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

IN RE: REFINERY DUST CLAIMS	**Master Docket: SX-06-CV-78** **ACTION FOR DAMAGES** **JURY TRIAL DEMANDED**
CUTHBERT ANTHONY, **Plaintiff,** **v.** **AMERDA HESS CORP., et. al.,** **Defendants**	
LITWIN CORPORATION, **Third-Party Plaintiff,** **v.** **UOP, LLC, et. al.,** **Third-Party Defendants.**	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Hess Oil Virgin Islands Corporation (hereinafter, "HOVIC") and Defendant Amerada Hess Corporation's (hereinafter, "Hess") Motion for Leave to File a Third-Party Complaint (hereinafter, "Motion") filed under the master docket on April 1, 2011. Subsequently, a plethora of untimely oppositions were filed in response.

BACKGROUND

In February 2006, forty-three plaintiffs[1] (hereinafter, "Group One") each filed a separate Complaint against Defendant HOVIC, Defendant Hess, and Defendant Litwin Corporation (hereinafter, "Litwin"). The Group One plaintiffs sought damages for injuries sustained from alleged exposure to dangerous dust, including but not limited to, asbestos, catalyst, and silica, while working at Defendant HOVIC's refinery in St. Croix, U.S. Virgin Islands.[2] In response, Defendant HOVIC, Defendant Hess, and Defendant Litwin each filed a separate Answer for each plaintiff in Group One.[3]

Subsequently, Defendant Litwin filed a Third-Party Complaint in each lawsuit in Group One in March 2006, and then an Amended Third-Party Complaint in April 2006, naming the following businesses as Third-Party Defendants: UOP, LLC (hereinafter, "UOP"), Shell Oil Corporation (hereinafter, "Shell"), Riggers and Erectors International, Inc. (hereinafter, "Riggers"), Communication Systems and Maintenance Corporation (hereinafter, "CSM"), Virgin Islands Industrial Maintenance Corporation (hereinafter, "IMC"), Chicago Bridge and Iron Company, N.V. (hereinafter, "CBI") (individually and as successor in interest to Chicago Bridge and Iron), and A.P. Green Services Inc. (hereinafter, "APG") (individually and as successor in interest to Bigelow-Liptak Corporation). In response, Third-Party Defendant UOP, Third-Party

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[1] The Group One plaintiffs and their civil case numbers: Anthony, Cuthbert (78/06); Antoine, Johnary (65/06); Archibald, Norris (76/06); Belgrave, Teddy (91/06); Benjamin, Stachill (80/06); Charles, Neville (73/06); Cintron, Feliciano (77/06); Connor, Leonard (75/06); Davis, Carlos (105/06); Desir, Charles (89/06); Dubois, Michael (90/06); Durrant, Solomon (67/06); Emmanuel, Boniface (111/06); Encarnacion, Fidel (107/06); Francis, Clement (109/06); Francois, Augustin (108/06); Frederick, John (110/06); Freeman, Harvey (112/06); Griffith, Octive (113/06); Jagrup, Francis (79/06); James, Gordon (82/06); James, Hazel (83/06); Massicot, Peterson (84/06); Motilal, Phoonchand (100/06); Murray, Ralph (71/06); Nieves, Isamel (62/06); Patrick, Lawrence (64/06); Pinales, Edelmiro (70/06); Rally, Robinson (68/06); Regis, Clive (81/06); Registe, Julian (69/06); Riviere, Henry (63/06); Royer, Edward (92/06); Samlal, Percy (85/06); Samuel, Andrew (88/06); Samuel, Leroy (94/06); Tavarez, Orlando (95/06); Taylor, Samuel (98/06); Taylor, Evans (97/06); Taylor, Michael (96/06); Toussaint, Michael (99/06); Williams, Elroy (106/06); and Woodley, Vincent (86/06).

[2] The Group One plaintiffs alleged in their Complaints that Defendant HOVIC own and operated the refinery from 1965 until 1998. The Group One plaintiffs worked at the refinery over various time spans and had different job descriptions/responsibilities.

[3] Defendant HOVIC and Defendant Hess filed their Answers on or about March 27, 2006. Litwin filed its Answer on or about March 16, 2006.

Defendant Shell, Third-Party Defendant IMC, Third-Party Defendant Riggers, and Third-Party Defendant CBI each filed a separate Answer to the Amended Third-Party Complaint.[4] Third-Party Defendant CSM and Third-Party Defendant APG never filed an answer and Defendant Litwin took no further actions as to these two parties.

In October 2006, thirty-one plaintiffs[5] (hereinafter, "Group Two") each filed a separate Complaint against Defendant HOVIC, Defendant Hess, and Defendant SPX Corporation (hereinafter, "SPX"), as successor-in-interest to Litwin corporation. The Group Two plaintiffs sought damages for injuries sustained from alleged exposure to dangerous dust, including but not limited to, asbestos, catalyst, and silica, while working at Defendant HOVIC's refinery in St. Croix, U.S. Virgin Islands.[6] In response, Defendant HOVIC and Defendant Hess each filed a separate Answer[7] and Defendant SPX filed a motion to dismiss for each plaintiff in Group Two. Subsequently, upon Group Two plaintiffs filing the notice of dismissal of Defendant SPX, the Court dismissed Defendant SPX without prejudice. Defendant Litwin was not named as a defendant by the Group Two plaintiffs, and thus, Defendant Litwin did not file a third-party complaint in any of the lawsuits in Group Two.

In August 2007, the Court consolidated the Group One plaintiffs and the Group Two plaintiffs, and issued a Case Management Order which created a master case file and docket,

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[4] Third-Party Defendant Shell, Third-Party Defendant Riggers, and Third-Party Defendant IMC also counterclaimed against Defendant Litwin.

[5] The Group Two plaintiffs and their civil case numbers: Alexander, Claudius (622/06); Andrew, Paul (623/06); Baptiste, Benedict (624/06); Benjamin, Gillium (625/06); Burt, Leighton (619/06); Carrasquillo, Enrique (636/06); Durand, Benjamin (637/06); Eddy, Letton (665/06); Edmonds, Charles (638/06); Espiritusanto, Tomas (618/06); Eugene, Lennox (640/06); Eugene, Joseph (639/06); Felix, Nicholas (641/06); Figueroa, Faustino (642/06); Francois, Joseph (643/06); Frederick, Matthew (621/06); Garcia, Marcelino (644/06); Gilbert, Charles (645/06); Gonzales, Rolando (646/06); Hodge, John (647/06); John, Edward (648/06); Joseph, Gregor (649/06); Joseph, Michael (657/06); Julienne, Hoseph (650/06); Lenroy, Phillip (630/06); Lloyd, Joseph (651/06); Mathurin, Joseph (627/06); Mootoo, Alexander (631/06); Passee, Matthew (620/06); Prospere, George (629/06); and St. Rose, Augustin (632/06).

[6] Similarly, the Group Two plaintiffs alleged in their Complaints that Defendant HOVIC own and operated the refinery from 1965 until 1998. The Group Two plaintiffs worked at the refinery over various time spans and had different job descriptions/responsibilities.

[7] Defendant HOVIC and Defendant Hess filed their Answers on or about November 3, 2006.

captioned as *In Re: Refinery Dust Claims*, and used Plaintiff Cuthbert Anthony's case number, SX-06-CV-78, as the master docket number. The parties were ordered to file under the master docket only pleadings, motions, or other documents that applied to more than one plaintiff's case.

On April 1, 2011, Defendant HOVIC and Defendant Hess jointly filed this instant motion under the master docket. The following documents were filed in response: (1) on April 29, 2011, proposed third-party defendant/Third-Party Defendant CBI and proposed third-party defendant Ralph M. Parsons Company (hereinafter, "Parsons") filed an opposition; (2) on May 11, 2011, proposed third-party defendant/Third-Party Defendant Riggers and proposed third-party defendant/Third-Party Defendant IMC filed a joint joinder in proposed third-party defendant/Third-Party Defendant CBI and proposed third-party defendant Parson's opposition; (3) on May 13, 2011, Defendant HOVIC and Defendant Hess filed a reply; (4) on May 16, 2011, Plaintiffs filed an opposition, and alternatively, requesting the Court to sever any third-party complaints from each plaintiff's first party lawsuit; (5) on May 17, 2011, proposed third-party Union Pump Company (hereinafter, "Union Pump") filed a joinder in proposed third-party defendant/Third-Party Defendant CBI and proposed third-party defendant Parson's opposition; (6) on May 20, 2011, Defendant HOVIC and Defendant Hess filed a reply to Plaintiffs' opposition; (7) on June 30, 2011, proposed third-party defendant Axens North America, Inc. (hereinafter, "Axens") filed an opposition; and (8) on July 7, 2011, Defendant HOVIC and Defendant Hess filed a reply to proposed third-party defendant Axens.

Subsequently, aside from Plaintiff Joseph Mathurin, the remaining lawsuits against Defendant HOVIC and Defendant Hess were dismissed with prejudice. Currently, Joseph Mathurin's lawsuit against Defendant HOVIC and Defendant Hess remains pending before the

Court[8] and the Group One plaintiffs' lawsuits against Defendant Litwin remains pending before the Court.[9]

STANDARD OF REVIEW

Pursuant to Federal Rule of Civil Procedure 14(a)(1),[10] "[a] defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it." However, a defendant must request leave if it files the third-party complaint more than fourteen days after serving its answer. *See id.*

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[8] In April 2015, Plaintiff Joseph Mathurin, Defendant HOVIC, Defendant Hess, Defendant Litwin, Third-Party Defendant Riggers, Third-Party Defendant IMC, Third-Party Defendant UOP, Third-Party Defendant Shell, and Third-Party Defendant CBI filed their stipulation to dismiss Plaintiff Joseph Mathurin's lawsuit against Defendant HOVIC and Defendant Hess with prejudice. Third-Party Defendant CSM and Third-Party Defendant APG were not parties to this stipulation. The Court withheld signing off on the stipulation and dismissing Plaintiff Joseph Mathurin's lawsuit until the miscellaneous filings under the master docket and each plaintiff's individual docket are addressed.

[9] In May 2013, the Group One plaintiffs, Defendant HOVIC, Defendant Hess, Defendant Litwin, Third-Party Defendant Riggers, Third-Party Defendant IMC, Third-Party Defendant UOP, Third-Party Defendant Shell, and Third-Party Defendant CBI filed a separate stipulation for each plaintiff in Group One to: (1) dismiss each respective Group One plaintiff's lawsuit against Defendant Litwin with prejudice; (2) dismiss Defendant Litwin's Third-Party lawsuit against Third-Party Defendant Riggers, Third-Party Defendant IMC, Third-Party Defendant UOP, Third-Party Defendant Shell, and Third-Party Defendant CBI with prejudice; and (3) dismiss Third-Party Defendant Riggers and Third-Party Defendant IMC's counterclaims against Defendant Litwin with prejudice. Third-Party Defendant Shell's counterclaims remain pending against Defendant Litwin. Third-Party Defendant CSM and Third-Party Defendant APG were not parties to this stipulation. The Court withheld signing off on the stipulation and dismissing Defendant Litwin until the miscellaneous filings under the master docket and each plaintiff's individual docket are addressed.

[10] Federal Rule of Civil Procedure 14 (hereinafter, "Rule 14") applies in the Superior Court pursuant to Superior Court Rule 7. The Court is cognizant, however, that "the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and the Local Rules of the District Court should represent rules of last resort rather than first resort and should be invoked only when a thorough review of applicable Virgin Islands statutes, Superior Court rules, and precedents from [the Supreme] Court reveals the absence of any other [applicable] procedure." *Vanterpool v. Gov't of the V.I.*, S. Ct. Civ. No. 2013-0072, 2015 V.I. Supreme LEXIS 23, *16 (V.I. Aug. 10, 2015).

Rule 14 governs the procedures and requirements of third-party practice. Rule 14 serves as a procedural mechanism for judicial efficiency by allowing parties to combine the third-party lawsuit with the first-party lawsuit. There are currently no applicable Virgin Islands statutes, Superior Court rules, or Virgin Islands Supreme Court (hereinafter, "Supreme Court") precedents that are directly on point regarding third-party practice. Courts and practitioners in this jurisdiction have long recognized the practice of impleading third-party defendants pursuant to Rule 14. *See e.g., Andrew v. Carvalho*, 14 V.I. 513 (Terr. Ct. 1978); *James v. Antilles Ins.*, 26 V.I. 3 (Terr. Ct. 1990); *In re Kelvin Manbodh Asbestos Litig. Series*, 47 V.I. 267 (Super. Ct. 2005); *Jacobs v. Roberts*, ST-14-CV-193, 2015 V.I. LEXIS 58 (Super. Ct. 2015) (unpublished). Furthermore, in *Santiago v. Virgin Islands Housing Authority*, 57 V.I. 256 (V.I. 2012), the Supreme Court noted that a third-party complaint was filed and did not comment or object to the viability of third-party practice in the Virgin Islands. Additionally, in *Appleton v. Harrigan*, 61 V.I. 262, n.6 (V.I. 2014), the Supreme Court stated in a footnote that "Rule 14 governs third-party complaints, allowing a 'defending party [to], as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it.'" It appears that, at this time, the Supreme Court continues to recognize third-party practice under Rule 14 in this jurisdiction. Thus, applying Rule 14 here is not a "mechanistic and uncritical reliance" of the Federal Rules of Civil Procedure.

DISCUSSION

Since it has been more than fourteen days after Defendant HOVIC and Defendant Hess served their Answers, Defendant HOVIC and Defendant Hess must obtain leave from the Court to file a third-party complaint.

A. Untimely Responses to Defendant HOVIC and Defendant Hess's Motion

The oppositions filed in response to Defendant HOVIC and Defendant Hess's Motion were all untimely and filed without leave from the Court. Local Rules of the District Court 7.1[11] provides, in relevant part that:

> **(e) Time Periods.**
> **(1)** A party shall file a response within fourteen (14) days after service of the motion. For good cause shown, parties may be required to file a response and supporting documents, including brief, within such shorter period of time as the Court may specify, or may be given additional time upon request made to the Court.
> **(2)** A party shall file a reply, if any, within fourteen (14) days after service of the response.
> **(3)** Nothing herein shall prohibit the Court from ruling without a response or reply when deemed appropriate.

Here, Defendant HOVIC and Defendant Hess served its Motion on March 31, 2011[12] and filed it with the Court on April 1, 2011. Thus, the oppositions were due on or before April 14, 2011. Yet,

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[11] Local Rule of the District Court 7.1 is applicable to the Superior Court via Superior Court Rule 7. As noted above, the Court is cognizant that "the Local Rules of the District Court should represent rules of last resort rather than first resort and should be invoked only when a thorough review of applicable Virgin Islands statutes, Superior Court rules, and precedents from [the Supreme] Court reveals the absence of any other [applicable] procedure." *Vanterpool*, 2015 V.I. Supreme LEXIS at *16. There are currently no applicable Virgin Islands statutes, Superior Court rules, or Supreme Court precedents that are directly on point regarding time periods for motions and responses filed with the Superior Court. Judges, magistrates, and attorneys in the Superior Court have come to rely on the provisions of Local Rule 7.1(e), and thus, the practice of abiding by the time periods set forth in this rule have become routine and expected within the Superior Court. *See e.g., Robles v. Beautiful Hair Designs*, SX-09-CV-503, 2011 V.I. LEXIS 80, *12 (V.I. Super. Ct. Aug. 24, 2011) (unpublished) (The court noted that "[a] response in opposition was due fourteen days later.") The Court believes it is a good practice to continue applying these deadlines to avoid confusion in the Superior Court regarding the filing deadlines for motions and responses. Thus, applying Rule 7.1(e) here is not a "mechanistic and uncritical reliance" of the Local Rules of the District Court.

[12] The Certificate of Service indicated that a copy of the Motion was served on March 31, 2011, via electronic mail to: Plaintiffs, Defendant Litwin, Third-Party Defendant Shell, Third-Party Defendant UOP, Third-Party Defendant CBI, Third-Party Defendant Riggers, and Third-Party Defendant IMC. The parties had previously stipulated that service via electronic mail is permitted in this matter. The Stipulated Case Management Order, dated August 7, 2007, provides in relevant part "3. In addition to the methods prescribed by Fed. R. Civ. P. 5, service of pleadings (except

all the oppositions herein were filed after the due date and without leave from the Court. Thus, the Court will not consider the untimely oppositions,[13] and further is also not prohibited from ruling on a motion without a response in opposition or reply when deemed appropriate. LRCi 7.1(e)(3); *see also, Hodge v. V.I. Water & Power Auth.*, 55 V.I. 460, 463 (Super. Ct. 2011).

B. Motion for Leave to File a Third-Party Complaint

Federal Rule of Civil Procedure 14 (hereinafter, "Rule 14") provides that a defending party may serve a complaint on "a nonparty who is or may be liable to it for all or part of the claim against it." To implead the proposed third-party defendants under Rule 14, Defendant HOVIC and Defendant Hess must demonstrate that they have a cause of action against the proposed third-party defendants that is based upon Plaintiffs' claim against Defendant HOVIC and Defendant Hess. *See, Andrew v. Carvalho,* 14 V.I. 513, 516 (Terr. Ct. 1978) ("there must be some showing under the applicable law that the third party may be liable to the original defendant to qualify for treatment under Rule 14"); *see also, Jacobs,* 2015 V.I. LEXIS at *2.

This means that in order to satisfy Rule 14, any liability of a third-party defendant must necessarily be secondary or derivative to the liability of an original defendant, in this case, Defendant HOVIC and Defendant Hess. *See, Andrew,* 14 V.I. at 516 ("A judgment against the third party must inure to the benefit of the original defendant and not to the original plaintiff (note emphasis).") Here, Defendant HOVIC and Defendant Hess's proposed third-party complaint

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for pleadings which seek to add new parties and motions) and discovery upon parties may be accomplished by electronic mail in the portable document format (PDF)." The Court believes this was a clerical error and instead, it should have read "service of pleadings (except for pleadings which seek to add new **parties) and motions** and discovery upon parties." To read otherwise, would limit electronic email service strictly to pleadings and discovery. Nevertheless, even if that was not a clerical error, none of the parties objected to being served this Motion via electronic email.

[13] The proposed third-party defendants Parsons, Union Pump, and Axens' oppositions raised the question of whether it is appropriate for a nonparty to file an opposition to Defendant HOVIC and Defendant Hess's Motion filed in the first-party lawsuit. Proposed third-party defendants Parsons, Union Pump, and Axens are not parties to this action and never moved to intervene. In their oppositions, proposed third-party defendants Parsons, Union Pump, and Axens failed to cite to any authority in support of them filing oppositions in the first-party lawsuit as nonparties. Nevertheless, the question is moot and the Court need not address it at this time since these untimely oppositions will not be considered by the Court.

alleges seven causes of action: Count One - contribution against asbestos, catalyst, and silica manufacturers/suppliers; Count Two - contribution against contractors; Count Three - contribution against respiratory protection manufactures/suppliers; Count Four – common law indemnification; Count Five – contractual indemnification; Count Six – breach of contract for failure to insure; and Count Seven – breach of contract for failure to name as added insured.

a. Contribution and Indemnification

The proposed third-party complaint was filed before *Banks v. International Rental & Leasing Corp.*, 55 V.I. 967 (V.I. 2011). While contribution and indemnification were viable causes of action in the U.S. Virgin Islands pre-*Banks*, to date, there are no binding decisions in the Virgin Islands addressing whether these claims are still viable post-*Banks*. This question—whether contribution and indemnification should continue to be recognized in this jurisdiction—must be addressed. Defendant HOVIC and Defendant Hess's Motion is not the proper vehicle, however, for the parties to resolve this question since the majority of the proposed third-party defendants were not brought into the first-party lawsuit, and therefore, have not been served with this Motion.[14] Thus, for the limited purpose of addressing this Motion, the Court will assume that these are all still viable causes of action in the U.S. Virgin Islands post-*Banks*, and grant Defendant HOVIC and Defendant Hess's Motion and permit them to file their third-party complaint for claims involving contribution and indemnification. Upon proper service, the third-party defendants can file the proper motions and memorandum of law to raise this question.

Although the Court will permit Defendant HOVIC and Defendant Hess to file their third-party complaint, the Court believes it best for Defendant HOVIC and Defendant Hess to file a third-party complaint for each plaintiff separately under his/her individual docket. As noted above, seventy-four plaintiffs each filed a separate Complaint against Defendant HOVIC, Defendant Hess

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[14] Proposed third-party defendants IMC, Riggers, and CBI were served a copy of this Motion because they were brought into this lawsuit as Third-Party Defendants via Defendant Litwin's Amended Third-Party Complaint.

and Defendant Litwin.[15] Now, Defendant HOVIC and Defendant Hess want to implead over fifty third-party defendants to cover the claims of all seventy-four plaintiffs by filing one copy of the third-party complaint under the master case file docket. The Court cannot discern whether Defendant HOVIC and Defendant Hess are alleging that all the proposed third-party defendants are liable for all or part of each individual plaintiff's claims against Defendant HOVIC and Defendant Hess, or a medley of proposed third-party defendants are liable for all or part of each individual plaintiff's claims against Defendant HOVIC and Defendant Hess. This is further complicated by the fact that the seventy-four Plaintiffs worked at Defendant HOVIC's refinery over various time spans and had different job descriptions/responsibilities. For example, Plaintiff Cuthbert Anthony worked as an electrician and sign painter at the refinery from approximately 1971 until 1981, while Plaintiff Charles Desir worked as a process operator and supervisor of catalyst work at the refinery from approximately 1973 until 1990. This means that there could be potentially numerous combinations between seventy-four Plaintiffs and the fifty-plus third-party defendants. Thus, the Court believes that it will be cleaner and clearer for the record for Defendant HOVIC and Defendant Hess to file a third-party complaint under each plaintiff's individual docket and only implead third-party defendants that they allege are liable (on a contribution and/or indemnification claim) for all or part of that specific plaintiff's claims against Defendant HOVIC and Defendant Hess.

However, to avoid any potential prejudice to the individual plaintiff from their cases remaining open for several more years as the result of the forthcoming third-party complaints,[16] the Court will sever the first-party lawsuit and the third-party lawsuit. *See, e.g., Abednego v. St. Croix Alumina, LLC*, 2015 V.I. LEXIS 95, *51 (V.I. Super. Ct.) ("Once severed, the claims

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[15] Only the Group One plaintiffs named Litwin as a defendant in their Complaints.

[16] Approximately ten years have passed since Plaintiffs filed their lawsuits in 2006, and the majority of the individual lawsuits were settled and dismissed with prejudice or are pending dismissal upon approval of the remaining stipulations.

proceed separately as independent actions with separate judgments entered in each.") (internal quotation marks omitted). Thereafter, upon approving the remaining stipulations, the Court will issue appropriate orders to finalize each individual plaintiff's case. See Fed. R. Civ. P. 54(b).

b. Breach of Contract

Lastly, Defendant HOVIC and Defendant Hess also pleaded breach of contract claims in their proposed third-party complaint. However, these proposed third-party claims are not directly connected to the individual Plaintiffs' tort claims against Defendant HOVIC and Defendant Hess, [17] but instead involve separate allegations concerning contractual issues Defendant HOVIC and Defendant Hess claim to have against the proposed third-party defendants. In other words, Defendant HOVIC and Defendant Hess's alleged right to relief for breach of contract against the proposed third-party defendants are not contingent upon a finding of liability against Defendants. Therefore, the proposed third-party defendants are not subject to impleader by Defendant HOVIC and Defendant under Rule 14 for their breach of contract claims. *Andrew,* 14 V.I. at 516; Fed. R. Civ. P. 14.

However, Federal Rule of Civil Procedure 18 (hereinafter, "Rule 18") may be used by a party asserting a third-party claim to "join, as independent or alternative claims, as many claims as it has against an opposing party."[18] Fed. R. Civ. P. 18(a). Thus, once the Court determines that

[17] In their complaints, Plaintiffs alleged the following causes of action against Defendant HOVIC and Defendant Hess: count one – negligence/premises liability; count two - for supplying chattel dangerous for intended use; and count three - punitive damages.

[18] Rule 18 is applicable to the Superior Court via Superior Court Rule 7. As noted above, the Court is cognizant that "the Federal Rules of Civil Procedure should represent rules of last resort rather than first resort and should be invoked only when a thorough review of applicable Virgin Islands statutes, Superior Court rules, and precedents from [the Supreme] Court reveals the absence of any other [applicable] procedure." *Vanterpool,* 2015 V.I. Supreme LEXIS at *16.

Rule 18 governs the joinder of claims. There are currently no applicable Virgin Islands statutes, Superior Court rules, or Supreme Court precedents that are directly on point regarding joinder of claims in the Superior Court. According to the Advisory Committee Notes on the 1966 amendment (hereinafter, "Advisory Committee Notes") to Rule 18(a), "Rule 18(a) is now amended...to state clearly, as a comprehensive proposition, that a party asserting a claim (an original claim, counterclaim, cross-claim, or third-party claim) may join as many claims as he has against an opposing party." The Advisory Committee Notes further pointed out that,

> The Rules "proceed upon the theory that no inconvenience can result from the joinder of any two or more matters in the pleadings, but only from trying two or more matters together which have little or nothing in

a proper third-party claim has been asserted, the Court may allow joinder of any other claims that the third-party plaintiffs—Defendant HOVIC and Defendant Hess—may have against the proposed third-party defendants. As stated above, for the limited purpose of addressing this Motion, the Court will assume that contribution and indemnification are still viable causes of action in the U.S. Virgin Islands post-*Banks*, and thus, Defendant HOVIC and Defendant Hess have asserted proper third-party claims against the proposed third-party defendants. Accordingly, the Court will allow the joinder of Defendant HOVIC and Defendant Hess's breach of contract claims. If it is subsequently determined that contribution and/or indemnification are no longer viable causes of action in this jurisdiction, the Court will re-evaluate the propriety of joining these breach of contract claims.

CONCLUSION

For the reason stated above, Defendant HOVIC and Defendant Hess's Motion for Leave to File a Third-Party Complaint will be granted. An Order consistent with this Memorandum Opinion will follow.

DONE and so ORDERED this 3rd day of May, 2016.

ATTEST:

Estrella H. George
Acting Clerk of the Court
Court

By: Court Clerk Supervisor

Dated: 5/4/16.

HAROLD W.L. WILLOCKS
Administrative Judge of the Superior

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common." Sunderland, The New Federal Rules, 45 W. Va. L.Q. 5, 13 (1938)). Accordingly, Rule 18(a) has permitted a party to plead multiple claims of all types against an opposing party, subject to the court's power to direct an appropriate procedure for trying the claims. See Rules 42(b), 20(b), 21.

Given the efficiency and economy of joining all claims in one lawsuit, the Court believes that Rule 18 serves a valid purpose when applied to the Superior Court. It will help the Court avoid hearing the same facts multiple times or seeing the same parties return to court separately for each of their legal disputes. Thus, applying Rule 18 here is not a "mechanistic and uncritical reliance" of the Federal Rules of Civil Procedure.