HOVIC and Litwin subsequently filed crossclaims and HOVIC, Litwin, and M&H also filed third-party complaints in four *Manbodh* cases, *Manbodh*, *Laurencin*, *Jobity*, and *Daniel*. HOVIC and Litwin were also granted leave to extend their cross- and third-party claims to the remaining first-party cases. But leave could not have authorized HOVIC or Litwin “to conglomerate the[ir] claims into one pleading,” (Litwin’s Mem. of Law in Supp. of Reply to Opp’n to UOP & Born, Inc. 7), because crossclaims and third-party claims are derivative. They must arise from the same transaction or occurrence upon which the *Manbodh* Plaintiffs’ original actions were predicated. Ergo, they must be stated in each Plaintiff’s case because the circumstances giving rise to each Plaintiff’s action are different.

Courts have, when necessary, joined third-party defendants as first-party defendants and re-designated third-party complaints as counterclaims. *Cf. Livera v. First Nat’l State Bank of N.J.*, 879 F.2d 1186, 1191-93 (3d Cir. 1989). The Court was compelled to do the same here and undo the portion of the October 4, 2005 Orders that “deem[ed] (1) Defendant / Third Party Plaintiff Hess Oil Virgin Islands Corporation’s Third-Amended Third Party Complaint; (2) Defendant / Third Party Plaintiff Litwin Corporation’s Amended Third Party Complaint; and (3) Defendant Hess Oil Virgin Islands Corporation’s Third-Amended Crossclaims – ‘applicable to all cases listed on Exhibit A of Case Management Order No.3, In re Kelvin Manbodh Asbestos Litigation Series, Master Docket No.: 324-1997.’” (Order 1, entered Apr. 12, 2018.) However, when “dropping and dismissing a party, rather

than severing the relevant claim will result in the claim being blocked by the statutes of limitations, a court must choose to sever the claim, rather than to drop the party, because that is the just option.” *Abednego v. St. Croix Alumina, LLC*, 63 V.I. 153, 183 (Super. Ct. 2015) (quotation marks and citation omitted). So, rather than sever the third-party claims outright, *cf. id.* (“Once severed, the claims proceed separately as independent actions with separate judgments entered in each.” (quotation marks and citation omitted)), the Court instead severed them from *Manbodh* and directed that one third-party complaint be filed within each Plaintiff’s case that names only those Third-Party Defendants who are or may be liable to HOVIC or to Litwin for all or part of that Plaintiff’s claims. The crossclaims also were severed and ordered to be refiled in each Plaintiff’s case and name only those parties against whom HOVIC and Litwin were permitted to assert third-party claims. Crossclaims are asserted against coparties and third-party claims asserted against nonparties. This cannot be inverted.

The Court did, however, sever outright HOVIC’s third-party breach of contract claims, breach of contract for failure to name as an insured (count four) and breach of contract for failure to name as an additional insured (count five). Neither claim arose from the original actions filed by the *Manbodh* Plaintiffs. In other words, whether CBI and others failed “to obtain insurance in support of their agreement to indemnify, hold harmless, and defend HOVIC,” (HOVIC’s Third Amend. Third-Party Compl. p. 33), and likewise, whether CBI failed to name HOVIC as an additional insured in any insurance policies they were obligated to obtain – neither claim arose from Mr. Manbodh’s claim that he was exposed to asbestos and other toxic substances during the time he worked at the St. Croix oil refinery. Accordingly, because both claims are unrelated to the Plaintiffs’ personal injury claims, this Court further severed them from the *Manbodh* cases outright. *Cf. Abednego*, 63 V.I. at 183 (“Once severed, the claims proceed separately as independent actions with separate judgments entered in each.” (quotation marks and citation omitted)).

The final reason for vacating the October 4, 2005 Orders in part is straight-forward: none of the orders issued in this litigation would ever be final and appealable until all third-party claims (for

over two-hundred Plaintiffs) pending within *Kelvin Manbodh v. Hess Oil Virgin Islands Corporation, et al.* (but as the master case) were resolved. As Attorney Daley succinctly stated nearly fourteen years ago, “the infrastructure is there in the clerk’s office” “why waste it, because the individual 211 files are already here.” (Hr’g Tr. 21:3-4, 18-19, Aug. 16, 2004.) Time has proven him right: determining “whether Plaintiff Number Four with whom HOVIC settled for X amount of dollars work[ed] with the product of six of the 65 third-party [defendants,] none of them, 20 of them, or whatever . . . under one single-docketed case” has proven “to be . . . impossible to manage.” *Id.* at 21:7-11, 15. This was never a one-size-fits-all litigation, notwithstanding HOVIC’s and Litwin’s assertions to the contrary. Determining whether any of the Third-Party Defendants are or should be liable to HOVIC, to Litwin, and now to Madsen & Howell, *cf. Manbodh*, 2018 V.I. LEXIS 96, for any of the *Manbodh* Plaintiffs’ claims will require precision because the Plaintiffs worked in different areas of the refinery, with different products, and at different areas. “Complex litigation is aptly called complex for a reason—sometimes getting to the legal issues requires the use of a scalpel and not an axe.” *Augustin v. Hess Oil V.I. Corp.*, 67 V.I. 488, 511 (Super. Ct. 2017) (brackets, quotation marks, and citations omitted)).

CONCLUSION

By orders entered April 12, 2018, the Court denied Litwin’s Motion to Consolidate *UOP* with *Manbodh*, denied HOVIC’s November 8, 2005 Motion for Reconsideration of the October 21, 2005 Order denying HOVIC’s June 6, 2005 Motion to Consolidate *Fluor* with *Manbodh*, but granted HOVIC’s alternate request for clarification of that Order. The Court also denied HOVIC’s July 27, 2015 Renewed Motion to Consolidate *Fluor* and *Manbodh*.

As explained above, consolidation is not appropriate at this time. The *Fluor* and *UOP* cases stem from approximately 159 asbestos cases, the *Abraham* series of cases, that were filed in the District Court of the Virgin Islands. While the *Abraham* and the *Manbodh* series of cases may have been mediated together and settled *en masse*, that alone does not justify consolidating the third-party contribution and indemnification claims remaining in *Manbodh* with the first-party contribution and

indemnification claims filed in *Fluor* and *UOP*. Hence, all three motions were denied. However, the Court did grant HOVIC's request to clarify the October 21, 2005 Order because the Order was unclear insofar as it pertained to *Fluor* or *UOP* and HOVIC's failure to follow the May 4, 2005 bench ruling. The overall reason why HOVIC's motion to consolidate was denied is clear, because consolidation was not proper at that time. Finally, considering the issues highlighted by these three motions, and the overall stagnation of this case, the Court *sua sponte* ordered that all third-party claims and crossclaims be severed from the master case and refiled in each individual Plaintiff's case. "A master case is not really a case, not in the true sense. Summons does not issue in a master case. The master case does not proceed to trial. Judgment is not entered in a master case. A master case cannot be dismissed on motion." *Alumina Dust Claims*, 67 V.I. at 196. It follows that claims—whether first-party or third-party claims, counter- or crossclaims—cannot exist within a master case because "[a] master case closes when it has served its purpose," *id.*, whereas a true case cannot be closed until all claims have been resolved.

DONE this 17 day of October, 2018.

ATTEST:

Estrella H. George
Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 10/17/18


HAROLD W.L. WILLOCKS
Administrative Judge of the Superior Court

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

**IN RE: KELVIN MANBODH ASBESTOS
LITIGATION SERIES.**

**Master Case No.
SX-97-CV-324**

ERRATA ORDER

COMES NOW the Court to correct the following scrivener's error in the Opinion dated and

October 17, 2018:

On page 4, insert "ESQ." after "JAMES L. HYMES, III"; on page 8, three lines from the bottom of the page, delete "Between" and replace it with "From"; on page 11, in footnote 8, change "note 5" to "note 6"; on page 12, nine lines from the bottom of the page, insert brackets around "then-" so that the quoted language reads: "in the [then-]Territorial Court"; on page 13, in the last line, change the apostrophe within the brackets from ' to ' ; on page 14, change "October 4, 2004 Order" to "October 5, 2004 Order"; on page 17, four lines from the bottom, delete the comma following "August 21, 2015" and insert a period so the text reads: "on August 12, 2015. HOVIC filed"; on page 20, eleven lines from the bottom, insert a closing parenthesis so the text reads "(other citation omitted)),"; on page 27, seven lines from the top, replace "and then concluded that "[t]heir" with "before concluding that "[t]heir"; and near the end of the same paragraph insert ", HOVIC argues." after "was in error" so the text reads "denying consolidation was in error, HOVIC argues."; on page 28, immediately following the block quote, replace "Thus," to "Since"; and midway through the page, change "*id.* at 6," to "(Recons. Mot. 6)" and change "(Recons. Mot. 6.)" to "*Id.*"; on page 29, in the second line of the first full paragraph, delete "Service"; on page 36, six lines from the top of the page, replace "*Id.* at 3." with "(Renew Mot. 3.)"; and ten lines from the bottom of the page, insert the word "to" between "refer" and "the"; on page 39, four lines before the paragraph break, change "Although *Armstrong*" to "However, even though *Armstrong*"; and three lines into the next paragraph, italicize "*Bookworm, Inc. v. Tirado*" and change "20020" to "2002"); on page 43, twelve lines from the bottom of the page, delete the word "since" following "renewed motion"; on page 44, in the second to last line, change "its" to "the"; on page 45, six lines from the top of the page, italicize "Fluor"; on page 46, italicize "Banks"; on page 45, seven lines from the top of the page, insert a closing quotation mark before "*Watergate*"; on page 51, six lines from the top of the page, insert a second closing parenthesis after "and citation omitted"); and five lines from the bottom of the page, italicize "Manbodh"; on page 52, three lines from the end of the section, delete "areas" and replace it with "times"; and in the first line of the next section, insert "August 25, 2003" between "Litwin's" and "Motion".

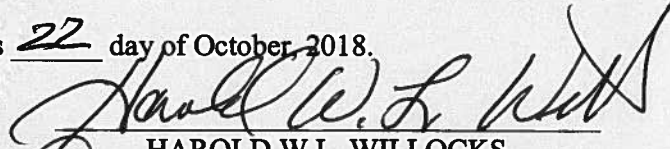
DONE and SO ORDERED this 22 day of October, 2018.

ATTEST:

Estrella H. George
Clerk of the Court

By:

Court Clerk Supervisor


HAROLD W.L. WILLOCKS

Administrative Judge of the Superior Court