IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

CLAUDE THEODULE; JOHN and ROSALINE ST. ROSE; and GEORGE and BLONDELLE LOUISON, Plaintiffs, v. HESS OIL VIRGIN ISLANDS (HOVIC); HOVENSA LLC; AMERADA HESS CORPORATION; LITWIN PAN-AMERICAN CORPORATION; RIGGERS & ERECTORS INTERNATIONAL, INC.; RARITAN SUPPLY COMPANY, Individually and as successor in interest to Bridge Supply Company; 3M a/k/a MINNESOTA MINING & MANUFACTURING COMPANY; CLEMCO INDUSTRIES, INC.; INGERSOLL RAND CORPORATION; and JOHN DOE DEFENDANTS, Defendants.	CIVIL NO. 604/2004 ACTION FOR DAMAGES JURY TRIAL DEMANDED

MEMORANDUM OPINON AND ORDER

THIS MATTER is before the Court on the Motion to Disqualify Plaintiffs' Counsel of the Defendants, Hess Oil Virgin Islands Corporation, Amerada Hess Corporation, and HOVENSA LLC ("Defendants"), the opposition thereto of the Plaintiffs, Claude Theodule, Joan and Rosaline St. Rose, and George and Blondelle Louison ("Plaintiffs"), and the Defendants' reply to the opposition. For the following reasons, Defendant's motion is granted.

Defendants seek disqualification of Plaintiffs' counsel, Lee J. Rohn, Esq. ("Rohn"), pursuant to Rule 1.9 of the Model Rules of Professional Conduct, contending that Rohn represented Defendants in matters substantially related to the instant matter. Disqualification of an attorney pursuant to Rule 1.9 is warranted where the following two-prong test is satisfied: (1) the party seeking disqualification is a former client and (2) the subject matter of the present lawsuit is "the same or substantially related" to the matter in which the former client was represented. *See Bluebeard's Castle, Inc. v. Delmar Marketing*, 886 F.Supp. 1204, 1207-09 (D.V.I. 1995); *see also In re Corn Derivatives Anti-Trust Litigation*, 748 F.2d 157, 162 (3rd Cir. 1984); *Brice v. Hess Oil Virgin Islands Corp.*, 769 F.Supp. 193, 195 (D.V.I. 1990). In this matter, it is uncontroverted that Bryant & Associations employed Rohn from 1985 until 1987, during which time Rohn represented HOVIC and Amerada Hess. Thus, the first prong of the Rule 1.9 test requiring the establishment of a prior attorney-client relationship is satisfied. The remaining and key consideration in this case is whether Rohn's representation of HOVIC and Amerada Hess is substantially related to the instant matter so as to meet the second prong of the Rule 1.9 analysis.

In determining whether there is a substantial relationship here, the Court must consider three factors: (1) the nature and scope of the earlier representation; (2) the nature of the present lawsuit; and (3) the possibility that the client might have disclosed confidences during the earlier representation that could be relevant and detrimental to the present action. *See Bluebeard's Castle, Inc.*, 886 F.Supp. at 1209. In this matter, it is further uncontroverted that Rohn defended HOVIC and Amerada Hess in toxic tort cases involving exposure to asbestos at the Hess oil refinery and various negligence claims relating thereto.[1] Similar to Rohn's prior representation, the instant action is a toxic tort case involving exposure to silica dust at the Hess oil refinery and

[1] Rohn's prior representation wherein she defended HOVIC and Amerada Hess in toxic tort litigation include but are not limited to the matters of *Joseph v. HOVIC, et al.*, Civil No. 89/1986 (V.I. Super. Ct.) and *Purjet v. HOVIC, et al.*, Civil No. 284/1984 (V.I. Super. Ct.).

negligence claims of failure to warn, failure to take appropriate safety measures, etc. While Rohn asserts that the present litigation is factually distinct from her prior representation of Defendants HOVIC and Amerada Hess, Rohn fails to support her assertion or otherwise demonstrate any factual distinction, which would make moot her continuing duties to former clients under Rule 1.9.

Furthermore, the present toxic tort case, like the prior representation, involves allegations of exposure to silica dust occurring during the time of and predating Rohn's prior representation. Plaintiffs allege that they suffered personal injuries due to silica exposure during their employment at Hess oil refinery. Plaintiff Theodule worked at the Hess oil refinery extended from 1970 until 2000, Plaintiff St. Rose worked at the Hess oil refinery from 1969 – 1988, and Plaintiff Louison worked at the Hess oil refinery from 1967 – 1993. Accordingly, Plaintiffs allegations of exposure to silica dust predates and encompasses the time period of 1985 until 1987 wherein Rohn defended HOVIC and Amerada Hess. This fact is particularly significant because the present litigation will necessarily call into question the policies, procedures, actions and confidences of Defendants HOVIC and Amerada Hess at the time and predating the time Rohn acted as their counsel in toxic tort actions similar to the instant action.

The Court finds that the subject matter of the present matter is substantially related to Rohn's previous representation of HOVIC and Amerada Hess. The provisions of Rule 1.9 are for the protection of former clients, namely to guard former clients from the possibility that confidential information gained through representation will be used against them.[2] In consideration thereof, the Court cannot in good conscience permit Rohn to continue to litigate

[2] *See Alexander v. HOVIC & Hovensa, LLC*, Civ. No.603/2000, memo. op. (V.I. Super. Ct., September 25, 2001) (wherein the Court disqualified Rohn from litigating a toxic tort action, holding that the subject matter of the case was substantially related to the work Rohn performed for HOVIC in previous litigation.) In addition, Rohn has been disqualified from litigating other similar actions, including *Peter v. HOVIC*, Civil No. 408/1994 (V.I. Super. Ct.).

this matter knowing that she would have been privy to information during her prior representation that will necessarily be at issue in this matter, namely policies, procedures, actions and confidences of Defendants HOVIC and Amerada Hess at the time of Plaintiffs' instant allegations. Accordingly, the premises having been considered, and the Court being otherwise fully advised, it is hereby

ORDERED that the Motion to Disqualify Plaintiffs' Counsel is **GRANTED**. It is further

ORDERED that the instant action is **stayed for thirty (30) days** from the date of this order so that Plaintiffs may retain substitute counsel.

Dated: October 31, 2005

Edgar D. Ross
Judge

ATTEST:

DENISE D. ABRAMSEN
Clerk of the Court

By: **Deputy Clerk** 10/31/05

CERTIFIED TO BE A TRUE COPY
THIS 2nd day of Nov- 2005
Denise D. Abramsen
CLERK OF THE COURT
By T. Bermudez Court Clerk II