

NOT FOR PUBLICATION

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

IN RE: REFINERY DUST CLAIMS

MASTER DOCKET NO. SX-06-CV-078

JOSEPH MATHURIN,

PLAINTIFF,

SX-06-CV-627

v.

ACTION FOR DAMAGES

**HESS OIL VIRGIN ISLANDS
CORPORATION, AMERADA HESS
CORPORATION AND SPX CORPORATION
AS SUCCESSOR-IN-INTEREST TO LITWIN
CORPORATION,**

JURY TRIAL DEMANDED

DEFENDANTS.

AMENDED MEMORANDUM OPINION¹

THIS MATTER comes before the Court on Defendants Hess Oil Virgin Islands Corp. And Hess Corporation's Motion for Reconsideration of this Court's March 9, 2012 Order Setting this Matter for Trial filed on March 26, 2012. On March 29, 2012, Plaintiff filed its Opposition to Defendants' Motion for Reconsideration. On April 10, 2012 Defendants filed their Reply thereto.

FACTS

On February 13, 2012, Plaintiff filed an Emergency Motion Requesting an Immediate Trial Date. The Motion was Opposed by Defendants, and subsequently the Court granted Plaintiff's Motion in its March 9, 2012 Order, which set a new trial date in this matter for July 23, 2012. The Defendants then file a motion requesting the Court to reconsider the amended trial date of July 23, 2012.

¹ The following changes were made to this Memorandum Opinion:
The Court corrected the caption to include the master docket case number; and
The Court deleted the sentence "On March 9, 2012, the Court issued an order setting jury selection and trial to commence on February 4, 2013" from the Facts.

DISCUSSION

Standard of Review

Local Rules of Civil Procedure Rule 7.3, Motions for Reconsideration reads as follows:

A party may file a motion asking the Court to reconsider its order or decision. Such motion shall be filed within fourteen (14) days after the entry of the order or decision unless the time is extended by the Court. Extensions will only be granted for good cause shown. A motion to reconsider shall be based on:

1. intervening change in controlling law;
2. availability of new evidence, or;
3. the need to correct clear error or prevent manifest injustice.

In the context of a motion to reconsider, “manifest injustice” generally means that the court overlooked some dispositive factual or legal matter that was presented to it. “Manifest injustice” has also been defined as an error in the trial court that is direct, obvious, and observable. Most cases use the term “manifest injustice” to describe the result of a plain error. *Cabrita Point Dev., Inc. v. Evans*, 2008 U.S. Dist. LEXIS 105405 (D.V.I., Dec. 31, 2008).

Defendants’ Motion for Reconsideration rests solely on the presumption that manifest injustice must be prevented. In Defendants Opposition to Plaintiff’s Emergency Motion Requesting an Immediate Trial Date, Defendant raised many of the same arguments it now presents in its motion for reconsideration. Defendants asserted that Plaintiff request for an early trial lacked merit because of a failure to support such a claim; Defendants also suggested that a less burdensome discovery tool—Fed. R. Civ. P. 30(a)(2), *de bene esse* deposition—was available; lastly, Defendants argued that the request for an early trial date will unduly prejudice Defendants’ ability to prepare defense for trial. In *Bostic v. AT&T*, 45 V.I. 577 (D.V.I. 2003), the Court explicitly stated that a motion for reconsideration “is not a vehicle for registering disagreement with the court’s initial decision, for rearguing matters already addressed by the court, or for raising arguments that could have been raised before but were not.” In this case, the Court finds Defendant’s Motion for reconsideration to be no more than an artless attempt to

resurrect arguments previously made in its Opposition to Plaintiff's Motion Requesting an Immediate Trial Date.

Contrary to defense counsel's belief and covert implication, Courts do not flip a coin in making their decisions. In making its decision, this Court considered all the facts presented. Further, there is nothing counsel has raised that the Court has not considered. Defendants' Motion for reconsideration is devoid of any factual or legal matter that was overlooked by the Court.

CONCLUSION

For the reason stated above, Defendants' Motion for Reconsideration of this Court's March 9, 2012 Order setting this matter for trial on July 23, 2012 is denied. The Court will issue an Order consistent with the ruling of this Amended Memorandum Opinion.

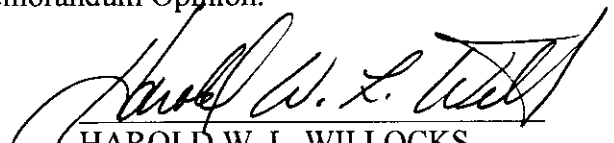
ATTEST:

Venetia Harvey-Velazquez
Clerk of the Court

By: 

Deputy Clerk

Dated: 4/3/12


HAROLD W. L. WILLOCKS
Judge of the Superior Court

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ORDER

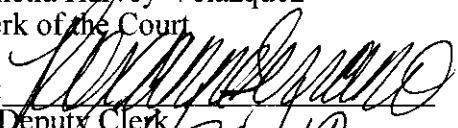
THIS MATTER comes before the Court on Defendants Hess Oil Virgin Islands Corp. And Hess Corporation's Motion for Reconsideration of this Court's March 9, 2012 Order Setting this Matter for Trial filed on March 26, 2012. On March 29, 2012, Plaintiff filed its Opposition to Defendants' Motion for Reconsideration. On April 10, 2012 Defendants filed their Reply thereto. The Court having been advised on the premises, it is hereby:

ORDERED that Defendants' Motion for Reconsideration of this Court's March 9, 2012 Order setting this matter for trial on July 23, 2012 is **DENIED**.

DONE and so ORDERED this 26th day of April, 2012.

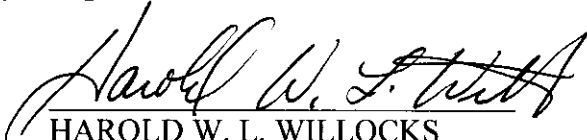
ATTEST:

Venetia Harvey-Velazquez
Clerk of the Court

By: 

Deputy Clerk

Dated: 4/30/12


HAROLD W. L. WILLOCKS
Judge of the Superior Court