

FOR PUBLICATION

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

THE LITWIN CORPORATION,

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.; RESAL,
INC.; EXXON MOBIL 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
INFRASTRUCTURE & TECHNOLOGY GROUP, AS
SUCCESSOR-IN-INTEREST TO THE RALPH M.
PARSONS COMPANY; DARCOID INTERNATIONAL
CORPORATION; RUBBER AND GASKET COMPANY
OF PUERTO RICO; AMERICAN CYANAMID
COMPANY; SÜD-CHEMIE, INC., AS SUCCESSOR-IN-
INTEREST TO UNITED CATALYSTS INC.; CHRIS
ANDERSON CONSTRUCTION AND 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 AND 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,**

DEFENDANTS.

CASE No. SX-05-CV-056

**ACTION FOR CONTRIBUTION AND
INDEMNITY**

JURY TRIAL DEMANDED

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¹ The Court takes judicial notice that Maria Tankenson Hodge, Esq. and Adam G. Christian, Esq. for Hodge & Francois no longer represents these Defendants.

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MEMORANDUM OPINION

WILLOCKS, Administrative Judge

BEFORE THE COURT is a Motion to Dismiss (hereinafter “Dismissal Motion” or “Motion”) filed by Defendant General Engineering Corporation (hereinafter “GEC”). The Plaintiff, The Litwin Corporation (hereinafter “Litwin”), filed an Opposition. For the reasons stated below, the Court will deny the Motion.

FACTUAL AND PROCEDURAL BACKGROUND

The Court recently summarized some of the background of this case, particularly relating to GEC. For the sake of convenience, that background is restated here:

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 in which 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 (hereinafter “Claimants”). Approximately two-years before filing this lawsuit, Litwin “entered into a joint settlement agreement with the 159 Claimants and other parties and settled all claims by Claimants with payment of a settlement. Litwin filed this action in the Superior Court to recoup some of the monies paid to settle with the Claimants. Litwin’s Complaint alleges that the companies named as defendants in this case were really to blame for 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,” *id.* ¶ 31, which Litwin used at the former oil refinery. 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.

GEC . . . appeared . . . on April 15, 2005 and motioned for an extension of time (forty-five days) to respond to the Complaint. Litwin did not oppose either Motion. Seventy-four days later, GEC . . . responded by filing [its Dismissal] Motion . . . on

June 23, 2005 [Litwin opposed and served its] Opposition . . . on July 11, 2005 and filed [it] with the Superior Court on July 14, 2005. . . .

On July 27, 2005, GEC . . . filed a Motion for an Extension of Time (hereinafter “Additional Time Motion”[]) . . . [to request] additional fifteen days to . . . [reply] to Litwin’s Opposition[]. Litwin opposed . . . on August 15, 2005. . . . GEC filed its Reply in support of its Additional Time Motion on September 1, 2005 and its Reply to Litwin’s Opposition to its Dismissal Motion on September 14, 2005, . . . notwithstanding that GEC’s Additional Time Motion remained pending.

By Order entered April 18, 2018, the Presiding Judge of the Superior Court of the Virgin Islands reassigned this case to the undersigned judge due to similarity of claims and parties with the cases grouped under the *In re: Kelvin Manbodh Asbestos Litigation Series* master case. Following a review of this case, the Court, by Orders dated and entered September 14, 2018, granted GEC[’s] . . . April 15, 2005 Motion[] for an Extension of Time to respond to Litwin’s Complaint. Notwithstanding that . . . [GEC] had asked for forty-five days but took seventy-four days to respond, the Court nonetheless deemed [its] June 23, 2005 Dismissal Motion[] timely because Litwin did not oppose. *The Litwin Corp. v. Universal Oil Prods. Co.*, SX-05-CV-056, 69 V.I. ____, ____; 2018 V.I. LEXIS 102, *2-5 (V.I. Super. Ct. Sept. 26, 2018) (quotation marks, brackets, and citations omitted).

In ruling on GEC’s Additional Time Motion, the Court also concluded that GEC was required to show good cause because it requested an extension of time after its time to act had passed, but that it failed to do so. Consequently, the Court could not excuse GEC’s neglect and GEC’s Reply was stricken. *See id.* at *24; 69 V.I. at _____. GEC has yet to officially answer Litwin’s February 2, 2005 Complaint because its Dismissal Motion remains pending.

DISCUSSION

In its Complaint, Litwin alleges that the “Claimants instituted lawsuits claiming compensatory and punitive damages against Plaintiff . . . as well as other entities, in the District Court of the U.S. Virgin Islands.” (Compl. ¶ 29.) The Claimants alleged injuries from “exposure to finished and unfinished asbestos products, products containing asbestos, catalyst, refractory, dust, particles, fibers, and other harmful and hazardous and toxic substances while working at or near what is commonly known as the Hess oil refinery located at St. Croix, U.S. Virgin Islands, or elsewhere.” *Id.* ¶ 28. Further, that “Plaintiff entered into a joint settlement agreement with Claimants and other parties and settled all claims by Claimants with payment of a settlement on or about March of 2003. This settlement has

resulted in a final resolution of all claims Claimants could bring against the Defendants named herein.”

Id. ¶ 30. Finally, Litwin alleges that all

Defendants were at all times relevant herein millers, manufacturers, contractors, installers, purveyors, suppliers and distributors of milled asbestos fibers, dust, particles, and other finished and unfinished asbestos products, products containing asbestos, catalyst, refractory, or other harmful and hazardous and toxic substances, or; process designers, product designers, refinery construction or maintenance contractors or inspectors of refinery systems; sellers and/or suppliers of protective equipment; or creators of specifications for refinery systems related to said products that Claimants claim they were exposed to on St. Croix, U.S. Virgin Islands and/or elsewhere. *Id.* ¶ 31.

Concerning GEC, Litwin alleges that GEC is liable individually “and as successor in interest to Reed, Wible & Brown, Inc. . . . a foreign corporation that was doing business in the U.S. Virgin Islands.” *Id.* ¶ 10 (bold font and capitalization omitted). GEC is liable as a contractor, Litwin claims, because GEC “manufactured or supplied defective or unreasonably dangerous chattels, defective products and/or performed defective or unreasonably dangerous work upon land or buildings as a result of which” Litwin and GEC “may be liable to Claimants.” *Id.* ¶ 112. “In particular,” GEC’s “actions . . . included but were not limited to, performing services in the refinery which exposed others to catalyst, asbestos and other harmful, hazardous and/or toxic materials.” *Id.* ¶ 113. GEC must indemnify Litwin, Litwin alleges, because “[t]he damage and harm caused by” GEC resulted in “the bringing of Claimants’ claims against” Litwin. *Id.* ¶ 118. Yet Litwin “was unaware of the defective chattels, products, conditions, work and harmful and hazardous circumstances caused by” GEC “upon Claimants, or alternatively innocently failed to discover the defects.” *Id.* ¶ 114. GEC should also have to contribute “for the portion of sums paid” by Litwin to the Claimants, since GEC is “ultimately responsible due to [its] tortious actions, inactions and representations.” *Id.* ¶ 122.

In its Dismissal Motion, GEC claims that “Litwin’s extremely vague statements . . . fail to meet even the most basic threshold required from a plaintiff under the rules and as it pertains to its general allegations.” (Def. GEC’s Mem. of Law in Supp. of Def’s Mot. to Dismiss 3, filed June 23, 2005 (hereinafter “GEC Br.”).) GEC also notes that Litwin has similar claims pending in the Superior Court

within the cases grouped under the *In re: Kelvin Manbodh Asbestos Litigation Series* master case. In those cases, as in this case, “Litwin has failed to present a single cause of action,” GEC argues. *Id.*; *see also id.* (“As with its Amended Third Party Complaint in Civil No. 324/ 1997 Litwin once again fails to properly allege its cause of action against this Defendant for contribution and indemnity.”). GEC further points out that,

Litwin’s Amended Third Party Complaint in the aforementioned [sic] case was presented as part of the Asbestos Litigation Series, which has been in litigation for some time now. The allegations raised in the present case are the exact same as those raised in the Amended Third Party Complaint, indemnity and contribution in the 324/1997 [Manbodh] case[s]. Those issues are presently pending before this Court. In fact, only a few weeks ago this Court heard arguments regarding common law contribution and indemnity by the majority of the parties also involved in the present case, which also happen to be parties in the other asbestos litigation. *Id.* at 1-2.

Thus, “Litwin has failed to state a claim upon which relief may be granted,” GEC concludes. *Id.* at 2.

This comprises the sum and substance of GEC’s Dismissal Motion.

Litwin, however, reads more into GEC’s Motion than there is. From its reference to the *Manbodh* cases, Litwin infers that GEC is contending “that Litwin has failed to allege an essential element of its indemnity and contribution claims, based upon the fact that Litwin has alleged the same claims in the *In re Kelvin Manbodh Asbestos [Litigation] Series*.” (Pl’s Opp’n to Def. GEC’s Mot. to Dismiss 2, filed July 14, 2005 (hereinafter “Opp’n”)) Litwin then reads GEC’s reference to *Manbodh* as an implication “that the asserted deficiencies in the allegations therein are similarly defective in this matter.” *Id.* Litwin also contends that GEC “argues that an essential element of a claim for common law indemnity, and also of a claim for common law contribution, is that the liability of the indemnitor or contributor must have been extinguished by the party seeking the indemnity or contribution.” *Id.* at 3. But GEC made no such argument in its Motion.

GEC may have made this argument in the *Manbodh* cases.² But the Dismissal Motion GEC filed in this case is completely devoid of any discussion of the law that governs Litwin's claims. Presumably, Litwin is conflating arguments GEC made in *Manbodh* with the Motion it filed in this case. But in so doing, Litwin also addressed arguments GEC did not make. "Raising new arguments for the first time in a *reply* is concerning." *Der Weer v. Hess Oil V.I. Corp.*, 61 V.I. 87, 96 (Super. Ct. 2014) (emphasis added) (citations omitted). But nothing prevents an opposing party from raising new arguments in a response in opposition. Nonetheless, the Court is unsure how to proceed here, because Litwin's opposition is not responsive to GEC's Motion. Presumably, the Court could disregard Litwin's Opposition. But since the Court previously denied GEC's Additional Time Motion and struck its Reply, *see generally The Litwin Corp.*, 69 V.I. at ____; 2018 V.I. LEXIS 102 at *23, the Court would only have GEC's Motion to go off of. Yet, the problem then becomes that GEC's Brief is just four pages long and cites only to general case law concerning the sufficiency of complaints. (Cf. GEC Br. 2-3 (citing *Callender v. Nichtern*, 32 V.I. 96 (Terr. Ct. 1995); *Bell v. Chase Manhattan Bank*, 40 V.I. 377 (D.V.I. 1999); *Trantham v. Ford Motor Co.*, Civ. No. 1998-140, 1999 WL 33722403 (D.V.I. Sept. 15, 1999); *Dept. of Hous. & Comm. Renewal v. United Inds. Serv., Transp., Prof'l & Gov't Workers of N.A.*, 23 V.I. 333 (Terr. Ct. 1988); *Unger v. Nat'l Resident Matching Progr.*, 928 F.2d 1292 (3d Cir. 1991); *Lombardi v. Gov't of the V.I.*, 33 V.I. 3 (Terr. Ct. 1995); *Hans Lollik Corp. v. Gov't of the V.I.*, 17 V.I. 220 (Terr. Ct. 1981); *Wood v. Rohm & Haas Co.*, C.A. No. 03-0076, 2003 WL 22100887 (E.D. Pa. July 22, 2003)) (pin cites omitted)). None of the cases GEC cites in its Brief involve contribution or indemnification, the claims asserted by Litwin. *Callender* does reference indemnification, but only in passing and in a footnote. *See* 32 V.I. at 103 n.7. *Bell* discusses indemnification a bit, but only as to a form of statutory indemnification available under Puerto Rico's

² Litwin did file a motion in *Manbodh* to consolidate this case with the *Manbodh* cases. But that motion was filed on July 22, 2005—after GEC had already filed its June 23, 2005 Dismissal Motion in this case and after Litwin filed it July 14, 2005 Opposition. Moreover, Litwin's consolidation motion is still pending in *Manbodh*.

Discharge Indemnity Law which “requires an employer to indemnify an employee discharged without cause in an amount calculated per the statute.” 40 V.I. at 382 (citing P.R. Laws. Ann. tit. 29, § 185a, *et seq.* (1995 ed.)). So, *Bell* is also inapposite here. The consequences is that the Court has before it a motion to dismiss that fails to make any legal arguments regarding the law governing Litwin’s claims, coupled with an opposition by Litwin that fails to respond to GEC’s Motion and instead responds to arguments that may have been made in another case.

“[U]nder these circumstances,” if the Court were to proceed and address GEC’s Motion on the merits, it would be tantamount to “improperly reward[ing]” Litwin’s “counsel’s failure to actually read a motion.” *Daniel v. Borinquen Insulation Co.*, SX-98-CV-192, *et seq.*, 2017 V.I. LEXIS 117, *19 (V.I. Super. Ct. July 28, 2017) (internal quotation marks and citation omitted)). It would also be tantamount to improperly rewarding GEC’s counsel for failure to brief its motion, particularly since no court can “make a movant’s arguments for him when he has failed to do so.” *Joseph v. Joseph*, SX-04-CV-188, 2015 V.I. LEXIS 43, *5 (V.I. Super. Ct. Apr. 23, 2015) (citations omitted)); *accord Joseph v. Legislature of the V.I.*, ST-11-CV-419, 2017 V.I. LEXIS 175, *4 n.3 (V.I. Super. Ct. Apr. 12, 2017) (“As the Court is not required to make arguments for parties this alone is enough for this Court to deny this claim.” (citations omitted)). “[T]here is absolutely no basis . . . for the proposition that attorneys are not required to fully brief all questions of law relevant to the issues that are being litigated.” *Antilles Sch., Inc. v. Lembach*, 64 V.I. 400, 428 n.13 (2016). “[I]t is not the Court’s job to research and construct legal arguments open to parties. In order to develop a legal argument effectively, the facts at issue must be bolstered by relevant legal authority; a perfunctory and undeveloped assertion is inadequate.” *Joseph*, 2015 V.I. LEXIS 43 at *5 (ellipsis omitted) (quoting *Schneider’s Dairy, Inc. v. Serv. Pers. & Empls. of the Dairy Indus., Teamsters Local Union No. 205*, No. 2:13-cv-1325, 2013 U.S. Dist. LEXIS 174350, *5-6 n.1 (W.D. Pa. Dec. 10, 2013), parenthetically); *accord Daybreak, Inc. v. Friedberg*, ST-10-CV-716, 2018 V.I. LEXIS 84, *8 (V.I. Super. Ct. Aug. 21, 2018) (“This Court does not see it as our responsibility to make a party’s arguments for it.” (footnoted citation omitted));

see also *Prosser v. Nissman*, 67 V.I. 96, 103 (Super. Ct. 2016) (rejecting inadequately briefed arguments). Accordingly, the Court will deny GEC's Motion.³

CONCLUSION

For the reasons stated above, the GEC's Dismissal Motion will be denied. An appropriate order follows.

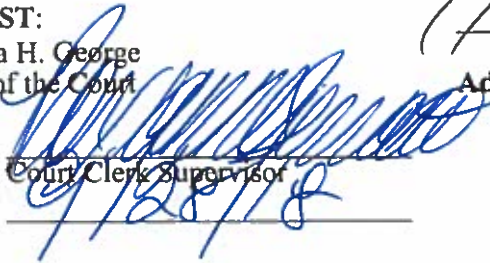
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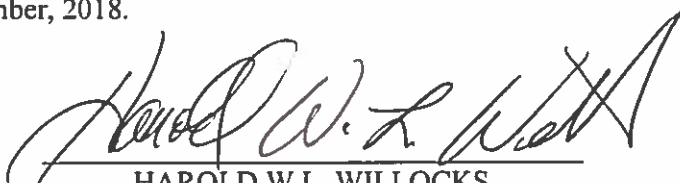
ATTEST:

Estrella H. George
Clerk of the Court

By:

Dated:


Court Clerk Supervisor


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

³ Even if the Court were to address GEC's Motion on the merits, it would be denied because GEC is simply incorrect in contending that "Litwin has failed to present a single cause of action against this Defendant." (GEC Br. 3.) Unlike other Defendants, many of whom Litwin lumped together in the same counts (e.g., asbestos supplier defendants and catalyst supplier defendants), GEC (as well as Virgin Islands Industrial Maintenance Corporation) are the only two Defendants named in Count Fifteen and Count Sixteen. GEC is on notice of what causes of action Litwin brought against it. Presumably, what GEC meant to argue was that Litwin failed to state a single *plausible or viable* cause of action against GEC. But that's not what GEC argued and this Court cannot make arguments for the litigants and then find legal authority in support.