

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

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**FREDERIC J. BALBONI, JR.**

Plaintiff,

vs.

**RANGER AMERICAN OF THE VIRGIN  
ISLANDS, INC. and EMICA KING,**

Defendants.

**CASE NO. ST-14-CV-366**

**ACTION FOR PERSONAL  
INJURY AND DAMAGES**

**JURY TRIAL DEMANDED**

**MEMORANDUM OPINION AND ORDER**

Before this Court is Plaintiff's Motion to Determine 20 V.I.C. § 555 Unconstitutional, which was filed on January 23, 2017. Defendants filed an Opposition to Plaintiff's Motion to Determine 20 V.I.C. § 555 Unconstitutional on February 16, 2017.<sup>1</sup> On March 1, 2017, the Government of the Virgin Islands filed a Response to Plaintiff's Constitutional Challenge to Title 20 of the Virgin Islands Code Section 555.<sup>2</sup> Finally, on March 17, 2017, Plaintiff filed a Reply Brief in Support of Plaintiff's Motion to Determine 20 V.I.C. § 555 Unconstitutional. Ultimately, Plaintiff asks this Court to declare § 555 invalid on constitutional grounds; Defendants ask this Court to deny Plaintiff's Motion as unripe or, in the alternative, find § 555 constitutional. This Court will deny Plaintiff's motion because § 555 is constitutionally sufficient.

**I. BACKGROUND AND PROCEDURAL HISTORY**

Plaintiff Frederick Balboni's Complaint against Defendants Ranger American of the Virgin Islands, Inc. and Emica King alleges that King, while negligently operating a vehicle owned by Ranger American, hit him as he attempted to cross Veterans Drive.<sup>3</sup> Balboni seeks both economic and non-economic damages.<sup>4</sup> He also asserts that Ranger American's "actions and omissions . . . were grossly negligent" and seeks an award of punitive damages.<sup>5</sup>

Balboni's Motion argues that § 555's non-economic damages cap of \$100,000 violates the right to a jury trial under the Seventh Amendment, the Equal Protection Clause of the Fourteenth

<sup>1</sup> Plaintiff also filed a Notice of Constitutional Question on November 9, 2017, in accordance with the Virgin Islands Rule of Civil Procedure 5.1(a). Because the Virgin Islands Rules of Civil Procedure help facilitate prompt, efficient, and fair litigation, this Court suggests that, in the future, parties carefully read and abide by all of the Virgin Islands Rules so that litigation is not unnecessarily delayed.

<sup>2</sup> Although this Court accepted the Government of the V.I.'s Response, this Court, on January 12, 2018 and in accordance with Virgin Islands Rule of Civil Procedure 5.1(b), certified the constitutional question to the Attorney General of the Virgin Islands so as to satisfy all necessary procedural requirements prior to addressing the merits of Plaintiff's challenge.

<sup>3</sup> Compl. at ¶¶ 6-7, 11-13.

<sup>4</sup> *Id.* at ¶ 17.

<sup>5</sup> *Id.* at ¶ 18.

Amendment, and the Due Process Clause of the Fifth and Fourteenth Amendments.<sup>6</sup> Defendants contend that Balboni's Motion is not ripe for adjudication, and, even if this Court determined that the issue was ripe, § 555 is constitutional, and Balboni's Motion should be denied.<sup>7</sup> On March 1, 2017, in accordance with Rule 5.1(c) of the Virgin Islands Rules of Civil Procedure, the Government of the Virgin Islands filed a Response to Plaintiff's Constitutional Challenge to Title 20 of the Virgin Islands Code Section 555; it asserts that a rational basis exists for § 555 and that the Seventh Amendment does not limit the actions of the Legislature.<sup>8</sup> Lastly, Balboni filed a Reply Brief in Support of Plaintiff's Motion to Determine 20 V.I.C. § 555 Unconstitutional where he argues that his Motion is ripe for adjudication because he is making a facial constitutional challenge to § 555 and reasserts his constitutional arguments.<sup>9</sup>

## **II. DISCUSSION**

Balboni's Motion presents multiple issues: (1) whether Balboni's Motion is ripe for review at this time; and (2) if ripe, whether § 555 violates the right to a jury trial under the Seventh Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Due Process Clause of the Fifth and Fourteenth Amendments.

### **A. Balboni's Claim is Ripe for Adjudication**

Defendants argue that Balboni's Motion is not ripe because a jury has yet to "render a verdict in Plaintiff's favor" and "include an award of noneconomic damages in excess of the statutory cap."<sup>10</sup> They argue that, by asking this Court to rule on the constitutionality of § 555 prior to a jury verdict, Balboni essentially seeks an improper advisory opinion.<sup>11</sup> Conversely, Balboni asserts that he is making a facial constitutional challenge and that fact-finding is unnecessary.<sup>12</sup> He also complains that waiting to rule on his Motion would impose an undue hardship on him because "[t]he amount of potential recovery of noneconomic damages impacts crucial decisions by Plaintiffs . . . regarding case strategy, case valuation, settlement decisions, insurance coverage issues, and how much money to expend on experts and other litigation costs."<sup>13</sup>

The ripeness doctrine "ensure[s] that only concrete cases and controversies present themselves for adjudication."<sup>14</sup> Ripeness essentially allows courts to exercise judicial restraint so as to avoid ruling on issues that are merely abstract or hypothetical.<sup>15</sup> Though ripeness does not

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<sup>6</sup> Pl.'s Mot. to Determine 20 V.I.C. § 555 Unconstitutional, 2.

<sup>7</sup> Defs' Opp'n to Pl.'s Mot. to Determine 20 V.I.C. § 555 Unconstitutional 1-3.

<sup>8</sup> Gov't of the Virgin Islands Resp. to Pl.'s Constitutional Challenge to Title 20 of the Virgin Islands Code Section 555 2-7.

<sup>9</sup> Pl.'s Reply Br. in Support of Pl.'s Mot. to Determine 20 V.I.C. § 555 Unconstitutional 2-4, 5-9.

<sup>10</sup> Defs' Opp'n to Pl.'s Mot. to Determine 20 V.I.C. § 555 Unconstitutional 2.

<sup>11</sup> *Id.*

<sup>12</sup> Pl.'s Reply Br. in Support of Pl.'s Mot. to Determine 20 V.I.C. § 555 Unconstitutional 3.

<sup>13</sup> *Id.*

<sup>14</sup> *People of the Virgin Islands ex rel. K.J.F.*, 59 V.I. 333, 340 n.6 (2013).

<sup>15</sup> See *General Offshore Corp. v. Farrelly*, 743 F. Supp. 1177, 1187 (D.V.I. 1990) ("[R]ipeness law [allows courts] to conserve judicial machinery for problems which are real and present or imminent, not to squander it on abstract or hypothetical or remote problems.") (quoting 4 K. Davis, *Administrative Law Treatise* § 25:1 (1982)).

involve a specific legal test, other courts have looked to a variety of factors as guidance in assessing whether an issue is ripe: (1) whether the parties would suffer hardship from the postponement of any judicial action; and (2) whether the issue presented needs more factual development before resolution is proper.<sup>16</sup>

This Court concludes that Balboni's Motion is ripe for adjudication. First, in his Reply Brief, Balboni affirmatively states that he is making a facial constitutional challenge.<sup>17</sup> Facial constitutional challenges are by nature "decided in a factual vacuum" due to the statute in question being challenged as unconstitutional under all applications.<sup>18</sup> In other words, an extensive factual record is unnecessary to determine whether or not a statute is unconstitutional as written. Second, refraining from ruling on Balboni's Motion would potentially cause hardship on the parties. Knowing that one possibly cannot collect more than \$100,000 in non-economic damages changes a party's trial approach.<sup>19</sup> For instance, as Balboni pointed out in his Reply,<sup>20</sup> settlement discussions and decisions on trial expenses are necessarily affected by the cap.<sup>21</sup> This is not a trivial concern. Though a plaintiff could successfully plead gross negligence and avoid the cap altogether, all of the decisions that are unavoidably altered or affected by § 555 occur prior to a plaintiff knowing whether or not a jury would indeed find gross negligence. Based on these concerns and the lack of need for a hefty factual record, this Court finds that a judicial decision on Balboni's Motion is appropriate at this time.

This Defendants argue that a jury might not actually find in favor of Balboni or, if it does, might find him to be barred from recovery due to a finding of contributory negligence.<sup>22</sup> Consequently, from Defendants' viewpoint, a ruling on Balboni's Motion prior to a jury verdict would amount to "an improper advisory opinion based upon a hypothetical scenario."<sup>23</sup> This Court is well aware of the disallowance of advisory opinions by the courts of the Virgin Islands.<sup>24</sup> However, deciding Balboni's facial challenge would not amount to such. Courts give advisory

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<sup>16</sup> See *Triple G Landfills, Inc. v. Board of Comm'rs*, 977 F.2d 287, 289 (7th Cir. 1992); *Farrelly*, 743 F. Supp. at 1187. See also *Perry v. Del Rio*, 66 S.W.3d 239, 250 (Tex. 2001) ("[Courts should] evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration."); *Iowa Coal Mining Co. v. Monroe County*, 555 N.W.2d 418, 432 (regarding ripeness, asking whether more fact-finding was needed and whether parties would suffer hardship from refraining from a judicial decision).

<sup>17</sup> Pl.'s Reply Br. in Support of Pl.'s Mot. to Determine 20 V.I.C. § 555 Unconstitutional 3.

<sup>18</sup> See *Farrelly*, 743 F. Supp. at 1187 ("[T]he issues presented in a facial challenge are purely legal, making whatever factual determinations . . . irrelevant.").

<sup>19</sup> Cf. *Evans v. State*, 56 P.3d 1046, 1049 (Alaska 2002) (noting that constitutional challenges at hand were facial challenges due to plaintiffs seeking a declaratory judgment so that they could "better determine how to proceed with their contemplated tort actions.").

<sup>20</sup> Pl.'s Reply Br. in Support of Pl.'s Mot. to Determine 20 V.I.C. § 555 Unconstitutional 3.

<sup>21</sup> See *Gummo v. Ward*, 2013 U.S. Dist. LEXIS 140798, at \*5 (M.D. Tenn. Sept. 30, 2013) (recognizing that failing to decide the constitutional challenges to Tennessee's non-economic damages cap "could conceivably present a hardship to the parties to the extent it impacts upon settlement discussions.").

<sup>22</sup> Defs' Opp'n to Pl.'s Mot. to Determine 20 V.I.C. § 555 Unconstitutional 2.

<sup>23</sup> *Id.*

<sup>24</sup> See *Beachside Assocs., LLC v. Bayside Resort, Inc.*, 2013 V.I. LEXIS 26, at \*2 (Super. Ct. May 15, 2013) ("[T]he Court may not issue an advisory opinion based on a hypothetical set of facts."); *People of the Virgin Islands v. Powell*, 2013 V.I. LEXIS 7, \*1 (Super. Ct. Jan. 8, 2013) ("[T]his Court may not render advisory opinions."); *Chiang v. Turnbull*, 2000 V.I. LEXIS 11, at \*35 (Terr. Ct. June 20, 2000) ("This Court will not render an advisory opinion on proposed legislation.").

opinions by weighing in on constitutional matters absent an actual controversy between parties.<sup>25</sup> On occasion, a potential judicial decision might “feel” like an advisory opinion or “in effect” be an advisory opinion where the controversy between the parties is questionably concrete.<sup>26</sup> Neither of those situations reflects the matter currently before this Court. The fact that a jury has not rendered a verdict does not transform the constitutional question before this Court into an uncertain, abstract issue in the sense that this Court would be merely conducting an “academic exercise.”<sup>27</sup> Rather, a judicial decision on the Motion would affect the parties’ interactions in the future, and, because Balboni is asserting a facial challenge, the parties would not benefit from prolonging a decision on the question presented.<sup>28</sup> Therefore, this Court finds that Balboni’s Motion is ripe for adjudication.<sup>29</sup>

## **B. Constitutionality of 20 V.I.C. § 555**

Balboni asserts that § 555 is unconstitutional “under all circumstances.”<sup>30</sup> Specifically, Balboni challenges § 555 as (1) impermissibly intruding into the jury’s duty of fact-finding in violation of the Seventh Amendment; (2) treating automobile accident victims differently based on the severity of their non-economic injuries in violation of the Equal Protection Clause of the Fourteenth Amendment; and (3) arbitrarily and unreasonably depriving victims of their fundamental right to a jury trial in violation of the Due Process Clause of the Fifth and Fourteenth Amendments.<sup>31</sup> Defendants conversely argue that (1) *Davis v. Omitowaju*, 883 F.2d 1155 (3d Cir. 1989) controls the constitutional analysis here; (2) that the legislative history provides a rational basis for § 555, thereby satisfying Equal Protection and Due Process concerns; and (3) *Davis*’s in

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<sup>25</sup> See *In re Opinion of the Justices of the Supreme Judicial Court given under the Provisions of Article VI, Section 3 of the Me. Constitution*, 162 S.3d 188, 197 (ME 2017) (“The Senate seeks our opinions regarding the constitutionality of a statute recently enacted through citizen initiative . . . .”); *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich. 1, 7 (2007) (accepting state House of Representatives’ request to determine the constitutionality of 2005 PA 71, M.C.L. 168.523); *Opinion of the Justices to the Senate*, 423 Mass. 1201 (1996) (answering four questions posed by the state Senate as to the constitutionality of Senate Bill No. 2276).

<sup>26</sup> See *FEC v. Akins*, 524 U.S. 11, 24 (1998) (noting that, within the context of standing, a judicial decision would “in effect, amount to an advisory opinion” where an abstract harm essentially rids a controversy of the requisite concreteness).

<sup>27</sup> Cf. *Duke Power Co. v. Carolina Envtl. Study Group*, 438 U.S. 59, 81-82 (1978) (“Although it is true that no nuclear accident has yet occurred and that such an occurrence would eliminate much of the existing scientific uncertainty surrounding this subject, it would not, in our view, significantly advance our ability to deal with the legal issues presented nor aid us in their resolution.”).

<sup>28</sup> See *McInnis-Misenor v. Me. Med. Ctr.*, 319 F.3d 63, 71 (1st Cir. 2003) (“The fact that an event has not occurred can be counterbalanced in [the ripeness] analysis by the fact that a case turns on legal issues “not likely to be significantly affected by further factual development.”); *Artway v. Attorney Gen.*, 81 F.3d 1235, 1249 (3d Cir. 1996) (“The more that the question presented is purely one of law, and the less that additional facts will aid the court in its inquiry, the more likely the issue is to be ripe, and vice-versa.”).

<sup>29</sup> The language in both Balboni’s Motion and in his Reply Brief make it unclear whether Balboni is asserting a facial challenge *as well as* an as-applied challenge. If that is the case, in accordance with the doctrine of ripeness, Balboni’s as-applied challenge would not be ripe for adjudication at this time since an as-applied challenge would actually require the factual determination of whether Balboni is awarded non-economic damages and, if so, how much damages he is awarded. This Memorandum Opinion only addresses the facial challenges made by Balboni.

<sup>30</sup> Pl.’s Reply Br. in Support of Pl.’s Mot. to Determine 20 V.I.C. § 555 Unconstitutional 3.

<sup>31</sup> Pl.’s Mot. to Determine 20 V.I.C. § 555 Unconstitutional 5-7, 10-15, 15-17.

depth analysis of the Seventh Amendment essentially answered the Seventh Amendment question here regarding § 555.<sup>32</sup>

To succeed on a facial challenge, the party asserting the challenge bears the burden of proving that the questioned statute is unconstitutional under every set of circumstances.<sup>33</sup> Although the Supreme Court of the United States has historically disfavored facial challenges, it has allowed them in several different scenarios.<sup>34</sup> Here, Balboni must show that § 555 is unconstitutional under the Fifth, Seventh, and Fourteenth Amendments in all respects.

### **1. Seventh Amendment**

The Seventh Amendment, made applicable to the Virgin Islands via § 3 of the Revised Organic Act, 48 U.S.C. § 1561, guarantees a right to a jury trial:

“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.”<sup>35</sup>

Read literally, at a minimum, the jury has the responsibility of making fact determinations that are free from later alteration by a United States judge.<sup>36</sup> The issue then becomes whether a legislative cap on damages, which a judge must enforce where a jury award exceeds this cap, infringes on the jury’s fact-finding responsibility.

Several federal courts have concluded that legislative caps do not violate the Seventh Amendment.<sup>37</sup> For instance, the Fourth Circuit in *Boyd v. Bulala* determined that Virginia’s damages cap in medical malpractice actions did not violate the Seventh Amendment’s right to a jury trial.<sup>38</sup> Relying on the reasoning taken by the Virginia Supreme Court, the Fourth Circuit

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<sup>32</sup> Defs’ Opp’n to Pl.’s Mot. to Determine 20 V.I.C. § 555 Unconstitutional 7, 10-12, 12-16, 16-18.

<sup>33</sup> *United States v. Salerno*, 481 U.S. 739, 745 (1987).

<sup>34</sup> See *City of Los Angeles v. Patel*, 135 S. Ct. 2443, 2449 (2015) (listing cases).

<sup>35</sup> U.S. Const. amend. VII.

<sup>36</sup> See *Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226, 242-43 (1897) (“The Seventh Amendment was intended to . . . deprive the courts of the United States of any such authority [to reexamine facts tried by a jury].”); *Davis v. Omitowaju*, 883 F.2d 1155, 1162 (3d Cir. 1989) (“[T]he second clause [of the Seventh Amendment] speaks exclusively of the role of the court.”).

<sup>37</sup> Though this Court recognizes that several state courts have considered the constitutionality of legislative caps on non-economic damages, a substantial number of those courts did so on the basis of their respective state constitutions, which warrants caution if the wording in those constitutions differ from that of the Seventh Amendment. See *Watts ex. Rel. Watts v. Lester E. Cox Med. Ctrs.*, 376 S.W.3d 633, 640-41 (Mo 2012) (holding that Missouri’s non-economic damages cap violated the right to a trial by jury guaranteed under article I, section 22(a) of Missouri’s constitution); *Judd ex rel. Montgomery v. Drezga*, 103 P.3d 135, 144-45 (Utah 2004) (holding that Utah’s non-economic damages cap did not violate the right to a jury trial under Utah’s constitution); *Moor v. Mobile Infirmary Ass’n*, 592 So.2d 156, 160-63 (Ala. 1991) (concluding that Alabama’s non-economic damages cap violated the right to a jury trial under Alabama’s constitution). This list is by no means exhaustive.

<sup>38</sup> 877 F.2d 1191, 1196 (4th Cir. 1989).

distinguished between the jury's role as a fact-finder and the act of determining the legal consequences of those factual findings, and it ultimately concluded that the Seventh Amendment did not guarantee a right to have the jury perform the latter function.<sup>39</sup> The Third Circuit, in dealing with the Virgin Islands' damages cap in medical malpractice actions, arrived at a similar conclusion in *Davis v. Omitowoju*.<sup>40</sup> The Third Circuit concluded that 27 V.I.C. § 166b did not intrude upon the jury's fact-finding responsibilities because the Seventh Amendment prevents courts from arbitrarily altering jury findings but does not prevent the Legislature from placing statutory restrictions on recovery in medical malpractice suits, which judges are bound to enforce.<sup>41</sup> Lastly, in *Smith v. Botsford Gen. Hosp.*, the Sixth Circuit, adopting the reasoning of the *Boyd* court, upheld Michigan's damages cap in medical malpractice actions and determined that the role of the jury did not involve "determin[ing] the legal consequences of its factual findings."<sup>42</sup>

This Court finds the reasoning utilized in *Boyd*, *Davis*, and *Smith* persuasive; consequently, § 555 does not infringe on an individual's right to a jury trial under the Seventh Amendment.<sup>43</sup> An empaneled jury retains the responsibility of making reasonable fact determinations throughout a trial. The language of the Seventh Amendment makes this clear. Further, any factual determinations made by a jury are unalterable by judges. However, factual determinations made by a jury do, in fact, have legal consequences. For example, if a statute required elements X and Y for a person to be in violation, and a jury found, based on the evidence presented, that X and Y existed, then the legal consequences of those factual determinations would be that the said person violated the statute. Conversely, if the said jury determined that X did not exist but that Y existed, the legal consequences of that determination would be that the said person did not violate the statute. Here, if a jury were to conclude that Balboni suffered \$250,000 in non-economic damages, then the legal consequences of that determination would be that the award would violate § 555 and would require a reduction to be in accordance with the law. If a jury were to find gross negligence on behalf of the Defendants, then the legal consequences of that determination would be that the § 555 cap would not apply. In sum, once the jury makes its factual determinations, including the amount of damages, its responsibility is satisfied, and, so long as those determinations are not arbitrarily altered by a judge, the Seventh Amendment is not offended.

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<sup>39</sup> *Id.*

<sup>40</sup> 883 F.2d 1155 (3d Cir. 1989).

<sup>41</sup> *Id.* at 1162.

<sup>42</sup> 419 F.3d 513, 519 (6th Cir. 2005). *See also* *Madison v. IBP, Inc.*, 257b F.3d 780, 804 (8th Cir. 2001) ("In applying the [damages cap] provision, a court does not 'reexamine' the jury's verdict or impose its own factual determination as to what a proper award might be . . . Rather, it implements the legislative policy decision by reducing the amount recoverable to that deemed to be a reasonable maximum by Congress."), *vacated*, 536 U.S. 919 (2002); *Hemmings v. Tidyman's Inc.*, 285 F.3d 1174, 1202 (9th Cir. 2002) (concluding that Title VII's damages cap did not run afoul of the Seventh Amendment). Even the Supreme Court of the United States alluded to the idea that a jury's role as a fact-finder might not encompass a guarantee that the jury also have the final determination of damages. *See Tull v. United States*, 481 U.S. 412, 427 (1987) ("Congress' assignment of the determination of the amount of civil penalties to trial judges therefore does not infringe on the constitutional right to a jury trial.").

<sup>43</sup> This Court recognizes Balboni's contention that *Davis* unpersuasive because the Third Circuit dealt with a non-economic damages cap in medical malpractice actions rather than a cap in automobile injury actions. *See* Pl.'s Reply Br. in Support of Pl.'s Mot. to Determine 20 V.I.C. § 555 Unconstitutional 4-5. However, even assuming, *arguendo*, that *Davis* was not binding on this Court, the Plaintiff's asserted distinctions do not make the *Davis* court's Seventh Amendment analysis unpersuasive.

Balboni's characterization of a judge reducing a jury award pursuant to § 555 as a "legislative remittitur," while creative, is not persuasive.<sup>44</sup> "Remittitur is a common-law doctrine in which a court will reduce the damages award indicated in a jury verdict after concluding that 'no rational jury, acting on the basis of the full evidentiary record, and without being inflamed by passion or prejudice or other improper consideration, could have awarded such a large sum as damages'" which is no longer recognized in the Virgin Islands.<sup>45</sup> As the Supreme Court of the Virgin Islands stated, remittitur essentially allows a trial judge to adjust a jury award based on her view that a different amount of damages would be more appropriate.<sup>46</sup> In other words, "remittitur removes power from a jury and vests it with a judge."<sup>47</sup> Section 555 does not have an equivalent effect. When enforcing § 555's cap, a judge is not reexamining the facts; rather, she is merely applying the facts before her to the applicable law. In essence, a judge is "merely implementing a policy decision of the legislature" by implementing § 555.<sup>48</sup> The Seventh Amendment protects against judges arbitrarily altering factual determinations made by juries; it does not prevent the Legislature from passing a statute that involves a predetermined non-economic damages limitation based on what it believes to be sound policy for the Virgin Islands.

Therefore, because § 555 in no way offends Seventh Amendment guarantees, Balboni's facial challenge must fail.

## **2. Fourteenth Amendment – Equal Protection Clause**

The Equal Protection Clause of the Fourteenth Amendment states that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws."<sup>49</sup> Though a seemingly strict proscription against unequal treatment, the Supreme Court of the United States has granted legislatures much discretion in enacting laws that may have an uneven effect on certain groups of people.<sup>50</sup> Indeed, such statutes are presumed valid.<sup>51</sup> However, where the statutory classification has no bearing on the stated legislative objective, the Court has delineated different levels of scrutiny based on the class of persons discriminated against or the rights being infringed upon. Where a statute discriminates against a group of persons within a suspect class, courts employ the strict scrutiny standard.<sup>52</sup> Strict scrutiny also applies where the statute infringes on a group's fundamental right.<sup>53</sup> If a statute discriminates against a group of persons based on sex or illegitimacy, courts use an intermediate scrutiny standard.<sup>54</sup> Finally, where a statute affects a group

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<sup>44</sup> Pl.'s Mot. to Determine 20 V.I.C. § 555 Unconstitutional 6-7.

<sup>45</sup> See *Antilles School, Inc. v. Lembach*, 64 V.I. 400, 427 (2016) (citations omitted).

<sup>46</sup> *Id.* at 437.

<sup>47</sup> *Id.*

<sup>48</sup> *Davis*, 883 F.2d at 1162.

<sup>49</sup> Section one of the Fourteenth Amendment is made applicable to the Virgin Islands via § 3 of the Revised Organic Act. See *Gerace v. Bentley*, 65 V.I. 289, 307 n.3 (2016).

<sup>50</sup> See *McGowan v. Maryland*, 366 U.S. 420, 425 (1961).

<sup>51</sup> See *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).

<sup>52</sup> See *Gerace*, 65 V.I. at 308.

<sup>53</sup> See *City of Cleburne*, 473 U.S. at 440.

<sup>54</sup> See *United States v. Virginia*, 518 U.S. 515, 532-33 (1996) (recognizing heightened scrutiny for discrimination based on sex); *City of Cleburne*, 473 U.S. at 441 (noting that discrimination based on illegitimacy is subject to intermediate scrutiny).

of persons not within a suspect, quasi-suspect class, or affects a fundamental right, a rational basis standard is used.<sup>55</sup>

The first question to answer is whether or not § 555 treats people of a suspect class differently or implicates a fundamental right. Balboni argues that the fundamental right to a jury is adversely affected by § 555.<sup>56</sup> This Court disagrees. When discussing fundamental rights within the context of equal protection analysis, the Supreme Court of the United States has been precise and particular about what constitutes a “fundamental right.” For example, the Supreme Court has held that the right to vote, the right to one’s privacy, the right to procreate and make family decisions, and the right to travel are fundamental rights that would require a strict scrutiny analysis.<sup>57</sup> However, even assuming, *arguendo*, that the right to a jury trial in civil matters in the Virgin Islands is a fundamental right deserving of strict scrutiny, this Court has already concluded that § 555 does not infringe on one’s Seventh Amendment rights. Therefore, because no fundamental right is infringed upon and no suspect class is discriminated against, the rational basis review is the appropriate standard to under which to analyze § 555.

Rational basis merely requires that the statutory classification in question rationally furthers a legitimate state interest.<sup>58</sup> The purported legislative objectives do not have to be proven correct. “Rather, ‘those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker.’”<sup>59</sup> Rational basis is a deferential standard, and a statute must survive if the court finds “any reasonably conceivable state of facts that could provide a rational basis for the classification.”<sup>60</sup>

Balboni argues that treating seriously-injured victims of automobile accidents from those that are not as seriously injured, as well as differentiating between automobile accident victims and victims of other personal injury torts, is not rationally related to the purported policy underlying § 555, i.e., to reduce insurance premiums.<sup>61</sup> Defendants conversely assert that § 555 is rationally related to the goal of keeping insurance premiums low and keeping insurance carriers in the territory.<sup>62</sup> This Court agrees with the Defendants.

Maintaining reasonable insurance premiums, as well as ensuring that insurance providers remain in the territory, is a legitimate interest of the Virgin Islands. The fear of insurance companies potentially being liable for large amounts in non-economic damages coupled with the mandatory requirement that private citizens have automobile insurance coverage could impact

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<sup>55</sup> See *Abdul-Akbar v. McKelvie*, 239 F.3d 307, 317 (3d Cir. 2001).

<sup>56</sup> Pl.’s Mot. to Determine 20 V.I.C. § 555 Unconstitutional 11.

<sup>57</sup> See *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 n.3 (1976) (listing cases).

<sup>58</sup> See *Minn. v. Clover Leaf Creamery Co.*, 449 U.S. 456, 461 (1981).

<sup>59</sup> *Id.* at 464.

<sup>60</sup> See *Weinstein v. Albright*, 261 F.3d 127, 140 (2d Cir. 2001).

<sup>61</sup> Pl.’s Mot. to Determine 20 V.I.C. § 555 Unconstitutional 13-15.

<sup>62</sup> Defs’ Opp’n to Pl.’s Mot. to Determine 20 V.I.C. § 555 Unconstitutional at 10-11.

insurance premiums and coverage availability in general.<sup>63</sup> Therefore, it is rational for the Legislature to attempt to keep coverage plentiful and affordable by capping the amount of non-economic damages recoverable in personal injury actions.<sup>64</sup> It is not for this Court to determine whether the legislative limitation is a good or bad solution; rather, it is this Court's responsibility to determine whether a rational connection exists between the statute in question and the Legislature's purpose in passing that statute.<sup>65</sup> A rational connection exists here.

Section 555, albeit facially neutral, does inadvertently affect certain classes of automobile accident victims different from both other automobile accident victims and other personal injury tort victims. However, because the legislative purpose behind § 555 rationally relates to the reach and effect of § 555, no equal protection violation exists. On this claim, Balboni's challenge must fail.

### **3. Fifth and Fourteenth Amendment – Due Process Clause**

Balboni's final argument is that § 555 violates "substantive" Due Process by infringing on the fundamental right to a jury trial.<sup>66</sup> This Court disagrees.

The Due Process Clause of the Fifth and Fourteenth Amendments protects against the state and federal government from "depriv[ing] an individual of [life,] property or liberty without due process."<sup>67</sup> Simply stated, the "substantive" aspect protects against government infringement upon certain fundamental rights.<sup>68</sup> Where no fundamental right is implicated, the statute must not be arbitrary and must be rationally related to some legitimate government interest; in this respect, the analysis for Due Process is similar to that of Equal Protection.<sup>69</sup>

As stated above, regardless of whether the right to a jury trial is a fundamental right, § 555 does not inhibit an individual's right to a jury. Since no fundamental right is infringed upon, for Due Process purposes, § 555 need only be rationally related to a legitimate government interest. This Court has already concluded that such an interest exists and that § 555 has a rational connection to that interest.

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<sup>63</sup> Defs' Opp'n to Pl.'s Mot. to Determine 20 V.I.C. § 555 Unconstitutional Ex. 1, 9-10 (providing the Declarations of Aston Harty, President of Inter-Ocean Insurance Agency, Karen John, Vice President of Guardian Insurance Company, and Joseph Gunset, General Counsel to Lloyd's American, Inc.).

<sup>64</sup> *Cf. Davis*, 883 F.2d at 1158 ("Clearly the Virgin Islands' decision to curb, through legislation, the high costs of malpractice insurance and thereby promote quality medical care to the residents of the islands, provides a rational basis for capping the amount of damages that can be awarded a plaintiff."). Though Balboni adamantly argues that cases dealing with medical malpractice actions are quite distinguishable from the current case dealing with an automobile incident, the underlying purpose of both are, in part, the same, i.e., to keep insurance premiums down.

<sup>65</sup> *See Weinstein*, 261 F.3d at 140 ("Rational basis review does not pass judgment upon the wisdom, fairness, or logic of legislative decisions . . .").

<sup>66</sup> Pl.'s Mot. to Determine 20 V.I.C. § 555 Unconstitutional 15.

<sup>67</sup> *Weinstein*, 261 F.3d at 134. The Due Process Clause applies to the Virgin Islands via § 3 of the Revised Organic Act, 48 U.S.C. § 1561.

<sup>68</sup> *See Wash. v. Glucksberg*, 521 U.S. 702, 719-20 (1997).

<sup>69</sup> *People of the Virgin Islands v. Phillips*, 2009 V.I. LEXIS 18, at \*5-6 (Super. Ct. Sept. 22, 2009).

Therefore, Balboni's challenge on Due Process grounds must fail.

### III. CONCLUSION

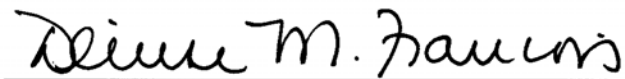
Balboni asserted a facial challenge to § 555, which comes with the burden of showing that the statute is unconstitutional under all circumstances. Balboni failed to meet that burden here. Therefore, this Court will deny Balboni's Motion to Determine 20 V.I.C. § 555 Unconstitutional.

Accordingly, it is hereby:

**ORDERED** that Plaintiff's Motion to Determine 20 V.I.C. § 555 Unconstitutional is **DENIED**; and it is further

**ORDERED** that a copy of this Memorandum Opinion and Order shall be directed to Attorney General Claude E. Walker, Robert L. King (King Law Firm, P.C.), and Attorney Daryl C. Barnes (Barnes & Benoit, LLP).

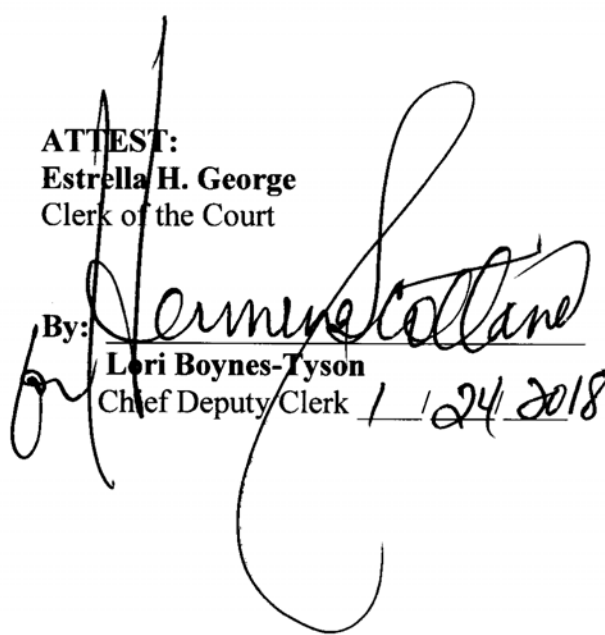
Dated: January 24, 2018



**DENISE M. FRANCOIS**  
Judge of the Superior Court  
of the Virgin Islands

**ATTEST:**  
**Estrella H. George**  
Clerk of the Court

By:



**Lori Boynes-Tyson**  
Chief Deputy Clerk

1/24/2018