SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

IN RE: CASES REMOVED TO THE DISTRICT COURT OF THE VIRGIN ISLANDS,	)	**CASE NOS:**
VERNIE AYERS;	)	**SX-98-CV-109**
JAMES WILLIAMS;	)	**SX-98-CV-110**
SAMUEL HOLLOWAY;	)	**SX-98-CV-111**
PLACIDE ALEXANDER;	)	**SX-98-CV-112**
DECIMA JOHN BAPTISTE, as Personal Representative for the ESTATE OF ARTHUR BAPTISTE;	)	**SX-98-CV-113**
ENRIQUE PEREZ;	)	**SX-98-CV-114**
LEARIE THORPE;	)	**SX-98-CV-115**
HENRY JAMES;	)	**SX-98-CV-116**
WILLIAM WICKHAM;	)	**SX-98-CV-117**
LAWRENCE CHARLERY;	)	**SX-98-CV-118**
PETER NESTOR;	)	**SX-98-CV-119**
SIMON JOSEPH;	)	**SX-98-CV-121**
FREDDY MODESTE;	)	**SX-98-CV-122**
ELFORD WILLIAMS;	)	**SX-98-CV-123**
LAWRENCE LUBRIN;	)	**SX-98-CV-124**
JOSE R. LOPEZ;	)	**SX-98-CV-125**
GEORGE JOHN;	)	**SX-98-CV-126**
FOSTER JOHN;	)	**SX-98-CV-127**
JAMES GRANT;	)	**SX-98-CV-128**
RUPERT DORE;	)	**SX-98-CV-129**
GEORGE JACKSON;	)	**SX-98-CV-130**
ANTHONY FATAL;	)	**SX-98-CV-131**
JAMES GILL;	)	**SX-98-CV-132**
CUTHBERT JOHN;	)	**SX-98-CV-133**
LINCOLN NICHOLAS;	)	**SX-98-CV-134**
ALEXIS EMMANUEL;	)	**SX-98-CV-135**
FRANCOIS MARCELLIN;	)	**SX-98-CV-136**
JOSEPH SANTOS;	)	**SX-98-CV-137**
HENDRICK PASCAL;	)	**SX-98-CV-138**
JOHN ST. LOUIS;	)	**SX-98-CV-139**
VERNICE CUMMINGS;	)	**SX-98-CV-140**
RALEIGH ANTOINE;	)	**SX-98-CV-141**
PATRICK NOEL;	)	**SX-98-CV-142**
ST. HILL BYER;	)	**SX-98-CV-146**
DELIA ANAVITATE LUCCA, as Personal Representative for the ESTATE OF ELEUTERIO LUCCA MUNOZ;	)	**SX-98-CV-147**
RUSSELL MASON;	)	**SX-98-CV-148**

JOSE HERNANDEZ;	)	**SX-98-CV-149**
ENRIQUE MARTINEZ;	)	**SX-98-CV-150**
CYRIL DASH;	)	**SX-98-CV-151**
CUTHBERT JAMES;	)	**SX-98-CV-152**
THEOPHILUS COBB;	)	**SX-98-CV-153**
AUGUSTIN LUCIEN;	)	**SX-98-CV-154**
APPOLLINARIS CHARLES;	)	**SX-98-CV-155**
PETER CUFFY;	)	**SX-98-CV-156**
AYBERT LEON;	)	**SX-98-CV-157**
SAMUEL BLACKMAN;	)	**SX-98-CV-158**
MAURICE LEON;	)	**SX-98-CV-159**
PAULINUS GENTIUS;	)	**SX-98-CV-160**
JOSEPH ST. BRICE,	)	**SX-98-CV-161**
Plaintiffs,	)	
v.	)	**ACTIONS FOR DAMAGES**
RARITAN SUPPLY COMPANY, individually and as successor-in-interest to BRIDGE SUPPLY COMPANY; CERTAINTEED PRODUCTS CORPORATION; MADSEN & HOWELL, INC.; UNION PUMP COMPANY; GAF CORPORATION, individually and as successor-in-interest to RUBEROID; and PITTSBURGH CORNING CORPORATION,	)	**JURY TRIALS DEMANDED**
Defendants.	)	

CLIFTON SIMON;	)	**SX-98-CV-120**
GILBERT COLLADO;	)	**SX-98-CV-143**
OLGA M. RIVERA VIVAS, as Personal Representative of the ESTATE OF BELFORD VIVAS, SR.;	)	**SX-98-CV-144**
HECTOR REYES,	)	**SX-98-CV-145**
Plaintiffs,	)	
v.	)	**ACTIONS FOR DAMAGES**
RARITAN SUPPLY COMPANY, individually and as successor-in-interest to BRIDGE SUPPLY COMPANY; CERTAINTEED PRODUCTS CORPORATION; MADSEN & HOWELL, INC.; UNION PUMP COMPANY; and GAF CORPORATION, individually and as successor-in-interest to RUBEROID,	)	**JURY TRIALS DEMANDED**
Defendants.	)	

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MEMORANDUM OPINION

MOLLOY, Robert A., Judge.

THESE INDIVIDUAL CASES[1] are before the Court *sua sponte* following a review of the files.

[1] Although the individual cases were never consolidated, they are all related. And, because each case presents the same issue, the Court has grouped them together in the same opinion under a common caption. *Cf. United States v. Kwai Fun Wong*, 135 S. Ct. 1625, 1630 n.1 (2015) (addressing two cases together in one opinion) ("Although we did not consolidate these cases, we address them together because everyone agrees that the core arguments for and against equitable tolling apply equally to both . . . ."); *Gov't of the V.I. v. David*, 20 V.I. 259, 261 (Terr. Ct. 1984) ("These two separate actions, which are *consolidated solely for purposes of this decision*, are before the Court on each of the respective Defendant's motion to dismiss . . . ." (emphasis added)); *see also In re: Recusal Motion*, 118 F. Supp. 2d 622 (D.V.I. 2000)

Having reviewed the files, the Court finds that each case raises the same concern — notwithstanding all of the orders issued since the District Court of the Virgin Islands purportedly remanded these cases to the Territorial Court of the Virgin Islands (now the Superior Court of the Virgin Islands)[2] in 1998, this Court's jurisdiction was actually never restored. Civil actions removed to federal court can only be remanded to state or territorial court by a federal district court judge. Here, the orders remanding these cases were issued by a federal magistrate judge. As a result, each of the orders lacked the force of law and, therefore, jurisdiction over these cases is still with the District Court of the Virgin Islands. The only action this Court can take, unless and until its jurisdiction is restored, is to direct the Clerk to administratively close these matters. Yet, in light of this conclusion, the Court issues this opinion to explain the basis for this determination.

BACKGROUND

On May 29, 1997, Josephat Henry and fifty other people joined together in the same complaint as plaintiffs. Their complaint, filed in the Territorial Court, named as defendants Raritan Supply Company ("Raritan"), individually and as successor to Bridge Supply Company, Certainteed Products Corporation ("Certainteed"), Madsen & Howell, Inc., Union Pump Company ("Union

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(disqualification motions in over four hundred cases resolved under generic caption); *In re: St. Croix Seamen's Asbestos Cases*, Case No. 606/92 et al., 1993 V.I. LEXIS 19, *6 (Terr. Ct. June 18, 1993) (grouping "39 cases which remain pending" "[o]ut of the approximately 100 actions initially filed" under a common caption to address "approximately 52 [m]otions to [d]ismiss" in one opinion); *accord In re: Mut. Fund Market-Timing Litig.*, 468 F.3d 439, 441 (7th Cir. 2006) (explaining that while "the current opinion" could be referred to as "*Kircher IV*" because it was the fourth opinion issued in the same matter, the court instead "used a generic caption to reflect the presence of many related appeals."). But, even though one opinion is used to address issue common to multiple cases, separate orders have to be issued in each individual case. *Cf. Crawford v. Wesleyville*, 68 Pa. D. & C. 215, 215-16 (Ct. Common Pleas 1949) ("Since substantially the same questions are raised in each case and since the basic facts are essentially identical, we shall discuss the appeals collectively but shall enter separate orders in each instance." (footnote omitted)).

[2] Although "[t]he Territorial Court was renamed the Superior Court on October 29, 2004," *Mitchell v. Wilson*, 62 V.I. 326, 332 n.5 (Super. Ct. 2015), the Court will refer to each by the name in effect at the time the events at issue herein occurred, rather than pretend that the local trial court has always been known by the same name.

Pump"), GAF Corporation ("GAF" or "GAF Corporation"), individually and as successor to Ruberoid, and Pittsburgh Corning Corporation. The same day, May 29, 1997, Arthur Paul and four other people also joined together as plaintiffs. They too filed a group complaint in the Territorial Court and named the same companies as defendants, except for Pittsburgh Corning Corporation. The clerk's office opened *Josephat Henry, et al. v. Raritan Supply Company, et al.* as case number 328/1997[3] ("*Henry*" or "*Henry* plaintiffs") and assigned it to the Honorable Edgar D. Ross, and then opened *Arthur Paul, et al. v. Raritan Supply Company, et al.* as case number 329/1997 ("*Paul*" or "*Paul* plaintiffs") and assigned it to the Honorable Alphonso G. Andrews, Jr. Each case was assigned at random pursuant to standard assignment procedures the clerk's office follows for new cases.

The *Henry* plaintiffs and the *Paul* plaintiffs sought damages, allegedly from exposure to asbestos during their employment at the oil refinery on St. Croix operated at that time by Hess Oil Virgin Islands Corporation ("HOVIC"). However, their group complaints did not plead any tort claims. Rather, both complaints sought damages based on an assignment of rights. The *Henry* plaintiffs and the *Paul* plaintiffs alleged in their group complaints that they all had sued Borinquen Insulation Company, Inc. in another, unnamed action and later settled with Borinquen. Through these settlements, Borinquen assigned the *Henry* plaintiffs and the *Paul* plaintiffs any rights Borinquen had to pursue contribution and indemnification from the companies these plaintiffs named as defendants in their May 29, 1997 group complaints.

Two months after the cases were filed, the attorney representing the *Henry* and the *Paul*

[3] Beginning in 2005, probably coinciding with the adoption of an electronic docketing system, the Clerk's Office changed the Superior Court's case numbering system from a "case type / case number / year" style to a "geographical division / year / case type / case number" style. As an example, the case number for civil case 109/1998 is now SX-98-CV-109. When discussing background, this opinion will refer to the style in effect at the time. But any citations will use the current numbering style to avoid confusion.

plaintiffs—as well as hundreds of other plaintiffs also pursuing actions for asbestos-related injuries—sent a letter to the Honorable Maria M. Cabret, with copies to Judge Andrews and Judge Ross as well as opposing counsel, and requested the assistance of the "Administrative Judge of the Territorial Court" in implementing "a common management approach before a single Judge.[4] (Letter from James Meaney, Esq. to Hon. Maria M. Cabret 1-2, filed July 22, 1997, *Alexander, et al. v. Hess Oil V.I. Corp., et al.*, SX-97-CV-323.) Four cases were referenced in the letter: *Louis Alexander, et al. v. Hess Oil Virgin Islands Corporation, et al.*, case number 323/1997; *Kelvin Manbodh, et al., v. Hess Oil Virgin Islands Corporation, et al.*, case number 324/1997, *Joseph King, et al. v. Hess Oil Virgin Islands Corporation, et al.*, case number 400/1997, and *Logan N. Joseph, et al., v. Hess Oil Virgin Islands Corporation, et al.*, case number 417/1997 – but not *Henry* or *Paul*. Counsel for the plaintiffs explained that he "expected twelve to fifteen [more] cases to be filed in the next six-to-nine months." *Id.* (parentheses omitted).

That same day, July 22, 1997, the plaintiffs in the other "group complaint" cases, *Alexander*, *Manbodh*, *King*, and *Joseph*—but again, not the plaintiffs in *Henry* or in *Paul*—filed a motion, captioned in all four cases. The motion asked that their cases, which comprised "approximately 150 Plaintiffs . . . involved in 15 separate lawsuits," be "administrative[ly] assign[ed] . . . to a single Judge . . . so that . . . these cases, and others to be filed, may be administered in an economical and efficient

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[4] The Court takes judicial notice that the Honorable Verne A. Hodge, then-Presiding Judge of the Territorial Court, had designated Judge Cabret to serve as the Administrative Judge in 1994. Judge Cabret continued to serve in that capacity until the Honorable Charles W. Turnbull, Governor of the Virgin Islands, designated her the Presiding Judge when Judge Hodge retired. Judge Cabret was officially sworn in as Presiding Judge on August 25, 2000 and continued in that office until July 1, 2006 when she assumed senior status, before being later nominated and confirmed to the Supreme Court of the Virgin Islands as an Associate Justice. *See* V.I. Supreme Court, Biography of Justice Maria M. Cabret, http://www.visupremecourt.org/Justices/Justice_Maria_M_Cabret/ (last visited July 27, 2016); St. Croix Source, Cabret Sworn in as Presiding Judge (Aug. 26, 2000), available at http://stcroixsource.com/content/news/local-news/2000/08/26/cabret-sworn-new-presiding-judge (last visited July 27, 2016); *In re Kelvin Manbodh Asbestos Litig. Series*, SX-97-CV-324, 2006 V.I. LEXIS 36, *1 n.1 (V.I. Super. Ct. Aug, 31, 2006) (unpublished).

manner," (Pls' Mot to Assign Cases to a Single Judge 2, filed July 22, 1997, *Alexander, et al. v. Hess Oil V.I. Corp., et al.*, SX-97-CV-323.[5])

Whether the plaintiffs' motion to assign cases was brought to the attention of the Presiding Judge is not noted in the record. But, later that same year, the Administrative Judge issued an order, dated December 11, 1997 and entered December 12, 1997, finding that all of the plaintiffs in *Alexander*, *Manbodh*, *King*, and *Joseph*—and also in *Henry*, *Paul* and five other cases commenced by group complaint—had joined together improperly "in an attempt to avoid paying the required filing fees" they would have incurred had each person filed his own case. (Order 3, entered Dec. 12, 1997, *Alexander, et al. v. Hess Oil V.I. Corp., et al.*, SX-97-CV-323.[6]) The Administrative Judge allowed the first-named plaintiff (or plaintiffs if a married couple) in each case to continue within that case, but then dropped the co-plaintiffs and severed their claims. Dropped plaintiffs were given thirty days to refile an individual complaint or their claims would be dismissed.

Because the same attorney represented all of the plaintiffs, counsel filed a motion, on December 19, 1997, for reconsideration. The plaintiffs disputed the court's finding, countering that "[n]one of the individual Plaintiff's cases can be presented as a snapshot. Rather, they can only be presented as full-length movies with the same beginning, middle and end, panned across the same backdrop—the history of asbestos at the HOVIC Refinery." (Pl.'s Reconsid. Mot. 3-4, filed Dec. 19,

[5] Although the motion was filed and docketed in all four cases, only *Alexander* is cited as it is the first case listed in the caption. All subsequent citation to "group" filings or orders issued in multiple cases will be to the first case listed in the caption of that document.

[6] In addition to *Alexander*, *Manbodh*, *King*, *Joseph*, *Henry*, and *Paul*, the other cases listed in the caption of the December 12, 1997 Order were *Hector Martinez, et al. v. Hess Oil V.I. Corp., et al.*, SX-97-CV-513; *Francis Laurencin, et al. v. Hess Oil V.I. Corp., et al.*, SX-97-CV-514; *Ralph Soodeen, et al. v. Hess Oil V.I. Corp., et al.*, SX-97-CV-563; *Rahamut Ali, et al. v. Hess Oil V.I. Corp., et al.*, SX-97-CV-687; and *Roy Clement, et al. v. Hess Oil V.I. Corp., et al.*, SX-97-CV-688. Although the order listed the same two defendants—HOVIC and Amerada Hess Corporation ("Hess")—for each case, including *Henry* and *Paul*, neither the *Henry* plaintiffs nor the *Paul* plaintiffs had named HOVIC or Hess as a defendant. Presumably, listing Hess and HOVIC, instead of Raritan Supply Company, was a scrivener's error.

1997, *Alexander*, SX-97-CV-323.[7]) Dropping them and severing their "claims would only result in the continous [sic] replay of the same movie," the plaintiffs asserted, because their "injuries do not arise from a single event but from a series of events intertwined with their various work experiences." *Id.* at 4. The plaintiffs also asked, in the alternative, to have more time to refile all of the individual complaints, numbering over a hundred, and sought clarification on how to effect service since the group complaints had already been served and some of the defendants had already appeared and answered those complaints. If "the new filings will be akin to [a]mended [c]omplaints," counsel asserted, then "formal re-service" was not required. *Id.* at 8. Instead, copies of the refiled complaints could be sent "by regular mail." *Id.*

Four days later, on December 22, 1997, while the motion for reconsideration was still under consideration, plaintiffs' counsel filed a document titled "Tender of Filing Fees for Plaintiffs" and listed the same cases in the caption as those listed in the December 12, 1997 Order, but with one more case. (*See* Tender of Filing Fees for Pls, filed Dec. 22, 1997, *Manbodh, et al. v. Hess Oil V.I. Corp., et al.*, SX-97-CV-328. [8]) Counsel notified the court that the plaintiffs had tendered a check in the amount of $7,400.00 to the clerk, "representing separate filing fees for each of the Plaintiffs (inclusive of each of their spouses) who did not previously deposit a filing fee with this Court at the commencement of these cases." *Id.* at 3. The fees were "tendered in response to Judge Cabret's December 12, 1997 Order," counsel explained, presumably to ameliorate any concerns, *Id.*

A month later, the Administrative Judge issued an opinion and order, dated January 23, 1998

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[7] Separate motions were filed on the same day in each of the individual cases, including *Henry* and *Paul*, with only the caption of that specific case.

[8] The additional case listed was *Florencio Rodriguez, et al. v. Hess Oil Virgin Islands Corporation, et al.*, case number SX-97-CV-690.

and entered January 26, 1998, and denied the plaintiffs' motion. The opinion concluded that the motion was improper because reconsideration should not be "used to ask the court to rethink what it had already thought through—rightly or wrongly." *Alexander v. HOVIC*, SX-97-CV-323, 1998 V.I. LEXIS 36, *3 (V.I. Terr. Ct. Jan. 23, 1998) (citations omitted) (unpublished). The court did grant counsel's request for additional time "to complete the required refilings of individual claims," however. *Id.* at *1. And, although the court did not address whether service of the group complaints would carry forward for the individual complaints to come, the court did note "that severance does not require the filing of an amended complaint." *Id.* at *4 n.1 (citing *Gonzalez v. Fireman's Fund Ins. Co.*, 385 F. Supp. 140 (D.P.R. 1974)). Instead, the plaintiffs needed "only to refile complaints individually" and then "give notice of new filings to all interested parties." *Id.*

All of the former *Paul* plaintiffs, and all but one of the former *Henry* plaintiffs,[9] complied and refiled individual complaints. Fifty complaints were filed on January 9, 1998, followed by three more on January 14, 1998. Two days later, on January 16, 1998, the now-former *Henry* plaintiffs and former *Paul* plaintiffs each filed a notice in their individual cases that copies of their complaints has been sent to the defendants by regular mail. The individual complaints mirrored the group complaints from *Henry* and *Paul* and named the same defendants, except that all but two of the former *Henry* plaintiffs had to amend their complaints to re-add Pittsburgh Corning Corporation as a defendant, presumably because they had inadvertently omitted this defendant when preparing their individual complaints.[10] Their amended complaints were filed on January 26, 1998.

[9] Joseph LaForce was named as a plaintiff in the group complaint filed in *Henry, et al. v. Raritan Supply Company, et al.*, SX-97-CV-328, but he did not—so far as the Court's records show—refile an individual complaint in compliance with the Administrative Judge's December 12, 1997 Order.

[10] The plaintiffs in *Paul* did not name Pittsburgh Corning Corporation as a defendant, so the former *Paul* plaintiffs also did not name Pittsburgh Corning Corporation in their individual complaints. The plaintiffs in *Henry* did name Pittsburgh Corning Corporation as a defendant. However, Aybert Leon, a former *Henry* plaintiff, never amended his individual

For reasons unclear from the record, the clerk's office assigned all of the individual complaints to Judge Andrews, even though only *Paul* had been assigned to him. *Henry* was still assigned to Judge Ross. And, before Judge Andrews had issued any orders in any of the individual cases, GAF Corporation filed a notice, on February 6, 1998, in *Vernie Ayers v. Raritan Supply Company, et al.*, stating that all of the individual cases had been removed to the District Court of the Virgin Islands pursuant to section 1441 of title 28 of the United States Code. Yet, rather than file separate notices with each case listed in the caption, GAF instead filed the one notice in *Ayers* and then fifty-two copies of that same notice, but with all of the individual case listed in an attachment. (*See* Def. GAF Corp.'s Notice 1, filed Feb. 6, 1998, *Ayers v. Raritan Supply Co.*, SX-98-CV-109 ("[A]n identical Notice of Removal to Federal Court was filed . . . in each of the Territorial Court cases listed on Exhibit A . . . .").[11]) And then someone, perhaps GAF's counsel or a court clerk, wrote the case number of each individual case on the copies. The clerk's office then placed corresponding copies in each case file and administratively closed these cases.

Although GAF did not file notice in this court until February 6, 1998, it had already started removing the cases to the District Court on February 3, 1998. And by February 6, 1998, the clerk of

complaint to re-add Pittsburgh Corning as a defendant. Another former *Henry* plaintiff, James Williams filed, on August 14, 1998, a document titled "Corrected Second Page of Complaint Filed with Court" that purportedly corrected certain errors in his individual complaint. However, the caption of the August 14, 1998 filing named numerous companies as defendants, including Pittsburgh Corning Corporation, but also Borinquen Insulation Company (with whom he had settled, according to the allegations in his complaint) and HOVIC, a company neither the *Henry* plaintiffs nor the *Paul* plaintiffs named in their group or individual complaints.

[11] Notably, someone handwrote the word "DISMISSED" on the list of cases between the name "Raleigh Antoine" and case number "141/1998." (*See* Def. GAF Corp.'s Notice, Ex. A, p.1, *Ayers*, SX-98-CV-109.) However, neither the case file (nor the electronic docket created years later) show that Raleigh Antoine v. Raritan Supply Company, et al., case number SX-98-CV-141, was dismissed sometime after being opened in January 1998 and before being removed in February 1998. The Court takes judicial notice, however, that none of the cases opened by the District Court following GAF's removal named Raleigh Antoine as a plaintiff. *Cf. Cianci v. Chaput*, S. Ct. Civ. Nos. 2014-033, 2014-034, ___ V.I. ___, 2016 V.I. Supreme LEXIS 24, *10-11 n.2 (V.I. June 16, 2016) ("'We may take judicial notice of the contents of another [c]ourt's docket.'" (quoting parenthetically *Orabi v. Att'y Gen of the United States*, 738 F.3d 535, 537 n.1 (3d Cir. 2014)).

that court had opened their cases,[12] assigned them all to the Honorable Raymond L. Finch, and then referred them all to the Honorable Jeffrey L. Resnick, pursuant to the local rule in effect at the time *See* LRCi 72.1 ("The Magistrate Judges are hereby designated to hear and determine in all civil causes any pretrial matter pending before the court . . . ."), *reprinted in* V.I. Ct. R. Ann. (1997 ed.). But, neither the physical case files (which were later returned to this court) nor their online dockets show that the parties consented to having a magistrate judge "conduct any or all proceedings" following removal pursuant to section 636(c) of title 28 of the United States Code.

Two weeks later, on February 20, 1998, the plaintiffs filed a motion in each of their District Court's cases for remand to the Territorial Court and for costs and attorney's fees for having to move for remand. On March 4, 1998, the plaintiffs and GAF filed a stipulation in one of the cases, *Vernice Cummings v. Raritan Supply Company, et al.*, and agreed to extend the defendants' time to respond to their motions.[13] The magistrate judge approved the stipulation the same day and the clerk entered the order on March 5, 1998. Over the following two months, the magistrate judge issued a few more orders, scheduling and rescheduling settlement conferences and granting the defendants even more time to respond to the remand motions.

GAF Corporation filed its response in opposition to the plaintiffs' motion for remand on May 21, 1998, after the third deadline the court gave and without asking permission first. And even though the magistrate judge had also ordered all of the parties to file their responses and replies "in

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[12] The Clerk of the District Court numbered its cases as civil numbers 1998/011 through 1998/065, excluding civil numbers 1998/033 and 1998/034, which were unrelated cases opened at the same time as the removed cases were being filed and numbered by the clerk.

[13] As with the notice GAF filed in *Ayers*—presumably because *Ayers* was the first numbered case of the individual cases—GAF and the plaintiffs also only filed one copy of their stipulation, presumably because *Cummings* was the first numbered case of the cases opened in the District Court. And like *Ayers*, GAF and the plaintiffs attached the same list of cases and explained that their agreement to extend the briefing deadline "appl[ied] in each of the related cases listed on Exhibit A." (*See* Stip. 1 (ECF No. 4), *Cummings v. Raritan Supply Co., et al.*, 98-cv-011.)

a single filing captioned" under *Cummings*, but note that it applied to all of the cases, (*see* Order 1, ECF No. 7 (Apr. 17, 1998), *Cummings v. Raritan Supply Co.*, 98-cv-011), GAF proceed to file two: one in *Cummings*, the other in *Hector Reyes v. Raritan Supply Company, et al.*, civil number 1998/051. While the arguments were identical in each, the background of *Cummings* concerned the former *Henry* plaintiffs while the background in *Reyes* spoke to the former *Paul* plaintiffs. Like GAF, the plaintiffs also filed two replies – one in *Cummings*, the other in *Reyes*, each addressing the group complaint where their claims were first alleged. But the arguments raised in each reply were identical. The plaintiffs all rejected GAF's assertion that the thirty-day deadline for removal restarted when they refiled their individual complaints.

The magistrate judge granted the plaintiffs' motions for remand by order dated May 29, 1998. *See generally Cummings v. Raritan Supply Co., et al.*, 98-cv-011, 1998 U.S. Dist. LEXIS 24130, *1 (D.V.I. May 29, 1998). While the order was only issued in *Cummings*, it did state that it applied to all of the related cases. *See id.* at *2 n1. And separate orders also issued the same day in the other cases, explaining that for the same reasons given in *Cummings*, the motion for remand was granted. The requests for costs were denied, however, but without explanation. *See id.* at *6. The same day, May 29, 1998, presumably after the magistrate judge had already submitted his orders to the clerk's office, GAF Corporation filed a request in *Cummings* for oral argument on the remand motions. No action was taken on the request, however, because the clerk had begun docketing the orders, entering them, and closing the District Court's cases. The docket of each case states that it was remanded to the Territorial Court.[14] Five months later, the United States Court of Appeals for the

[14] How and when the cases were returned by the District Court to the Territorial Court is not clear. The District Court's electronic docket in *Cummings* contains the following entry: "CLOSED Remanded to territorial court eod 06/01/98 [MWR] (Entered: 05/29/1998)." (ECF No. 11, *Cummings v. Raritan Supply Co., et al.*, 98-cv-011.) The docket in *Reyes* has a similar entry. (*See* ECF No. 6 (05/29/1998) ("CLOSED Remanded to territorial court (JLR) on motion by pltf eod

Third Circuit held, in *In re: United States Healthcare*, 159 F.3d 142, 146 (3d Cir. 1998), that "a remand order is dispositive of all the claims and defenses in the case as it banishes the entire case from the federal court" and, therefore, federal magistrate judges cannot hear and determine motions for remand.

Meanwhile, around the same time that the former *Henry* plaintiffs and former *Paul* plaintiffs' cases were being refiled, removed, and remanded, the Administrative Judge was meeting with counsel for the other cases affected by the December 12, 1997 Order. *See Alexander*, 1998 V.I. LEXIS 36 at *1 (ordering "counsel for plaintiffs and counsel for defendants" to "appear for an informal pretrial conference . . . on January 30, 1998."). And once all of the co-plaintiffs had finished refiling individual complaints, counsel in those cases jointly filed a document, on August 10, 1998, titled Stipulated Consolidated Discovery and Case Management Order, and agreed to coordinate discovery in the cases "listed on Exhibit A and all cases filed by September 1, 1998 in the Territorial Court of the Virgin Islands by Alkon, Rhea & Hart that relate to asbestos exposure at the Hess Oil

06/01/98 [MWR] (Entered: 05/29/1998)"), *Reyes v. Raritan Supply Co., et al.*, 98-cv-051.) Presumably, the Clerk of the District Court of the Virgin Islands, like other federal district courts, uses the abbreviation "eod" to mean "entered on docket." *Cf. United States v. Serrano*, 870 F.2d 1, 12 n.12 (1st Cir. 1989) ("An 'EOD' entry, meaning 'Entered on Docket,' is customary when the date of filing noted in the margin does not coincide with the date the order is actually entered."); *see also Houston v. Greiner*, 174 F.3d 287, 289 (2d Cir. 1999) (same explanation). If so, then the magistrate judge's May 29, 1998 order was not formally entered until June 1, 1998. *Cf. Nat'l Sav. Bank of Albany v. Jefferson Bank*, 127 F.R.D. 218, 222 (S.D. Fla. 1989) ("The 'EOD', or 'entered-on-docket' date, is the legally operative date from which a party must take some action from the entry of an order" (footnote omitted)). But, even if the order was not entered until June 1, 1998, not May 29, 1998, *cf. id.* at 223 n.10, neither the District Court's electronic dockets, nor the Superior Court's physical case files—which include (with the exception of *Antoine*) the District Court case files for each plaintiff—reveals any transmittal, memorandum, or other correspondence between the District Court and the Territorial Court, akin to a higher court's mandate formally returning a case to a lower court. The District Court case files do contain copies of the May 29, 1998 Orders, certified by the Clerk between June 9th and 10, 1998. But, so far as the Court can discern from the case files, certified copies of the May 29, 1998 orders were never mailed by the Clerk of the District Court to the Clerk of the Territorial Court per federal law. *See* 28 U.S.C. § 1447(c) ("A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case."). Perhaps certified copies of the orders were couriered to the Territorial Court with the District Court's case files, instead of being sent through the mail, since each plaintiff's District Court case file is a part of his Superior Court's case files. But, when and how the files returned to this court remains unclear.

Virgin Islands Corporation's St. Croix refinery." (Stip. Consol. Disc. and Case Mgmt Order 1, filed Aug. 10, 1998, *Manbodh v. Hess Oil V.I. Corp.*, SX-97-CV-324.) Unfortunately, if the list of cases was attached when it was filed, it is no longer with the document in the court's case file.

A few days after that, the Administrative Judge issued a case management order, dated August 12, 1998 and entered August 13, 1998, but under the generic caption, *In re: All Asbestos Personal Injury Cases*, but without a case number in the caption. The order stated that "all asbestos personal injury and wrongful death cases now or hereafter filed with the Territorial Court of the Virgin Islands" were "consolidated" under "one master [case file and] docket," so that "pretrial procedures" could be coordinated, paperwork reduced, and justice furthered. (Case Mgmt Order No. 1, 1, entered Aug. 13, 1998, *In re: Kelvin Manbodh Asbestos Litig. Series*, SX-97-CV-324.[15]) Case Management Order No. 1, as it was titled, directed the clerk's office to open a master case and a master docket under the caption *In re: Kelvin Manbodh Asbestos Litigation Series* for all of the personal injury asbestos cases.[16]

Unfortunately, the case management order did not identify which cases were consolidated under the master case or whether the stipulation the parties had filed a few days before was incorporated. And since the order gave the parties the option to submit objection in writing within thirty days, counsel again jointly filed a document, on September 10, 1998, titled Joint Proposed

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[15] Although a case number was not listed on the order or on the notice of entry the clerk's office issued, the Court takes judicial notice that Case Management Order No. 1 is the first document that was docketed in *In re: Kelvin Manbodh Asbestos Litigation Series*. Presumably, Case Management Order No. 1 only used *In re: All Asbestos Personal Injury Cases* as a generic caption to capture all of the asbestos cases. *Cf.*, *infra*, note 1.

[16] Unfortunately, instead of giving the *Manbodh* master case a new or a different case number, the same number the Clerk's Office had assigned to the group complaint Kelvin Manbodh and others filed on May 23, 1997 was also used as the master case number. *Contra* Patricia D. Howard, Clerk, *A Guide to Multidistrict Litigation*, 75 F.R.D. 577, 585 (1977) ("It is not recommended that the low number docket sheet be used as the master docket, since it is possible that this action will be terminated prior to the termination of the remainder of the litigation."); *cf. id.* at 595 (explaining that "low number case" refers to the "actual case number").

Revisions to Case Management Order No. 1, and Request for Conference. The joint filing identified portions of the case management order counsel thought were not practical or were unclear, and also questioned whether the stipulation they filed had been implicitly incorporated into Case Management Order No.1. The Administrative Judge responded in an order dated September 30, 1998 and entered October 2, 1998, and scheduled a status conference for November 20, 1998 to address their concerns.

In the interim, while the concerns over managing litigation under the *Manbodh* master case were being addressed, litigation resumed in the former *Henry* plaintiffs' cases and the former *Paul* plaintiffs' cases following the May 29, 1998 remand order. On July 6, 1998, Lincoln Nicholas filed a stipulation signed by all of the parties (including some who had not appeared through counsel yet or answered his complaint) and agreed to dismiss all of his claims with prejudice against all of the defendants. Since the cases had been assigned to Judge Andrews before removal, Judge Andrews approved Nicholas' stipulation the next day, by order dated July 7, 1998 and entered July 9, 1998. But after Judge Cabret issued Case Management Order No. 1 and the *Manbodh* master case was created, and once the former *Henry* plaintiffs and the former *Paul* plaintiff began settling their claims with some of the defendants, she, and not Judge Andrews, issued the orders approving of the stipulated dismissals that were submitted for a period of time.

Case Management Order No. 1 did not identify which individual cases were being consolidated or coordinated under *Manbodh*.[17] And the joint stipulation that the parties filed listing

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[17] Consolidation means different things in different contexts. *Compare Tremcorp Holdings, Inc. v. Harris*, S. Ct. Civ. No. 2016-0013, __ V.I. ___, 2016 V.I. Supreme LEXIS 34, *11 (V.I. Sept. 7, 2016) (per curiam) ("[S]eparately-filed cases consolidated by the Superior Court do not lose their individual character" for purposes of appeal), *with*, *Schnabel v. Lui*, 303 F.3d 1023, 1035 (9th Cir. 2002) ("'Consolidation' as a term of legal procedure is generally used in three different contexts: (1) when several actions are stayed while one is tried, and the judgment in the case tried will be conclusive as to the others; (2) when several actions are combined and lose their separate identities, becoming a single action with a

the cases that would eventually become part of the *Manbodh* litigation is missing (or was never filed). So, it is possible that these cases, along with all of the other asbestos-related cases, were being coordinated under *Manbodh*. Or, perhaps counsel and the court believed so. Yet, even though all of these cases remained assigned to Judge Andrews, Judge Cabret approved all of the stipulations, despite whatever case name or number was listed in the caption.

So, when thirty of the former *Henry* plaintiffs filed stipulations, on November 10, 1999, agreeing to dismiss their claims with prejudice against Raritan Supply Company,[18] Judge Cabret approved them all in orders dated November 12, 1999 and entered November 26, 1999. Similarly, between January 13, 2000 and June 13, 2000, forty-five plaintiffs in six "group" stipulations agreed to dismiss their claims against Union Pump Company with prejudice.[19] But, unlike the stipulations

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single judgment entered; and (3) when several actions are tried together, but each suit retains its separate character, with separate judgments entered." (citation omitted)). So while 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. A master case does not proceed to trial. Rather, the individual cases consolidated, or coordinated, under it do.

[18] The thirty plaintiffs who filed stipulations to dismiss their claims against Raritan were: Williams, Alexander, Thorpe, Henry, Wilkham, Charlery, Nestor, Joseph, Modeste, Lubrin, Lopez, George John, Jackson, Gill, Cuthbert John, Emmanuel, Pascal, Cummings, Noel, Mason, Dash, James, Cobb, Charles, Cuffy, Aybert Leon, Blackman, Maurice Leon, Gentius, and St. Brice.

[19] Case Management Order No. 1 had adopted a numbering system for each document filed or issued in the master case. (*See* Case Mgmt Order No. 1 at 7 ("Before filing an Order, pleading, motion or other document in the Master File, a party must obtain a number from the Court that will be placed on the front page of the document."), *In re: Kelvin Manbodh Asbestos Litig. Series*, SX-97-CV-324.) The six stipulations between certain plaintiffs and Union Pump were assigned numbers 770 and 771 (both filed January 13, 2000); number 831 (filed April 26, 2000); numbers 833 and 834 (both filed May 3, 2000), and number 855 (filed June 13, 2000). Among other *Manbodh* plaintiffs, the plaintiffs from these cases who stipulated to dismiss their claims against Union Pump Company were Simon, Dore, Cuthbert John, Lucien, and Aybert Leon in document number 770, but also Joseph LaForce, but with case number 117/1998 – even though, as noted, *see*, *supra*, note 9, LaForce never refiled a complaint in the Territorial Court and civil case number 117 in 1998 was and remains assigned to William Wickham. The plaintiffs named in document number 771 were Williams, Holloway, Thorpe, Henry, Charlery, Joseph, Lubrin, Lopez, Gill, Cummings, Noel, Mason, Dash, James, Cobb, Charles, Cuffy, Maurice Leon, Gentius, and St. Brice. Only one plaintiff, Perez, was named in document number 831 among the other *Manbodh* plaintiffs listed. The plaintiffs named in document number 833 were James, Marcellin, St. Louis, Byer, Blackman, and (for a second time) Aybert Leon. The plaintiffs named in document number 834 were Simon (for a second time), and Modeste, George John, Fatal, Emmanuel, Pascal, Collado, Reyes, and Hernandez. Finally, the plaintiffs named in document number 858 were Ayers, Wickham, Nestor, Williams, Jackson, and Martinez.

with Raritan, which were filed in the individual cases, these six group stipulations[20] were captioned under *In re: All Asbestos Personal Injury Cases* and listed the *Manbodh* master case number. Orders approving the six stipulations were also issued under the master case.[21]

For reasons unclear from the record—but perhaps because Case Management Order No. 2 issued in *Manbodh* on June 22, 2000 and none of the former *Henry* or former *Paul* cases were included on the list of cases, (*see* Case Mgmt Order 2, entered Apr. 21, 2001, *Manbodh*, SX-97-CV-341 (*nunc pro tunc*))—litigation in these cases shifted from *Manbodh* to just one of the individual cases. On October 4, 2000, Rupert Dore filed a motion in his case, not just on his own behalf, however, but also on behalf of thirty-five other plaintiffs to enforce a settlement agreement between himself and others with GAF and Certainteed. And of the other plaintiffs on whose behalf the motion was filed, only twenty-five were former *Henry* plaintiffs or former *Paul* plaintiffs.[22] The other ten were named in the motion simply because they were all in the same boat: seventy plaintiffs had negotiated a settlement agreement with GAF and Certainteed through the Center for Claims Resolution, "a consortium" that GAF and Certainteed had "joined . . . with other asbestos-products manufacturers to manage common asbestos-related litigation." (Pl.'s Mot. to Enforce Settlement Agmt 2, filed Oct. 4, 2000, *Dore v. Raritan Supply Co., et al.*, SX-98-CV-129.) But Dore and the thirty-

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[20] Even if Case Management Order No. 1 did govern these individual cases for a time, filing stipulations for dismissal in the master case was still improper because the order directed that "[o]rders, pleadings, *motions and other documents*" that did not apply to all of the cases, but only to a few of the cases, should indicate the case name and file number for that individual case and "be filed only in the court file *for that case*." (Case Mgmt Order No. 1 7, *In re: Kelvin Manbodh Asbestos Litig. Series*, SX-97-CV-324 (emphasis added).)

[21] The Clerk's Office since added copies of the stipulations and the dismissal orders from *Manbodh* to each plaintiff's respective case file and docket.

[22] The twenty-five former *Henry* and former *Paul* plaintiffs were: Alexander, Ayers, Baptiste, Charlery, Charles, Collado, Cuffy, Grant, Jackson, Cuthbert James, Foster James, Aybert Leon, Estate of Eleuterio Lucca Munoz, Lucien, Marcellin, Martinez, Mason, Pascal, Santos, St. Louis, Estate of Belford Vivas, Sr., Elford Williams, James Williams, and Joseph LaForce and William Wickham (both with the same case number).

five other plaintiffs named in the motion had not been paid. So, they moved the court to enforce their agreement, but only filed the motion in Dore's case.[23]

GAF responded, but through different counsel, and asked the court for more time to respond. Judge Andrews granted the request by order dated October 11, 2000 and entered October 24, 2000. The same day, October 24, 2000, GAF filed a motion to consolidate *Dore* with another case, *Placide Alexander, et al. v. Center for Claims Resolution*, case number 537/2000, the same thirty-six plaintiffs had filed two weeks earlier, on October 10, 2000, for breach of contract. After GAF filed its response to the plaintiffs' motion to enforce settlement, and after the plaintiffs had filed their reply and also their response to GAF's consolidation motion, Certainteed, on November 3, 2000, filed a stipulation to substitute counsel, but which was really a notice of appearance as co-counsel only to address the settlement motion. Prior counsel remained for all other purposes. Three days later, Certainteed filed its response in opposition to both the plaintiffs' motion to enforce the settlements and in opposition to GAF's motion to consolidate. Judge Andrews approved the stipulation by order dated and entered November 8, 2000 and around the same time, issued an order dated November 3, 2000, but not entered until November 8, 2000, imposing a stay on all further proceedings in *Dore* until his successor was nominated and confirmed to the bench.

Because of the stay, counsel for Dore sent a letter, dated November 28, 2000 and docketed November 29, 2000, to the presiding judge and asked to have *Dore* reassigned, because the settlement motion was fully briefed and Judge Andrews had stayed the case because his term was ending. Presiding Judge Cabret responded by letter, dated and docketed November 29, 2000, and

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[23] Because the caption only named *Rupert Dore v. Raritan Supply Company, et al.*, case number 129/1998, the motion was only docketed in Dore's case, not in any other plaintiff's case.

denied Dore's request. She explained that her "caseload and administrative court duties" do not allow for "any additional cases," and since both she and "Judge Ross . . . are handling Judge Andrews' criminal cases," Judge Ross' "caseload [also] does not allow for additional assignments." (Letter 1, filed Nov. 29, 2000, *Dore v. Raritan Supply Co., et al.*, SX-98-CV-129.) "Consequently," the Presiding Judge concluded, *Dore* "must remain for appropriate action by the judge who will be replacing Judge Andrews." *Id.*

The next action in the former *Henry* plaintiffs' cases and the former *Paul* plaintiffs' cases occurred on March 22, 2001 when the clerk's office reassigned all of the cases to the Honorable Darryl Dean Donohue, Sr. after Judge Andrews concluded his term on the bench. Then, on June 8, 2001, three of the former *Paul* plaintiffs and ten of the former *Henry* plaintiffs (including Dore) filed stipulations in their individual cases, agreeing to dismiss their claims against Raritan with prejudice.[24] Judge Donohue approved all of stipulations by orders dated June 14, 2001 and entered June 15, 2001, but, as to *Dore*, without technically lifting the stay first.

Nothing further occurred in any of the cases until 2007 when the Honorable Francis J. D'Eramo, who succeeded Judge Cabret after she took senior status, issued an order in *Dore*, perhaps believing that *Dore* was part of the *Manbodh* litigation, but without realizing that *Dore* remained assigned to Judge Donohue since Judge Donohue had not recused or reassigned the case to Judge D'Eramo once he became the presiding judge.[25] Judge D'Eramo ordered Dore to "make an appropriate filing . . . or [his] case will be dismissed for failure to prosecute" because there had been

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[24] The thirteen plaintiffs who filed stipulations to dismiss their claims against Raritan were: Reyes, Simon, and Collado (former *Paul* plaintiffs), and Holloway, Perez, Williams, James, Dore, Fatal, St. Louis, Cummings (a second time), Byer, and Lucien.

[25] The Superior Court's electronic docketing system, eNACT, shows that *Dore* remained assigned to Judge Donohue despite Judge D'Eramo orders.

no movement "since June of 2001." (Order 1, entered May 29, 2007, *Dore v. Raritan Supply Co., et al.*, SX-98-CV-129.) And when Dore did not respond, Judge D'Eramo dismissed the case in an order dated June 26, 2007 and entered June 29, 2007.

Again the cases went dormant until 2013, when the clerk's office, on October 21, 2013, reassigned *Paul* and all of the individual cases, except *Dore*, to the undersigned judge following Judge Donohue's retirement. Then, on November 21, 2013, the former *Paul* plaintiffs and all of the former *Henry* plaintiffs except Dore but including Nicholas (even though his case had already been dismissed by Judge Andrews in 1998) filed stipulations in their individual cases, agreeing to dismiss their claims against Madsen & Howell with prejudice.[26] This Court approved each stipulation by orders entered between November 27, 2013 and December 9, 2013.

When more time passed and the cases appeared to be pending still but without any movement, the Court, beginning in January 2014, started to issue orders in a few of the cases, detailing some of the procedural history of that case. The orders acknowledged that many of the cases affected by the December 12, 1997 Order were eventually consolidated under *Manbodh* and were still pending in some aspect in the Superior Court. The orders also took judicial notice of the stipulations between Union Pump and some of the plaintiffs that were approved in *Manbodh.* Some of the plaintiffs were then ordered to inform the court in writing whether their stipulations with Raritan were intended to cover Raritan in both capacities and further to inform the court as to the

[26] The court takes judicial notice that Richard E. Daley, II, Esq. died on August 31, 2008. (*See, e.g.*, Pet. ¶ 3, filed Dec. 10, 2008, *In re: Estate of Daley II*, SX-08-PB-127; *accord* Order, entered Nov. 20, 2008, *In re: Daley III* [sic], S. Ct. Civ. No. 2008-0111 (appointing receiver for Attorney Daley's files).) New counsel has not yet formally appeared or substituted for Attorney Daley on behalf of Madsen & Howell, GAF, or Certainteed Products. However, new counsel did sign the November 2013 stipulations on behalf Madsen & Howell, presumably with apparent authority, notwithstanding that new counsel never moved for leave to substitute for Attorney Daley or filed a notice of appearance noting that prior counsel had passed away.

status of their claims against Certainteed and GAF, and also Pittsburgh Corning Corporation for the former *Henry* plaintiffs. And although the orders were only issued in a few of the cases, the Court did point out in *Cummings*, for example, that "fifty other cases . . . also remain pending before the Court . . . many of which are in a substantially similar, but not identical, posture . . . ." (Order 2 n.2, entered Jan. 16, 2015, *Cummings v. Raritan Supply Co., et al.*, SX-98-CV-140.) Cummings responded, through counsel, and informed the court that he "never pursued his complaint against GAF, CertainTeed Products Corporation nor Pittsburgh Corning Corporation." (Pl.'s Resp. to Ct. Order of Jan. 14, 2015, filed Jan. 30, 2015, *Cummings v. Raritan Supply Co., et al.*, SX-98-CV-140.) Yet, rather than move to dismiss his claims against these remaining defendants (or even request that the clerk enter default), Cummings instead "respectfully submitted that *the court consider dismissal* of those entities for non-prosecution after seventeen years." *Id.* (emphasis added). None of the other parties responded to these responses, except that Raritan informed the court that the stipulated dismissals were intended to dismiss claims against Raritan in both capacities.

Nothing else occurred in any of the individual cases to date. However, on August 10, 2015, the Supreme Court of the Virgin Islands held in *Vanterpool v. Government of the Virgin Islands*, 63 V.I. 563, 574-75 (V.I. 2015), that, under Virgin Islands law, the presiding judge is the only judicial officer who has the authority to assign or reassign cases between and among the judges, and further that no judge has any authority to issue orders, including dispositive orders, in cases assigned to other judges, except when the assigned judge is unavailable or an emergency situation arises.

DISCUSSION

Despite the length of time that has passed since these cases were purportedly remanded, and notwithstanding all the orders issued to date, regrettably all of these cases remain with the District

Court of the Virgin Islands because Magistrate Judge Resnick's May 29, 1998 Order remanding the cases to this Court was not a valid order. The United States Constitution "vests the judicial power of the United States in judges."[27] *Thomas v. Arn*, 474 U.S. 140, 153 (1985). And to assist the federal judges in the performance of their duties, Congress enacted the Federal Magistrate Act in 1968, which "abolished the office of United States commissioner, and . . . reform[ed] the first echelon of the Federal judiciary into an effective component of a modern scheme of justice by establishing a system of U.S. magistrates." *Matthews v. Weber*, 423 U.S. 261, 266 (1976) (quotation marks and citation omitted). The Federal Magistrate "Act grew from Congress' recognition that a multitude of new statutes and regulations had created an avalanche of additional work for the district courts which could be performed only by multiplying the number of judges or giving judges additional assistance." *Id.* at 268. And as the work of the district courts continued to increase, Congress subsequently amended the Federal Magistrate Act in 1976 to give federal magistrate judges more authority.[28]

The 1976 amendments "provided that a district court judge could designate a magistrate to 'hear and determine' any pretrial matter pending before the court, except certain 'dispositive' motions." *United States v. Raddatz*, 447 U.S. 667, 673 (1980) (quoting 28 U.S.C. § 636(b)(1)(A)). Yet, even though federal magistrates cannot hear and determine—or, decide, said another way—a

[27] The federal judges appointed to the District Court of the Virgin Islands are not considered to be Article III judges. *See* 48 U.S.C. § 1614(a). Instead, they are considered to be Article IV judges. *Cf. United States v. Gov't of the V.I.*, 45 V.I. 764, 774 n.3 (3d Cir. 2004) ("The District Court of the Virgin Islands is an Article IV court, but is authorized by statute to exercise jurisdiction equivalent to an Article III court." (citations omitted)). However, all federal magistrate judges, regardless whether they serve in an Article III or an Article IV court, perform the same duties and possess the same authority throughout the federal court system. *See* 28 U.S.C. § 631(a) ("In the case of a magistrate judge appointed by the district court of the Virgin Islands, Guam, or the Northern Mariana Islands, this chapter shall apply as though the court appointing such a magistrate judge were a United States district court.").

[28] Earlier the same year, 1976, Congress had amended the Federal Magistrate Act specifically to authorize the District Court of the Virgin Islands to appoint federal magistrate judges. *See* Act of Oct. 17, 1976, Pub. L. 94-520, 90 Stat. 2458, 2458, codified as amended at 28 U.S.C. § 631(a).

dispositive motion, district court judges can still "'designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations'" as to how the judge should rule. *Id.* (quoting 28 U.S.C. § 636(b)(1)(B)). And once the magistrate submits proposed findings and recommendations, any party can then file objections. *See id.* Not filing objections can foreclose the parties' rights to raise the issue later on appeal, so long as the parties know they can seek further review from the district court judge and the federal appellate court promulgates a rule accordingly. *See Thomas*, 474 U.S. at 155 ("We hold that a court of appeals may adopt a rule conditioning appeal, when taken from a district court judgment that adopts a magistrate's recommendation, upon the filing of objections with the district court identifying those issues on which further review is desired."). Of course, the district court judge must also approve, reject, or modify the magistrate's recommendation.

This distinction between dispositive and nondispositive motions has not proven so straightforward for federal courts, however. The United States Court of Appeals for the Third Circuit addressed the distinction between dispositive and nondispositive in *In re: United States Healthcare*, specifically whether a motion to remand a civil action to state court is more akin to a dispositive motion or to a nondispositive motion. Section 1441 of title 28 of the United States Code lets a defendant remove certain civil actions from state or territorial court to federal court. *See* 28 U.S.C. § 1441(a) ("Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."); *see also* 48 U.S.C. § 1612(a) ("The District Court of the Virgin Islands shall have the jurisdiction of a District Court of the United States, including, but not limited to, the diversity jurisdiction provided for in section 1332 of title 28, United States Code."); *Hansen v. O'Reilly*, 62 V.I. 494, 508 (V.I. 2015) ("Section 1613 [of title 48 of the United States Code] unquestionably extends the federal removal statute to the Superior Court and the District Court."). Any party who objects to removal must file "[a] motion to remand the case . . . within 30 days after the filing of the notice of removal" in the state or territorial court 28 U.S.C. § 1447(c). If the motion is denied, the case stays in federal court. If the motion is granted, the case returns to the state or territorial court from which it was removed and the order remanding the case "is not reviewable on appeal or otherwise." *Id.* § 1447(d).

In re: United States Healthcare involved a medical malpractice action Donald Hoyt had filed in the Superior Court of New Jersey against U.S. Healthcare among other defendants. *See* 159 F.3d at 144. Before any of the other defendants had been served, U.S. Healthcare removed the case to the District Court of New Jersey, claiming that, even though Hoyt alleged negligence, the federal court had original jurisdiction because Hoyt's claim actually arose under ERISA, the Employee Retirement Income Security Act of 1974. *See id.* The clerk of the District Court assigned the case to a judge and designated a magistrate to handle all pretrial proceedings. "The parties, however, did not consent to the magistrate judge exercising the jurisdiction of a district judge as provided in 28 U.S.C. § 636(c)." *Id.* And, while none of the parties moved to remand the case, "the magistrate judge on his own motion on October 17, 1997, remanded the case to the Superior Court of New Jersey on the ground that the district court lacked subject matter jurisdiction." *Id.* The magistrate judge deemed the motion as nondispositive and "the district court treated the remand as effective immediately . . . and closed the case on October 17, 1997." *Id.*

Two months later, on December 30, 1997, U.S. Healthcare filed a petition for writ of mandamus with the Third Circuit. (*See* Pet., *In re: U.S. Healthcare*, No. 97-5812 (3d Cir. Dec. 30, 1997).) In its brief, U.S. Healthcare argued that "that the magistrate judge did not have the authority to remand this case to state court." 159 F.3d at 144 (quotation marks omitted). The defendants who opposed the petition, argued both that magistrate judges can decide remand motions and that remand orders cannot be reviewed on appeal or otherwise, and also that U.S. Healthcare had not met the standard for mandamus relief. *See id.* at 144-45. The Third Circuit disagreed, ruled in favor of U.S. Healthcare, granted the petition, and issued a writ directing the magistrate judge to set aside his remand order.

In reaching its decision, the Third Circuit first considered whether a motion for remand should be viewed as a dispositive motion or a nondispositive motion. *See id.* at 145. And "[i]n considering this issue," the court also took "into account 'the potential for Art. III constraints in permitting a magistrate to make decisions on dispositive motions.'" *Id.* (quoting *Raddatz*, 474 U.S. at 676). Ultimately, because Congress ensured "that Article III judges retain the ultimate adjudicatory power over dispositive motions"—the kind of motion that has "a preclusive effect on the parties"—the court concluded that "[a]n order of remand simply cannot be characterized as nondispositive." *Id.* (citation omitted). Granting a motion for remand, the court explained, "preclusively determines . . . that there will not be a federal forum available to entertain a particular dispute." *Id.* Therefore, "a magistrate judge may not, without the consent of the parties, decide this critical issue at the core of the exercise of federal judicial power." *Id.* The court further concluded that section 1447(d) did not bar U.S. Healthcare's petition and that mandamus was the only relief available, *see id.* at 146, and then ordered that a writ of mandamus be issued to the magistrate judge "directing him to vacate the order of October 17, 1997, remanding the case to the Superior Court of

New Jersey." *Id.* at 147. The court expressly declined to address, however, whether the magistrate judge was correct in deciding to remand Hoyt's malpractice case. *See id.* ("Of course, we express no view on whether the district court has subject matter jurisdiction in this case and thus our opinion does not preclude the district court from remanding the case if it should find that it lacks subject matter jurisdiction."). But it was the judge and not the magistrate, who had to make that decision.[29]

Here, as in *Healthcare*, the clerk of the District Court of the Virgin Islands assigned all of the former *Henry* and former *Paul* plaintiffs' cases to a judge and then designated them to a magistrate. Also like *Healthcare*, none of the parties consented to having a magistrate judge preside over their cases. Again, just as in *Healthcare*, the magistrate ruled on the motions for remand (rather than recommending a ruling to the judge) and issued orders remanding the cases to the Territorial Court. The clerk then closed the cases like in *Healthcare*. But unlike *Healthcare*, none of the parties sought further review or relief, even though the Third Circuit decision came down only five months after Magistrate Judge Resnick issued his remand order. Instead, counsel and the courts (both Territorial and District) proceeded as though the magistrate judge did have the authority to remand these cases to the Territorial Court. But that is not correct.

Like other federal trial courts, the District Court of the Virgin Islands can "refer dispositive motions to a magistrate for a recommendation so long as the entire process takes place under the district court's total control and jurisdiction, and the judge exercises the ultimate authority to issue an appropriate order." *Thomas*, 474 U.S. at 153 (quotation marks, citations, and brackets omitted).

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[29] The United States Courts of Appeal for the Ninth, Second, Sixth, and Tenth Circuits have all reached the same conclusion as the Third Circuit. *See generally Flam v. Flam*, 788 F.3d 1043 (9th Cir. 2015); *Williams v. Beemiller, Inc.*, 527 F.3d 259 (2d Cir. 2008); *Vogel v. U.S. Office Prods. Co.*, 258 F.3d 509 (6th Cir. 2001); *First Union Mortg. Corp. v. Smith*, 229 F.3d 992 (10th Cir. 2000). *But cf. Unauthorized Practice of Law Comm. v. Gordon*, 979 F.2d 11, 13 (1st Cir. 1992) (noting conflicting case law at the time, but declining to decide whether motion to remand is dispositive or non-dispositive).

Presumably, the District Court of the Virgin Islands can also condition its "ultimate authority" on promulgating rules that require the timely filing of objections to the magistrate's recommendations. *See id.* at 152. But, because all federal magistrate judges, even those serving in the District Court of the Virgin Islands, exercise the same authority throughout the federal judiciary, *see* 28 U.S.C. § 631(a), and because "a remand order is dispositive of all the claims and defenses in the case as it banishes the entire case from the federal court," *Healthcare*, 159 F.3d at 146, it follows that federal magistrate judges serving in the District Court of the Virgin Islands cannot decide motions for remand. By issuing a writ of mandamus, the Third Circuit signaled in *Healthcare* that, even though section 1447(d) of title 28 of the United States Code does not allow for the *direct* appeal of a remand order, it does not preclude *collateral* review of a remand order through an extraordinary writ proceeding. *Cf. In re: U.S. Healthcare*, 149 F.3d at 146 ("[W]e see no need to discuss this point further as it is clear that section 1447(d) is not a bar to U.S. Healthcare's petition."). Likewise, even though the deadline for appealing the order had passed before U.S. Healthcare filed its petition, that also did not preclude collateral review. And the reason why is clear, "a remand order executed by a judicial officer without power to issue the order" cannot "place the order beyond judicial review." *Id.* at 147 n.5.

In these individual cases, the plaintiffs had argued in their motions for remand that their initial pleadings were the group complaints they filed in *Henry* and in *Paul*. Because section 1446(b) of title 28 of the United States Code provides that removal to federal court from a state or territorial court must occur within thirty days after the date the defendant is served with a copy of the "initial pleading," the plaintiffs claimed that GAF Corporation was too late. The group complaints in *Henry* and in *Paul* were filed on May 29, 1997. Those group complaints were "removable," the plaintiffs conceded, "because there was complete diversity of citizenship between all of the Plaintiffs and Defendants." (Pl's Mot. for Remand 4, ECF 2 (Feb. 20, 1998), *Cummings v. Raritan Supply Co., et al.*, 98-cv-011.) But, because Federal Rule of Civil Procedure 21 provides that misjoinder is not a basis for dismissal, and because the "December 12, 1997 Order . . . severed . . . the other *Josephat Henry* Plaintiffs"—as well as the other *Arthur Paul* Plaintiffs— the plaintiffs argued that the complaints they each filed individually were not new cases. Instead, each individual, refiled complaint "relates back" to "the initial filing and service" of the May 29, 1997 complaints, they claimed. *Id.* at 7. Consequently, the individual complaints were "not the first pleading" for removal purposes. *Id.* at 8. The group complaints were. GAF Corporation waited too long, the plaintiffs argue. So, all of the individual cases should be remanded to the Territorial Court and costs awarded for having to oppose GAF's removal.

In response, GAF Corporation, later joined by Madsen & Howell, disputed the plaintiffs' characterization of the December 12, 1997 Order. That order, GAF argued, "was based upon a finding of fact that the attempt to join the additional co-plaintiffs as parties was arbitrary" and "in violation of" Federal Rule of Civil Procedure 20 concerning joinder of claims. (Def. GAF Corp.'s Resp. in Opp'n to Pl.'s Mot for Remand 1, ECF 8 (May 21, 1998), *Cummings v. Raritan Supply Co., et al.*, 98-cv-011.) So, "the exact nature of the misjoinder is critical," GAF stressed, to answering "the federal removal jurisdictional issue." (Def. GAF Corp.'s Resp. in Opp'n to Pl.'s Mot for Remand 4, ECF 8 (May 21, 1998), *Cummings v. Raritan Supply Co., et al.*, 98-cv-011.) All sides agreed, GAF acknowledged, that if the co-plaintiffs had been dismissed from *Henry* and *Paul*, then the plaintiffs' remand motion would have to be denied. GAF timely filed notice within thirty days after the individual complaints were filed. But, the co-plaintiffs were dropped from *Henry* and *Paul*, not dismissed. But, if the co-plaintiffs in *Henry* and in *Paul* were never properly in those cases, then "dropping . . . misjoined plaintiffs . . . ha[d] the same effect as a dismissal," GAF Corporation argued. *Id.* "[M]isjoinder of parties is not a ground for dismissal of an action," but only when "**proper party plaintiffs**" are involved. *Id.* at 5. If the co-plaintiffs dropped from *Henry* and from *Paul* were never properly in those cases, then dropping them meant they were also "no longer . . . part[ies]" in those cases, GAF argued. *Id.*

In reply, the plaintiffs reiterated that the administrative judge had "required the affected Plaintiffs to '**re-file** individual complaints.' Ordering them to 're-file' meant their original complaints were already considered 'filed'—not that the original Complaint 'was ineffective as to any plaintiff other than Josephat Henry [or Arthur Paul]' as the Defendants suggest." (Pl.'s Reply to Def's Opp'n to Pl's Mot for Remand 2, ECF No. 9 (May 22, 1998), *Cummings v. Raritan Supply Co. et al.*, 98-cv-011 (quoting Dec. 12, 1997 Order 4, in *Henry*, SX-97-CV-328); *accord* Pl's Reply to Def's Opp'n to Pl's Mot. for Remand 2, ECF No. 5 (May 26, 1998), *Reyes v. Raritan Supply Co., et al.*, 98-cv-051 (quoting Dec. 12, 1997 Order 4, in *Paul*, SX-97-CV-329).) According to the plaintiffs, GAF Corporation was "baldly" claiming, without any "authority whatsoever" that dropping misjoined plaintiffs from a case "has the same effect as a dismissal.'" (Pl's Reply 3-4, filed May 22, 1998 (quoting Def. GAF Corp.'s Opp'n 5), ECF No. 9, *Cummings*, 98-cv-011.) The reason "why no authority [was] mentioned," the plaintiffs claimed, is because "it does not exist." Instead, Rule 21 of the Federal Rules of Civil Procedure provides exactly the opposite, that "[m]isjoinder of parties **is not a ground for dismissal of an action**." *Id.* at 4. GAF Corporation "took a gamble and lost," the plaintiffs quipped. *Id.* And, for this reason, they asked to be awarded "all costs and expenses associated with filing their Motion[s] for Remand." *Id*.

In his remand order, Magistrate Judge Resnick observed that "time limitations in the statute" governing removal to federal court "are deemed mandatory and are strictly construed against removal." *Cummings*, 1998 U.S. Dist. LEXIS 24130 at *3 (citing *Balestrieri v. Bell Asbestos Mines, Ltd.*, 544 F. Supp. 528, 529 (E.D. Pa. 1982)). The thirty-day deadline to remove a civil action "is triggered when the initial complaint provides adequate notice to the defendant, of federal jurisdiction." *Id.* at *3-4 (citing *Foster v. Mut. Fire, Marine & Inland Ins. Co.*, 986 F.2d 48 (3d Cir. 1998), and *Stransky v. Am. Isuzu Motors, Inc.*, 821 F. Supp. 1103 (E.D. Pa. 1993)). Since the May 29, 1997 group complaints "contained sufficient information to establish diversity between the parties," those complaints were the initial pleadings, the court concluded *Id.* at *4. And notwithstanding the Territorial Court's December 12, 1997 Order, the thirty-day removal deadline did not "re-commence[]"when the individual complaints were refiled. *Id.* Deciding "whether to sever or dismiss" a complaint is within a court's discretion. *Id.* at *5. So, "the defendants should have anticipated that the same underlying claims would continue" because the Territorial Court "chose severance over dismissal." *Id.* Having found that GAF failed to carry its burden, the court granted the plaintiffs' motions for remand, but denied their requests for costs without further explanation. *See id.* at *4, 5-6.

In deciding whether GAF had removed the refiled cases timely, the magistrate judge never considered the fundamental question, whether the former *Henry* and *Paul* plaintiffs had to refile individual complaints at all. That is, the magistrate judge never questioned whether the administrative judge could issue the December 12, 1997 Order and drop co-plaintiffs and sever claims in cases assigned to other judges. *Henry* was assigned to Judge Ross and *Paul* was assigned to Judge Andrews. Neither case had been reassigned by the presiding judge to any other judge. So, the more fundamental question was whether the December 12, 1997 Order was validly issued.[30] And this question is not at all academic in this instance because the scope of that order was raised in each of the motions for remand. If the order was not valid, then arguably none of the former *Henry* plaintiffs or the former *Paul* plaintiffs had to comply with it. They could have refused to comply and appealed the dismissal once thirty days had passed. They did not. Instead, they complied. But whether they should have, meaning whether the individual complaints they refiled were initial pleadings for removal purposes or subsequent pleadings — this issue was certainly raised to the District Court. Answering that question, however, is not for this Court to decide.

Regrettably, the only decision this Court can make here is to order the Clerk to administratively close these cases. The magistrate judge lacked the authority to remand these cases to the Territorial Court. *Cf. Flam*, 788 F.3d at 1047 ("a remand order cannot be issued by a magistrate judge."). So, because the May 29, 1998 Orders were not valid, jurisdiction over these cases remain with the District Court. No amount of time can make a void order valid. *Cf. Ernest v.*

[30] It is unclear what authority the administrative judge may have had to make decisions on an administrative level, that might later have dispositive effect in cases assigned to other judges *See, e.g.*, *In re Kelvin Manbodh Asbestos Litig. Series*, 47 V.I. 375, 379 (Super. Ct. 2006) ("To resolve pre-trial matters, this Court, 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, Litwin, and some twenty-six other defendants." (emphasis added)); *In re: Requests for Continuances*, [no case number], 1980 WL 681772 (V.I. Terr. Ct. Apr. 17, 1980) (order by administrative judge on behalf of the "Judges of the Territorial Court, Division of St. Croix" declaring policy for the St. Croix Division regarding requests for continuances)); *cf. Mustafa v. Camacho*, 59 V.I. 566, 570-71 & n.2 (V.I. 2013) (reversing and remanding case to Appellate Division with instructions to dismiss review proceeding because filing fee for internal appeal was not paid) ("Unquestionably, a party's failure to pay a filing fee required by law implicates interests beyond those of the parties."). In truth, the concerns raised in the December 12, 1997 Order were the filing fees that the trial court is required by statute to assess and collect. *See* 4 V.I.C. § 516. So, clearly the decision to order the plaintiffs to refile individual complaints was partly administrative in scope. The letter that counsel for the plaintiffs sent to the Administrative Judge, admittedly not on behalf of the *Paul* or the *Henry* plaintiffs, lends further support for this conclusion. In that letter, counsel specifically asked for the assistance of the "Administrative Judge of the Territorial Court" to come up with "a common management approach" for handling all of the group complaints he had filed. (July 22, 1997 Letter 1-2, Alexander, SX-97-CV-323.) Presumably, this letter—as well as the motion to assign cases to a single judge that was filed the same day—are what prompted the Administrative Judge to review all of the cases in which many people had joined together to file a single complaint. And what followed was the December 12, 1997 Order.

Morris, S. Ct. Civ. No. 2013-0065, 64 V.I. ___, 2016 V.I. Supreme LEXIS 18, *19 (V.I. May 18, 2016). And the Superior Court lacks any discretion to disregard void orders. *Cf. id.* at *19-20. Congress unquestionably authorized removal from the Superior Court to the District Court and removal unquestionably terminates the jurisdiction of the Superior Court. *See Hansen*, 62 V.I. at 509 ("[O]nce a notice of removal is filed and notice is provided to the clerk of the state court, "the State court shall proceed no further unless and until the case is remanded" by the district court." (quoting 28 U.S.C. § 1446(d)); *accord Nat'l S.S. Co. v. Tugman*, 106 U.S. 118, 122 (1882) ("[T]he suit being removable under the statute—the jurisdiction of the state court absolutely ceased."). No amount of time can restore jurisdiction once lost and any action by a state or territorial court after removal is void until its jurisdiction is restored. *See id.* ("The duty of the state court was to proceed no further in the cause. Every order thereafter made in that court was *coram non judice*, unless its jurisdiction was actually restored."); *see also Ackerman v. ExxonMobil Corp.*, 734 F.3d 237, 249 (4th Cir. 2013) ("[T]he statute deprives the state court of further jurisdiction over the removed case and that any post-removal actions taken by the state court in the removed case action are void *ab initio*."); *Polyplastics, Inc. v. Transconex, Inc.*, 713 F.2d 875, 880 (1st Cir. 1983) ("[A]ny action taken by the Puerto Rico court after removal was effected was a nullity anyway, with or without the order against further proceedings.").

As in *Healthcare*, the plaintiffs can seek a writ of mandamus from the Third Circuit, directing the magistrate judge to set aside the May 29, 1998 Orders and the Clerk of the District Court to reopen their cases. Or, they can ask the District Court judge to construe the order in *Cummings* as a report and recommendation and adopt it and then remand the cases. *Cf. Williams*, 527 F.3d at 266 ("A motion to remand is not a pretrial matter . . . and a magistrate judge presented with such a motion should provide a report and recommendation to the district court that is subject to *de novo* review" (quotation marks and citation omitted)). The judge could also conduct a *de novo* review. *Cf. Calascibetta v. V.I. Grand Estates Homeowners Ass'n*, Civ. No. 2008-45, 2008 U.S. Dist. LEXIS 53461, *4 (D.V.I. July 14, 2008) ("The record does not reflect that all parties in this action consented to the magistrate judge's authority to remand this case to the Superior Court. As a consequence, the magistrate judge's July 14, 2008, order will be vacated, and the Court will conduct a *de novo* review of the Plaintiffs' motion."); *Ott Mgmt, LLC v. V.I. Grant Estates Homeowners Ass'n*, Civ. No. 2008-46, 2008 U.S. Dist. LEXIS 53463, *4-5 (D.V.I. July 14, 2008) (same). But, what must occur next is not for this Court to decide.

Courts can still take certain ministerial actions in a case even after the case has been removed. *See, e.g.*, *Lawrence v. Chancery Ct. of Tenn.*, 188 F.3d 687, 692 (6th Cir. 1999) ("[Section] 1446(d)'s prohibition to 'proceed no further' does not extend to ministerial acts that do not affect the merits of the dispute between the parties. Otherwise, the state court would be forever prohibited from taking any action at all regarding the now-removed case (assuming no remand). This would include such actions as the routine destruction of old files, allowing parties to remove documents for proper legal purposes, or any other similar action that required a court order."); *see also Ardoin v. Stine Lumber Co.*, 885 So. 2d 43, 48 (La. Ct. App. 2004) ("[A] state court retains the power to assess and collect costs after removal."). So, the Court will direct the Clerk to reclose these cases.

CONCLUSION

For the reasons stated above, these cases remain with the District Court of the Virgin Islands. Federal magistrate judges cannot rule on motions for remand. Thus, the May 29, 1998 Orders remanding these cases were void. Notwithstanding that all of the orders the Territorial Court and the Superior Court issued since removal are also void—and despite any additional concerns raised by judges issuing orders in these cases when the cases may not have been reassigned to them—this Court could still give effect to most or even all of the prior orders once jurisdiction is restored. *See Vanterpool*, 63 V.I. at 575 ("When a trial judge takes actions that exceed the scope of his [or her] authority because authority was vested in another judge, the decision to deny those proceedings legal effect is grounded not in metaphysical notions regarding transfer of power, but on practical considerations concerning efficient judicial administration." (internal quotation marks and citations omitted)). Until then, these matters must be administratively closed. Separate orders accompanying this opinion will issue in each case, directing the Clerk to re-close that case.

DONE AND SO ORDERED.

Date: September 21, 2016

ROBERT A. MOLLOY
Judge of the Superior Court

ATTEST:
ESTRELLA H. GEORGE
Acting ~~Clerk~~ of the Court
By: ____________
Court Clerk ~~Supervisor~~ II
Dated: 9/21/16