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

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INSURANCE COMPANY OF NORTH AMERICA, Plaintiff	:	CIVIL NO. 858/1983
	:	ACTION FOR CONTRIBUTION AND/OR INDEMNITY
vs.	:	
GOVERNMENT OF THE VIRGIN ISLANDS	:	

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MEMORANDUM OPINION
(December 30, 1986)

FEUERZEIG, J.

The court is required to decide the continued validity of the rule that a cause of action for contribution or indemnity against the Government of the Virgin Islands accrues on the date of the entry of judgment or the date of the satisfaction of the judgment. Finding no reason to modify or revise that rule, the court reaffirms Dublin v. Virgin Islands Telephone Corporation, 15 V.I. 214 (Terr. Ct. 1978).

I.

The plaintiff's insured was injured on or about November 15, 1981, in an automobile accident in St. Thomas, Virgin Islands. The plaintiff, Insurance Company of North America (INA), on September 29, 1983, filed suit for contribution and/or indemnity against the defendant Government of the Virgin Islands, after a September 10, 1983, settlement of a claim on behalf of its insured. The Government, relying on the Virgin Islands Tort Claims Act (VITCA), 33 V.I.C. §3408 _et seq._ (Supp. 1985), moved to dismiss contending that INA had not filed the requisite notice of intention to file a claim within 90 days of the accident. After assessing the current New York law [1] and national trends, this court reaffirmed its holding in _Dublin v. Virgin Islands Telephone Corp._, _supra_, that a cause of action for contributon or indemnification accrues, for the purposes of the 90-day filing requirement of 33 V.I.C. §3409(c), upon either the date of the entry of judgment or the date of the satisfaction of the judgment.

The Government then moved to reconsider because the memorandum submitted in support of its motion was the incorrect memorandum and, "the points raised . . . in the [new] memorandum are too important to be lost because of . . . inadvertence and . . . neglect." The essence of the Government's renewed argument is that _Dublin_ has been undermined by more recent Virgin Islands cases. [2]

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[1] _Dublin_ interpreted the Virgin Islands Tort Claims Act with reference to New York case law because the VITCA was primarily modeled after New York's Tort Claims Act. _Dublin_, _supra_ at 222.

[2] The court notes that its March 21, 1986, memorandum opinion addressed some of the identical points raised by the Government's "new" memorandum. The Government's new memorandum addresses the facts in _Martinez v. Frazer_, Civ. No. 651/1981, Terr. Ct.,Div. St.T. & St.J. (Memorandum June 14, 1985), and not the facts of this case. Consequently, the court will not address those arguments that clearly have no applicability here, e.g., that no notice of intention was filed with the Government.

II

The Government contends that Dublin "is no longer viable precedent and should be specifically overruled" because it is founded "upon assumptions which have since been discarded by later courts." Initially, the Government argues that the Virgin Islands District Court in Gonzales v. Stevens, 19 V.I. 515 (D.V.I. 1983), "correctly notes that . . . the notice provisions in the [New York Tort Court of Claims Act and the Virgin Islands Tort Claims Act] are in fact different [and that] there should be no resort to New York judicial decisions in this area." [3] The Government, however, fails to note that the distinction made in Gonzalez between the New York Court of Claims Act (NYCCA) and VITCA was limited to the filing requirements.

> Although the Virgin Islands Tort Claims Act was "primarily . . . drawn from" the New York Court of Claims Act, N.Y. Judiciary Law, §§8-12 (McKinney 1981, Dublin v. Virgin Islands Telephone Corp., 15 V.I. 214, 221 (Terr. Ct. 1978), the filing requirements contained in the two statutes differ in one dramatic respect. The New York act provides that the filing of a "claim" actually triggers the commencement of a lawsuit in the state Court of Claims. By contrast, neither the "notice of intention" nor the "claim" described in our act amounts to a civil complaint.

Gonzalez v. Stevens, supra at 518 n.2. The limited distinction drawn in Gonzalez has been further restricted by the Third Circuit Court of Appeals.

> [W]here a complaint is timely filed under the Tort Claims Act with the proper parties having been served and contains all of the necessary substantive requirements--which include a statement as to when the claim arose, a statement as to where the claim arose, a statement as to the nature of the claim and items of damage or injuries as well as the sum claimed, and a verification--the complaint suffices as a

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[3] The Government curiously supports this argument by citation to a New York case decided long before Dublin.

"claim" under the meaning ascribed to that term in the Tort Claims Act.

Albert v. Abramson's Enterprises, Inc., 790 F.2d 380, 383 (3d Cir. 1986). The fact that a plaintiff in New York may procedurally begin a tort lawsuit against the government by filing a "claim" while a Virgin Islands plaintiff must file a formal complaint has no bearing on the issue decided in Dublin or now before the court.

The Government claims that the Dublin court failed to note that the NYCCA does not allow third party practice, citing Tully v. DiNapoli, 272 N.Y.S.2d 667 (N.Y.1966). Tully, however, stands only for the proposition that a subcontractor who does not enjoy contractual privity with the state also does not have "a right to have its name in the title of the claim as one of the claimants."

Finally, the Government argues that the Third Circuit in Hodge v. Monsanto, 592 F.2d 184 (3d Cir. 1986), substantially eroded Dublin by ruling "that a claim for contribution by one defendant against a governmental defendant was lost for failing to comply with the notice provision of the VITCA." The Government's summary of Hodge, however, is mistaken.

The cross claim in Hodge was made by one defendant against the Government for injuries allegedly sustained as a result of the same governmental negligence that gave rise to the plaintiffs' claim. The cross claim asserted in Hodge was for an injury the cross claimant allegedly suffered more than two years before its assertion. The Hodge court allowed the plaintiffs' claim because the plaintiffs had filed a timely notice of their claim with the Government, but disallowed the cross claimant's claim because he had not.

> [W]e hold that the [plaintiffs] . . . adequately complied with the procedural requirements of the Tort Claims Act . . . we do not reach the same result, however, with respect to the [cross claimant because he] . . . did not file a claim for his injuries until after he had been sued by the [plaintiffs]. It was not until . . . three and a half years after the accident, that he filed a "third party complaint" (actually a cross claim) against the government, seeking damages for his injuries . . . The cross-claim was Monsanto's first assertion of a claim. It must be treated as an independent suit and be governed, therefore, by the limitation set by the statute . . . [and] that time had passed.

Hodge v. Monsanto, supra at 187. Clearly, Hodge has no bearing on either Dublin or this case because it does not involve, contrary to the Government's assertions, a claim for contribution.

The contention that Dublin is an outmoded minority view previously was made by the Government and was addressed and rejected by this court in its memorandum opinion of March 21, 1986. After a review of the applicable New York cases, and finding no persuasive authority to the contrary, the court adhered to the position that a cause of action for contribution or indemnity accrues at the time of payment of the judgment or settlement of the claim, and not at the time of the commission of the underlying tort. This view is supported by decisions in other jurisdictions as well. The Supreme Court of California, for example, recently canvassed the positions of other states with regard to this issue and determined the national trend rejects as the date of accrual the time when the original accident occurs.

People's Department of Transportation v. Superior Court, 26 Cal.3d 744, 751-52, 162 Cal. Reptr. 585, 590, 608 P.2d 673, 677-80 (1980).[4] As a result, the California court also held that a cause of action for contribution or indemnification "accrues at the time that the defendant pays a judgment or settlement to which he is entitled." Id. 608 P.2d at 676.

CONCLUSION

The Government has failed to establish that any court of the Virgin Islands, or the Third Circuit Court of Appeals, has made a ruling that even incidentally diminishes the continued vitality of Dublin. Finally, the Dublin holding regarding a cause of action for contribution or indemnity is in accord with the majority view. Accordingly, this court having found no basis for disturbing Dublin, the Government's motion for reconsideration will be denied.

~~HENRY L. FEUERZEIG~~
Judge ~~of the~~ Territorial Court

ATTEST:

for: VIOLA E. SMITH
Administrator/Clerk of the Court

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[4] 1 V.I.C. §4 (1967) requires the court to apply the generally accepted common law rule of decision where there is no Virgin Islands law and the Restatements of the law do not control. It is only in "the absence of a clear trend in either direction [that] a . . . court of the Virgin Islands may apply the 'better rule'." Edwards v. Born, Inc., 792 F.2d 387, 390 (3d Cir. 1986).