

**UNITED DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

Eleanor Abraham, et al.,)	
)	
Plaintiffs,)	CIVIL NO. 12-cv-11
v.)	
)	
St. Croix Renaissance Group, LLLP,)	ACTION FOR DAMAGES
)	
Defendant.)	JURY TRIAL DEMANDED
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**DEFENDANT ST. CROIX RENAISSANCE GROUP L.L.L.P.'S
OPPOSITION TO PLAINTIFFS' MOTION FOR REMAND**

I. Introduction

This case arises out of a complaint filed by over 500 Plaintiffs in the Superior Court of the Virgin Islands, alleging both a multitude of exposures over 10 years to a multitude of contaminants (allegedly emanating from SCRG's site on St. Croix) and a range of failures to warn and otherwise act. SCRG filed a removal notice under CAFA.¹ The Plaintiffs have now moved to remand this case back to the Superior Court. In their Motion for Remand [DE 36], Plaintiffs state on page 6:

Establishing CAFA jurisdiction over an alleged "mass action" is a two-part process. See 28 U.S.C. § 1332(d)(11). First, the case must meet the CAFA definition of a "mass action" under Section 1332(d)(11)(B). Second, a case satisfying the definition of "mass action" must then "meet the provisions ..." of paragraphs 1332(d)(2) through (10) in order for CAFA removal jurisdiction to attach.

The Plaintiffs argue that (1) the facts in this case do not satisfy the prima facie definition of a "mass action" and (2) that even if they do, two of the provisions of §1332 (d)(2) through (10) warrant remand in this case.

¹ The *Class Action Fairness Act of 2005*, as those requirements were codified at 42 U.S.C. § 1332(d).

Notwithstanding the Plaintiffs' arguments, the Defendant has correctly pled the necessary CAFA elements in its Notice of Removal. [DE 1, and also attached as **Exhibit A.**] In this opposition memorandum, SCRG will examine each of the CAFA "elements"² the Plaintiffs allege are not met -- in the order presented in Plaintiffs' *Motion for Remand*.

For the reasons set forth herein, it is respectfully submitted that this case was properly removed under CAFA, so that the relief sought -- remand to the Superior Court -- must be denied.

II. Procedural Posture

It is useful to first understand what motions are before the Court -- and why. On August 2, 2012, Plaintiffs filed a First Amended Complaint [DE 15] based on what they label a "mass tort."³ However, in their pending motion for remand filed October 24, 2012 [DE 36] they argue that while it is a mass tort, this is not a "mass action" for the purposes of CAFA, and thus seek remand. For better or worse, Plaintiffs are the masters of their own complaint, so Defendant is simply trying to plead in response to somewhat problematic averments. *Rivet v. Regions Bank of Louisiana*, 118 S.Ct. 921, 925 (1998); *Joyce v. RJR Nabisco Holdings Corp.*, 126 F.3d 166, 171 (3d Cir. 1997).

² As discussed below, Plaintiffs incorrectly argue that they raise issues as to the CAFA "elements." This is not the case. They address CAFA "exceptions." Because of this, they also misstate the burden here, which is on the plaintiff where trying to assert that an exception exists, as will discussed herein.

³ On August 7, 2012, that complaint was withdrawn without leave [D.E. 21] and was re-filed with only minor revisions later that same day [D.E. 22]. Whichever complaint filed in this case that this Court reviews is irrelevant to the outcome of this motion.

Defendant notes that the USVI does not have a "mass tort" statute or rule⁴ -- and in any case, regardless of what Plaintiffs call the action, SCRG believes that each plaintiff must allege some actual damage. Thus, on August 6, 2012, defendant SCRG filed a motion seeking a more definite statement. [DE 18 and 19].

At a conference call on Tuesday, October 23, 2012, the Court mentioned, and everyone agreed that the first issue is that of the CAFA jurisdiction raised in the motion to remand. Plaintiff then filed this motion for remand. Once jurisdiction is decided as a result of this motion, Defendant asks that the Court grant the motion for more definite statement -- requiring each plaintiff to allege at least some actual injury.⁵

III. ARGUMENT

The Plaintiffs raise three arguments to support their remand motion. As set forth below, none of these three arguments support their remand request. One preliminary comment is in order.

As will be discussed, all three of these arguments deal with CAFA "exceptions." While Plaintiffs are correct that generally jurisdictional and removal statutes must be

⁴ "Mass tort" is generally a term used in reference to specific statutes/rules or Rule 23 class actions -- its meaning in a non-mass action, non-class setting where there is no such statute or rule is unclear. Even when brought as a class action, other leading jurisdictions, absent particular statutes or management rules, have refused to alter procedural or statute of limitations provisions simply because this label is employed. See e.g., *Blanco v. AMVAC Chemical Corp.*, 2012 WL 3194412, 12 (Del.Super. 2012) ("...the defendants have presented no compelling reasons for a 'carve out' of a special rule covering tolling in *mass tort class actions*."). (Emphasis added).

⁵ Finding this is a "mass action" may moot the motion to sever for all practical purposes. If, on the other hand, it is determined by this Court that it is not a CAFA "mass action" and the case is remanded, Defendant will seek to have its motion for severance [D.E. 16 and 17] decided after it can understand a bit more based on its motion for a more definite statement.

narrowly construed. However, CAFA's express, unique stated purpose is to "restore the intent of the framers" by extending federal court jurisdiction over "interstate cases of national importance under diversity jurisdiction." See *CAFA*, Pub. L. No. 109-2, S 2, 119 Stat. 4, 4-5 (2005).

Thus, once a defendant makes a *prima facie* showing of jurisdiction under CAFA, the burden shifts to the plaintiff to demonstrate that some *exception* might apply. See *Kaufman v. Allstate New Jersey Ins. Co.*, 561 F.3d 144, 153 (3d Cir. 2009) (burden for establishing applicability of exceptions to CAFA falls on party seeking remand.) **This burden shifting applies both to the local controversy exception and to the exceptions to the mass action provision.** See *Lowery v. Honeywell Int'l, Inc.*, 460 F.Supp.2d 1288, 1301 (N.D. Ala. 2006) (plaintiffs have burden of proof for local controversy and mass action exceptions).

With this comment in mind, the Plaintiffs' three arguments will now be addressed in the order raised.

A. 28 U.S.C. §1332 (d)(11)(B) -- Plaintiffs argue a lack of jurisdiction under CAFA based on the fact that all of the "the claims at issue in this suit all arise from *one location*"

Oddly, Plaintiffs' first point deals with §1332(d)(11)(B) -- a section fully addressed in Defendant's *Notice of Removal*. Plaintiffs erroneously contend CAFA jurisdiction does not exist because:

Plaintiffs who reside or have resided in St. Croix seek damages for personal injuries and/or property damage due to improper maintenance, storage and containment of, and/or failure to remove, toxic substances **at a single location**, the alumina refinery on St. Croix. . . [and]. . . Moreover, unlike the claims in *Mobley*, the claims at issue in this suit **all arise from one location**. (Emphasis added.)

Plaintiffs' Remand Motion [DE 36] at 8-9. Plaintiffs then (correctly) states on page 9 that under the applicable provisions, CAFA:

expressly excludes from the statutory definition of a 'mass action' any civil case in which 'all of the claims in the action arise from **an event or occurrence** in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State[.]' *Mobley*, 2010 U.S. Dist. LEXIS 524, at *9, *10 *citing* 28 U.S.C. § 1332(d)(11)(B)(ii)(I). (Emphasis added.)

Notice the switch. Plaintiffs first state that the claims here "all arise from **one location**." However, the language of 1332(d)(11)(B)(ii)(1) does not mention claims from a "single location," but rather:

(ii) As used in subparagraph (A), the term "mass action" shall not include any civil action in which—

(I) all of the claims in the action arise from **an event or occurrence** in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State. (Emphasis added.)

Because CAFA refers to "one event," **not** "one location," this subsection is a CAFA "exception" (not an element of CAFA) commonly referred to by courts as the "single occurrence exception."⁶

Plaintiffs' error comes from their incorrect interpretation of the requirement in the statutory language that the claims must "*arise from an event or occurrence in the State*" by (incorrectly) assuming this is somehow, automatically, the case if multiple events happen at the same *location* -- even if the occurrences are over a long period and arise from multiple causes. As set forth in the *Notice of Removal* [DE 1] at 5, facts asserted

⁶ Because this is a CAFA exception, the burden here lies with Plaintiffs, as noted.

by Plaintiffs in their Complaint make it clear on the face of the document that there were multiple events and occurrences over many years:

this is not a single event or occurrence such as the Court noted was the case in *Abednego v. Alcoa, Inc.*, 2011 Westlaw 941569 (D.V.I. March 17, 2011).

The law on this is well-settled and is reflected both in the cited *Abednego* decision and in many other decisions.

This exception requires that to avoid removal there had to have been just "*an* event or occurrence" -- a "single" event or occurrence. In *Abednego*, this Court explicitly noted this, analyzing the identical point and finding that there was only a single occurrence: the single event was Hurricane Georges. As the District Court for the Southern District of Florida also stated in this regard:

The statute states the claims must arise from 'an event or occurrence,' and Defendants point to the use of the singular in both the article and nouns in that phrase. Because the facts alleged involve numerous sales to numerous parties over a period of approximately one and one-half years, **the single occurrence exception** is inapplicable. [Emphasis added.]

Galstadi v. Sunvest Communities USA LLC, 256 F.R.D. 673, 676 (S.D. Fla. 2009). Put in plainer terms, "[t]he statute is fairly clear: the exception applies to 'an event or occurrence' in the singular." *Id.* at 677. See also *Aburto v. Midland Credit Management, Inc.*, 2009 WL 2252518, 4 (N.D.Tex. 2009) (" . . .this case does not fall within the exception to a mass action. The language of the statute references 'an event or occurrence,' both terms being singular. Plaintiffs' Third Petition, as well as their briefing, clearly recites factual allegations involving more than a singular event or occurrence.")

Plaintiffs' allegations in the Amended Complaint cover, at a minimum, a varied series of events ranging over more than a decade. They also allege damages from different types of events: from red mud waste going to the ground and then being transported to a completely different, non-process substance (structural asbestos) that was allegedly released directly through the air during a permitted, supervised building demolition years after the industrial processes ceased -- a totally separate source and incident (undertaken at a different time by different parties and done by different sub-contractors.).

Moreover, in the complaint, Plaintiffs seek recovery not only for damages allegedly directly caused by material blown and otherwise transported from the site, but also, for instance, for SCRG's totally separate, allegedly negligent failure to warn. Indeed, plaintiffs make significantly different claims based on whether they were property owners or renters, near the site or far away, on-island for post-2002 hurricanes or not, warned or not -- as well as being 'exposed' at very different times over a decade.⁷ In any event, all are separate occurrences.⁸ Moreover, it would be even more of a stretch to argue that the claims based on Plaintiffs' alleged *ongoing* exposures arise

⁷ Moreover, although the substance of the claims need not be addressed at this stage, a detailed radiological and materials U.S. EPA study done in mid-2012, following concerns raised at neighborhood meetings, has shown that the materials tested by the agency from the cisterns in the nearby area **do not** match the chemical 'fingerprints' of the red mud from the site. This adds another variable and many additional alleged occurrences from other sources.

⁸ All of this also leaves out the most glaring point -- one explicitly stated in Plaintiff's own motion: There are actually tens or hundreds of pre-2002 occurrences under prior owners that are also the subject of Plaintiffs' counsel's variety of litigation regarding this site. This Court pointed to Hurricane Georges, but in other cases before the Court some of these plaintiffs (and certainly their counsel) allege other acts from prior to that as well as from 1998 to 2002 by Alcoa.

from the same event or occurrence as the claims relating to various post-2002 hurricanes that happened years ago.

Thus, as shown above, courts that have analyzed the statute have concluded that, on allegations analogous to those here, the exception does not apply.

B. §1332(d)(11)(A)

At page 11 of their *Motion to Remand* [DE 36], Plaintiffs state "Defendants have not shown that the provisions of 28 U.S.C. §1332 (d)(2)-(10) have been met or otherwise do not apply, as required by 28 U.S.C. §1332 (d)(11)(A)." However, as noted, the burden is on the Plaintiffs to demonstrate any exceptions.⁹ The actual elements of the prima facie showing under CAFA, such as the number of claimants and amounts in controversy were delineated in detail in the Notice of Removal -- and each one was addressed in detail. They have not been challenged in the motion for remand. Thus, not being contested by the Plaintiffs, who carry the burden here, are conceded.¹⁰

⁹ Again, Plaintiffs misstate this burden in their memorandum. As noted in *Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571 (5th Cir. 2011):

This court has held that the party objecting to CAFA jurisdiction must prove that the CAFA exceptions to federal jurisdiction divests the district court of subject matter jurisdiction. [T]he Insurance Companies bore the burden of proof as to each element of the 'local controversy' and 'home state' mandatory abstention provisions of CAFA. (Citations Omitted)

¹⁰ Regarding the other sections of 28 U.S.C. §1332 (d)(2)-(10) not contested by the Plaintiff, they clearly do not support remand. Section 2 has been addressed. Section 3 requires a local defendant, which has been pled and will be addressed further in this memorandum. Section 4 is not applicable on its face, as re-addressed here. Section 5 clearly does not apply. Section 6 was pled in detail. Section 7 applies to the citizenship of plaintiffs on specific dates which defendant cannot determine from the amended complaint -- and is not at issue here. Section 8 (involving class certification) applies only to true class action and is not applicable to CAFA. Sections 9 and 10 were also pled in detail in the removal notice.

Plaintiffs then go on address the two particular subsections that they believe require the Court to deny jurisdiction and remand this case. The two subsections the Plaintiffs raise are:

1. More than 2/3's of the Plaintiffs are citizens of the Virgin Islands and all seek significant relief from Defendant.¹¹
2. All of Plaintiffs' injuries were incurred in the U.S. Virgin Islands as the result of the Defendant's conduct in the Virgin Islands.¹²

Each of these two contested subsections will be addressed separately, as neither bars SCRG's assertion of jurisdiction under CAFA.

1. Under Section 1332(d)(4)(A) - "2/3rds" is Irrelevant if the Defendant is not a Citizen of the State in Which the Action was Filed

Plaintiffs failed to read all of subsection (d)(4)(A) -- stopping half of the way through the language -- after which there is an "and," NOT an "or." That section continues with an additional requirement they ignore. In both section A and section B, there is an identical, additional requirement for the exception to apply -- that the defendant be must a "**citizen of the State**" in which the action is filed. The full quote is:

¹¹ Plaintiffs allege that Section 1332(d)(4)(A)(i)(I) requires the Court to decline jurisdiction because "more than two-thirds of the plaintiffs be citizens of the U.S. Virgin Islands. Of the 500 plus Plaintiffs in the case, more than 2/3 of them are citizens of St. Croix, U.S. Virgin Islands."

¹² Plaintiffs allege Section 1332(d)(4)(A)(i)(III) requires the Court to decline jurisdiction because the injuries to all have occurred in the same jurisdiction, which the pleadings satisfy in this case. In this case, as they allege that their damages were caused by the failure of SCRG to properly store and contain toxic substances at its facility in St. Croix, including bauxite, bauxite residue or red mud, asbestos, coal dust, and other particulates.

(4) A district court **shall decline to exercise jurisdiction** under paragraph (2) --

(A)

(i) over a class action in which—

(I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;

(II) at least 1 defendant is a defendant—

(aa) from whom significant relief is sought by members of the plaintiff class;

(bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and

(cc) who is a citizen of the State in which the action was originally filed; **and**

(III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; **and**

(ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; **or**

(B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, **and the primary defendants, are citizens of the State in which the action was originally filed.** (Emphasis added.)

As set forth in Defendant's removal papers [DE 1] at 5, SCRG properly pleaded this -- noting that it is not a citizen of the U.S. Virgin Islands where the action was originally filed. Thus, this factor is not present here, as will be discussed herein, making the CAFA exceptions inapplicable to this case.

As discussed in SCRG's Notice of Removal [DE 1], for the purposes of CAFA, "an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized." 28 U.S.C. §1332(d)(10). SCRG is a citizen of (1) its state of organization (Delaware) and (2) its "principal place of business" (Massachusetts) pursuant to the "nerve center" test set forth in *Hertz Corp. v. Friend*, 130 S.Ct. 1181 (2010). The same averment was also set forth by SCRG in its Answer to initial version of the Complaint. [DE 3].¹³

To understand this point more clearly, put another way, the correct reading of 4(A) is:

(4)(A) A district court shall decline to exercise jurisdiction under paragraph (2) over a class action in which greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed; **at least 1 defendant is a defendant. . .who is a citizen of the State in which the action was originally filed); and** principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed. . . .(Emphasis added.)

¹³ It is black letter law that a defendant's citizenship for the purposes of jurisdiction is determined at the start of suit. *Chadda v. Mullins*, 430 Fed.Appx. 192, 194, 2011 WL 2259747, 1 (3d Cir. 2011) citing *Smith v. Sperling*, 354 U.S. 91, 93 n. 1, 77 S.Ct. 1112, 1 L.Ed.2d 1205 (1957); *Grand Union Supermarkets of the V.I. v. H.E. Lockhart Mgmt.*, 316 F.3d 408, 410 (3d Cir. 2003). In this regard, in late April of 2010, SCRG began the shift of all of its nerve center functions (which had been in Boston originally) back to Boston in mid-May of 2010 -- when the local operating partner's employment was terminated and ended with the shift of its senior operating partner and decision-making, financial authority, accounting, etc. back to Boston in May of 2011, making it a citizen of Massachusetts at the time this complaint was initially filed in December of 2011. In fact, the main office building is closed, the main power is off -- all that is left at the site are a few people in a temporary area in the powerhouse. See Declaration of John Thomas, **Exhibit B**. Thus, these facts are similar to those found in *Lewis v. Lycoming*, 2012 WL 2422451, 5-6 (E.D.Pa. 2012).

Plaintiffs seek to insert the word "or" after the first clause and change the "and" at the end to an "or" as well:

(4)(A) A district court shall decline to exercise jurisdiction under paragraph (2) over a class action in which greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed; **OR** at least 1 defendant is a defendant. . . who is a citizen of the State in which the action was originally filed. . . . [Wording added for effect.]

Thus, under the correct reading, the Court will decline jurisdiction only if all three necessary facts are present: (1) 2/3^{rds} of the plaintiffs are citizens of the state, (2) the defendant is a citizen of the state, and (3) principal injuries resulting from the alleged conduct or any related conduct of defendant were incurred in the State.

An excellent "overview" of this "Local Controversy Exception" (the section raised by Plaintiffs) and the closely related "Home State Exception" to CAFA was provided recently in *Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 569-570 (5th Cir. 2011). That court also discussed the fact that these are exceptions - not CAFA prima facie elements (and that the burden therefore lies with the party asserting them -- here the plaintiffs) stating, in part, as follows:

"Local Controversy" and "Home State" Exceptions to CAFA

Indeed, the law is not complete without its exceptions. CAFA requires federal courts to decline jurisdiction over a proposed class action if either of the following **narrow exceptions is proven by a preponderance of the evidence: (1) the local controversy exception, 28 U.S.C. § 1332(d)(4)(A); or (2) the home state exception, 28 U.S.C. § 1332(d)(4)(B).** The CAFA mandatory abstention provisions are 'designed to draw a delicate balance between making a federal forum available to genuinely national litigation and allowing the state courts to retain cases when the controversy is strongly linked to that state.' *Hart v. FedEx Ground Package Sys., Inc.*, 457 F.3d 675, 682 (7th Cir.2006).

(1) "Local Controversy" Mandatory Abstention

Pursuant to the 'local controversy' mandatory abstention provision of CAFA, the district court 'shall decline to exercise jurisdiction': [where each of the separate elements is met because] 'Congress crafted CAFA to exclude only a narrow category of truly localized controversies, and the exceptions provide a statutory vehicle for the district courts to ferret out the controversy that uniquely affects a particular locality to the exclusion of all others.' *Preston II*, 485 F.3d at 823 (citing *Evans v. Walter Indus., Inc.*, 449 F.3d 1159 (11th Cir.2006)) (internal quotes omitted).

(2) "Home State" Mandatory Abstention

CAFA's "home state" mandatory abstention provision states:

(4) A district court shall decline to exercise jurisdiction under paragraph (2) [over a class action in which] —

(B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed. 28 U.S.C. § 1332(d)(4)(B).

In other words, the home state mandatory abstention provision prevents a federal district court from exercising subject matter jurisdiction when 'two-thirds or more of the members of all proposed plaintiff classes in the aggregate, **and** the primary defendants, are citizens of the State in which the action was originally filed.' 28 U.S.C. § 1332(d)(4)(B). (Emphasis added.)

Accord Williams v. Homeland Ins. Co. of N.Y., 657 F.3d 287, 291-292 (5th Cir. 2011)

("the local controversy exception requires a local defendant (a) from whom significant relief is sought; and (b) whose alleged conduct forms a significant basis for the claims asserted"); and *Coleman v. Estes Exp. Lines, Inc.*, 631 F.3d 1010, 1015 (9th Cir. 2011)

("The first criterion is whether 'significant relief is *sought*' from a defendant who is a citizen of the state in which the suit is filed.").

In short, the exception in Section 1332(d)(4)(A)(a)(I) is not met as the Defendant, SCRG, is not a citizen of the Virgin Islands.

2. The "principal injuries clause" 1332(d)(4)(A)(i)(III) is also just part of the extended section -- and also requires a Defendant that is a local citizen

In exactly the same manner, Plaintiffs attempt to read 1332(d)(4)(A)(i)(III) as though it creates some sort of exception by itself, independent of the rest of the full content of the statute. They suggest that jurisdiction should be declined if just "principal injuries resulting from the alleged conduct or any related conduct of defendant were incurred in the State." Again, as above, the correct reading is that this is just one of the elements of (d)(4)(A).

(4)(A) A district court shall **decline** to exercise jurisdiction under paragraph (2) over a class action in which greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed; **at least 1 defendant** is a defendant. . . ; **AND who is a citizen of the State in which the action was originally filed**); and principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed. . . .

Thus, again, the exception in Section 1332(d)(4)(A)(i)(III) is also not met since SCRG is not a citizen of the Virgin Islands.

IV. Conclusion

The Plaintiffs (1) misunderstood §1332 (d)(11)(B) to include claims based on multiple occurrences in "one location," and misread §1332(d)(4)(A) to require that jurisdiction must be declined for mass actions whenever (2) 2/3rds of the plaintiffs are citizens of a state, or (3) the principal injuries occurred in a state -- even if the defendant is a citizen of another state. Plaintiffs were also mistaken as to the burden when CAFA exceptions are raised -- which is theirs. As that burden has not been met, the remand should be denied.

Defendant SCRG's Opposition
to Plaintiffs' Motion for Remand
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Dated: October 29, 2012

/s/

Joel H. Holt, Esq.
Counsel for Defendant SCRG
Law Offices of Joel H. Holt
2132 Company Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820
Telephone: (340) 773-8709
Email: holtvi@aol.com

Dated: October 29, 2012

/s/

Carl J. Hartmann III, Esq.
Counsel for Defendant SCRG
5000 Estate Coakley Bay, L-6
Christiansted, St. Croix
U.S. Virgin Islands 00820
Telephone: (340) 719-8941
Email: carl@carlhartmann.com

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October, 2012, I filed the foregoing with the Clerk of the Court, and delivered by ECF to the following:

Lee J. Rohn, Esq.
Law Office of Rohn and Carpenter, LLC
1101 King St.
Christiansted, VI 00820
Counsel for the Plaintiffs

/s/

Joel H. Holt

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



Eleanor Abraham, et al.,)	
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Plaintiffs,)	CIVIL NO. 12-cv-11
v.)	
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St. Croix Renaissance Group, LLLP,)	ACTION FOR DAMAGES
)	
Defendant.)	JURY TRIAL DEMANDED

DECLARATION OF JOHN THOMAS

I, John Thomas, declare, pursuant to 28 U.S.C. Section 1746, as follows:

1. I am an adult resident of the State of Massachusetts and am personally knowledgeable about each fact set forth in this affidavit.
2. Defendant SCRG is a Delaware LLLP, and has been since its formation.
3. I am the President and managing partner of one of the partners of Defendant SCRG, Brownfields Recovery (BR), which is, like the majority partners in SCRG, located in Boston, Massachusetts. I am the SCRG partner who has managed the overall direction of the redevelopment of the SCRG asset, with the title of Vice-President. Between October 2005 and May of 2011, I was also a direct employee of SCRG.
4. Prior to the June, 2002 closing and the formation of SCRG for the purchase of the site of the former St. Croix Alumina refinery (SCA), overall strategy, negotiations, due diligence and decision-making for the eventual acquisition was conducted and managed out of the BR office in Boston.
5. After the site purchase, by 2003 there was an operating office and on-site management staff at the site on St. Croix. There were eventually some 45 employees on-site at SCRG in the USVI.
6. However, from 2004 on, SCRG became the target of various frivolous claims and then litigation, which significantly, negatively affected development efforts.
7. In April of 2010, BR and the other the controlling partners in SCRG were unable to effectuate a settlement in various USVI litigation involving ALCOA, the DPNR and others, that was so affecting SCRG.
8. Thus, in mid-May of 2010, SCRG began the shift of all of its nerve center functions (which had been in Boston originally) back to Boston.

9. SCRG's local operating partner's employment in the USVI was terminated in May of 2010. I began to fulfill that management function from Boston as well.
10. From May of 2010 through May of 2011, all major decision-making and major accounting decisions were transferred back to Boston.
11. In May of 2011, I, as the local representative partner, was finally removed from SCRG's payroll and placed back to a Boston-based payroll. My time and another manager's time as well as costs incurred here are charged to SCRG. I am employed in, have my home and pay taxes in Massachusetts. If communications, filings or other documentation is necessary for SCRG, they are directed from here. Similarly, all payments and transactions are directed from Boston.
12. All major (and even minor) decision-making, financial decisions, accounting decisions, legal decisions, payment decisions and other nerve center functions were subject to this shift back to Boston which was substantially complete by May of 2011. Thus, the top partners and officials of SCRG are situated in Boston, Massachusetts. All major decisions involving the business are made or approved there. From the offices in Massachusetts we review and approve SCRG's financial reports and strategic plans, review and approve its business assessments and objectives, and reviews and approves its personnel plans. Our approval is expressly required for all cooperative business arrangements, all capital expenditures, any business operations planning, any acquisition or divestiture of business, all engagements of consultants to do business, all press releases and communications, all agreements and all reductions in force.
13. The main office in St. Croix has been closed and is unused. The power there has been turned off. We have stopped generating power.
14. As required by federal law with regard to the port, guards are still on-site, supplied by a contractor, and a small, temporary space with power is still used as set forth in paragraph 15 -- in the non-operating powerhouse.
15. In September of 2011 a settlement was reached with Alcoa's subsidiary (SCA) in litigation under which Alcoa is required to undertake a major project to redesign and execute closure activities for the waste disposal Area A and adjacent areas. We hope to re-staff and proceed when this is and the site-related litigation is completed. An SCRG site person and 4 employees remain in that temporary space to conduct caretaker functions and act as a local contact for Boston and the Area A closure activities by Alcoa's subsidiary.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 26, 2012



John Thomas