COMMITTEE ON RULES AND JUDICIARY

BILL NO. 35-0197

Thirty-Fifth Legislature of the Virgin Islands

November 13, 2023

An Act amending title 22 Virgin Islands Code, chapter 33 relating to insurance contracts, by adding section 847 to give an injured party direct standing to sue an insurer instead of, or in addition to, the insured tortfeasor

PROPOSED BY: Senator Marise C. James

WHEREAS, Virgin Islands common law does not currently recognize a direct action by an injured party against a liability insurer. For example, an injured party may not, under current Virgin Islands law, bring a direct action against an insurer when good-faith efforts to serve process on the insured are unsuccessful; and

WHEREAS, the Supreme Court of the Virgin Islands has not authoritatively decided whether the common law of the Virgin Islands will recognize such a direct right of action; and

WHEREAS, it is the intent of the Legislature of the Virgin Islands to pass legislation to permit a direct action against an insurer for the protection of Virgin Islands residents and to clarify Virgin Islands law; and

WHEREAS, several states and territories have enacted direct action statutes, including Alabama, Arkansas, Connecticut, Georgia, Guam, Iowa, Kansas, Louisiana, Minnesota, Nebraska, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, and Wisconsin to protect the injured person from having no remedy against an insurer, forcing those injured persons to go to the Government for assistance instead of having a remedy in court from the wrongdoer and the wrongdoer's insurance company; and

WHEREAS, this direct action legislation establishes a firm public policy that an injured person should be afforded a mechanism to access an insured's liability policy and guard against the risk that the injured person's right of recovery will be frustrated or denied because the insured is bankrupt, not amenable to service of process, immune from suit, deceased, or fled the Virgin Islands or even fled the United States and is avoiding service of process; and

WHEREAS, this direct action legislation does not create an independent cause of action against the insurer but grants a procedural right of action against the insurer where the plaintiff has a substantive cause of action against the insured, but the insured cannot be sued due to some procedural fault; Now, therefore,

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 22 Virgin Islands Code, chapter 33 is amended by adding section 847 to read as follows:

"**§ 847. Direct action against liability insurer.**

On any bond or policy of insurance covering liability to others for negligence, a person sustaining damages or loss, or the person's heirs or representatives, has the right of direct action against the insurer and reinsurer within the coverage terms and limits of the bond or policy, whether or not the bond or policy of insurance was written or delivered in the Territory of the Virgin Islands, and whether or not such policy contains a provision forbidding such direct action, irrespective of whether the liability is presently established or is contingent and to become fixed or certain by final judgment against the insured, provided that the cause of action arose in the Territory of the Virgin Islands, or under the Virgin Islands long arm statute 5 V.I.C. § 4903. Such action may be brought against the insurer alone or against both the insured and insurer. This section is intended to be remedial and curative, and thus applied retroactively."

BILL SUMMARY

This bill enacts section 847 of chapter 33, title 22, Virgin Islands Code, and gives an injured party direct standing to sue an insurer of a policy covering liability to others for negligence instead of, or in addition to, the insured tortfeasor. This provision protects an injured person from having no remedy, which may cause those injured persons to rely upon the Government for assistance despite an existing applicable insurance policy.

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