

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

JOSEPH DANIEL AND MIGIONETTE DANIEL,

PLAINTIFFS,

v.

BORINQUEN INSULATION COMPANY, INC.; LITWIN CORPORATION; LITWIN PAN-AMERICAN CORPORATION; OWENS-CORNING FIBERGLAS CORPORATION; RARITAN SUPPLY COMPANY, INDIVIDUALLY AND AS SUCCESSOR-IN-INTERESTS TO BRIDGE SUPPLY COMPANY; MADSEN & HOWELL, INC.; UNION PUMP COMPANY; PITTSBURGH CORNING CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO UNARCO INDUSTRIES; GARLOCK, INC.; GAF CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO RUBEROID; FLEXITALIC 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.; LOCKHEED MARTIN CORPORATION, INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO MARTIN MARIETTA CORPORATION, MARTIN MARIETTA ALUMINUM, INC., AND MARTIN MARIETTA ALUMINUM PROPERTIES, INC.; MARTIN MARIETTA CORPORATION, INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO, MARTIN MARIETTA ALUMINUM, INC. AND MARTIN MARIETTA ALUMINUM PROPERTIES, INC.; MARTIN MARIETTA MATERIALS, INC. INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO MARTIN MARIETTA CORPORATION, MARTIN MARIETTA ALUMINUM, INC. AND MARTIN MARIETTA ALUMINUM PROPERTIES, INC.; AND GENERAL ENGINEERING CORPORATION,

DEFENDANTS.

IN RE: ALUMINA DUST CLAIMS,

CASE NO. SX-98-CV-192

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

*** * ***

**CONSOLIDATED UNDER: IN RE:
KELVIN MANBODH ASBESTOS
LITIGATION SERIES, SX-97-CV-324**

**MASTER CASE NO.
SX-09-MC-031**

**IN RE: BAUXITE CONTAINING SILICA HALLIDAY
LITIGATION SERIES.**

NATHANIEL J. HALLIDAY,

PLAINTIFF,

v.

**LOCKHEED MARTIN CORPORATION, INDIVIDUALLY AND AS
SUCCESSOR TO MARTIN MARIETTA CORPORATION;
MARTIN MARIETTA CORPORATION; MARTIN MARIETTA
ALUMINUM, INC., NOW KNOWN AS ALERIS ROLLED
PRODUCTS, LLC OR AS LEWISPORT, LLC; ALERIS ROLLED
PRODUCTS, LLC; GENERAL ENGINEERING CORPORATION;
AND GLENCORE, LTD F/K/A CLARENDON, LTD.,**

DEFENDANTS.

**MASTER CASE NO.
SX-15-CV-097**

CASE NO. SX-11-CV-236

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

*** * ***

**CONSOLIDATED UNDER: IN RE:
BAUXITE CONTAINING SILICA
HALLIDAY LITIGATION SERIES, SX-
15-CV-097**

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MEMORANDUM OPINION

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MEMORANDUM OPINION

THIS OPINION provides the Court's reasoning for its Order, entered May 4, 2017, granting a Motion to File Sur-Reply filed by the Plaintiffs, Joseph Daniel and Migionette Daniel, in *Joseph Daniel, et al. v. Borinquen Insulation Company, Inc.*, and a Motion for Leave to File a Brief in Opposition to Plaintiffs' Supplemental Memorandum's "Final Comment" filed by the Defendants, Lockheed Martin Corporation, Martin Marietta Corporation, Martin Marietta Aluminum, Inc., and Martin Marietta Properties, Inc. in the *In re: Alumina Dust Claims* master case and in *Nathaniel J. Halliday v. Lockheed Martin Corporation, et al.*

PROCEDURAL BACKGROUND¹

Joseph and Migionette Daniel ("the Daniels") filed a complaint in the Superior Court² on January 20, 1998. Mr. Daniel alleged that, while employed at the former alumina refinery on St.

¹ Since the motions are interrelated and concern each case captioned above, the Court issued one order, and now issues one opinion, as to all, even though the cases have not been consolidated. *Cf. Hodge v. Luis*, 21 V.I. 207 (Terr. Ct. 1984) (grouping three unrelated cases together in the same opinion because they all raise the same question of law).

² Known as the Territorial Court of the Virgin Islands until 2004 when its name was changed. For convenience sake and to avoid confusion, the Court refers to the Territorial Court as the Superior Court.

Croix, he was exposed to asbestos and other toxic substances³ and “developed an asbestos-related disease and/or toxic substance-related disease, illness and/or condition, and now, as a matter of scientific probability and reasonable medical certainty . . . has an increased risk of developing serious and/or fatal diseases.”⁴ (Compl. ¶ 32, *Daniel, et al. v. Borinquen Ins. Co., et al.*, SX-98-CV-192.) The Daniels named Lockheed Martin Corporation, Martin Marietta Corporation, and Martin Marietta Materials, Inc. (collectively “Lockheed Martin”) as defendants in addition to approximately thirty other companies.

After a delay unrelated to the present motions, Lockheed Martin filed a motion for summary judgment on February 2, 2012. The Daniels responded in opposition on February 13, 2012 and Lockheed Martin replied to the Daniels’ response on March 2, 2012. Three days later, on March 5, 2012, the Daniels filed the first motion at issue here: a motion to file a surreply.⁵ The Daniels asked for leave to address an argument their attorney failed to address when he filed their response in opposition to Lockheed Martin’s summary judgment motion. Counsel for the Daniels explained that Lockheed Martin’s summary judgment motion had referenced “on the first page . . . that the motion similarly raised issues as . . . in Metiver v. Lockheed Martin Corporation, et al., No. SX-08-CV-56, which is part of the IN RE: Alumina Dust claims Master Docket.” (Pls.’ Mot. to File Sur-reply 2, filed Mar. 5, 2012.) Counsel further explained that, because he also “represents approximately 32 Plaintiffs in actions against” Lockheed Martin, *id.* at 1, he believed Lockheed Martin’s reference to

³ The Daniels’ complaint defined “toxic substances” to include exposure to “ethylene oxide, industrial solvents including, but not limited to, toluene, xylene, and benzene, diesel fuel exhaust, sand particles, waste chemicals and nickel.” (Compl. ¶ 30, filed Jan. 20, 1998, *Daniel, et al. v. Borinquen Ins. Co., et al.*, SX-98-CV-192.)

⁴ Mr. Daniel asserted negligence, gross negligence, recklessness, and intentionally wrongful acts as count one, supplying a chattel dangerous for intended use as count two, battery as count three, and fraudulent concealment as count four. Mrs. Daniel asserted a claim for loss of consortium as count six. Count five was pleaded as a claim for punitive damages. However, Virgin Islands precedent has clarified since then that punitive damages is not a stand-alone claim, but rather a demand for a certain type of damages.

⁵ “A further response filed after the reply has been filed is called a sursur-reply, not a surreply, because it is the second response by someone who opposes a motion and generally comes in answer to the movant’s reply.” *Der Weer v. Hess Oil V.I. Corp.*, 64 V.I. 107, 121 (Super. Ct. 2016) (quotation marks and citation omitted).

Metiver “mean[t] that the motion [in *Daniel*] was addressed to solely the WCA,” or the Virgin Islands Workers Compensation Act, “as in all previous” motions Lockheed Martin had filed. *Id. at 4*. “In 20 of the cases,” Lockheed Martin “filed Motion[s] for Summary Judgement based solely on the WCA.” *Id.* “In the balance of cases,” Lockheed Martin “filed [a] Motion to dismiss . . . based again solely on the applicability of the WCA.” *Id.* After “having received over 30 prior motions filed in less than a year based solely that the WCA was dispositive,” *id. at 4*, counsel for the Daniels explained that he assumed Lockheed Martin was raising the same arguments in *Daniel* that it had raised in the other cases. Consequently, when he filed the response in *Daniel* in “opposition to summary judgement[, he] answered that argument only,” *id.*, i.e., the applicability of the Workers Compensation Act. In other words, counsel neglected to address the other arguments Lockheed Martin raised in its February 2, 2012 summary judgment motion. Hence, the Daniels requested leave to file a second response. In support, counsel attached a list of the cases for which he is counsel of record: twenty-two cases filed in 2007 and 2008, thirteen cases filed in 2011, and *Daniel*, which was filed in 1998. This is where *Daniel* began to converge with the *Alumina Dust Claims* cases. Lockheed Martin filed its response in opposition to the Daniels’ surresponse motion on March 20, 2012. As stated earlier, the Court’s May 4, 2017 Order granted the Daniels’ surresponse motion and gave Lockheed Martin leave to file a surreply. The Daniels’ filed their surresponse on May 13, 2017. Lockheed Martin filed its surreply on June 19, 2017.

The second motion granted on May 4, 2017 was filed by Lockheed Martin on November 22, 2013, but in the *Alumina Dust Claims* master case and in another case, *Halliday v. Lockheed Martin Corporation, et al.* The Superior Court opened a master case under the caption *In re: Alumina Dust Claims* in 2009 to manage a number the cases that were filed “[b]etween October 2007 and June 2008 . . . for injuries allegedly caused by exposure to toxic dusts . . . at the former alumina refinery on St. Croix.” *In re: Alumina Dust Claims*, SX-09-MC-031, 2017 V.I. LEXIS 2, *3-4 (Super. Ct.

Jan. 10, 2017) (quotation marks, citations, and footnotes omitted). These cases are the same cases the Daniels' were referring to in their March 5, 2012 surrejoinder motion. Like the Daniels, the *Alumina Dust Claims* plaintiffs also sued Lockheed Martin Corporation, Martin Marietta Corporation, Martin Marietta Aluminum, Inc., and Martin Marietta Aluminum Properties, Inc. for damages, including punitive damages. As the Daniels' attorney noted, Lockheed Martin filed multiple summary judgment motions on July 15, 2011 in the individual *Alumina Dust Claims* cases, a year prior to filing the same motion in *Daniel*.⁶ The *Alumina Dust Claims* plaintiffs filed their responses in opposition to summary judgment on August 16, 2011 and Lockheed Martin filed its replies to their responses on September 15, 2011. The summary judgment motions remain pending in part because of the ancillary motions addressed here.

After briefing had closed on Lockheed Martin's July 15, 2011 summary judgment motions, the *Alumina Dust Claims* plaintiffs filed a supplemental response on September 18, 2012, but in the master case and without requesting or obtaining leave to file said response first. The *Alumina Dust Claims* plaintiffs' supplemental response referred the Court to the reply that Lockheed Martin filed in *Daniel* on March 2, 2012. They also attached a page from that reply, specifically page 6, to their response and asserted that "new matter has been filed by defendants . . . in another case" that is "relevant to this case." (Pls.' Supp. Resp. 1, filed Sept. 18, 2012.) The *Alumina Dust Claims* plaintiffs failed to explain what the "new matter" was, however, apart from attaching page 6. And

⁶ One of the individual cases, *Erwin LaBast v. Lockheed Martin Corporation, et al.*, case number SX-07-CV-502, was used as the *de facto* master case for a time. See *Ayala v. Lockheed Martin Corp.*, SX-08-CV-296, 2017 V.I. LEXIS 39, *25 (Super. Ct. Mar. 3, 2017) ("When [Presiding] Judge Donohue designated LaBast's case file and number to be used as the case file and number for the *Alumina Dust Claims* master case, he was simply following . . . past practice. But 'the result was also two cases with the same case number.'" (quoting *Alumina Dust Claims*, 2017 V.I. LEXIS 2 at *37-38 (brackets omitted))). Lockheed Martin had filed a motion for summary judgment in *LaBast* on November 23, 2010, opposed by LaBast on January 4, 2011. The parties treated this motion as if it impacted all of the cases until the Presiding Judge's order "clarified] (albeit not in so many words) that individual cases being managed under a master case should be assigned to the same judge and further that the master case should be a separate case with its own case number and caption." *Id.* at *26. Subsequently, Lockheed Martin filed for summary judgment in all of the other *Alumina Dust Claims* cases in which it was named as a defendant.

their September 18, 2012 supplemental response contains only three sentences. But page 6 of the March 2, 2012 Reply Lockheed Martin filed in *Daniel* does make the following argument:

Assuming that Mr. Daniel was exclusively employed by Martin Marietta Alumina, Inc. from 1970 to 1983 as the Daniels claim, the Moving Defendants *do not argue* that Martin Marietta Aluminum, Inc., as its parent, would be immune from suit for injuries occurring during that time period, or that the Moving Defendants would be immune as successors to Martin Marietta Aluminum, Inc.

The Moving Defendants recognize that, for any time period in which Mr. Daniel was employed exclusively by Martin Marietta Alumina, Inc. and when Martin Marietta Alumina, Inc. was the entity named on the WCA insurance certificate, then Martin Marietta Aluminum, Inc., as a parent company, *would not be entitled to immunity* under Section 284. Thus, for any such time period when Mr. Daniel was employed exclusively by Martin Marietta Alumina, Inc. and when Martin Marietta Alumina, Inc. was the entity named on the WCA insurance certificate, the Moving Defendants would be successors to an entity not covered by Section 284. Accordingly, with respect to any alleged injuries sustained during such time period, Martin Marietta Aluminum, Inc. could be sued as a third party under Section 263 of the WCA – but only if the Daniels could prove that Martin Marietta Aluminum, Inc. was a third party that was responsible for their injuries. (Def. Lockheed Martin Corp.’s Reply in Supp. of S.J. Mot. 6, filed Mar. 2, 2012, *Daniel*, SX-98-CV-192, *attached to Pls.’ Supp. Resp., Alumina Dust Claims*, SX-09-MC-031).

Then, more than a year after the *Alumina Dust Claims* plaintiffs’ filed their September 18, 2012 supplemental response, Lockheed Martin filed a motion for leave to file a brief in opposition on November 22, 2013. This is the second motion the Court’s May 4, 2017 Order granted. Lockheed Martin requested leave to address the “Plaintiffs’ ‘Final Comment,’ as Plaintiffs wrongly suggest that Lockheed Martin has taken a contrary position in the *Daniel* matter.” (Def. Lockheed Martin Corp.’s Mot. for Leave to File Br in Opp’n to Pls’ Supp. Mem.’s Final Comment 1, filed Nov. 22, 2013 (hereinafter “Def.’s Mot.”).) Counsel for Lockheed Martin explained that, “[b]ecause of the significant differences in the procedural posture and factual allegations in *Daniel* and the cases at bar . . . [its] arguments are entirely appropriate.” *Id.* Hence, the Court should “give Lockheed Martin an opportunity to respond to this inaccurate assertion, which demonstrates Plaintiffs’ counsel’s fundamental misunderstanding of the key differences between the two factual and procedural settings in *Daniel* and the instant matters.” *Id.* (citations omitted).

For reasons not clear from its November 22, 2013 motion, Lockheed Martin filed its motion in the *Alumina Dust Claims* master case, which was proper because the supplemental response Lockheed Martin wanted leave to respond to was filed in the master case since it concerned all the individual cases. But Lockheed Martin also listed *Halliday* in the caption of its November 22, 2013 motion, which meant that it also filed its motion in that case too. “Court papers are deemed filed in every case listed in the caption.” *Edwards v. Hess Oil V.I. Corp.*, SX-15-CV-382, 2017 V.I. LEXIS 94, *9 (Super. Ct. June 28, 2017). However, because Mr. Halliday did not file a response on September 18, 2012 or join the supplemental response the *Alumina Dust Claims* plaintiffs filed, Lockheed Martin essentially requested leave to respond to a response that was not filed in *Halliday*. This is where *Daniel* and the *Alumina Dust Claims* case began to converge with *Halliday* and the cases that would later be grouped together with *Halliday*. *Cf. Alumina Dust Claims*, 2017 V.I. LEXIS 2 at *21-22 (“Lockheed Martin failed to note, that the *Halliday* plaintiffs did not file a supplemental response on September 18, 2012, since it would be another three months before . . . [these] cases were consolidated under *Halliday*.” (quotation marks omitted)).

Nathaniel Halliday and twelve other individuals had sued Lockheed Martin Corporation, Martin Marietta Corporation, Martin Marietta Aluminum, Inc., Aleris Rolled Products, General Engineering Corporation, and after amendment Glencore, Ltd, in May 2011 for damages, including punitive damages, allegedly from exposure to toxic dusts during their employment at the former St. Croix alumina refinery. The same attorney who represents the Daniels and the *Alumina Dust Claims* plaintiffs also filed these cases. Following standard procedures, the Clerk’s Office opened thirteen new civil cases, assigned each at random among the judges in the St. Croix District, and transferred them all to the Jury Trial Division for further proceedings. *Halliday* was assigned at random to the undersigned judge. Approximately a week before filing for summary judgment in the *Alumina Dust Claims*, Lockheed Martin filed a similar motion in each of the 2011 cases, but for dismissal for

failure to state a claim for relief. Like the *Alumina Dust Claims* cases, Lockheed Martin raised the same argument in the 2011 cases: that it was immune from suit because it had inherited its predecessors' statutory immunity. (See, e.g., Def. Lockheed Martin Corp.'s Mot. to Dismiss 2, filed July 7, 2011, *Halliday v. Lockheed Martin Corp., et al.*, SX-11-CV-236 ("Because Halliday's claims are barred by the exclusive remedy provision of the WCA, Lockheed Martin files this Rule 12(b)(6) motion to dismiss Halliday's First Amended Complaint." (footnote omitted)).) Halliday and the other plaintiffs opposed dismissal. The motions to dismiss also remain pending in part because of the ancillary motions addressed here.

Lockheed Martin pointed out in each motion to dismiss that the *Halliday* cases were similar to the *Alumina Dust Claims* cases. See *id.* at 2 n.2 (citing summary judgment motion filed in *LaBast*). Accordingly, the Court directed Halliday's attorney to submit "a list[ing] of the pending cases that are associated or are similar to" *Halliday* in advance of a hearing the Court had scheduled for September 20, 2012 (Order 1, entered Aug. 9, 2012, *Halliday*, SX-11-CV-236.) Counsel submitted the list, but then grouped the cases into three categories: "[t]he *Ayala* Group, [t]he *Charles* Group, and the *Boston* Group." (Pl.'s Inf. Mot. 1, filed Aug. 6, 2012, *Halliday*, SX-11-CV-236 (italics added).⁷) The *Ayala* group, named for *Carmelo Ayala v. Lockheed Martin Corporation, et al.*, case number SX-08-CV-296, included nineteen cases, all of which were "associated" or "similar" per the August 9, 2012 Order, but are actually the *Alumina Dust Claims* cases. The *Charles* Group, nine cases named for *Roger Charles v. Glencore, Ltd., et al.*, case number SX-11-CV-262, is only associated or similar to *Halliday* insofar as these cases also concerned exposure to toxic dust by former employees of the alumina refinery. But none of the *Charles* plaintiffs sued Lockheed Martin

⁷ Counsel for *Halliday* filed the information motion before the August 9, 2012 Order, dated August 8, 2012, was reduced to writing and entered per Superior Court Rule 5.

or any of the Martin Marietta entities.⁸ The *Boston* Group—named for *Ronald Boston v. Lockheed Martin Corporation, et al.*, case number SX-11-CV-249—is the only group of cases that were relevant because *Halliday* was included in this group. Following the September 20, 2012 status conference, and a subsequent conference held on November 8, 2012, counsel for the parties agreed that the *Boston* group of cases should be coordinated together. However, because *Boston* was assigned to another judge, this Court, by Order entered December 14, 2012, ordered the *Boston* group of cases consolidated under *Halliday* and then directed the Clerk to reassign the other cases to the undersigned judge.⁹ A master case was not opened yet, however, because counsels and the Court still had to address a case management plan. It is against this backdrop that Lockheed Martin filed in *Halliday* and in *Alumina Dust Claims* its motion for leave to respond to the September 18, 2012 supplemental response.

Subsequently, in 2015, “this Court, in its capacity as the Administrative Judge of the Superior Court . . . caused a miscellaneous case to be opened under the caption *In re: Complex Litigation Cases Pending in the District of St. Croix*, case number SX-15-MC-003.” *Alumina Dust Claims*, 2017 V.I. LEXIS 2 at *22. By way of this miscellaneous case, the Court “scheduled a global status conference for February 26, 2015 to begin discussions with counsels, from an administrative perspective only, on how best to move through the court system the complex litigation cases pending in the Superior Court of the Virgin Islands.” *Id.* (quotation marks, citation, and footnotes omitted). “Among other complex cases discussed . . . were the *Alumina Dust* cases and the *Halliday* series of cases, as well another series of cases similar to *Halliday* . . . [but] consolidated . . . under Roger

⁸ These *Boston* group cases were later consolidated under a master case captioned *In re: Bauxite Containing Silica Charles Litigation Series*, case number SX-15-CV-098.

⁹ Following the decision of the Supreme Court of the Virgin Islands in *Vanterpool v. Government of the Virgin Islands*, 63 V.I. 563 (2015), in which the Court held that “it is the responsibility of the Presiding Judge of the Superior Court to ‘assign the cases among all the judges of the court’” and further held that this “assignment power” may not be “delegate[d] . . . to a different judge,” *id.* at 574, the Presiding Judge, by order dated October 7, 2015 and entered October 19, 2015, ratified and approved this Court’s December 14, 2012 Order and further reassigned the *Halliday* group of cases, *nunc pro tunc*, to the undersigned judge.

Charles v. Glencore, Ltd, et al., case number SX-11-CV-262.” *Id.* at *22-24 (brackets, ellipses, and citation omitted). As a result of these administrative hearings, the Superior Court¹⁰ opened *In re: Bauxite Containing Silica Halliday Litigation Series*, case number SX-15-CV-097, as a master case and grouped the *Halliday* cases (formerly the *Boston* group of cases) under this master case. Once the master case was opened, this Court issued an order, entered March 17, 2015, directing that, unless the parties objected, the motion papers filed in *Halliday* before the cases were consolidated would be deemed as master motion papers for purpose of ruling on the multiple motions to dismiss that Lockheed Martin had filed in the 2011 cases.

Further to this March 17, 2015 Order in *Bauxite / Halliday*, the Court issued a second order on May 4, 2017 Order, but only in the *Bauxite / Halliday* master case. As explained above, when Lockheed Martin filed its November 22, 2013 motion in *Alumina Dust Claims* and in *Halliday*, the other 2011 cases had already been consolidated under *Halliday*. Although these cases were later moved under the *Bauxite / Halliday* master case, *Halliday* was essentially serving at the time as a *de facto* master case. Thus, since Lockheed Martin had filed its motion in *Halliday* too, and at the time when *Halliday* was serving as a master case, the second May 4, 2017 Order deemed Lockheed Martin’s November 22, 2013 motion to also have been filed in *Bauxite / Halliday*, in furtherance of the March 17, 2015 Order, deeming the motion papers filed in *Halliday* as master motion papers.

DISCUSSION

Both the Daniels’ March 5, 2012 surrejoinder motion and Lockheed Martin’s November 22, 2012 motion for leave to file a response are governed by the same legal standard because both motions request leave to make additional arguments. “Generally, the parties are expected to succinctly address their arguments in three filings—a motion, a response and a reply—or less, if

¹⁰ Appreciating the concerns that could arise—and later did arise in *Alumina Dust / LaBast*, see *Alumina Dust Claims*, 2017 V.I. LEXIS 2 at *37-39—from having multiple cases consolidated under another case in the same group, the Court directed that the *Boston* group of cases be moved from *Halliday* and consolidated under the *Bauxite (Halliday)* master case instead.

possible.” *Der Weer v. Hess Oil V.I. Corp.*, 64 V.I. 107, 120 (Super. Ct. 2016) (quotation marks, brackets, and citation omitted). Courts do, however, “have the discretion . . . to allow further response or reply when necessary or warranted.” *Id.* (quotation marks and citation omitted). But at some point briefing on motions must end. *Accord Starlight Int’l, Inc. v. Herlihy*, 181 F.R.D. 494, 496 (D. Kan. 1998) (“The briefing here at issue exemplifies the need for the general rule. Each side wants to have the last word. At some point briefing must cease.”); *Archdiocese of Milwaukee v. Underwriters at Lloyd’s, London*, 955 F. Supp. 1066, 1070 (E.D. Wis. 1996) (“If the defendant’s brief is permitted, the plaintiffs may wish to file a reply to defendant’s surreply. However, at some point, briefing must end.”); *Lockrey v. Leavitt Tube Employees’ Profit Sharing Plan*, 748 F. Supp. 662, 667 n.2 (N.D. Ill. 1990) (“It is possible that defendants merely misunderstood the reason for which the Court requested additional briefing. However, the alternative to finding a waiver of defendants’ argument is to accept further briefing. This alternative would hardly be fair to plaintiff or the Court in light of the amount of briefing which has already been performed on the estoppel issue. At some point the briefing must stop and the case must proceed.”); *see also Acadia Health Care Co. v. Horizon Health Corp.*, 472 S.W.3d 74, 105 (Tex. Ct. App. 2015) (“We recognize this is a complicated appeal but briefing must end at some point.”). That said, 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.

Here, considering the extensive background detailed above, resolving Lockheed Martin’s November 22, 2013 motion would have been straight-forward if, rather than grant it, the Court had instead struck the *Alumina Dust Claims* plaintiffs’ September 18, 2012 supplemental response. With the supplemental response stricken, there would have been nothing on file for Lockheed Martin to reply to. The Court could have then dismissed Lockheed Martin’s motion as moot.¹¹ Briefing had

¹¹ The Court could have dismissed Lockheed Martin’s motion on a technicality. The September 18, 2012 supplemental

ended on Lockheed Martin's July 15, 2011 summary judgment motions the year before the *Alumina Dust Claims* plaintiffs filed their supplemental response. Moreover, they also filed that response without requesting or obtaining leave before, or even at same time as, they filed their response. Furthermore, the Court had already given LaBast, a case that had also served for a time as the *Alumina Dust Claims* master case, leave to supplement his opposition to a summary judgment

response was not filed by the *Alumina Dust Claims* plaintiffs in the *Alumina Dust Claims* master case, but rather by Erwin LaBast in *LaBast*, at least according to the caption of the response that is. However, the *LaBast* case was still functioning as the master case at the time when the September 18, 2012 supplemental response was filed. *See supra*, note 6. Despite the caption, the Court deemed the response filed in the master case because the response begins by referencing "the filings in this case in 2011." (Pls.' Supp. Response 1, filed Sept. 18, 2012.) Lockheed Martin's summary judgment motion in *LaBast* was filed on November 23, 2010, not "in 2011." Although LaBast's response, filed January 4, 2011, and Lockheed Martin's reply, filed January 11, 2011, were both filed in 2011, LaBast later filed a motion, on January 12, 2011, which the Court granted by order entered March 8, 2011, for leave to file a surresponse. He filed his surresponse on March 11, 2011. Notwithstanding the concern that the September 18, 2012 response was filed without requesting or receiving leave first, if it were deemed filed in *LaBast* and not in *Alumina Dust Claims*, it would mean that party opposing a motion has now responded three times in opposition when one response is allowed as of right and a second response can be permitted with leave of court. Allowing the September 18, 2012 supplemental response and the November 22, 2013 motion to remain on file in *LaBast* could also be seen as sanctioning a practice whereby the parties continually revise their arguments without court approval, simply by not opposing each other's supplemental response or motions for leave. In other words, Lockheed Martin's summary judgment motion in *LaBast* would have been opposed by LaBast on January 4, 2011, replied to by Lockheed Martin on January 11, 2011, opposed again by LaBast on March 11, 2011, supplemented by LaBast on September 18, 2012, and further replied to by Lockheed Martin on or around July 5, 2017 (the filing deadline has not yet passed). The simpler course here—considering that the September 18, 2012 supplemental response was filed three days after Lockheed Martin filed its replies in the individual *Alumina Dust Claims* cases—was to deem the response filed in the *Alumina Dust Claims* master case, not in *LaBast*, notwithstanding how the paper was captioned. *But see Edwards*, 2017 V.I. LEXIS 94 *9 ("Court papers are deemed filed in every case listed in the caption."). Hence, the Court cannot sufficiently underscore that counsel[s] must take care when listing case or cases in the caption of their papers. While the Clerk's Office, or the Court upon review, can correct simple mistakes, ultimately it is not the duty of the Superior Court of the Virgin Islands or its Clerk's Office to figure out which cases court papers are supposed to be filed in. *Accord Edwards*, 2017 V.I. LEXIS 94 at *10 ("It is not the responsibility of the clerk's office to correct papers that are filed with the court, to correct filing mistakes in those papers, or to make copies of papers and serve them on the other parties. Likewise, it is not the responsibility of the Clerk's Office to make sufficient copies of papers filed in multiple cases." (quotation marks, brackets, citations, and ellipsis omitted)). This sort of lazy lawyering cannot continue. *Cf. Goodwin v. Fawkes*, SX-11-CV-435, 2016 V.I. LEXIS 198, *45 (Super. Ct. Dec. 12, 2016) ("Judicial notice is not a cure-all for lazy lawyering." (citations omitted)). "[I]t underscores a much larger concern: the assumption that the Superior Court will 'continue to shepherd the parties or their counsel along the way.' This, we cannot do. That is, the parties and their counsel cannot continue to pepper the courts with papers that list the wrong case numbers, name the wrong parties, or request relief the parties did not plead and expect the judges, clerks, and court staff to sort it out for them." *Paul v. Raritan Supply Co.*, SX-97-CV-329, 2017 V.I. LEXIS 106, *9 (Super. Ct. July 13, 2017) (quoting *In re: Red Dust Claims*, SX-15-CV-620, 2017 V.I. LEXIS 98, *34 (Super. Ct. July 7, 2017) (citing *Antoine v. Hess Oil V.I. Corp.*, SX-05-CV-508, 2017 V.I. LEXIS 44, *6-7 (Super. Ct. Mar. 10, 2017; *Edwards*, 2017 V.I. LEXIS 94 at *11-12)). The Court also could have dismissed Lockheed Martin's motion from *Halliday* since Halliday did not file the September 18, 2012 supplemental response. Much of the confusion here stems from a fundamental misunderstanding by counsels. Arguments are made by and papers are filed by attorneys as agents for the parties. Attorneys are not parties themselves. Hence, "Plaintiffs' counsel's fundamental misunderstanding of the key differences between the two factual and procedural settings in *Daniel* and the instant matters" is not relevant, (Def.'s Mot. 1 (emphasis added)), since any misunderstanding would be attributed to the Daniels or to the *Alumina Dust Claims* plaintiffs such as Ayala, Metiver, or LaBast, not their attorney. All too often counsels conflate each other with their clients. Cases, and arguments raised in cases, belong to the parties, not the attorneys.

motion Lockheed Martin filed in that case on November 23, 2010. *See Alumina Dust Claims*, 2017 V.I. LEXIS 2 at *11.

However, rather than object or move to strike when the *Alumina Dust Claims* plaintiffs filed their supplemental response, Lockheed Martin instead asked for leave to reply. Similarly, the *Alumina Dust Claims* plaintiffs did not oppose Lockheed Martin's motion. Although courts do not grant motions just because they are unopposed, *see Ayala*, 2017 V.I. LEXIS 39 at *19 (“[A] ‘motion is not automatically granted simply because it is unopposed.’” (quoting *Alumina Dust Claims*, 2017 V.I. LEXIS 2 at *26)), courts do consider whether any of the parties have responded in opposition. Here, the fact that neither side objected to the other side's additional briefing or request for additional briefing was an important factor in why the Court granted Lockheed Martin's motion.

Similarly, even though Lockheed Martin did object to granting the Daniels' surresponse motion, the Court overruled their objection, not because Lockheed Martin was incorrect. Lockheed Martin is correct that leave to file a surresponse or surreply should not be granted simply because counsel misread or failed to read a motion before filing a response. “Indeed, to grant . . . leave to file a [surreresponse or] sur-reply under these circumstances would improperly reward . . . counsel's failure to actually read a motion.” (Def. Lockheed Martin Corp.'s Resp. in Opp'n to Pls.' Mot. to File Sure-Reply 2, filed Mar. 20, 2012, *Daniel*, SX-98-CV-192.) Leave to file a surresponse was not granted to the Daniels so their attorney could take another bite at the appeal. Instead, leave was granted because answering the question raised here—directly, by the *Alumina Dust Claims* plaintiffs in their supplemental response and by Lockheed Martin in requesting leave to reply to their response, and indirectly by the Daniels in claiming that Lockheed Martin appeared to have “change[d] course” in its March 2, 2012 reply (Pls.' Mot. 4)—requires precision, particularly since Lockheed Martin has a different attorney in *Daniel* than in the *Alumina Dust Claims* and *Bauxite / Halliday* cases.

To explain, the reply that Lockheed Martin filed in *Daniel* is what prompted the plaintiffs in the *Alumina Dust Claims* master case to file their supplemental response. That supplemental response in turn prompted Lockheed Martin (albeit through different counsel) to file a motion for leave to respond to the *Alumina Dust Claims* plaintiffs, but also to Halliday (and by extension *Bauxite / Halliday* per court order). Giving all of the parties leave to respond except the parties in *Daniel* would not have been fair since the reply filed in *Daniel* started it all. But more importantly, even though the larger question at issue in these cases—whether a successor corporation can inherit its predecessors’ immunity from suit under the Virgin Islands Workers Compensation Act—may be relatively straight-forward, answering that question might not be if Lockheed Martin has in fact taken one position in *Daniel* and another position in the *Alumina Dust Claims* cases and the *Bauxite / Halliday* cases. (Compare Def. Lockheed Martin Corp.’s Reply 5, filed Mar. 2, 2012, *Daniel*, SX-98-CV-192 (“Moving Defendants do not seek to extend the immunity provided by Section 284 beyond the employer named in the certificate. That is, the Moving Defendants never have claimed that Section 284 directly applies to them, or that they should be considered to be ‘employers’ entitled to immunity under Section 284.”), with Def. Lockheed Martin Corp.’s Reply in Supp. of S.J. Mot. 4, filed September 15, 2011, *Ayala*, SX-08-CV-296 (“Plaintiff’s claims against Lockheed Martin fail because he was employed by Lockheed Martin’s predecessors-in-interest (Martin Marietta Aluminum, Inc. and Martin Marietta Aluminum Properties, Inc.) and those predecessors-in-interest were insured under the WCA.”), and Def. Lockheed Martin Corp.’s Br. in Supp. of Workmen’s Comp. Immunity 7, filed Nov. 12, 2013, *Halliday v. Lockheed Martin Corp., et al.*, SX-11-CV-236 (“Because Lockheed Martin is the successor-in-interest to all of the Martin Marietta entities sued in this case and to non-party employer Martin Marietta Alumina, Lockheed Martin succeeds to the benefits provided by the Workmen’s Compensation coverage for each of those entities.”).)

Ultimately, it may be that Lockheed Martin is not taking contrary positions in any of the cases. But granting Lockheed Martin leave to clarify its positions (and the various plaintiffs leave to respond) was warranted here because “the judicial estoppel doctrine will preclude a party from asserting a position on a question of fact or a mixed question of law and fact that is inconsistent with a position taken by that party in a previous judicial proceeding.” *Sarauw v. Fawkes*, S. Ct. Civ. No. 2017-0005, ___ V.I. ___, ___, 2017 V.I. Supreme LEXIS 2, *17 (Jan. 8, 2017) (footnote omitted). It is “the inconsistently itself [that] damages public confidence in the purity of judicial proceedings.” *Id.* at ___, 2017 V.I. Supreme LEXIS at *16 (quotation marks, brackets, ellipsis, and citation omitted). While all of the motions Lockheed Martin filed—in *Daniel*, in the *Alumina Dust Claims*, and in the *Bauxite / Halliday* cases—are still pending, before the Court could begin to resolve any of these motions, the Daniels’ surresponse motion and Lockheed Martin’s motion for leave to file a response had to be resolved first. Courts must “first resolve the related, or ancillary, motions” if “granting or denying these motions would affect the arguments and issues that can be considered.” *Der Weer v. Hess Oil V.I. Corp.*, 64 V.I. 107, 120 (Super. Ct. 2016); accord *Rivera-Mercado v. Gen. Motors Corp.*, 51 V.I. 307, 332 (2009) (Swan, J., concurring) (“[W]hatever its decision, it is improper for a trial court to rule on summary judgment without first ruling on a pending . . . motion [for permission to take discovery].” (quotation marks, brackets, and citations omitted)). Here, granting or denying either motion could affect what arguments and issues the Court would have to consider, particularly if Lockheed Martin was taking different or contrary positions on the same issue. Hence, the Court granted both motions.

CONCLUSION

For the reasons stated above, the Court, by order entered May 4, 2017, granted the motion the Daniels filed on March 5, 2012 to file a sur-reply and the motion that Lockheed Martin filed on

MEMORANDUM OPINION

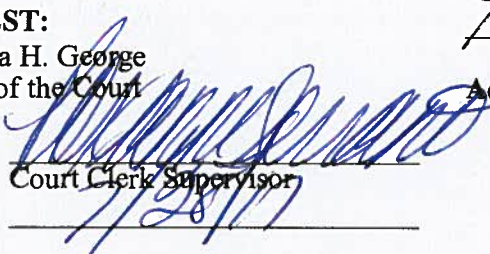
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November 22, 2013 for leave to file a brief in reply to the *Alumina Dust Claims* plaintiffs' supplemental response.

DATED this 28 day of July, 2017.

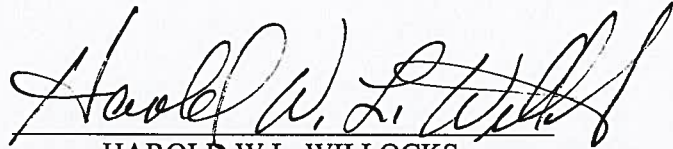
ATTEST:

Estrella H. George
Clerk of the Court

By: 

Court Clerk Supervisor

Dated: _____



HAROLD W.L. WILLOCKS

Administrative Judge of the Superior Court