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

DELORIS D. VELASQUEZ, Individually and as Next Friend of Kaleema Allen, Plaintiff, v. UNITED CORPORATION, Defendant.	CASE NO. SX-16-CV-043 ACTION FOR DAMAGES
UNITED CORPORATION, Third Party Plaintiff, v. ABED ALDALIE, Third Party Defendant.	

MEMORANDUM OPINION and ORDER DENYING RECONSIDERATION and INTERLOCUTORY APPEAL

THIS MATTER comes before the Court on United's fully briefed Motion for Reconsideration and, Alternatively, to Amend Order to Certify Issue for Interlocutory Appeal, filed October 23, 2018. For the reasons stated herein, United's Motion will be DENIED.

STANDARD OF REVIEW

Reconsideration

Motions for reconsideration of interlocutory orders are governed by V.I. R. Civ. P. 6-4, as follows:

> (b) Grounds. A motion to reconsider shall be based on:
> (1) intervening change in controlling law;
> (2) availability of new evidence;
> (3) the need to correct clear error of law; or
> (4) failure of the court to address an issue specifically raised prior to the court's ruling.
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> Where ground (4) is relied upon, a party must specifically point out in the motion for reconsideration wherein the record of the proceedings the particular issue was actually raised before the court.

"Generally, '[a] motion for reconsideration is not a second bite of the apple...[Instead, it serves] to focus the parties on the original pleadings as the "main event" and to prevent parties from filing a second motion with the hindsight of the [C]ourt's analysis covering issues that should have been raised in the first set of motions.'" *Smith v. Law Offices of Karin A. Bentz, P.C.*, 2018 V.I. LEXIS 13, at *13 (V.I. Super. 2018) (citing *In re Infant Sherman*, 49 V.I. 452, 457 (V.I. 2008)). Relief through such a motion is "an extraordinary remedy" that should be used sparingly. *See Daybreak, Inc. v. Friedberg*, 2018 V.I. LEXIS 84, at *4 (V.I. Super. 2018) (citing *Smith*, 2018 V.I. LEXIS 13, at *15. "The purpose of motions to reconsider is to allow a court to correct its own errors, sparing parties and appellate courts the burden of unnecessary proceedings." *People of the V.I. v. Clark*, 54 V.I. 154, 156 (V.I. Super. 2010) (citing *Charles v. Daley*, 799 F.2d 343, 348 (7th Cir.1986). A party moving for reconsideration has a "heavy burden to establish an error sufficiently serious to merit amendment." *Id.* (citing *United States v. Petersen*, 2009 U.S. Dist. LEXIS 28228, at *4 (D.V.I. 2009)).

Interlocutory appeal

Under 4 V.I.C. §33(c), the Supreme Court has jurisdiction to hear appeals in civil cases of interlocutory orders that involve, in the trial court's opinion, a controlling question of law as to which there is substantial ground for difference of opinion, and where an immediate appeal from the order may materially advance the ultimate termination of litigation.

The Supreme Court has noted that the language of 4 V.I.C. § 33(c) is identical to that of 28 U.S.C. § 1292(b) and that "Both federal and territorial statutes assign consideration of civil interlocutory appeals to the discretion or opinion of the trial judge." *In re Le Blanc*, 49 V.I. 508, 522-523 (V.I. 2008). "Several courts interpreting 28 U.S.C. § 1292(b) have determined that a 'controlling question of law' is one that involves a 'pure' question of law or 'abstract legal issues' and not a court's application of established legal standards to facts of a case." *Samuel v. United Corp.*, 2015 V.I. LEXIS 19, at *2 (V.I. Super. 2015) (citations omitted). In addition, "matters such as pretrial rulings on the admissibility of evidence and matters entrusted to the [trial] court's discretion are not ordinarily certifiable." *Id.* at *3 (citation omitted).

DISCUSSION

Reconsideration

Although United's Motion does not reference Rule 6-4, the provisions therein apply. There is no allegation of an intervening change of controlling law or discovery of new evidence, and therefore no basis for reconsideration under Rules 6-4(b)(1) or 6-4(b)(2). "When assessing a motion for reconsideration based on the need to correct clear error of law" under Rule 6-4(b)(3), "the court may grant the motion when its prior decision applied an incorrect legal precept or failed to conduct proper legal analysis using the correct legal precept." *Smith*, 2018 V.I. LEXIS 13, at *15. United argues that the Court's analysis of 5 V.I.C. §1451(d) and 20 V.I.C. §555 as applied to this case did not consider that "United's responsibility to Plaintiff under §1451(d) is significantly impacted by whether and to the extent the non-economic damages recoverable by Plaintiffs are limited to $100,000.00 under 20 V.I.C. §555."

United contends that the Court "cannot know to what extent United owes several liability for its degree of negligence (not subject to the damage cap under the Court's ruling), nor to what extent United owes joint liability for the driver's degree of negligence (subject to the cap)." United argues that language of 20 V.I.C. §555(a) that "the total amount recoverable for non-economic damages for any injury to a person in an action arising out of a motor vehicle accident may not exceed $100,000" is a limitation on the amount of money that a plaintiff may be awarded at trial.

The Court finds that the words "total amount recoverable" must be interpreted here not as a limitation on Plaintiff's recovery in her premises liability action, but rather as a limitation to $100,000 on the total amount recoverable from the vehicle operator in "an action arising out of a motor vehicle accident." As applied here, because United's potential obligation to Plaintiff, if deemed liable at trial, is not subject to reduction under either 5 V.I.C. §1451(d) or under 20 V.I.C. §555(a), United is unaffected by any subsequent apportionment of fault between it and Third-Party Defendant Aldalie and any cap that may apply to Aldalie under §555(a).

This interpretation that "total amount recoverable" does not limit a plaintiff's recovery, but rather caps a vehicle operator's responsibility, finds support in the fact that the statute's "limitation shall not apply upon a finding of gross negligence or willful conduct." The statutory limitation focuses not on the injured plaintiff, but rather on the culpability of the conduct of the operator, such that not a plaintiff's recovery, but only the amount that a defendant operator will be required to pay-out in an action arising out of a motor vehicle accident is capped, unless the operator is grossly negligent or acts willfully.

The legislative intent behind the adoption of 20 V.I.C. §555 further supports this interpretation. "The law was enacted at the same time that the Legislature enacted compulsory automobile insurance. It is evident to the Court that the law was enacted in order to ensure that there would be sufficient motor vehicle insurance capacity in the Virgin Islands…The Legislature's intent was to protect insurance carriers as well as operators and owners of motor vehicles from non-economic damages in excess of $75,000."[1] *Owens v. V.I. Misc. Servs.*, 2005 V.I. LEXIS 17, at *6-7 (V.I. Super. 2005). By adopting §555, "the Legislature [intended] to attempt to keep coverage plentiful and affordable by capping the amount of non-economic damages recoverable in personal injury actions" arising from motor vehicle accidents. *Balboni v. Ranger Am. of the V.I., Inc.*, 2018 V.I. LEXIS 4, at *15 (V.I. Super. 2018).[2] In addressing a constitutional challenge to §555, the Superior Court in *Balboni* also recognized that the statute, "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." *Id.* Here, had Plaintiff brought an action against Aldalie as the operator of the vehicle that struck her, if successful, her recovery for non-economic damages from Aldalie would have been limited by the statutory cap that does not apply to her premises liability claim against United.

United argues that the Court's interpretation of 5 V.I.C. §1451(d) and 20 V.I.C. §555 will result in manifest injustice. The standard under Rule 6-4(b)(3) does not include "manifest injustice" as an alternative ground for reconsideration, as was the case under the previous standard, LRCi 7.3. The Advisory Committee on Rules comment to Rule 6-4 refers to Supreme Court precedent prior to the adoption of the V.I. Rules of Civil Procedure noting manifest injustice as a ground for reconsideration. Because the Supreme Court has indicated that the Advisory Committee comments may have substantive significance,[3] the Court will address United's manifest injustice argument.

The gist of United's argument is to the effect that it will suffer manifest injustice if the jury in the primary action does not apportion fault between premises owner United and vehicle operator Aldalie, because Plaintiff's recovery against Aldalie for non-economic damages is capped per

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[1] The §555(a) cap was increased from $75,000 to $100,000 in 2008 by Act No. 6998.

[2] The *Balboni* court expounded further: "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 insurance premiums and coverage availability in general." 2018 V.I. LEXIS 4, at *14-15.

[3] *See Mills-Williams v. Mapp*, 67 V.I. 574, 585 (2017).

§555(a). Therefore, if Aldalie's percentage of fault is not determined in the initial trial, United might be required to pay damages that Plaintiff is not entitled to recover. For the reasons noted above, any recovery to Plaintiff in her trial against United is not subject to the §555(a) cap, and therefore the potential applicability of a cap against non-economic damages that might be recoverable from Aldalie has no bearing on Plaintiff's premises liability claims against United.

United's present arguments largely repeat those presented in United's opposition to severance. Manifest injustice must amount to more than "mere disagreement with the Court's interpretation" of the law. *In re Estate of Melchior*, 2012 V.I. LEXIS 73, at *9 (V.I. Super. 2012) (citing *Bostic v. AT&T of the V.I.*, 45 V.I. 553, 559 (D.V.I. 2004). *See also Smith v. City of Chester*, 155 F.R.D. 95, 97 (E.D.Pa. 1994) (clear error or manifest injustice does not exist where a litigant merely disagrees with the court). In the context of a motion to reconsider, manifest injustice generally means that "the Court overlooked some dispositive factual or legal matter that was presented to it." *Greene v. V.I. Water & Power Auth.*, 2012 WL 4755061, at *2 (D.V.I. 2012) (quoting *In re Rose*, 2007 U.S. Dist. LEXIS 64622, at *3 (D.N.J. 2007)). United's previously presented arguments setting forth its disagreement with the Court's interpretations of 5 V.I.C. §1451(d) and 20 V.I.C. §555(a) and its dissatisfaction with the fact that it may not take advantage of the §555(a) cap designed to limit awards against vehicle operators in actions arising from motor vehicle accidents do not constitute manifest injustice.

United also argues that the Court should reconsider its ruling that 5 V.I.C. §1451(d) "has the same meaning" as 20 V.I.C. §555(a) because "it is clear that the Legislature used broader language in enacting §1451 than it used in enacting §555." Motions for reconsideration cannot be used as "a vehicle for registering disagreement with the court's initial decision, for rearguing matters already addressed by the court, or for raising arguments that could have been raised before but were not." *Bostic,* 45 V.I. at 557. The Court has already addressed the interpretation of both the statutes at length. Nothing presented here is new information not previously considered, or arguments that could not have been raised before.

United has not demonstrated any basis for reconsideration, but rather asserts its disagreement with the Court's October 10, 2018 ruling; challenges certain statutory interpretations of the Court; and raises the same arguments that the Court previously found unpersuasive. As such, United's Motion for Reconsideration will be denied.

Interlocutory Appeal

In the alternative, United requests interlocutory appellate review of "the critical question of apportionment" of damages. The issues disputed herein of severance and apportionment of damages between tortfeasors can only be determined by an involved fact-intensive inquiry and cannot be interpreted as a "pure question of law that the Supreme Court could decide quickly and cleanly without having to study the record."[4] United's Motion takes issue with the Court's interpretation and application of 5 V.I.C. §1451(d) and 20 V.I.C. §555(a), not a controlling question of law. Further, the immediate appeal of the severance order will not materially advance the ultimate termination of the litigation, required for certification under 4 V.I.C. § 33(c). On the basis of the foregoing, it is hereby

ORDERED that United's Motion for Reconsideration and, Alternatively, to Amend Order to Certify Issue for Interlocutory Appeal is DENIED;

Dated: November 16, 2018.

DOUGLAS A. BRADY, JUDGE

ATTEST:
ESTRELLA GEORGE
Clerk of the Court

By: 11/16/18
Court Clerk Supervisor

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[4] *Samuel, 2015 V.I. LEXIS 19, at *3* (citation omitted).