

FILED

March 14, 2023 09:33 AM
SCT-Civ-2022-0110
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

IN THE SUPREME COURT OF THE VIRGIN ISLANDS
SCT-CIV-2022-0110

**GOVERNMENT OF THE VIRGIN ISLANDS, MARK LONSKI, AND
PROPERTYKING, INC.,
Appellants/Defendants,
v.
ELVIS GEORGE,
Appellee/Plaintiff**

ON APPEAL FROM THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
CIVIL NO. ST-2021-CV-00079

APPELLANT GOVERNMENT OF THE VIRGIN ISLANDS' BRIEF

CAROL THOMAS-JACOBS, Esq.
Acting Attorney General

PAMELA R. TEPPER, Esq.
Solicitor General

By: /s/ Tracy Myers
TRACY MYERS, Esq.
V.I. Bar No. 1149
Assistant Attorney General
Department of Justice
34-38 Kronprindsens Gade
GERS Complex, 2nd Floor
St. Thomas, VI 00802
Telephone: (340) 774-5666
Fax: (340) 777-9848
Tracy.Myers@doj.vi.gov

TABLE OF CONTENTS

VOLUME I OF I

	<u>Page No.</u>
1. Notice of Appeal	1
a. Exhibit 1: November 14, 2022, Order	5
b. Exhibit 2: August 5, 2022, Motion for Leave to Intervene.....	12
2. 24 V.I.C. § 263	18
3. 2002 V.I. Bill 248	26
4. Certified Docket Sheet	38
5. February 12, 2021, Complaint	44
6. March 8, 2021, Answer.....	49
7. October 19, 2021, Notice of Production.....	56
8. November 2, 2021, Notice of Production.....	59
9. February 10, 2022, Notice of Final Lien	61
10. February 14, 2022, Notice of Production	62
11. April 4, 2022, Informational Notice.....	64
a. April 4, 2022, Informational Notice – Exhibit A.....	67
12. April 8, 2022, Notice of Mediation	68
13. July 29, 2022, Motion to Interplead.....	70
a. Mediated Settlement Agreement	75
b. Affidavit of Julie German Evert, Esquire	77
14. August 3, 2022, Joinder of Motion to Interplead.....	84
15. August 4, 2022, Order	87

16. August 5, 2022, GVI’s Motion for Leave to Intervene	89
17. August 5, 2022, Proposed Complaint in Intervention	94
a. August 5, 2022, Affidavit of Rainia Thomas	100
18. August 5, 2022, GVI’s Notice of Claim of Right to Settlement Proceeds ...	102
19. September 19, 2022, Plaintiff’s Request for Hearing	106
a. Exhibit A: Workers’ Compensation Notice	115
b. Exhibit B: Final Lien Notice	117
c. Exhibit C: Proposed Settlement Breakdown	119
20. September 21, 2022, GVI’s Reply	127
21. September 23, 2022, Defendant’s Response	135
22. September 29, 2022, Plaintiff’s Reply to Request for Hearing	139
23. October 3, 2022, GVI’s Motion to Strike or Object	146
24. November 9, 2022, Record of Proceedings	152
25. November 9, 2022, Transcript of Hearing on All Pending Motions	154
26. November 14, 2022, Order	256
27. December 2, 2022, GVI’s Motion for Stay of Judgment.....	263
28. December 6, 2022, Plaintiff’s Motion to Join.....	284
29. December 6, 2022, Defendant's Opposition to Motion to Stay.....	286
30. December 12, 2022, GVI’s Reply	289
31. January 5, 2023, Order	294
32. March 8, 2023, Superior Court eRecord (with Nov. 9, 2022, transcript, docket sheet, and the Nov. 14, 2022, order)	296

FILED

December 06, 2022 02:25 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

FILED

December 05, 2022 06:09 PM

SCT-Civ-2022-0110
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

ELVIS GEORGE,
Plaintiff,

v.

**MARK LONKSI and PROPERTY
KING, INC.,**
Defendants.

SCT-CIV-2022-_____

Re: ST-2021-CV-00079

NOTICE OF APPEAL

The Government of the Virgin Islands, on behalf of the Department of Labor – Workmen’s Compensation Division, by and through the undersigned Assistant Attorney General Tracy Myers, appeals the November 14, 2022, Order entered by the Superior Court of the Virgin Islands in case number ST-2020-CR-00003 which denied the Government’s August 5, 2022, Motion for Leave to Intervene and ordered the Government to execute a General Release associated with the matter. *See*, Exhibits 1 and 2. This appeal is filed pursuant to title 4 of the Virgin Islands Code section 33(a) and Virgin Islands Rule of Appellate Procedure Rule 5(a)(2) because “the denial of a motion to intervene in a final, appealable order.” *Anthony v. Indep. Ins. Advisors, Inc.*, 56 V.I. 516, 524 (2012) (quoting *United States v. Alcan Aluminum, Inc.*, 25 F.3d 1174, 1179 (3d Cir. 1994)). The order appealed was issued on November 14, 2022, and thus the Notice of Appeal is timely under V.I. R. APP.

P. Rules 4(a) and 5(a)(1). The Government seeks review and reversal of the Superior Court's November 14, 2022, Order.

The appeal will address the following issues:

1. Whether the Superior Court erred and/or abused its discretion when it denied the Government's August 5, 2022, Motion for Leave to Intervene under 24 V.I.C. § 263, which guarantees that: the Government must be joined as a party in any action involving an injured workman or employee or his beneficiaries entitled to Workmen's Compensation; the Government must agree to any compromise in such an action; or the injured party must acknowledge that all sums due the Government are secured by any recovery;
2. Whether the Superior Court erred and/or abused its discretion in ordering the Government to execute a General release associated with the matter when under 24 V.I.C. § 263, only the Government may compromise its right against third parties entitled to Workmen's Compensation;
3. Whether the November 14, 2022, violates the separation of powers principles inherent in the Revised Organic Act; and
4. Whether the Superior Court violated the clear and unambiguous language of 24 V.I.C. § 263 – which grants first priority of recovery to

the Government – when it ordered the Cashier of the Superior Court to release recovery funds to Plaintiff’s counsel before ensuring that all sums due the Government are secured.

Respectfully submitted,

DENISE GEORGE, ESQ.
Attorney General

PAMELA TEPPER, ESQ.
Solicitor General

Date: December 5, 2022

BY: /s/ Tracy Myers
Tracy Myers, Esq.
Assistant Attorney General
V.I. Department of Justice
34-38 Kronprindsens Gade
GERS Building, 2nd Fl.
St. Thomas, USVI 00802

CERTIFICATE OF SERVICE

It is hereby certified that on or before December 5, 2022, pursuant to V.I. R. APP. P. 4(d) and (f), a true copy of the foregoing Notice of Appeal was filed with the Supreme Court of the Virgin Islands by using the VIJEFS system and served on the following persons via first-class, certified mail:

/s/ Tracy Myers

Honorable Sigrid M. Tejo
Superior Court Judge
Superior Court of the Virgin Islands
Alexander A. Farrelly Justice Complex
P.O. Box 70
St. Thomas, VI 00804

Julie German Evert, Esq.
Law Office of Julie German Evert
5034 Norre Gade, Suite 6
St. Thomas, VI 00802
Counsel for Plaintiff Elvis George

James L. Hymes, III, Esq.
Law Office of James L. Hymes, III, PC
P.O. Box 990
St. Thomas, VI 00804-0990
Counsel for Mark Lonski and Property King, Inc.

Courtesy Copy:
Venetia Velazquez
V.I. Department of Justice
34-38 Kronprindsens Gade
GERS Building, 2nd Fl.
St. Thomas, VI 00802

FILED

December 05, 2022 06:09 PM

SCT-Civ-2022-0110
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

Exhibit 1

November 14, 2022

Order

FILED

November 14, 2022 04:14 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,

Plaintiff,

vs.

MARK LONSKI and PROPERTY KING,

Defendants.

)
) **Case No.: ST-21-CV-00079**
)
)
)
)
)
)
)
)
)

ORDER

THIS MATTER came before the Court for a hearing on all pending motions on November 9, 2022. Plaintiff appeared and was represented by Attorney Julie German Evert, Esquire. Defendants were presented by Attorney James L. Hymes, III. The Department of Labor was presented by Attorney Venetia H. Velazquez. Pending before the Court are the following:

1. Motion for Leave to Intervene filed August 5, 2022, by the Government of the Virgin Islands;
2. Plaintiff's Request for Hearing to Determine Disbursement of Settlement Proceeds filed September 19, 2022;
3. Government's Reply to Plaintiff's Request for Hearing to Determine Disbursement of Settlement Proceeds filed in Opposition to the Government's Motion to Intervene and Notice of Claim of Right to those Funds filed September 21, 2022;
4. Defendants' Response to Motion to Intervene filed September 23, 2022;
5. Plaintiff's Reply to Government's Reply to Plaintiff's Request for Hearing to Determine Disbursement of Settlement Proceeds filed in Opposition to the Government's Motion to Intervene and Notice of Claim of Right to those Funds filed September 29, 2022; and
6. Government's Motion to Strike and, Alternatively Objection to Plaintiff's Surreply filed without Leave of Court filed October 3, 2022.

BACKGROUND

On February 12, 2021, Plaintiff filed a Complaint for an action for damages against Defendant for injuries he sustained as the result of an accident involving Defendants on July 14, 2020. Plaintiff's injuries occurred while he was employed and working at the St. John Waste Management (WMA) facility in St. John. WMA referred Plaintiff to the Department of Labor Workers' Compensation Administration (WCA) to ensure payment of Plaintiff's claims and related payments. Plaintiff had never been contacted by the Department of Labor to institute an action to recover payments made to Plaintiff for his injuries.

On or about January 18, 2022, Plaintiff's counsel contacted the WCA to receive information pertaining to any lien that the Department of Labor may have regarding payments associated with Plaintiff's injuries. By letter dated February 10, 2022, WCA informed Plaintiff's counsel that the WCA had expended Sixty-One Thousand Two Hundred Five Dollars and Twenty-Seven Cents (\$61,205.27). The letter further advised counsel to "submit the General Release along with \$5.00 for the Notary Public ... when a settlement agreement in this case has been effectuated."

Sometime in July 2022, Plaintiff's counsel had a telephone conversation with Commissioner Molloy, Assistant Commissioner/Legal Counsel Attorney Nesha R.Christian-Hendrickson, and Ms. Rainia Thomas. Attorney Christian-Hendrickson and Ms. Thomas were present but did not participate in the conversation. There appears to be a disagreement as to the ultimate resolution of the meeting, but it was undisputed that during the meeting, the Commissioner was informed of the possibility of the matter settling and that Plaintiff's counsel was seeking reimbursement for her attorney's fees and expenses. The Department of Labor disputes that there was an agreement regarding payment of attorney's fees. However, it appears there have been occasions when WCA has accepted settlement payments less the associated attorney's fees and expenses.

On August 5, 2022, the Government filed a Motion to Intervene as a matter of right pursuant to V.I.R. Civ. P. 24 because the "Government has a right pursuant to statutory law to recoup monies expended on Workmen's Compensation claims, before a party may compromise or distribute proceeds from a third party for injuries arising from workplace injuries for which Government has expended or paid out funds."

On September 1, 2022, Plaintiff's counsel sent a letter to Assistant Commissioner/ Legal Counsel Christian-Hendrickson indicating the matter had settled for \$17,500.00 and less her attorney's fees and expenses, the total amount due WCA would be \$10,462.67. Enclosed with the letter was a release required by Defendants. No one from the Department of Labor responded to the letter and it is the position of the Department of Labor that it is entitled to the entire settlement proceeds to be paid back into the Government Insurance Funds.

ANALYSIS

A. THE GOVERNMENT'S MOTION TO INTERVENE IS DENIED AS UNTIMELY

Plaintiff sustained his injuries on July 14, 2020, while working at the St. John Waste Management office. Plaintiff was referred to the WCA to seek payment for his medical bills and expenses. While there is not record as to when those payments began, it clear that payments began before February 10, 2022. At no time between July 14, 2020, and February 10, 2022, did the Department of Labor institute legal action against Defendants to recover money to repay the Government Insurance Fund. It was not until after a telephone conversation between the Commissioner of Labor and Plaintiff's counsel in July 2022, that the Department of Labor then decided to take part in this proceeding.

It is clear from the record that on February 2, 2022, the Department of Labor was sent a letter from Plaintiff's counsel requesting a final WCA lien. The WCA responded by letter dated February 10, 2022. Additionally, Ms. Petersen, the Assistant Director: Worker's Compensation Administration, was copied on a letter dated April 7, 2022, that the matter was scheduled for mediation on May 26, 2022. From the information before the Court, the Department of Labor neither attended the mediation nor initiated any action to stop or intervene in the mediation.

Title 24 V.I.C. § 263, in relevant part, provides that "when an injured workman or employee, or his beneficiaries in case of death, may be entitled to institute an action for damages against a third person in cases where the Government Insurance Fund, in accordance with the terms of this chapter, is obliged to compensate in any manner or to furnish treatment, the **Administrator shall subrogate himself to the rights of the workman or employee or of his beneficiaries, and**

may institute proceedings against such third person in the name of the injured workman or employee or of his beneficiaries, within two years following the date of the injury, and any sum which as a result of the action, or by virtue of a judicial compromise, may be obtained in excess of the expenses incurred in the case shall be delivered to the injured workman or employee or to his beneficiaries entitled thereto¹. (Emphasis added.)

While the exact date when the Department of Labor became aware of Plaintiff's injury is not part of the record, the record is clear that Plaintiff reported his injury to the WCA and began receiving compensation. It is also clear that at no time did the Department of Labor institute proceedings on behalf of the Plaintiff following his reporting of his injury. It is further clear from the record that two years have passed since Plaintiff's injuries. The Department of Labor, while on notice of not only Plaintiff's injury, but this pending matter did nothing to subrogate its' claim until August 5, 2022, more than two years after Plaintiff's injury.

The Court finds that the Department of Labor's attempt to intervene is untimely and denied.

B. THE COURT FINDS THAT GIVEN THE CIRCUMSTANCES IN THIS MATTER, EQUITY REQUIRES THE COURT DISBURSE THE MONEY TO BOTH THE DEPARTMENT OF LABOR AND PLAINTIFF'S COUNSEL

Title 24 V.I.C. § 263 states that an injured government employee can neither institute an action nor compromise the right of action without the assent and participation of the Commissioner of Labor, and the statute as a whole contemplates that all parties to a suit to recover damages for an injured employee may compromise their claims in aid of settlement, as long as each party expressly consents to the compromise². The issue that remains before the Court is did the Commissioner in the telephone conversation in July 2022, result in an agreement that the Department of Labor would accept the settlement proceeds less Plaintiff's counsel's attorney's fees and expenses.

¹ Title 24 V.I.C. § 263.

² Jennings v. Richards, 31 V.I. 188, 1995 V.I. LEXIS 1 (V.I. Terr. Ct. 1995).

The testimony before the Court, regarding the July 2022 conversation, is that the Commissioner of Labor advised Plaintiff's counsel that he was required to follow the Virgin Islands Code as it pertains to these matters and during his tenure, he has never agreed to accept a settlement less attorney's fees and expenses. The Assistant Commissioner further added there was no agreement. Ms. Thomas added that she is familiar with Attorneys Holt and Rohn and in the past, in similar matters, have accepted settlements, less their attorney's fees and expenses. Additionally, there is a September 1, 2022, letter sent to the Assistant Commissioner/Legal Counsel regarding the settlement and disbursement of proceeds. The letter also included a proposed release. The letter was never responded to by the Department of Labor.

The settlement proposed by Plaintiff would result in the WCA and the Government Insurance Fund receiving Ten Thousand Four Hundred Sixty-Two Dollars and Sixty-Seven Cents (\$10,462.67), Four Hundred Dollars (\$400.00) more than if the WCA had initiated an action against Defendants. While it is the policy of the Commissioner to ensure that the Government Insurance Fund is reimbursed for all funds expended so that the funds are available for other recipients, this is situation where the Department of Labor, but for Plaintiff's action, would not have received any compensation to replace in the Fund. The Court further finds that the Commissioner is vested with the discretionary authority to enter into compromise agreements without violating the Code, and in fact, it is the practice and procedure of many Government agencies to do so, in order to collect monies that it due, i.e. property tax amnesties and income tax extensions, to name a few.

Accordingly, the Court finds, that in this matter, and this matter only, the decision of this Court is specific to these facts and circumstances and are not binding on any future WCA actions³, it is hereby

ORDERED that the Department of Labor and/or the Worker's Compensation Administration execute the General Release associated with this matter no later than November 21, 2022; and it is further

ORDERED that the Cashier of the Superior Court shall release to Plaintiff's counsel, from the funds deposited by Defendants on August 9, 2022, the sum of Six Thousand Thirty-Seven

³ The Court notes that perhaps, in an abundance of caution, the Department of Labor and/or WCA should be the legal community on notice that this past practice and procedure will no longer be recognized by the Department.

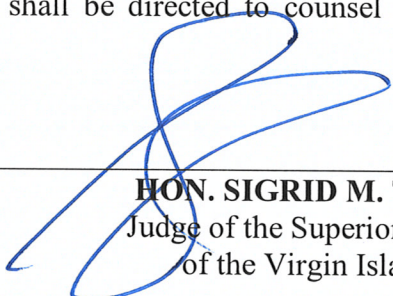
Dollars and Thirty-Three Cents (\$6,037.33) as and for attorney's fees and expenses; and it is further

ORDERED that the Cashier of the Superior Court release the remaining Ten Thousand Four Hundred Sixty-Two Dollars and Sixty-Seven Cents (\$10,462.67) to the Department of Labor, Worker's Compensation Administration to be placed back into the Government Insurance Fund; and it is further

ORDERED that the Government's Motion to Strike Surreply is DENIED⁴; and it is further

ORDERED that a copy of this Order shall be directed to counsel of record and the Department of Labor.

Dated: November 14, 2022.



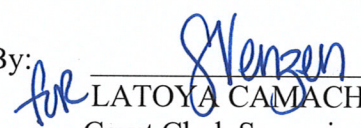
HON. SIGRID M. TEJO
Judge of the Superior Court
of the Virgin Islands

ATTEST:

TAMARA CHARLES

Clerk of the Court ____/____/____

By:



LATOYA CAMACHO
Court Clerk Supervisor 11 / 14 / 2022

⁴ Plaintiff filed a request for Hearing to which the Government replied, and Plaintiff replied which is permitted under the Rules of Civil Procedure. Therefore, it is not a surreply needing leave of Court to be filed.

FILED

December 05, 2022 06:09 PM

SCT-Civ-2022-0110
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

Exhibit 2

August 5, 2022

Motion for Leave to Intervene

FILED

August 05, 2022 09:36 AM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,)	
)	
Plaintiff,	)	CIVIL NO. ST-21-CV-00079
)	
v.	)	ACTION FOR DAMAGES
)	
MARK LONSKI and)	
PROPERTY KING, Inc.,	)	JURY TRIAL DEMANDED
)	
Defendants.)	
_____)	

MOTION FOR LEAVE TO INTERVENE

COMES NOW the **GOVERNMENT OF THE VIRGIN ISLANDS** (“Government”, by and through undersigned counsel and pursuant to V.I. R. Civ. P. 24, hereby files this Motion to Intervene, as a matter of right, as a party Plaintiff in the above-captioned matter. Pursuant to V.I.R. Civ. P. 24, the Government may intervene in this matter, as a matter of right, as the Government has a right pursuant statutory law to recoup monies expended on Workmen’s Compensation claims, before a party may compromise or distribute any proceeds from a third party for injuries arising from workplace injuries for which the Government has expended or paid out funds.

SUMMARY OF FACTS

1. This case was brought by Plaintiff to recover damages from his employer, related to workplace injuries, occurring on or about July 14, 2020. *See* Complaint.
2. The Government of the Virgin Islands, through the Workmen’s Compensation Division, has expended in excess of \$61,000 for Plaintiff’s care arising from his workplace injury. *See* Exh. A (Affidavit of Rainia Thomas); Exh. B (Lien and Notice of Lien).
3. The Workmen’s Compensation Division has filed a lien for the funds expended, in accordance with applicable law. *See* Exhs. A, B; see also 24 V.I.C. § 263.

4. The parties in this case have entered into a settlement agreement, to provide approximately \$17,000 to plaintiff as compensation for his workplace injury, through a third party. *See* Pl's Mot. to Interplead "Settlement Funds" and Proposed Order, dated July 29, 2022 and Def's Joinder of Mot. to Interplead, dated August 3, 2022.

5. The Government is not a party to that agreement, and no release has been presented to the Workmen's Compensation Division. *See* Exhs. A, B.

6. On or about July 29 and August 3, 2022, the parties filed a "Motion to Interplead Settlement Funds," and Joinder thereto, asking the Court to deposit the settlement proceeds into its registry; the parties have not moved to interplead the Government. *See* Pl's Mot. to Interplead "Settlement Funds" and Proposed Order, dated July 29, 2022 and Def's Joinder of Mot. to Interplead, dated August 3, 2022.

DISCUSSION

MOVANT IS ENTITLED TO INTERVENE AS A MATTER OF RIGHT.

V.I.R. Civ. P. 24 provides that a party may intervene by motion, as a matter of right, as follows:

On timely motion, the court must permit anyone to intervene who:

- (1) is given an unconditional right to intervene by a federal or Virgin Islands statute; or
- (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

V.I.R. Civ. P. 24(a). In sum, intervention is as of right where "an intervenor has an interest in the litigation that cannot be protected without joining the litigation." *See Underwood v. Streibich*, No. ST-95-CV-459, 2019 V.I. LEXIS 15, at *2-3 (Super. Ct. Feb. 15, 2019). The rule further provides for "permissive intervention" upon timely motion, of anyone who "is given a conditional right to

intervene by a federal or Virgin Islands statute”; or who “has a claim or defense that shares with the main action a common question of law or fact.” V.I.R. Civ. P. 24 (b)(1).

Moreover, it is well-settled that “liberal intervention is desirable to dispose of as much of a controversy ‘involving as many apparently concerned persons as is compatible with efficiency and due process.’” *Feller v. Brock*, 802F.2d 722, 729 (4th Cir. 1986) (quoting *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967)). The Government has a right to intervene in this action and, further satisfies the standard for permissible intervention.

This jurisdiction has adopted the Third Circuit’s test for determining whether intervention as a matter of right is appropriate, as follows: 1.) the application for intervention is timely; 2.) the applicant has a sufficient interest in the litigation; 3.) the interest may be affected or impaired, as a practical matter by the disposition of the action, and; 4.) the interest is not adequately represented by an existing party in the litigation. *Underwood v. Streibich*, No. ST-95-CV-459, 2019 V.I. LEXIS 15, at *3, n. 7 (Super. Ct. Feb. 15, 2019) (quoting *Anthony v. Indep. Ins. Advisors, Inc.*, 56 V.I. 516, 526 (V.I. 2012)).

Here, the Government timely moves for intervention and has a sufficient interest in the litigation, as a matter of law. Title 24, Section 263 expressly provides that:

The injured workman or employee or his beneficiaries **may not institute any action, nor may compromise any right of action they may have against the third person responsible for the damages, unless the Administrator is a party to the action or agrees to the compromise**, but the failure to join the Administrator shall not deprive the courts of jurisdiction over the claim or otherwise result in dismissal of the claim, **so long as the injured worker or employee acknowledges that all sums due the Government Insurance Fund are secured by any recovery.**

No compromise between the injured workman or employee, or his beneficiaries in case of death, and the third person responsible shall be valid or effective in law unless the expenses incurred by the Government Insurance Fund in the case are first paid. No judgment shall be entered in actions of this nature and no compromise whatsoever as to the rights of parties to said actions shall be approved, without making express reserve of the rights of the Government Insurance Fund to reimbursement of all expenses incurred. The clerk of the court taking cognizance of any claim of the above-described nature, shall notify the Administrator of any order entered by the case, as well as the final deposition thereof.

24 V.I.C. § 263. The law required Plaintiff to join the Government as a party OR to acknowledge the duty to repay the Government Insurance fund “all sums due” from any settlement obtained. *See id.* The parties failed to adhere to the statutory requirement to name the Government as a party, to provide actual notice of the pending action and an opportunity to safeguard its interests. That failure is despite the agency’s February 2022 notice of the lien and an express request for submission of a General Release once settlement was reached. See Exh. B. Additionally, the parties failed to present to the Government a settlement agreement and compromise that includes an acknowledgment that the Government is entitled to a refund of all sums paid, despite the lien indicating the government expended more than \$61,000 associated with the within claims. See Exhs. A, B (affidavit; lien).

This complaint was filed just more than one year ago. The parties recently filed a “Motion to Interplead Settlement Funds,” seeking to have the Court accept the settlement funds into its registry and thereafter distribute those funds to the parties, in contravention of Section 263.

Considering the totality of the circumstances, as we must, including the parties’ recent settlement and failure to adhere to the requirements of Section 263, despite notice and the express mandates of the law, and further their recent filing indicating their intent and attempt to circumvent the law, the Government’s motion is also timely. *Underwood*, 2019 V.I. LEXIS 15, at *4, n. 10. The parties further cannot claim they are now prejudiced by being required to adhere to the law; to permit such a claim would allow the parties to benefit from their deliberate disregard of legal mandates. Finally, any delay in filing the instant motion is the result of the parties’ failure to name the Government as a party, to provide actual notice of the suit, and as a result of the recent filings by the parties indicating their intent to deposit and have distributed the proceeds, without reimbursing the Government. Those filings, on or about August 3, 2022, made clear that the Government’s interests are at risk and are “no longer being adequately represented by the current parties.” *Id.* at *4-5.

Without intervention, the Government's interest in recouping its payments for the workplace injuries at issue in this case, and in adhering to statutory mandate to do so, will be substantially impaired.

Respectfully submitted,

DENISE N. GEORGE, ESQ.
ATTORNEY GENERAL

Dated: August 5, 2022

By: /s/ Venetia Harvey Velázquez
Venetia Harvey Velázquez, Esq.
Bar #: 786
Assistant Attorney General
Department of Justice
213 Estate La Reine, RR1 Box 6151
Kingshill, USVI 00850
Tel: (340) 773-0295
Email: venetia.velazquez@doj.vi.gov

CERTIFICATE OF SERVICE

I hereby certify that on this the 5th day of August, 2022, I have caused an exact copy of the foregoing Motion for Leave to Intervene to be served electronically through the C-Track system upon the following counsel of record.

Julie German Evert, Esq.
Law Office of Julie German Evert
5034 Norre Gade, Suite 6
St. Thomas, VI 00802
Email: lawofficesofjulieevert@gmail.com

James L. Hymes, III, Esq.
Law Office of James L. Hymes, III, PC
P. O. Box 990
St. Thomas, VI 00804-0990
Email: jim@hymeslawvi.com;

This document complies with the page or word limitation set forth in Rule 6-1(e).

/s/ Ivelisse Torres



User Name: Tracy Myers

Date and Time: Thursday, March 9, 2023 10:50:00AM AST

Job Number: 192154527

Document (1)

1. 24 V.I.C. § 263

Client/Matter: Research

Search Terms: 24 vic 263

Search Type: Natural Language

24 V.I.C. § 263

Statutes current through Act 8687 of the 2022 session of the 34th Legislature, including all code changes through January 18, 2023

Virgin Islands Code Annotated > TITLE TWENTY-FOUR Labor (Chs. 1 — 20) > Chapter 11. Workers' Compensation Administration (§§ 250 — 292)

§ 263. Liability of third persons; subrogation

In cases where the injury, the occupational disease or the death entitling the workman or employee or his beneficiaries to compensation in accordance with this chapter has been caused under circumstances making third persons responsible for such injury, disease or death, the injured workman or employee or his beneficiaries may claim and recover damages from the third person responsible for said injury, disease, or death within two years following the date of the injury. The Administrator may subrogate himself to the rights of the workman or employee or his beneficiaries to institute the same action in the following manner:

When an injured workman or employee, or his beneficiaries in case of death, may be entitled to institute an action for damages against a third person in cases where the Government Insurance Fund, in accordance with the terms of this chapter, is obliged to compensate in any manner or to furnish treatment, the Administrator shall subrogate himself to the rights of the workman or employee or of his beneficiaries, and may institute proceedings against such third person in the name of the injured workman or employee or of his beneficiaries, within two years following the date of the injury, and any sum which as a result of the action, or by virtue of a judicial compromise, may be obtained in excess of the expenses incurred in the case shall be delivered to the injured workman or employee or to his beneficiaries entitled thereto. The workman or employee or his beneficiaries shall be parties in every proceeding instituted by the Administrator under the provisions of this section, and it shall be the duty of the Administrator to serve written notice on them of such proceedings within five days after the action is instituted.

The injured workman or employee or his beneficiaries may not institute any action, nor may compromise any right of action they may have against the third person responsible for the damages, unless the Administrator is a party to the action or agrees to the compromise, but the failure to join the Administrator shall not deprive the courts of jurisdiction over the claim or otherwise result in dismissal of the claim, so long as the injured worker or employee acknowledges that all sums due the Government Insurance Fund are secured by any recovery.

No compromise between the injured workman or employee, or his beneficiaries in case of death, and the third person responsible shall be valid or effective in law unless the expenses incurred by the Government Insurance Fund in the case are first paid. No judgment shall be entered in actions of this nature and no compromise whatsoever as to the rights of parties to said actions shall be approved, without making express reserve of the rights of the Government Insurance Fund to reimbursement of all expenses incurred. The clerk of the court taking cognizance of any claim of the above-described nature, shall notify the Administrator of any order entered by the case, as well as the final deposition thereof.

The Administrator may compromise as to his rights against a third party responsible for the damages. No such extrajudicial compromise, however, shall affect the rights of the workman or employee, or of his beneficiaries, without their express consent and approval.

Any sum obtained by the Administrator through the means provided in this section shall be covered into the Government Insurance Fund.

History

—Amended Jan. 16, 1975, No. 3662, § 1, Sess. L. 1974, p. 296; June 19, 2002, No. 6529, § 13, Sess. L. 2002, p. 341.

Annotations

Notes

HISTORY

Source.

Based on Ord. Mun. C. St. T. and St. J. app. Mar. 9, 1954 (Bill no. 289), § 15.

Revision notes.

Substituted “Administrator” for “Commissioner” in the second sentence of the first paragraph, in three places in the second paragraph and in the fourth through sixth paragraphs for purposes of conformity with Act No. 6033, § 2(b), Sess. L. 1994, p. 254, in light of the creation of the Workers' Compensation Administration and the transfer of functions pertaining to workers' compensation from Commissioner of Labor to the Administrator of Workers' Compensation Administration by section 2(a) of that act.

Section is entirely rewritten, on advice of the Code Advisory Committee, to provide in greater detail for the liability of third parties and to provide for the subrogation of the Commissioner to the rights of the workman or employee where the government has incurred expenses. The section as so rewritten is patterned after 11 Laws of Puerto Rico Annotated § 32.

Amendments

—2002.

Act 6529, § 13, added the language at the end of the third undesignated paragraph following “compromise.”

—1975.

Amended generally.

Retroactive effect of 1975 amendment.

Act Jan. 16, 1975, No. 3662, § 2, Sess. L. 1974, p. 297, provided:

“The amendments to this section shall have retroactive application to all causes of action occurring before the date of enactment.”

ANNOTATIONS

1.Derivation.

2.Purpose.

3.Common law action.

4.Construction.**5.Third party liability.****6.Recovery by government against third party.****7.Limitation of actions.****8.Compromise and negotiation.****9.Uninsured employer.****10.Application.****1. Derivation.**

The provisions of this section are patterned after section 32 of Title 11, Laws of Puerto Rico Annotated and are with certain language changes, identical. *Ayala v. Conrad*, 6 V.I. 615, 1968 V.I. LEXIS 4 (V.I. Mun. Ct. 1968).

2. Purpose.

Purpose of this section is to provide for subrogation by Commissioner in cases where the injured employee seeks both compensation under the workmen's compensation law and damages from a third party tort-feasor. *Ayala v. Conrad*, 6 V.I. 615, 1968 V.I. LEXIS 4 (V.I. Mun. Ct. 1968).

3. Common law action.

By granting an injured employee the right to seek both compensation and damages from a third party this section does not deprive such employee of the right to seek such damages alone at common law. *Ayala v. Conrad*, 6 V.I. 615, 1968 V.I. LEXIS 4 (V.I. Mun. Ct. 1968).

It is clear that employees who in the course of their employment are injured by the negligence of a third person have a common-law remedy against such third person. *Ayala v. Conrad*, 6 V.I. 615, 1968 V.I. LEXIS 4 (V.I. Mun. Ct. 1968).

4. Construction.

Since language of this section was virtually identical with that of Puerto Rico statute from which it was derived, this section was to be construed to mean what the highest court of Puerto Rico had, prior to enactment of this section, construed the Puerto Rico statute to mean. *Berkeley v. West Indies Enterprises, Inc.*, 480 F.2d 1088, 10 V.I. 619, 1973 U.S. App. LEXIS 9504 (3d Cir. V.I. 1973).

5. Third party liability.

Co-employee of an injured worker was not an "employer" under 24 V.I.C. § 284(a) and therefore was a "third person" whom the injured worker could sue for negligence under 24 V.I.C. § 263. *Defoe v. Phillip*, 56 V.I. 109, 2012 V.I. Supreme LEXIS 4 (VI. 2012).

Plain language of the Virgin Islands Workers' Compensation Act does not support extending an employer's immunity from suit to a co-employee; the legislature intended courts to deem co-employees as "third persons" rather than "employers." *Defoe v. Phillip*, 56 V.I. 109, 2012 V.I. Supreme LEXIS 4 (VI. 2012).

24 V.I.C. § 263

Under 24 V.I.C. § 284, an individual was entitled to dismissal for acts he performed on behalf of a decedent's employer, as there was no independent personal duty to operate a forklift carefully on the employer's property, and manipulating marble slabs was not an ultrahazardous activity. The worker could be held liable for his own allegedly tortuous acts under 24 V.I.C. § 263, however, regardless of the fact that he was acting on behalf of his own business or of the seller of the slab. *Bertrand v. Cordiner Enters., Inc.*, 53 V.I. 280, 2010 V.I. LEXIS 38 (V.I. Super. Ct. 2010), different results reached on reconsid., 55 V.I. 267, 2011 V.I. LEXIS 64 (V.I. Super. Ct. 2011).

Because a worker injured by a vehicle driven by a co-worker inside the refinery in which they both worked had not identified a breach by the co-worker of a duty owed to him under Virgin Islands law, 24 V.I.C. § 284 barred his claims against the co-worker; furthermore, a co-worker could be held liable under 24 V.I.C. § 263 only to the extent he owed a personal legal duty of care separate from that of the common employer. *Defoe v. Phillip*, 51 V.I. 34, 2009 V.I. LEXIS 2 (V.I. Super. Ct. 2009), rev'd, 56 V.I. 109, 2012 V.I. Supreme LEXIS 4 (VI. 2012).

24 V.I.C. § 263 does not, by its express terms, define the liability of a third person to an employee, but rather defines the rights of the Administrator of the Workers Compensation Fund as against the employee and the third person. *Defoe v. Phillip*, 51 V.I. 34, 2009 V.I. LEXIS 2 (V.I. Super. Ct. 2009), rev'd, 56 V.I. 109, 2012 V.I. Supreme LEXIS 4 (VI. 2012); *Defoe v. Phillip*, 2009 V.I. LEXIS 15 (V.I. Super. Ct. Jan. 12, 2009).

The court adopted the 'Wisconsin Approach,' under which a supervisor who performs the nondelegable duty of the employer to provide a safe workplace does not thereby assume a personal duty toward his fellow employees. Employees acting for the employer are considered the "employer" for purposes of tort immunity. *Nicco v. Atl. Tele-Network Co.*, 45 V.I. 149, 2003 V.I. LEXIS 1 (V.I. Terr. Ct. 2003).

Supervisor could not be held liable to an employee for negligence, as the supervisor was not a "third person" excluded from immunity under 24 V.I.C. § 263 of the Virgin Islands Workmen's Compensation Act. The supervisor's alleged failure to change an unsafe tire on a company truck fell within the employer's non-delegable duty to maintain a safe working environment. *Tavarez v. Klingensmith*, 267 F. Supp. 2d 448, 2003 U.S. Dist. LEXIS 10385 (D.V.I. 2003), aff'd, 372 F.3d 188, 2004 U.S. App. LEXIS 11729 (3d Cir. V.I. 2004).

Because the Virgin Islands Workmen's Compensation Act, 24 V.I. Code Ann. § 250 et seq., does not alter individuals' legal duties established by common law, a co-employee may face tort liability as a "third person" under limited instances, where he is shown to have breached an independent duty of care; however, where the challenged conduct falls within those duties which the law reserves solely to an employer, responsibility for its breach cannot be imputed to the co-employee. *Tavarez v. Klingensmith*, 267 F. Supp. 2d 448, 2003 U.S. Dist. LEXIS 10385 (D.V.I. 2003), aff'd, 372 F.3d 188, 2004 U.S. App. LEXIS 11729 (3d Cir. V.I. 2004).

Under 24 V.I.C. § 263, an injured worker's supervisors were not individually liable to him even if negligent, because they were acting on behalf of the employer when they decided how many workers were required to do a dangerous job. *Nicco v. Atl. Tele-Network Co.*, 45 V.I. 149, 2003 V.I. LEXIS 1 (V.I. Terr. Ct. 2003).

Immunity from suit granted by the Workmen's Compensation Act does not extend to fellow employees. *Anthony v. Lettsome*, 22 V.I. 328 (D.C.V.I. 1986).

Third party actions against those responsible for an injury are permitted against non-employers under this section. *Vanterpool v. Hess Oil Virgin Islands Corp.*, 589 F. Supp. 334, 21 V.I. 40, 1984 U.S. Dist. LEXIS 16098 (D.V.I. 1984), aff'd in part and rev'd in part, 766 F.2d 117, 1985 U.S. App. LEXIS 20148 (3d Cir. V.I. 1985).

Where third party's act of negligence was the sole inducing and proximate cause of injuries sustained by employee and for which workmen's compensation had been paid, third party was liable. *Commissioner of Agriculture & Labor ex rel. Halliday v. Robert Merwin & Co.*, 252 F. Supp. 637, 5 V.I. 356, 1966 U.S. Dist. LEXIS 8095 (D.V.I. 1966).

6. Recovery by government against third party.

Under this section, the government has a right to be subrogated to the rights of a government employee against "third persons responsible" for the injury entitling the employee to compensation. *JONES v. JAMES*, 17 V.I. 361, 1980 U.S. Dist. LEXIS 8922 (D.V.I. 1980).

Under this section, whenever the government is compelled to pay compensation to an employee for injuries aggravated by an accident unrelated to work, the government is simultaneously subrogated to the employee's right against "third persons responsible". *JONES v. JAMES*, 17 V.I. 361, 1980 U.S. Dist. LEXIS 8922 (D.V.I. 1980).

Where verdict of jury which determined liability of alleged tortfeasor involved in an accident in which government employee sustained injuries, for which workmen's compensation benefits were paid, included any potential liability for aggravation of employee's injuries in subsequent accidents, since the employee had already recovered all of the damages to which she was entitled by virtue of their being caused by aggravation of earlier injuries, the employee could not recover the same damage again from the alleged tortfeasor in subsequent accident and, therefore, the government, which had a lien under this section against the recovery in the first action for workmen's compensation benefits paid, had no basis upon which to assert its lien in the subsequent action. *JONES v. JAMES*, 17 V.I. 361, 1980 U.S. Dist. LEXIS 8922 (D.V.I. 1980).

Where government employee, after securing verdict which included potential liability for aggravation of injuries in subsequent accidents against alleged tortfeasor in accident in which employee sustained injuries—for which workmen's compensation benefits were paid—was involved in a subsequent accident, the employee could recover from the alleged second tortfeasor only that percentage of the injuries caused by the second alleged tortfeasor and, thus, no portion of the aggravation of employee's injuries attributable to the first accident were included in a proposed settlement between employee and alleged tortfeasor in second accident; consequently, the government had no basis to proceed for subrogation under this section because the compensation payments it had made to the employee after the first accident were for different injuries than those covered by the proposed settlement. *JONES v. JAMES*, 17 V.I. 361, 1980 U.S. Dist. LEXIS 8922 (D.V.I. 1980).

Where government employee was allowed, and received, compensation for number of weeks disabled, plus medical expenses, and suit was brought by Government at relation of employee against third party. Government was entitled to recover amount it had paid to employee from the judgment rendered against third party. *Commissioner of Agriculture & Labor ex rel. Halliday v. Robert Merwin & Co.*, 252 F. Supp. 637, 5 V.I. 356, 1966 U.S. Dist. LEXIS 8095 (D.V.I. 1966).

Where person received an out-of-court settlement plus medical costs in his action against tort-feasor involved in his accident, and because of accident said person was paid a sum of money from the Government Insurance Fund, and where Commissioner of Agriculture and Labor did not institute an action against anyone within the term of 90 days from date of final decision of Workmen's Compensation case, the Government had no right of reimbursement. 4 V.I. Op. Att'y Gen. 149.

7. Limitation of actions.

Session law extending this section's statute of limitations for suit by employee against third party, and providing that the amendment extending time for suit was retroactive to all causes of action accruing before the date of the session law, allowed finding that the limitation period as amended applied to suit at hand where cause of action accrued on June 1, 1973 and amending statute was dated January 16, 1975. *Galvan v. Hess Oil Virgin Islands Corp.*, 549 F.2d 281, 13 V.I. 636, 1977 U.S. App. LEXIS 10141 (3d Cir. V.I. 1977).

Section 36 of Title 5, providing that if any person entitled to bring an action was, at the time the cause of action accrued, under the age of 21, then the time of disability shall not be a part of the time limit for commencement of the action, applies to suits which this section states injured employees must bring against a third party within two years of the date of the injury. *Galvan v. Hess Oil Virgin Islands Corp.*, 549 F.2d 281, 13 V.I. 636, 1977 U.S. App. LEXIS 10141 (3d Cir. V.I. 1977).

24 V.I.C. § 263

Workman's personal injury action against third party for damages caused by injury for which workman was compensable under workmen's compensation law was governed by this section's statute of limitations providing that suit be instituted within a year of the final decision of the case by the commissioner, not by general two-year statute of limitations for injury to the person. *Berkeley v. West Indies Enterprises, Inc.*, 480 F.2d 1088, 10 V.I. 619, 1973 U.S. App. LEXIS 9504 (3d Cir. V.I. 1973).

8. Compromise and negotiation.

Under the strict wording of 24 V.I.C. § 263 an injured government employee can neither institute an action nor compromise the right of action without the assent and participation of the Commissioner of Labor, and the statute as a whole contemplates that all parties to a suit to recover damages for an injured employee may compromise their claims in aid of settlement, as long as each party expressly consents to the compromise. *Jennings v. Richards*, 31 V.I. 188, 1995 V.I. LEXIS 1 (V.I. Terr. Ct. 1995).

Taken as a whole, the worker's compensation statute clearly envisions the Commissioner and Deputy Commissioner of Labor as the administrators of the worker's compensation laws, and as the parties most knowledgeable about those laws, they should be ones to negotiate claims brought in the worker's compensation area. *Jennings v. Richards*, 31 V.I. 188, 1995 V.I. LEXIS 1 (V.I. Terr. Ct. 1995).

9. Uninsured employer.

Because an employer was not an insured company, it had no immunity to share with its employee, who thus was a "third person" for purposes of the Workers' Compensation Act. Therefore, the Administrator of the Workers' Compensation Administration had to be made a party to the present action. *Bertrand v. Cordiner Enters., Inc.*, 55 V.I. 267, 2011 V.I. LEXIS 64 (V.I. Super. Ct. 2011), *aff'd in part*, 57 V.I. 596, 2012 V.I. Supreme LEXIS 81 (VI. 2012).

10. Application.

Because a decedent's employer was an "uninsured employer" under V.I. Code Ann. tit. 24, § 261, not a "third person" under V.I. Code Ann. tit. 24, § 263, the Government was not entitled under § 263 to recover the sum paid out by the Government Insurance Fund from the settlement between the decedent's estate and the employer. *Bertrand v. Mystic Granite & Marble, Inc.*, 63 V.I. 772, 2015 V.I. Supreme LEXIS 36 (VI. 2015).

Cited.

Cited in *Rhymer v. Rhymer*, 21 V.I. 176, 1984 V.I. LEXIS 2 (Terr. Ct. St. T. and St. J. 1984); *Prevost v. Hess Oil Virgin Islands Corp.*, 22 V.I. 340, 640 F. Supp. 1220, 1986 U.S. Dist. LEXIS 21812 (1986); *Hood v. Hess Oil V.I. Corp.*, 22 V.I. 456, 650 F. Supp. 678, 1986 U.S. Dist. LEXIS 16098 (D.C.V.I. 1986); *Gomez v. Government of Virgin Islands*, 882 F.2d 733, 1989 U.S. App. LEXIS 11655 (3d Cir. V.I. 1989); *Gomez v. Government of Virgin Islands*, 882 F.2d 733, 1989 U.S. App. LEXIS 11655 (3d Cir. V.I. 1989).

Research References & Practice Aids

Hierarchy Notes:

24 V.I.C. Note

24 V.I.C. Ch. 11

Virgin Islands Code Annotated

Copyright © 2023 Office of the Code Revisor, Legislature of the Virgin Islands All rights reserved.

End of Document



User Name: Tracy Myers

Date and Time: Monday, March 6, 2023 11:05:00AM AST

Job Number: 191845069

Document (1)

1. [2002 V.I. Bill 248](#)

Client/Matter: Research

Search Terms: 24 vic 263

Search Type: Natural Language

2002 V.I. Bill 248


Enacted, June 19, 2002

Reporter

2002 V.I. ALS 6529; 2002 V.I. SESS. LAWS 6529; V.I. Act 6529; 2002 V.I. Bill 248

VIRGIN ISLANDS LEGISLATIVE SERVICE > TWENTY-FOURTH LEGISLATURE OF THE VIRGIN ISLANDS OF THE UNITED STATES Regular Session, 2002 > ACT NO. 6529 > BILL NO. 248

Notice

 [V> Text within these symbols is vetoed <V]

Synopsis

To provide an appropriation from the Interest Revenue Fund to the Department of Labor for summer youth employment and for other purposes

Text

BE IT ENACTED by the Legislature of the Virgin Islands:

SECTION 1. The sum of \$ 850,000 or as much thereof as needed is appropriated from the Interest Revenue Fund to the Department of Labor for the Summer Youth Employment for fiscal year ending September 30, 2002.

SECTION 2. The sum of \$ 100,000 is appropriated in the fiscal year ending September 30, 2002, from the Interest Revenue Fund to the Virgin Islands Police Department for the After-School Diversionary Wrap Program, Boot Camp. The sum shall remain available until expended.

SECTION 3. The sum of \$ 75,000, or so much of it as may be necessary, is appropriated in the fiscal year ending September 30, 2002, from the General Fund to the Department of Public Works to fund architectural and constructional renderings for the public cemetery on St. Thomas.

SECTION 4. Notwithstanding any other law to the contrary, not less than 2.5 acres of land of the Southern portion of the real property acquired for the new public cemetery located at 19K Estate Smith Bay, No. 1, 2 & 3 Estate East End Quarter, St. Thomas, Virgin Islands shall be designated exclusively for veterans' burials.

SECTION 5. Pursuant to [title 33, section 3026a, Virgin Islands Code](#), the sum of \$ 42,000 is appropriated in the fiscal year ending September 30, 2002, from the Interest Revenue Fund as a grant to the Virgin Islands Little League to host the International Little League Tournament, Divisions 11 and 12 on July 27 through August 4, 2002, on St. Croix. The sum shall remain available only for the purpose stated in this section.

SECTION 6. There is appropriated from the Interest Revenue Fund in the fiscal year ending September 30, 2002,

2002 V.I. Bill 248

the sum of \$ 250,000 (Two Hundred Fifty Thousand Dollars), to the Department of Public Works to be used for the Bovoni Landfill Improvements as follows:

1. Dust Control \$ 200,000
2. Local Wells \$ 50,000.

SECTION 7. Notwithstanding any other law, the sum of \$ 2,500,000, or so much of it as may be necessary, is appropriated from the Internal Revenue Matching Fund to the Public Finance Authority in the fiscal year ending September 30, 2003, to finance the issuance of bonds or provide other financial arrangements to fund the construction of a cafeteria, a gymnasium and an auditorium at the Addelita Cancryn Junior High School. The sum shall remain available until expended.

SECTION 8. The Governor may cause to be issued on behalf of the Government bonds not in excess of \$ 50,000,000 in aggregate principal amount to finance school construction and renovation in the territory.

SECTION 9. Act No. 6463 (Bill No. 24-0150) is amended in section 34 by adding subsections (d), and (e) to read:

"(d) To establish a Criminal Investigation Account Imprest Fund for use by the Commissioner of Police, Assistant Commissioner, the Chief of Detectives and the Territorial Chief of Police to pay for information concerning criminal activity, the disbursement of which requires the signatures of the Commissioner and one of the other three officers named in this subsection. -- \$ 100,000.

(e) To provide In-Service Firearms Training for the Virgin Islands Police Department. -- \$ 60,000."

SECTION 10. **[V>** The sum of \$ 206,970 is appropriated in the fiscal year ending September 30, 2002, from the Union Arbitration Award and Government Employees Increment Fund, established in [title 33, section 3066, Virgin Islands Code](#), to the Virgin Islands Police Department to pay Maria Ayala Felix Arbitration Award, RA-002-89. **<V]**

SECTION 11. Notwithstanding the provisions of [title 33, section 3066, subsection \(b\) Virgin Islands Code](#), the sum of \$ 150,000 is appropriated in the fiscal year ending September 30, 2002, from the Union Arbitration and Government Employees Increment Fund to pay all employees of the V.I. Police Department, V.I. Fire Service, Bureau of Corrections, and Marshals of the Territorial Court who are eligible under the Career Incentive Pay Program pursuant to title 3, chapter 25, section 570., as amended by Act No. 6483 (Bill No. 24-0183), sections 7 and 8.

SECTION 12. **[V>** The sum of \$ 144,483 is appropriated in the fiscal year ending September 30, 2002, from the General Fund to pay prior year obligations for services rendered by Lew Henley's Sewage Disposal to Department of Housing, Parks, and Recreation in the amount of \$ 94,483 and to the Department of Public Works in the amount of \$ 50,000. **<V]**

SECTION 13. [Title 24, section 263, Virgin Islands Code](#), is amended by inserting the following language at the end of the third paragraph after "compromise":

", but the failure to join the Administrator shall not deprive the courts of jurisdiction over the claim or otherwise result in dismissal of the claim, so long as the injured worker or employee acknowledges that all sums due the Government Insurance Fund are secured by any recovery."

SECTION 14. [Title 13, section 533, subsection \(a\), Virgin Islands Code](#), is amended by adding a paragraph after the end of the subsection:

"Notwithstanding the foregoing provisions, before a pending case may be dismissed, a corporation shall be given a reasonable time to provide proof that arrangements have been made to pay any delinquent franchise taxes once the matter is brought to the court's attention, as it is the purpose of this statute to collect the franchise tax and not simply to dismiss a case. If the proper proof is presented to the court that such arrangements to pay any delinquent franchise taxes have been made with the Lieutenant Governor's Office, a pending case shall be allowed to proceed without being dismissed."

SECTION 15. (a) Act No. 6462 (Bill No. 24-0128), is amended in Section 1, subsection (x) by striking "PRIOR YEAR OBLIGATION" and inserting in lieu thereof "PRIOR YEARS OBLIGATIONS."

SECTION 16. There is appropriated from the St. John Capital Improvement Fund, in the fiscal year ending September 30, 2002, the sum of \$ 170,000 (One Hundred Seventy Thousand Dollars), to the Department of Public Works to construct the first phase of the Cruz Bay Park Renovation Project. The sum shall remain available until expended.

SECTION 17. [V> Notwithstanding any other law, the sum of \$ 700,000 is appropriated in the fiscal year ending September 30, 2002, from the St. John Capital Improvement Fund to pay operating costs of the VITRAN Bus Service on St. John. <V]

SECTION 18. Notwithstanding [title 33, section 3057, subsection \(a\), Virgin Islands Code](#), or any other law, the sum of \$ 480,000, or so much of it as may be necessary, is appropriated in the fiscal year ending September 30, 2002, from the St. John Capital Improvement Fund in the Treasury of the Government of the Virgin Islands to the Virgin Islands Housing Finance Authority for infrastructure development at the Calabash Boom Townhouse Development site at Parcel No. 1, Estate Calabash Boom, St. John. Such sum shall remain available until expended only for the purpose stated in this section.

SECTION 19. [V> Title 33, chapter 111, Virgin Islands Code, is amended by adding a new section 3005: <V]

[V> "§ 3005. Deficit Reduction Fund <V]

[V> (a) There is established in the Treasury of the Government of the Virgin Islands, the Deficit Reduction Fund (hereinafter "The Fund"). The Commissioner of Finance shall provide for the administration of the Fund as a separate and distinct fund in the Treasury of the Government of the Virgin Islands, and no funds therein shall be available for expenditure except as provided in this section. <V]

[V> (b) The following money shall be deposited into the fund: <V]

[V> (1) Money appropriated by the Legislature of the Virgin Islands; <V]

[V> (2) Money available from federal grants and aids; <V]

[V> (3) All gifts and bequests; and <V]

[V> (4) Commencing in the fiscal year 2003 and until the Legislature shall determine otherwise: <V]

[V> (A) fifty percent (50%) of all property taxes derived from the Hovenssa Coker unit; and <V]

[V> (B) ten percent (10%) of all lottery and casino gaming proceeds. <V]

[V> (c) Notwithstanding the provisions of title 29, chapter 15, section 920 et seq., Virgin Islands Code, the Government of the Virgin Islands, through the Public Finance Authority, may utilize money in the Fund to finance the issuance of bonds to pay up to thirty percent (30%) of retroactive wages owed to all unionized government employees. <V]

[V> (d) To the extent that sufficient funds are available, such funds shall be expended to pay no less than thirty percent (30%) of retroactive wages owed to all unionized government employees no later than October 2004." <V]

SECTION 20. [V> Any professional Virgin Islander Athlete, who declares a willingness to assist in the promotion of the United States Virgin Islands as a recognized tourist destination and agrees to locate certain developing business enterprise in the Virgin Islands, shall be entitled to tax exemptions comparable to those provided under the terms of the agreement between the Government of the Virgin Islands and Timothy Duncan Enterprises Inc., as set forth in Appendix A of Act No. 6334 (Bill No. 23-0192), and such athletes and related enterprises shall be subject to obligations comparable to those mandated pursuant to the terms and provisions of Act No. 6334. <V]

SECTION 21. [V> The Governor of the Virgin Islands, on behalf of the Government of the Virgin Islands is hereby authorized to enter into agreements, with professional Virgin Islander athletes, similar to the agreement referenced in section 20 of this Act, provided that such athletes declare in writing a willingness to pursue such an agreement. <V]

SECTION 22. The sum of \$ 620,000 is appropriated in the fiscal year ending September 30, 2002, from the General Fund to the Department of Education for the following purposes:

- (a) \$ 120,000 to pay prior year obligations to Advance Security Group; and
- (b) \$ 500,000 for summer maintenance and repairs to the Territory's High Schools.

SECTION 23. There is appropriated from the General Fund of the Treasury of the Government of the Virgin Islands in the fiscal year ending September 30, 2002, the sum of \$ 100,000 (One Hundred Thousand Dollars), to the Department of Finance to meet initial contract obligations for the construction of the V.I. Military Museum and Veterans Memorial Complex on St. Croix.

SECTION 24. [V> The sum of \$ 1,000,000 is appropriated in the fiscal year ending September 30, 2002, from the Interest Revenue Fund to expand the Micro-Credit Loan Program, established in section 45 of Act No. 6427 (Bill No. 24-0092), specifically for applicants in the St. Croix District. Such sum shall remain available until expended only for the purposes stated in this section. <V]

SECTION 25. The sum of \$ 75,000 is appropriated in the fiscal year ending September 30, 2002, from the General Fund as a grant to WTJX TV-Channel 12 to produce community programs on local events, such as the Carnival, Fourth of July and St. Croix Festival parades and other community activities.

SECTION 26. [V> There is appropriated from the St. John Capital Improvement Fund, in the fiscal year ending September 30, 2002, the sum of \$ 650,000 (Six Hundred Fifty Thousand Dollars), to the Department of Public Works, of which \$ 250,000 shall be used to hire four (4) operators to run the VITRAN Bus Service on the island of St. John and \$ 400,000 to hire eight (8) operators to run the VITRAN Bus Service in St. Croix, including repairs and other maintenance. <V]

SECTION 27. There is appropriated from the General Fund in the Treasury of the Government of the Virgin

Islands, the sum of \$ 36,037 (Thirty Six Thousand, Thirty Seven Dollars), to the Pony Baseball League of the Virgin Islands to host the Mustang Division Caribbean Zone Tournament on St. Croix from July 11, 2002 to July 22, 2002.

SECTION 28. [V> There is appropriated from the General Fund in the Treasury of the Government of the Virgin Islands, in the fiscal year ending September 30, 2002, the sum of \$ 38,280 (Thirty Eight Thousand Two Hundred Eighty Dollars), to the Marlins Softball Travel Club to attend the 2002 National Modified Softball Championship Tournament in Marietta, Georgia. <V]

SECTION 29. Notwithstanding any other law, the sum of \$ 600,000 is appropriated in the fiscal year ending September 30, 2003, from the Interest Revenue Fund to the Housing Finance Authority to grant rent abatements to the tenants of the Watergut and Lagoon Housing Projects under the following conditions:

- (a) If a tenant is the head of the household, over the age of 65 years or disabled, as defined under the Federal Americans with Disabilities Act, rent shall be charged at a rate of 15% of the adjusted family income; or
- (b) If the tenant is the head of the household, rent shall be charged at a rate of 20% of the adjusted family income.
- (c) For purposes of this section, "adjusted family income" means income requirements as determined by the Federal Government and used by the Authority to determine eligibility.

SECTION 30. The sum of \$ 200,000 is appropriated from the Interest Revenue Fund in the fiscal year ending September 2002, to the Department of Education for the purpose of refurbishing the Track and Field at Central High School, including the bleachers and other necessary amenities. The sum shall remain available until expended.

SECTION 31. (a) There is appropriated from the Interest Revenue Fund in the fiscal year ending September 30, 2002, the sum of \$ 90,000 (Ninety Thousand Dollars), to the Department of Education for the installation of a wooden floor in the gymnasium at the St. Croix Educational Complex.

(b) The sums of \$ 90,000 to the Arthur Richards School and \$ 50,000 to the Federiksted Boating Association are appropriated in the fiscal year ending September 30, 2002, from the Interest Revenue.

(c) The sums appropriated in this section shall remain available until expended.

SECTION 32. [V> [Title 2, chapter 6, section 102, Virgin Islands Code](#), is amended by striking the second sentence in its entirety and inserting instead a new sentence to read: <V]

[V> "Seven (7) senators shall be elected at large by the qualified electors of the Virgin Islands from the Virgin Islands as a whole, provided that such senators shall be persons who are bona fide residents of the District of St. Croix, and seven (7) senators shall be elected at large by the qualified electors of the Virgin Islands from the Virgin Islands as a whole, provided that such senators shall be persons who are bona fide residents of the District of St. Thomas and St. John." <V]

SECTION 33. Act No. 6503 (Bill No. 24-0208), Section 3 is amended by striking "Frenchman Hill" and inserting in lieu thereof "Nordsidivej".

SECTION 34. [V> (a) The sum of \$ 175,000 is appropriated from the Road Fund in the fiscal year ending September 30, 2002, to pave the roadway beginning at 178-B6 Anna's Retreat and ending at 173-B2 Anna's Retreat on St. Thomas. <V]

[V> (b) The sum of \$ 277,060 is appropriated from the Road Fund in the fiscal year ending September 30, 2002, to widen and pave the roadway at Plot No. 2A 5-17, Estate Tabor and Harmony on St. Thomas. **<V]**

SECTION 35. Title 32, chapter 21, Virgin Islands Code, as amended, is further amended as follows:

(a) Section 603 is amended in the following instances:

(1) In subsection (a), insert the words, "authorized and permitted pursuant to the rules and regulations of the Commission" between the words, "gambling" and "that a";

(2) In subsection (n), strike the words, "paid out expenses" where they appear after the words "paid out as winnings to players", then re-designate (n) as subsection (o), and insert a new subsection (n) to read "(n) Gross Franchise Revenue means the total of all sums received by the Master Franchisors from licensees"; and

(3) In subsection (w), strike ", subsection (b) of the Master Franchise Agreement" and insert in lieu thereof, "of this article":

(b) Strike Section 605, subsection (a), paragraph (6) in its entirety;

(c) In Section 610(b)(4) strike "661" and "662" and replace them with "629 and 630";

(d) Section 613 is amended in the following instances:

(1) Insert the words "on Gross Franchise Revenues," before the words "Gross Internet gaming and Internet Gambling Revenue" in subsection (a) and before the words "gross Internet gaming revenues and gross Internet gambling revenues in subsection (b), and in addition, insert the words, "as applicable and" after "Gross Internet Gaming and Internet Gambling Revenue" where they appear in both subsections;

(2) In subsection (b), strike items (i) (ii) and (iii) and replace them with new items (i) and (ii) to read:

"(i) A Master Franchisor shall pay an annual tax of two and one-half (2 1/2) percent of its Gross Franchise Revenue; and

(ii) A Licensee shall pay an annual tax of one and one-half (1 1/2) percent of its Gross Internet Gaming Revenues and Gross Internet Gambling Revenues";

(3) In subsection (d), add "and licensees," after "Master Franchisors" and strike "quarterly" and replace it with "monthly".

(e) Section 614 is amended in the following instances:

(1) In subsection (c), paragraph (2), strike "Master Franchisor" and replace it with 'licensee';

(2) In subsection (d), insert the words: "law and" between the words, "himself to the" and "jurisdiction":

(3) In subsection (e), strike "employee" and insert "a key employee of the licensee or an immediate family member of a key employee".

(4) In subsection (f), strike the words, "an employee" and replace them with "a key employee of the Master Franchisor or an immediate family member of a key employee the Master Franchisor"; and

(f) Section 616 is amended by adding the following language at the end of the section:

"Notwithstanding the provisions of any law to the contrary, payments made to a licensee by check, credit card, internet funds or other similar instrument, and the debt that such instrument represents, shall be valid and may be enforced by legal process."

2002 V.I. Bill 248

(g) In section 620, subsection (b), insert the words, "by the licensee" between the words, "resolved" and "within" and strike the word, "notice" and replace it with "claim";

(h) In section 623 subsection (d), strike "645" and replace it with "628";

(i) In section 630, subsection (b), strike "651" and replace it with "629";

(j) Strike the existing Section 640 in its entirety and replace it with a new section 640 to read:

"§ 640. Applicable law; enforceability of Internet Gaming and Internet Gambling Debts

(a) All applicable laws of the Virgin Islands shall apply to the activities authorized by this Article. Any person who is a registered player submits to the laws and jurisdiction of the United States Virgin Islands.

(b) A debt incurred by a registered player to a licensee for playing any approved Internet game shall be valid and may be enforced by legal process."

(k) In section 642, strike the existing language in its entirety and insert new language to read:

". The Casino Control Commission shall on a timely basis provide to the appropriate Master Franchisor copies of written communications between the Commission and a licensee with respect to the results of investigations relating to that licensee, or its players."

(l) In the first sentence of Section 644, insert the following language between the words 'business entity' and 'shall be';

"supplying industry related software, hardware or other gaming equipment used in Internet gaming";

(m) In Section 644, insert the words, 'industry related' between the words, 'Commission and all' and 'software'.

SECTION 36. Act No. 6419 (Bill No. 24-0046) is amended in the following instances:

(a) Section 4 is amended as follows:

(1) Add the following language at the end of subsection (a);

"The Master Franchisors shall also be responsible to:"

(2) Strike the existing language in paragraph (3) in its entirety and replace it with the following language:

"Provide in the franchise agreement of each Master Franchisor that the licensees shall be in compliance with the terms of their license and the rules and regulations of the Commission;"

(3) Strike the language in paragraph (4) in its entirety and replace it with the following language:

"Provide such banking services for a licensee as outlined in the Franchise Agreement of each Master Franchisor."

(4) Change the existing designation of subsection '(c)' to '(b)' and re-designate the remaining subsections accordingly.

(5) In the re-designated subsection (c), add the following new paragraph (4):

"(4) In order to effectuate the provisions of this subsection, the Master Franchisors shall contribute one-half percent of their annual Gross Franchise Revenue into the Education Initiative Fund established pursuant to [title 33, section 3093, Virgin Islands Code](#)."

(6) (A) Strike the language in the re-designated subsection (d) in its entirety and insert new language to read as follows:

"In accordance with the initial ten-year option granted pursuant to this subsection, after a Master Franchisor has successfully completed the investigatory process, the Commission shall grant a license to the Master Franchisor for an initial period of three years. The license may be renewed by the commission for two successive periods of three and four years, respectively. Thereafter, the license shall be renewed for periods of five years in accordance with each ten-year option granted pursuant to the provisions of this subsection."

(B) Add a new re-designated (e), re-designating the existing (e) to (f), to read:

"(e) The Master Franchisor shall pay a license fee of \$ 25,000 for each period of licensure in accordance with a schedule established by the Commission. The Commission shall, by regulations, establish fees for the Investigation of the Master Franchisor and licensees."

(7) In subsection (m):

(A) Strike the words, 'both Master Franchisors' and replace them with 'a Master Service Provider';

(B) Add the words, 'of that entity' between the words 'Master Franchise Agreements' and 'and seek';

(C) Strike the word, 'Agreements' wherever it appears in the subsection and replace it with 'Agreement';

(D) Add the following language at the end thereof:

"A Master Franchisor shall have the right to obtain judicial review of a decision by the Commission to terminate a Master Franchise Agreement by appeal to the Territorial Court of the Virgin Islands in accordance with the provisions of title 5, chapter 97, Virgin Islands Code, and the rules of the Court."

(b) Act No. 6419 is further amended by striking the following terms in each instance where they appear in the Act and replacing them as follows:

(1) Strike "Master Franchisor" and insert "Master Service Provider";

(2) Strike " Master Franchisors" and insert "Master Service Providers";

(3) Strike "Master Franchises" and insert "Master Service Provider";

(4) Strike "Master Franchise" and insert "Master Service Provider Agreement";

(5) Strike "Gross Franchise Revenue" and insert "Gross Service Provider Revenue"; and

(6) Strike "franchise" and insert "provide services".

SECTION 37. There is appropriated in fiscal year ending September 30, 2002, from the interest earned on bonds or from any available fund of the Government of the Virgin Islands, the sum of \$ 400,000, to the Department of Education for the construction of equipment for additional classrooms at the Joseph Sibilly Elementary School. Such sum shall remain available until expended.

SECTION 38. The sum of \$ 30,000 is appropriated in the fiscal year ending September 30, 2002, from the General Fund to the Department of Housing, Parks and Recreation to fund the Caribbean Friendship activities.

SECTION 39. Notwithstanding [title 33, section 3057, subsection \(a\), Virgin Islands Code](#), the sum of \$ 150,000 is appropriated from the St. John Capital Improvement Fund to the Department of Education in the fiscal year ending

September 30, 2002, to assist with the development of an alternative education program. The sum shall remain available until expended.

SECTION 40. There is appropriated in fiscal year ending September 30, 2002, from the proceeds of the Garvee Bonds established in Act 6359 (Bill No. 23-0238), the sum of \$ 3,500,000 (Three Million, Five Hundred Thousand Dollars), to the Department of Public Works, to purchase four new VITRAN buses for St. Thomas, four new buses for St. Croix, and two new buses for St. John.

SECTION 41. The sum of \$ 100,000 is appropriated in the fiscal year ending September 30, 2002, from the Internal Revenue Matching Fund to the Department of Education to purchase air conditioners for the gymnasium at the Education Complex.

SECTION 42. There is appropriated in the fiscal year ending September 30, 2002, from the St. John Capital Improvement Fund, the sum of \$ 55,000 (Fifty Five Thousand Dollars), to the Virgin Islands Territorial Emergency Management Agency (VITEMA) for the purchase of three (3) vehicles.

SECTION 43. There is appropriated in the fiscal year ending September 30, 2002, from the St. John Capital Improvement Fund, the sum of 50,000 (Fifty Thousand Dollars), to the Department of Public Works for the clean-up of St. John after the Fourth of July Festivities.

SECTION 44. [V> Section 32 of this Act, relating to the at large election of senators takes effect in the 2004 election year. <V]

Thus passed by the Legislature of the Virgin Islands on May 24, 2002.

Witness our Hands and the Seal of the Legislature of the Virgin Islands this 10th of June, A.D., 2002.

Almando "Rocky" Liburd

President

Donald G. Cole

Legislative Secretary

History

Approved by the Governor with Line Item Veto June 19, 2002

Governor's Message

GOVERNOR'S MESSAGE:

THE GOVERNOR'S OBJECTIONS

Bill No. 24-0248 is hereby approved with the exception of the following items, part or parts, portion or portions thereof, which are hereby objected to (and deleted and disapproved in full) pursuant to [Section 9\(d\) of the Revised Organic Act of 1954](#), as amended:

* * *

SECTION 10. The sum of \$ 206,970 is appropriated in the fiscal year ending September 30, 2002, from the Union Arbitration Award and Government Employees Increment Fund, established in [title 33, section 3066, Virgin Islands Code](#), to the Virgin Islands Police Department to pay Maria Ayala Felix Arbitration Award, RA-002-89.

* * *

SECTION 12. The sum of \$ 144,483 is appropriated in the fiscal year ending September 30, 2002, from the General Fund to pay prior year obligations for services rendered by Lew Henley's Sewage Disposal to Department of Housing, Parks and Recreation in the amount of \$ 94,483 and to the Department of Public Works in the amount of \$ 50,000.

* * *

SECTION 17. Notwithstanding any other law, the sum of \$ 700,000 is appropriated in the fiscal year ending September 30, 2002, from the St. John Capital Improvement Fund to pay operating casts of the VITRAN Bus Service on St. John.

* * *

SECTION 19. Title 33, chapter 111, Virgin Islands Code, is amended by adding a new section 3005:

§ 3005. Deficit Reduction Fund

(a) There is established the Treasury of the Government of the Virgin Islands, the Deficit Reduction Fund (hereinafter "The Fund"). The Commissioner of Finance shall provide for the administration of the Fund as a separate and distinct fund in the Treasury of the Government of the Virgin Islands, and no funds therein shall be available for expenditure except as provided in this section.

(b) The following money shall be deposited into the Fund:

(1) Money appropriated by the Legislature of the Virgin Islands;

(2) Money available from federal grants and aids;

(3) All gifts and bequests; and

(4) Commencing in the fiscal year 2003 and until the Legislature shall determine otherwise:

(A) fifty percent (50%) of all property taxes derived from the Hovensia Coker unit; and

(B) ten percent (10%) of all lottery and casino gaming proceeds.

(c) Notwithstanding the provisions of title 29, chapter 1, section 920 et seq., Virgin Islands Code, the Government of the Virgin Islands, through the Public Finance Authority, may utilize money in the Fund to finance the issuance of bonds to pay up to thirty percent (30%) of retroactive wages owed to all unionized government employees.

(d) To the extent that sufficient funds are available, such funds shall be expended to pay no less than thirty percent (30%) of retroactive wages owed to all unionized government employees no later than October 2004."

SECTION 20. Any professional Virgin Islander Athlete, who declares a willingness to assist in the promotion of the United States Virgin Islands as a recognized tourist destination and agrees to locate certain developing business enterprise in the Virgin Islands, shall be entitled to tax exemptions comparable to those provided under the terms of the agreement between the Government of the Virgin Islands and Timothy Duncan Enterprises Inc., as set forth in Appendix A of (Bill No. 23-0192), and. such athletes and related enterprises shall be subject to obligations comparable to those mandated pursuant to the terms and provisions of .

SECTION 21. The Governor of the Virgin Islands, on behalf of the Government of the Virgin Islands is hereby authorized to enter into agreements, with professional Virgin Islander athletes, similar to the agreement referenced in section 20 of this Act, provided that such athletes declare in writing a willingness to pursue such an agreement.

* * *

SECTION 24. The sum of \$ 1,000,000 is appropriated in the fiscal year ending September 30, 2002, from the Interest Revenue Fund to expand the Micro-Credit Loan Program, established in section 45 of (Bill No. 24-0092), specifically for applicants in the St. Croix District. Such sum shall remain available until expended only for the purposes stated in this section.

* * *

SECTION 26. There is appropriated from the St. John Capital Improvement Fund, in the fiscal year ending September 30, 2002, the sum of \$ 650,000 (Six Hundred Fifty Thousand Dollars), to the Department of Public Works, of which \$ 250,000 shall be used to hire four (4) operators to run the VITRAN Bus Service on the island of St. John and \$ 400,000 to hire eight (8) operators to run the VITRAN Bus Service in St. Croix, including repairs and other maintenance.

* * *

SECTION 28. There is appropriated from the General Fund in the Treasury of the Government of the Virgin Islands, in the fiscal year ending September 30, 2002, the sum of \$ 38,280 (Thirty Eight Thousand Two Hundred Eighty Dollars), to the Marlins Softball Travel Club to attend the 2002 National Modified Softball Championship Tournament in Marietta, Georgia.

* * *

SECTION 32. [Title 2, chapter 6, section 102, Virgin Islands Code](#), is amended by striking the second sentence in its entirety and inserting instead a new sentence to read:

"Seven (7) senators shall be elected at large by the qualified electors of the Virgin Islands from the Virgin Islands as a whole, provided that such senators shall be persons who are bona fide residents of the District of St. Croix, and seven (7) senators shall be elected at large by the qualified electors of the Virgin Islands from the Virgin Islands as a whole, provided that such senators shall be persons who are bona fide residents of the District of St. Thomas and St. John."

* * *

SECTION 34. (a) The sum of \$ 175,000 is appropriated from the Road Fund in the fiscal year ending September 30, 2002, to pave the roadway beginning at 178-B6 Anna's Retreat and ending at 173-B2 Anna's Retreat on St. Thomas.

(b) The sum of \$ 277,060 is appropriated from the Road Fund in the fiscal year ending September 30, 2002, to widen and pave the roadway at Plot No. 2A-5-17, Estate Tabor and Harmony on St. Thomas.

* * *

SECTION 44. Section 32 of this Act, relating to the at-large election of senators, takes effect in the 2004 election year.

VIRGIN ISLANDS LEGISLATIVE SERVICE

Superior Court of the Virgin Islands
Docket Sheet

IN THE SUPREME COURT
OF THE VIRGIN ISLANDS

FILED

December 13, 2022 08:47 AM

SCT-Civ-2022-0110
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

Case #	ST-2021-CV-00079	Judge	Hon. Sigrid M. Tejo
Case Title	George v. Lonski et al	Case Type	Civil - Tort - Personal Injury

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
95	12-07-2022 02:29 PM	Motion - Opposition Motion	Official		Plaintiff's Motion to Join Defendant's Opposition to Motion for Stay	Julie M. German Evert On Behalf of Elvis George
94	12-07-2022 01:59 PM	Response - Opposition Received	Official		Opposition to Motion to Stay	James L. Hymes, III, Esq. On Behalf of Mark Lonski
97	12-12-2022 05:08 PM	Notice - Notice From The Supreme Court Regarding Appeal Received	Official		Supreme Court Docketing Order received. Appeal Docketed as SCT-CIV-2022-0110.	Supreme Court of the Virgin Islands
96	12-12-2022 05:02 PM	Notice - Notice Of Appeal Received	Official		Notice Of Appeal Received from the Supreme Court.	Supreme Court of the Virgin Islands
93	12-05-2022 10:37 AM	Notice - Proposed Order	Official		Proposed Order	Venetia H. Velazquez On Behalf of Department of Labor- Worker's Compensation Administration
92	12-05-2022 10:35 AM	Motion - Motion Received	Official		Government's Motion for Stay of Judgment Pending Appeal Pursuant to V. I. R. APP. P. 8	Venetia H. Velazquez On Behalf of Department of Labor- Worker's Compensation Administration
91	11-16-2022 04:28 PM	Service - Return of Service Issued	Official		Return of Service Issued to the Department of Labor- Worker's Compensation Administration	
90	11-14-2022 04:15 PM	Notice - Notice Of Entry	Official		Notice of Entry of an Order Re: All Pending Motions on November 9, 2022	Sheeniqua Venzen, Court Clerk II
89	11-14-2022 04:14 PM	Order - Order	Official		Order Re: All Pending Motions on November 9, 2022	Hon. Sigrid M. Tejo
88	11-09-2022 01:04 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding (Status Conference) for 11-09-2022	Sheeniqua Venzen, Court Clerk II
87	10-03-2022 12:12 PM	Response - Objection Received	Official		Government's Motion To Strike And, Alternatively, Objection To Plaintiff's Surreply Filed Without Leave Of Court	Velasquez, Venetia , Esq.
86	09-30-2022 09:04 AM	Affidavit - Affidavit	Official		Affidavit	
85	09-30-2022 09:03 AM	Notice - Exhibit	Official		Exhibit	
84	09-30-2022 09:03 AM	Notice - Exhibit	Official		Exhibit	
83	09-30-2022 09:02 AM	Notice - Exhibit	Official		Exhibit	

Superior Court of the Virgin Islands

Docket Sheet

Case #	ST-2021-CV-00079	Judge	Hon. Sigrid M. Tejo
Case Title	George v. Lonski et al	Case Type	Civil - Tort - Personal Injury

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
82	09-30-2022 09:01 AM	Notice - Exhibit	Official		Exhibit	
81	09-30-2022 08:59 AM	Response - Reply	Official		Plaintiff's Reply To Government's Reply To Plaintiff's Request For Hearing To Determine Disbursement Of Settlement Proceeds Filed In Opposition To The Government's Motion To Intervene And Notice Of Claim Of Right To Those Funds	Julie M. German Evert On Behalf of Elvis George
80	09-26-2022 04:33 PM	Response - Response	Official		Response to Motion to Intervene	James L. Hymes, III, Esq. On Behalf of Mark Lonski
79	09-23-2022 10:06 AM	Notice - Notice Of Entry	Official		Notice of Entry of an Order Scheduling Matter for a Status Conference	Sheeniqua Venzen, Court Clerk II
77	09-21-2022 02:27 PM	Response - Response	Official		Government's Reply To Plaintiff's Request For Hearing To Determine Disbursement Of Settlement Proceeds Filed In Opposition To The Government's Motion To Intervene And Notice Of Claim Of Right To Those Funds	Velazquez, Venetia, Esq.
78	09-23-2022 10:05 AM	Order - Order Scheduling Hearing	Official		Order Scheduling Matter for Hon. Sigrid M. Tejo a Status Conference	
76	09-19-2022 01:41 PM	Notice - Exhibit	Official		Exhibit	
75	09-19-2022 01:41 PM	Notice - Exhibit	Official		Exhibit	
74	09-19-2022 01:40 PM	Notice - Exhibit	Official		Exhibit	
73	09-19-2022 01:39 PM	Motion - Motion For Hearing Received	Official		Plaintiff's Request For Hearing To Determine Disbursement Of Settlement Proceeds	Julie M. German Evert On Behalf of Elvis George
72	09-07-2022 10:43 AM	Notice - Notice Of Entry	Official		Notice of Entry of an Order Setting Deadline	Sheeniqua Venzen, Court Clerk II
71	09-07-2022 10:42 AM	Order - Order	Official		Order Setting Deadline	Hon. Sigrid M. Tejo
70	08-09-2022 04:34 PM	Notice - Notice of Compliance with Court's Order	Official		Notice of Compliance with Order Of The Court	James L. Hymes, III, Esq. On Behalf of Mark Lonski
69	08-09-2022 12:15 PM	Financial - Payment Received	Official		Receipt #: 225167 Payor: Property King INC., Amount: \$17,500.00	
68	08-09-2022 11:35 AM	Notice - Notice of Appearance	Official		Notice of Appearance	Velasquez, Venetia, Esq.
67	08-08-2022 08:37 AM	Notice - Notice to the Court	Official		Notice to the Court Of The Government's Claim Of	Velasquez, Venetia, Esq.

Superior Court of the Virgin Islands

Docket Sheet

Case #	ST-2021-CV-00079	Judge	Hon. Sigrid M. Tejo
Case Title	George v. Lonski et al	Case Type	Civil - Tort - Personal Injury

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					Right To Any Settlement Proceeds Up to \$61, 205.27 And Objection To Disbursement Of Such Proceeds To Any Party Until The Government Has Been re-imbursed Pursuant to 24 V.I.C. 263	
65	08-05-2022 11:06 AM	Notice - Notice Of Entry	Official		Notice of Entry of an Order Setting Deadline	Sheeniqua L. Venzen, Court Clerk II
64	08-05-2022 09:49 AM	Notice - Proposed Order	Official		Proposed Order	
63	08-05-2022 09:48 AM	Initiating Document - Complaint	Official		Proposed Complaint In Intervention Received	
62	08-05-2022 09:47 AM	Motion - Motion To Intervene Received	Official		Motion For Leave to Intervene Comes Now The Government Of The Virgin Islands Received	Velasquez, Venetia, Esq.
61	08-04-2022 12:33 PM	Notice - Proposed Order	Official		Proposed Order	
66	08-05-2022 11:09 AM	Order - Order	Official		Order Setting Deadline	Hon. Sigrid M. Tejo
60	08-03-2022 04:18 PM	Motion - Motion Received	Official		Joinder Of Motion To Interplead	James L. Hymes, III, Esq. On Behalf of Mark Lonski
59	08-02-2022 09:40 AM	Affidavit - Affidavit	Official		Affidavit In Support of Motion To Interplead	
58	08-02-2022 09:24 AM	Motion - Motion Received	Official		Motion To Interplead Settlement Funds	Julie M. German Evert On Behalf of Elvis George
57	06-13-2022 02:50 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of an Order Setting a Deadline	Latoya A. Camacho, Court Clerk Supervisor
56	06-13-2022 02:48 PM	Order - Order	Official		Order Setting a Deadline Ordered that by July 29th,2022 the parties shall either: (1) file the appropriate Stipulation Agreement and/or Notice of Dismissal to close this matter or (2) advise the Court why the filing would be premature or otherwise	Hon. Sigrid M. Tejo
55	05-27-2022 03:15 PM	Notice - Mediation Report	Official		Mediation Report Received- The Conflict has been completely resolved	David E. Nichols, Esq.-Mediator
54	04-11-2022 03:23 PM	Notice - Notice to the Court	Official		Notice of Mediation	Julie M. German Evert On Behalf of Elvis George
53	04-05-2022 03:18 PM	Notice - Notice to the	Official		Informational Notice	James L. Hymes, III,

Superior Court of the Virgin Islands

Docket Sheet

Case #	ST-2021-CV-00079	Judge	Hon. Sigrid M. Tejo
Case Title	George v. Lonski et al	Case Type	Civil - Tort - Personal Injury

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
		Court				Esq. On Behalf of Property King INC.
52	03-15-2022 04:07 PM	Notice - Notice of Entry of Official Judgment/Order			Notice of Entry of an Order Scheduling Matter for a Status Conference	Latoya A. Camacho, Court Clerk Supervisor
51	03-15-2022 03:45 PM	Order - Order Scheduling Hearing	Official		Order Scheduling Matter for a Status Conference	Hon. Sigrid M. Tejo
50	02-15-2022 01:59 PM	Notice - Notice Of Service	Official		Notice of Production filed by Julie German Evert, Esquire	Julie German Evert, Esquire
49	02-10-2022 09:31 AM	Notice - Notice Of Service	Official		Notice of Production	Julie M. German Evert On Behalf of Elvis George
48	02-08-2022 03:30 PM	Notice - Notice Of Service	Official		Notice of Production	Julie M. German Evert On Behalf of Elvis George
47	01-25-2022 01:38 PM	Notice - Notice Of Service	Official		Notice Of Service	
46	01-24-2022 01:00 AM	Notice - Notice Of Service	Official		Notice Of Service	Julie M. German Evert On Behalf of Elvis George
45	12-16-2021 05:15 PM	Notice - Notice of Entry of Official Judgment/Order			Notice of Entry of Order	
44	12-15-2021 05:13 PM	Order - Order	Official		Order signed by Judge Sigrid Hon. Sigrid M. Tejo	Hon. Sigrid M. Tejo
43	12-03-2021 02:24 PM	Notice - Notice to the Court	Official		Notice to the Court	Julie M. German Evert On Behalf of Elvis George
42	11-03-2021 02:35 PM	Notice - Notice of Filing	Official		Notice to Take Deposition of the Plaintiff, Elvis George	
41	11-02-2021 04:17 PM	Notice - Notice Of Service	Official		Notice of Production of Documents	Julie M. German Evert On Behalf of Elvis George
40	10-27-2021 10:35 AM	Notice - Notice Of Service	Official		Notice Of Service	
39	10-22-2021 08:32 AM	Notice - Notice of Filing	Official		Amended Notice of Production	
38	10-20-2021 11:21 AM	Notice - Notice of Filing	Official		Notice of Production	Julie M. German Evert On Behalf of Elvis George
37	10-13-2021 09:30 AM	Hearing - Record Of Proceeding	Official		Record Of Proceeding completed by the clerk	Tashika Hector Court Clerk II
36	10-07-2021 10:54 AM	Notice - Notice to the Court	Official		Notice to the Court filed by James L. Hymes, III, Esq.	James L. Hymes, III, Esq.
35	08-02-2021 03:34 PM	Notice - Notice of Entry of Official Judgment/Order	Official		Notice of Entry of Judgment/Order	
34	08-02-2021 03:32 PM	Order - Order	Official		Amended Scheduling Order signed by Judge Sigrid M. Tejo	
33	07-30-2021 04:50 PM	Notice - Notice Of Service	Official		Notice Of Service	

Superior Court of the Virgin Islands
Docket Sheet

Case #	ST-2021-CV-00079	Judge	Hon. Sigrid M. Tejo
Case Title	George v. Lonski et al	Case Type	Civil - Tort - Personal Injury

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
32	07-30-2021 04:28 PM	Notice - Notice Of Service	Official		Notice Of Service	
31	07-30-2021 04:27 PM	Notice - Notice Of Service	Official		Notice Of Service	
30	07-30-2021 04:26 PM	Notice - Notice Of Service	Official		Notice Of Service	
29	07-30-2021 03:45 PM	Notice - Notice Of Service	Official		Notice Of Service of Rule 26 Initial Disclosures of the Plaintiff , Elvis George	
28	07-29-2021 11:59 AM	Notice - Proposed Order	Official		Proposed Order	Elvis George Julie German Evert, Esquire
27	07-29-2021 11:57 AM	Motion - Motion To Amend Received	Official		Stipulated Motion to Amend Scheduling Order	Elvis George Julie German Evert, Esquire
26	06-24-2021 09:58 AM	Notice - Notice Of Service	Official		Notice Of Service of Mark Lonski's Response to Plaintiff's Request for Production of Documents	James L. Hymes, III Esq.
25	06-24-2021 09:57 AM	Notice - Notice Of Service	Official		Notice Of Service of Mark Lonski's Response to Plaintiff's 1st Set of Interrogatories	James L. Hymes, III Esq.
24	06-24-2021 09:03 AM	Notice - Notice Of Service	Official		Notice Of Service of PK's Response to Plaintiff's Request for Production of Documents	James L. Hymes III, Esq.
23	06-24-2021 09:02 AM	Notice - Notice Of Service	Official		Notice Of Service of PK's Response to Plaintiff's First Set of Interrogatories	James L. Hymes III, Esq.
22	04-09-2021 11:42 AM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
21	04-09-2021 11:39 AM	Action - File Returned To Clerk's Office	Official		File Returned To Clerk's Office with an Order dated 04/07/2021	
20	04-07-2021 11:40 AM	Order - Order	Official		Order signed by Judge Sigrid M. Tejo	
19	03-26-2021 02:57 PM	Action - File Forwarded To Judge's Chambers	Official		File Forwarded To Judge's Chambers with a Joint Stipulated Scheduling Order dated 03/25/2021	
18	03-26-2021 11:02 AM	Motion - Motion Received	Official		Joint Stipulated Scheduling Order	Julie German Evert, Esquire & James L Hymes, III, Esq.
17	03-16-2021 09:12 AM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Judgment/Order	
16	03-12-2021 02:16 PM	Notice - Notice Of Service	Official		NOTICE OF SERVICE OF PLAINTIFF'S INTERROGATORIES AND REQUEST FOR DOCUMENT PRODUCTION TO	Elvis George Julie German Evert, Esquire

**Superior Court of the Virgin Islands
Docket Sheet**

Case #	ST-2021-CV-00079	Judge	Hon. Sigrid M. Tejo
Case Title	George v. Lonski et al	Case Type	Civil - Tort - Personal Injury

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					DEFENDANT MARK LONSKI	
15	03-12-2021 01:22 PM	Notice - Notice Of Service	Official		Notice Of Service	Elvis George Julie German Evert, Esquire
14	03-12-2021 09:01 AM	Order - Order	Official		Order signed by Judge Sigrid M. Tejo	
13	03-09-2021 07:46 AM	Answer - Answer	Official		ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT	JAMES L. HYMES, III
12	03-02-2021 02:38 PM	Notice - Notice Of Reassignment	Official		Notice Of Reassignment	
11	02-21-2021 11:17 AM	Notice - Notice of Appearance	Official		Notice of Appearance	JAMES L. HYMES, III, ESQUIRE
10	02-18-2021 04:30 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Order dated February 18, 2021 to: Julie German Evert, Esq.	
9	02-18-2021 04:30 PM	Order - Order of Recusal	Official		Order of Recusal	Hon. Denise M. Francois
8	02-16-2021 10:06 AM	Financial - Payment Received	Official		Receipt #: 201783 Payor: ELVIS GEORGE, Amount: \$75.00	
7	02-12-2021 04:27 PM	Service - Summons Issued	Official		Summons Issued	
6	02-12-2021 04:27 PM	Service - Summons Issued	Official		Summons Issued	
5	02-12-2021 04:26 PM	Initiating Document - Docket Letter Processed	Official		Docket Letter Processed	
4	02-12-2021 12:48 PM	Initiating Document - Complaint	Official		Verified Complaint Received	
3	02-12-2021 12:47 PM	Initiating Document - Litigant Personal Data Form	Official		Civil Litigant Personal Data Form	
2	02-12-2021 12:47 PM	Service - Summons Received	Official		Summons Received	
1	02-12-2021 12:46 PM	Service - Summons Received	Official		Summons Received	

CERTIFIED TO BE A TRUE COPY
This 13th day of Dec. 20 22
TAMARA CHARLES
CLERK OF THE COURT

By Paula Clayton Court Clerk TLT

FILED

February 12, 2021

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,

Plaintiff,

v.

MARK LONSKI AND PROPERTY KING INC.,

Defendants.

CIVIL NO.: ST-21-CV-_____

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW, Plaintiff, by and through her undersigned counsel, Law Office of Julie German Evert, (Julie German Evert, of counsel) and for his Complaint alleges as follows:

1. This Court has jurisdiction pursuant to 4 V.I.C. Section 76(a), as amended.
2. Plaintiff ELVIS GEORGE is a resident of St. John, US Virgin Islands, and at all times material hereto, Plaintiff was in the exercise of due care and caution for his safety and the safety of others.
3. At all times material hereto, Defendant MARK LONSKI was an individual residing in St. John, US Virgin Islands, and the operator of a 2019 Ford F-550, Tag #KING-8, which vehicle was owned by PROPERTY KING INC.
4. Defendant was driving the vehicle referenced above when he collided with the Plaintiff.
5. At all times material hereto defendant MARK LONSKI was employed by Defendant PROPERTY KING INC, a Virgin Islands corporation licensed and authorized to conduct business in the US Virgin Islands, and the owner of the truck being operated by defendant MARK LONSKI, as described herein.

6. On or about July 14, 2020, at St. John Waste Management work site, in St. John, US Virgin Islands, Defendant MARK LONSKI drove the Ford truck he was operating into the Plaintiff, ELVIS GEORGE, thus causing the Plaintiff to sustain multiple injuries to his body and person, as alleged herein.
7. As a direct and proximate result of the aforementioned conduct of Defendants, Plaintiff ELVIS GEORGE sustained injuries to his right shoulder, back, right foot, and other parts of his body, and suffers and continues to suffer great pain of mind and body. In addition, Plaintiff has lost income.
8. As a further direct and proximate result of the conduct of the Defendants, Plaintiff ELVIS GEORGE has incurred and will continue to incur expenses for physicians, therapy, drugs and medications, and other miscellaneous necessary and reasonable expenses for his medical care and treatment, the exact amount of which is as yet unascertained. Further Plaintiff ELVIS GEORGE will, in the future, continue to incur like expenses of an unknown amount.
9. Defendant MARK LONSKI was negligent in, but not limited to, the following manner:
 - (a) Operating his vehicle without exercising reasonable care for those working in the vicinity;
 - (b) Failing to keep a proper lookout for pedestrians behind him, while reversing;
 - (c) Failing to reverse when safe to do so; and
 - (d) Failing to make timely or any application of his brakes when by so doing he could have avoided the collision; and

10. In addition, at all times material hereto, Defendant MARK LONSKI was otherwise generally negligent.
11. Defendant MARK LONSKI'S conduct as alleged herein was in violation of Virgin Islands law, and defendant was cited at the scene as being in violation of 20 V.I.C. Section 507, negligent driving for failing to reverse when safe to do so.

COUNT I

Negligent Hiring, Retention and Supervision by PROPERTY KING INC over MARK LONSKI

12. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation contained in paragraphs 1 through 11, inclusive of this Complaint.
13. At all times, defendant PROPERTY KING INC employed defendant MARK LONSKI.
14. Defendant PROPERTY KING INC negligently trained and/or supervised defendant LONSKI and negligently authorized and/or permitted defendant MARK LONSKI to drive a large truck on the public streets of St. John, when defendant PROPERTY KING INC knew or should have known that defendant MARK LONSKI was not competent, and/or properly trained and/or skilled to drive a large truck on the public streets of St. John.
15. It was foreseeable and/or should have been foreseeable to defendant PROPERTY KING INC that if it did not properly train and/or supervise defendant MARK LONSKI in how to safely operate a large Ford truck while dumping its contents at the dump sites in St. John, and how to properly reverse a Ford truck so that he would not hit any pedestrians that may be in close vicinity to the vehicle, so that

the employees of St. John Waste Management work site, including plaintiff, would not suffer serious damages as herein alleged.

16. Despite this knowledge, defendant PROPERTY KING INC failed to exercise reasonable care to train and/or supervise defendant MARK LONSKI, and/or failed to exercise reasonable care to inquire, discern and confirm that defendant MARK LONSKI had the requisite training and experience to drive a large Ford truck, such as the truck he was operating when he slammed into the plaintiff's person, at the Waste Management site of St. John.
17. As a direct and proximate result of Defendant PROPERTY KING INC's negligence, as described herein, plaintiff has suffered the damages alleged herein and above.

COUNT II

Respondeat Superior

18. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation contained in paragraphs 1 through 17, inclusive of this Complaint.
19. At all times material to the allegations set forth in this Complaint, the Defendant MARK LONSKI was an employee of PROPERTY KING INC, and acting within the scope of his employment.
20. Defendant MARK LONSKI was negligent when he operated the truck owned by defendant PROPERTY KING INC., causing it to collide with the Plaintiff.
21. As a direct and proximate result of MARK LONSKI'S negligence, Plaintiff was injured as described herein, for which injuries MARK LONSKI is liable.

22. PROPERTY KING INC is also liable for the damages caused under the doctrine of respondeat superior, as MARK LONSKI was acting as PROPERTY KING INC.'s employee at all times relative hereto.

WHEREFORE, plaintiff prays for judgment against defendants jointly and severally as follows:

1. General Damages in a sum to be proven at trial;
2. All costs and incidental expenses according to proof;
3. For costs of suit herein and reasonable attorney's fees; and
4. Such other and further relief as the Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY.

RESPECTFULLY SUBMITTED,
LAW OFFICE OF JULIE GERMAN EVERT

February 12, 2020

/s/ Julie German Evert /s/
Julie German Evert, Esquire
Attorney for Plaintiff, VI Bar No. 370
5043 Norre Gade, Ste 6
St. Thomas, VI 00802
(340) 774-2830
lawofficeofjulieevert@gmail.com
julieevert555@gmail.com

FILED

March 08, 2021

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,)	
	)	CIVIL NO. ST-2021-CV-00079
Plaintiff,)	
	)	ACTION FOR DAMAGES
vs.)	
	)	JURY TRIAL DEMANDED
MARK LONSKI and PROPERTY KING, INC.,)	
)	
Defendants.)	
_____)	

ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF'S COMPLAINT

COME NOW the defendants **MARK LONSKI** and **PROPERTYKING, INC.** incorrectly referred to in the Complaint as Property King, Inc. (hereinafter "**Propertyking**"), by their undersigned attorney, James L. Hymes, III, and as and for their answer to the Complaint respectfully show to the Court and allege:

1. **ADMIT** the allegations contained in paragraph 1 of the Complaint.
2. **DENY** the allegations contained in paragraph 2 of the Complaint either for the reason they are false, or for lack of information.
3. **ADMIT** the allegations contained in paragraph 3 of the Complaint.
4. **DENY** the allegations contained in paragraph 4 of the Complaint as stated.
5. **ADMIT** the allegations contained in paragraph 5 of the Complaint.

6. **DENY** the allegations contained in paragraph 6 of the Complaint as stated, either for the reason they are false or for lack of information.

7. **DENY** that the conduct of the defendants caused injuries to the plaintiff and loss of income, as alleged in paragraph 7 of the Complaint.

8. **DENY** that the conduct of the defendants caused the plaintiff to incur medical expenses as alleged in paragraph 8 of the Complaint.

9. **DENY** the allegations contained in paragraph 9 of the Complaint and each sub- lettered paragraph thereof.

10. **DENY** the allegations contained in paragraph 10 of the Complaint.

11. **ADMIT** that Mark Lonski was cited for a violation of the Virgin Islands traffic code, but **DENY** that said citation was properly issued or of precedent in this litigation as alleged in paragraph 11 of the Complaint.

COUNT I

NEGLIGENT HIRING, RETENTION AND SUPERVISION BY PROPERTYKING, INC.

12. The defendants repeat and realleged their responses to paragraphs 1 through 11 above as if fully set forth herein below.

13. **ADMIT** the allegations contained in paragraph 13 of Count I of the Complaint.

14. **DENY** the allegations contained in paragraph 14 of Count I of the Complaint, and further assert that the defendant, Mark Lonski, has been driving the company dump truck for more than fifteen (15) years on St. John and St. Thomas, and that he has made visits to the dump site on a daily basis, has been thoroughly trained

by Propertyking to operate the vehicle, and is experienced to operate the vehicle in a safe and prudent manner.

15. **DENY** the allegations contained in paragraph 15 of Count I of the Complaint, and further assert that the defendant, Mark Lonski, has been driving the company dump truck for more than fifteen (15) years on St. John and St. Thomas, and that he has made visits to the dump site on a daily basis, has been thoroughly trained by Propertyking to operate the vehicle, and is experienced to operate the vehicle in a safe and prudent manner.

16. **DENY** the allegations contained in paragraph 16 of Count I of the Complaint, and further assert that the defendant, Mark Lonski, has been driving the company dump truck for more than fifteen (15) years on St. John and St. Thomas, and that he has made visits to the dump site on a daily basis, has been thoroughly trained by Propertyking to operate the vehicle, and is experienced to operate the vehicle in a safe and prudent manner.

17. **DENY** the allegations contained in paragraph 17 of Count I of the Complaint.

COUNT II
RESPONDEAT SUPERIOR

18. These defendants repeat and realleged their responses to paragraphs 1 through 17 above as if fully set forth herein below.

19. **ADMIT** the allegations contained in paragraph 19 of Count II of the Complaint.

20. **DENY** the allegations contained in paragraph 20 of Count II of the Complaint.

21. **DENY** the allegations contained in paragraph 21 of Count II of the Complaint either by reason of the fact they are false, or for lack of information.

22. Neither admit nor deny the assertion in paragraph 22 of Count II of the Complaint for the reason that it states a legal conclusion to which no response is required, but to the extent a response is required it is **DENIED**.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a cause of action against the defendants upon which the Court may grant relief.

2. The plaintiff is barred from recovery herein by reason of the fact that the damages of which he complains are due to the negligence of other parties over which the defendants had no control.

3. The negligence of the defendants, if any they had, which is specifically denied, was superseded by the negligence of other parties, thereby absolving the defendants of any liability for the damages of which the plaintiff complains.

4. The plaintiff is barred from recovery herein to the extent he contributed to his own injuries, if any he had.

5. The plaintiff is barred from recovery herein to the extent he knowingly and intelligently assumed the risk of injury to himself.

6. The plaintiff is barred from recovery herein by reason of the fact that he assumed control over the operation of defendants' vehicle by directing it where and how

to proceed at the time of the incident, and by reason of the fact that the defendant Lonski was obeying the directions of the plaintiff when the incident occurred.

7. The plaintiff is barred from recovery herein by reason of the fact that the defendant, Mark Lonski, has been driving the company dump truck for more than fifteen (15) years on St. John and St. Thomas, that he has made visits to the dump site on a daily basis, has been thoroughly trained by Propertyking to operate the vehicle, and is experienced to operate the vehicle in a safe and prudent manner and was operating the vehicle in a safe and prudent manner while obeying the directions of the plaintiff when the incident occurred.

8. The plaintiff is barred from recovery herein by reason of the fact that he had the last clear chance to avoid contact with the defendant's vehicle which would have resulted in no injury to himself.

9. The damages of which the plaintiff complains are limited by the provisions of 20 Virgin Islands Code §555 *et seq.*, to the extent it still applies.

10. The plaintiff is barred from recovery herein by reason of the fact that the defendants committed no act of negligence and acted reasonably.

11. The plaintiff is barred from recovery of punitive damages against the defendants for the reason that there is no vicarious liability for an intentional act, or an act which is committed in reckless disregard for the safety of others.

12. The plaintiff is barred from recovery of punitive damages for the reason that the facts as alleged in the Complaint of the plaintiff do not support a legal basis for a claim for punitive damages against the defendants.

13. The plaintiff is barred from recovery herein to the extent he has failed to mitigate his damages.

14. The plaintiff is barred from recovery herein to the extent he has received payments from collateral sources, and to the extent collateral source payments have been received by him, the defendants claim said payments as a setoff against any judgment the plaintiff may recover against them.

15. The damages of which the plaintiff complains are due to facts and circumstances over which the defendants had no control.

16. The defendants reserve the right to add additional affirmative defenses which may appear appropriate as developed during discovery and during the pendency of this case prior to and during trial.

WHEREFORE, the defendants respectfully request that this court enter an order dismissing the Complaint as to them, and further awarding them their costs, including a reasonable fee for their attorney, for being required to defend this action.

Respectfully Submitted,

DATED: March 8, 2020.

LAW OFFICES OF JAMES L. HYMES, III, P.C.
Attorney for Defendants – Mark Lonski
and Propertyking, Inc.

By: */s/James L. Hymes, III*

JAMES L. HYMES, III

VI Bar No. 264

P. O. Box 990

St. Thomas, VI 00804-0990

Telephone: (340) 776-3479

E-Mail: jim@hymeslawvi.com;

rauna@hymeslawvi.com

CERTIFICATE OF SERVICE

I hereby certify that on this the 8th day of March, 2021, as an approved C-Track filer on behalf of James L. Hymes, III, I have caused an exact copy of the foregoing ***“Answer and Affirmative Defenses to Plaintiff’s Complaint”*** to be served electronically through the C-Track system upon the following counsel of record:

JULIE GERMAN EVERT, ESQ.

LAW OFFICES OF JULIE GERMAN EVERT

5043 Norre Gade, Ste. 6

St. Thomas, VI 00802

lawofficesofjulieevert@gmail.com;

julieevert555@gmail.com

Attorney for Plaintiff

/s/ Rauna Stevenson-Otto

c:\george\2021-03-08...Answer....

FILED

October 19, 2021 05:09 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,

Plaintiff,

v.

MARK LONSKI. and PROPERTYKING, Inc.,

Defendants.

CIVIL NO. ST-21-CV-00079

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

NOTICE OF PRODUCTION

COMES NOW, Plaintiff, **ELVIS GEORGE**, by and through his undersigned counsel, Julie German Evert, Esquire, and hereby provides Notice pursuant to Rule 26 of producing a copy of the following documents to defendant's counsel of records which were sent via email on October 19th, 2021.

Plaintiff hereby produces the following documents.

1. Executed copies of the following:
 - a. (2) Authorization to Disclose Medical/Health Information
 - b. (1) Workmen's Compensation Authorization
 - c. (1) Employment Authorization Form
 - d. (1) Insurance Company Authorization
 - e. (1) Request for Social Security Information
 - f. (1) Credit Card Information
 - g. (1) Criminal Records Authorization
 - h. (1) Request for Copy of Tax Return
2. Records from Comprehensive Orthopaedic Global COG000001-COG000009

3. Records from Comprehensive Orthopaedic Global COG000001-000030
4. Billing from Comprehensive Orthopaedic Global COG000001
5. Billing from Comprehensive Orthopaedic Global COG000002
6. Records from St. John Physical Therapy SJPT000001-SJPT000030
7. Invoices from St. John Physical Therapy SJPT000001-SJPT000003
8. Records from Myrah Keating Smith Community Health Center MKS000001
9. Records and Invoices from St. Thomas Radiology Associates, LLC STTR-000001 – STTR-000010
10. Records and Invoices from St. Thomas Radiology Associates, LLC STTR-000001 – STTR-000002
11. Records from St. Thomas Neurology STTN000001-STTN000004
12. Insurance Form from St. Thomas Neurology STTN000001

Respectfully submitted,

LAW OFFICE OF JULIE GERMAN EVERT

/s/ Julie German Evert /s/

Dated: October 19th, 2021

Julie German Evert, Esquire

Counsel for Petitioner, VI Bar No. 370

5043 Norre Gade, Suite #6

St. Thomas, VI 00802

(340) 626-5416

julie@clgvi.com

law@clgvi.com

CERTIFICATE OF SERVICE

I certify that this document complies with the page or word provisions of V.I. Civ. Pro. Rule 6-1(e) and a true and exact copy of the NOTICE OF PRODUCTION was served on the following, this 19th day of October 2021:

James L. Hymes, III

VI Bar No. 264

P.O. Box 990

St. Thomas, VI 00804-0990

Telephone: (340) 776-3470

E-Mail: jim@hymeslawvi.com

rauna@hymeslawvi.com

Via: Mail // Facsimile // Hand Delivery // Email ☒ // C-Track E-File ☒ //

/s/ Julia Cassinelli /s/

Julia Cassinelli

Legal Assistant

Law Office of Julie Evert

FILED

November 02, 2021 12:17 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,

Plaintiff,

v.

MARK LONSKI. and PROPERTYKING, Inc.,

Defendants.

CIVIL NO. ST-21-CV-00079

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

NOTICE OF PRODUCTION

COMES NOW, Plaintiff, **ELVIS GEORGE**, by and through his undersigned counsel, Julie German Evert, Esquire, and hereby provides Notice pursuant to Rule 26 of producing a copy of the following documents to defendant's counsel of records which were sent via email on November 2nd, 2021.

Plaintiff hereby produces the following documents.

1. St. John Physical Therapy Workmen's Compensation SJPT-000034 – SJPT-000124
2. Records from Myrah Keating Smith Community Health Center MKS-000002 – MKS-000047

Please note that MKS-000014 is somewhat illegible and it relates to Dr. De James reducing and splinting Plaintiff's pinky finger.

Please note that MKS-000022 is illegible. That note relates to a kidney issue and is not related to the incident complained of.

Respectfully submitted,

LAW OFFICE OF JULIE GERMAN EVERT

/s/ Julie German Evert /s/

Dated: November 2nd, 2021

Julie German Evert, Esquire

Counsel for Petitioner, VI Bar No. 370

5043 Norre Gade, Suite #6

St. Thomas, VI 00802

(340) 626-5416

julie@clgvi.com

law@clgvi.com

CERTIFICATE OF SERVICE

I certify that this document complies with the page or word provisions of V.I. Civ. Pro. Rule 6-1(e) and a true and exact copy of the NOTICE OF PRODUCTION was served on the following, this 2nd day of November 2021:

James L. Hymes, III

VI Bar No. 264

P.O. Box 990

St. Thomas, VI 00804-0990

Telephone: (340) 776-3470

E-Mail: jim@hymeslawvi.com

rauna@hymeslawvi.com

Via: Mail // Facsimile // Hand Delivery // Email ☒ // C-Track E-File ☒ //

/s/ Julia Cassinelli /s/

Julia Cassinelli

Legal Assistant

FILED

August 05, 2022 09:36 AM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES



Workers' Compensation Administration

4401 Sion Farm
Christiansted, VI 00820
Phone: (340) 713-3413
Fax (340) 713-3421

2353 Kronprindsen Gade
St. Thomas, USVI 00802
Phone: (340) 715-5708
Fax: (340) 715-5743

February 10, 2022

Julia Cassinelli
Legal Assistant
Law Office of Julie German Evert
5043 Norre Gade, Suite 6 (Mailing)
11A Norre Gade (Physical)
St. Thomas, VI 00802
Tel. No.: (340) 774-2830

Re: Elvis George vs. VI Waste Management Authority
Date of Injury: July 14, 2020
Case No.: 2020-0254- FINAL LIEN

Dear Attorney Evert:

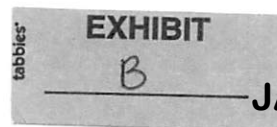
Please be advised that the Workers' Compensation Administration expended the sum of **\$61,205.27** in the referenced case. The breakdown is as follows:

MEDICAL EXPENDITURES:	\$ 55,509.36
DISABILITY INCOME BENEFITS:	\$ 5,695.91

Submit the General Release along with \$5.00 for the Notary Public to **Rainia Thomas, Director, Workers Compensation Administration, #4401 Sion Farm, Christiansted, St. Croix, U.S. Virgin Islands, 00820-4245**, when a settlement agreement in this case has been effectuated.

Sincerely,

Foster A. Smith
Claims Auditor



JA - 0061

FILED

February 14, 2022 02:21 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,

Plaintiff,

v.

MARK LONSKI. and PROPERTYKING, Inc.,

Defendants.

CIVIL NO. ST-21-CV-00079

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

NOTICE OF PRODUCTION

COMES NOW, Plaintiff, **ELVIS GEORGE**, by and through his undersigned counsel, Julie German Evert, Esquire, and hereby provides Notice pursuant to Rule 26 of producing a copy of the following documents to Defendants' counsel of records which were sent via email on February 14, 2022.

Plaintiff hereby produces the following documents:

1. Workers' Compensation Lien - WCL000001

Respectfully submitted,

LAW OFFICE OF JULIE GERMAN EVERT

/s/ Julie German Evert /s/

Dated: February 14, 2022

Julie German Evert, Esquire
Counsel for Plaintiff, VI Bar No. 370
5043 Norre Gade, Suite #6
St. Thomas, VI 00802
(340) 774-2830
Julieevert555@gmail.com
lawofficeofjulieevert@gmail.com

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT this Notice of Production complies with the page or word provisions of V.I. Civ. Pro. Rule 6-1(e) and a true and exact copy of the foregoing document was served on the following, this 14 day of February, 2022:

James L. Hymes, III
VI Bar No. 264
P.O. Box 990
St. Thomas, VI 00804-0990
Telephone: (340) 776-3470
E-Mail: jim@hymeslawvi.com
rauna@hymeslawvi.com

Via: Mail // Facsimile // Hand Delivery // Email ☒ // C-Track E-File ☒ //

/s/ Julia Cassinelli /s/
Julia Cassinelli
Legal Assistant

FILED

April 04, 2022 03:37 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,)	
	)	CIVIL NO. ST-2021-CV-00079
Plaintiff,)	
	)	ACTION FOR DAMAGES
vs.)	
	)	JURY TRIAL DEMANDED
MARK LONSKI and PROPERTY KING, INC.,)	
)	
Defendants.)	

INFORMATIONAL NOTICE

TO: HONORABLE SIGRID M. TEJO, JUDGE
SUPERIOR COURT OF THE VIRGIN ISLANDS
Alexander A. Farrelly Justice Complex
Post Office Box 70
St. Thomas, Virgin Islands 00804

TAMARA CHARLES
Clerk of the Court
SUPERIOR COURT OF THE VIRGIN ISLANDS
Alexander A. Farrelly Justice Complex
Post Office Box 70
St. Thomas, Virgin Islands 00804

COME NOW, the defendants, **MARK LONSKI** and **PROPERTYKING, INC.**,
incorrectly referred to in the Complaint as Property King, Inc. (hereinafter
"**Propertyking**"), by their undersigned attorney, James L. Hymes, III and provide the

following information to the Court regarding the March 31, 2022, mediation which did not take place.

The mediation scheduled to occur on March 31, 2022 in connection with this case did not take place for the reason that the Workmen's Compensation Division of the Department of Labor has not been made a party Plaintiff in connection with this matter. The Workmen's Compensation Division of the Department of Labor has a significant lien. By law, this lien must be satisfied first and foremost before any payments are made to the Plaintiff.

Because of the foregoing, this defendant demanded that the attorney for the Plaintiff make the Workmen's Compensation Division of the Department of Labor a party to this case, and to make it a party for the purpose of participating in the mediation to either prove, compromise, or withdraw its lien. The attorney for the Plaintiff advised the undersigned that she could not do any of the foregoing by March 31, 2022. She offered to go to mediation without any involvement by the Workmen's Compensation Division of the Department of Labor. The attorney for the Plaintiff represented that she would settle the Department of Labor's lien after the mediation was completed. This was unacceptable to the undersigned based on existing law in the Territory which was provided to the attorney for the Plaintiff in letter form, copy attached as "Exhibit A." This was also unacceptable to the undersigned for the reason that the attorney for the Plaintiff does not represent the Division of Workmen's Compensation of the Department of Labor and has no authority to speak on its behalf.

Accordingly, it is the position of the Defendants that his case cannot proceed to mediation until the Workmen's Compensation Division of the Department of Labor is fully involved in this case.

Respectfully Submitted,

DATED: April 4, 2022.

LAW OFFICES OF JAMES L. HYMES, III, P.C.
Attorney for Defendants – Mark Lonski
and Propertyking, Inc.

By: /s/ James L. Hymes, III

JAMES L. HYMES, III

VI Bar No. 264

P. O. Box 990

St. Thomas, VI 00804-0990

Telephone: (340) 776-3470

E-Mail: jim@hymeslawvi.com;

rauna@hymeslawvi.com

CERTIFICATE OF SERVICE

I hereby certify that on this the 4th day of April, 2022, as an approved C-Track filer on behalf of James L. Hymes, III, I have caused an exact copy of the foregoing ***“Informational Notice”*** to be served electronically through the C-Track system upon the following counsel of record:

JULIE GERMAN EVERT, ESQ.

LAW OFFICES OF JULIE GERMAN EVERT

5043 Norre Gade, Ste. 6

St. Thomas, VI 00802

lawofficesofjulieevert@gmail.com;

julieevert555@gmail.com

Attorney for Plaintiff

/s/ Rauna Stevenson-Otto

Rauna Stevenson

From: CJ Oleari
Sent: Thursday, March 31, 2022 12:15 PM
To: Julie Evert
Cc: Rauna Stevenson; Jim Hymes; Sanchez, Peter; pkingusvi@gmail.com
Subject: George vs. Property King

March 31, 2022

Dear Attorney Evert:

I am writing in response to your communication to me in which you assert that the Department of Labor does not participate in mediations. If this representation is made by you as the attorney for the Department of Labor, you should so indicate by filing a Notice of Appearance reflecting that you are authorized to speak on its behalf.

There is as case in the Virgin Islands which is directly on point on this issue. Jennings vs Richards and Manasseh Bus Lines, Inc., 31 VI Reports, 185 (1995). It involves a claim in which the alleged damages of the plaintiff exceed the potential recovery from the tortfeasor. The Court found that Section 263 of Title 24 provides that the Commissioner of Labor shall subrogate himself to the rights of the injured employee who is entitled to institute an action for damages against a third person tortfeasor in all cases where the Government Insurance Fund is obligated to compensate or furnish treatment to the employee. The Court found that "by the strict wording of the statute the injured employee can neither institute an action or compromise the right of action without the assent and participation of the Commissioner. Furthermore, Section 263 provides no compromise shall be valid or effective in law unless the expenses incurred by the Government Insurance are first paid." In the Jennings case, the Court found that "taken as a whole the Workers Compensation Statute clearly envisions the Commissioner, and the Deputy Commissioner of Labor as administrator of the Workers Compensation Laws, should assume the role of exclusive negotiator with the power to compromise or waive liens. The Court also found that Section 263 implies a duty on the part of the Commissioner to participate in settlement negotiations." In that case the Court entered an order directing the Commissioner of Labor or his/her designated representative to engage in good faith negotiations.

Under the circumstances, it seems to me that the Department of Labor either has to waive its lien entirely or participate in a mediation agreed to by the parties with the ability to negotiate in whole or part a payment to satisfy the lien which it is subrogated to in this case. If, up to now, The Department of Labor has not participated in mediation it has been doing so contrary to the law of Territory. My clients and I can not agree to proceed to a mediation without a means of resolving the pending lien either by waiver or compromise. We also do not wish to participate in a mediation which is manifestly unlawful and designed to compromise the rights of the defendants and to cause them to incur additional substantial legal costs and expenses.

Accordingly, I respectfully request to take the necessary steps to involve the Commissioner of Laor and its Division of Workmen's Compensation in the further handling of this matter or obtain a waiver of its lien.

Thank you for your advice, assistance and cooperation in this regard.

Sincerely yours,
James L. Hymes, III

FILED

April 08, 2022 11:33 AM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,

Plaintiff,

v.

MARK LONSKI. and PROPERTYKING, Inc.,

Defendants.

CIVIL NO. ST-21-CV-00079

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

NOTICE OF MEDIATION

COMES NOW, the parties and the Virgin Islands Department of Labor, and hereby files
a copy of the Confirmation for Mediation scheduled for **Thursday, May 26, 2022 at 10:00am.**

The above-referenced Confirmation is attached hereto and made a part hereof as **Exhibit "A."**

Dated: April 8, 2022

Respectfully submitted,
Law Office of Julie German Evert, PC

/s/ Julie German Evert, Esq. /s/
Julie German Evert, Esquire
Counsel for Plaintiff, VI Bar No. 370
5043 Norre Gade, Ste. 6
St. Thomas, VI 00802
(340) 774-2830
lawofficeofjulieevert@gmail.com
julieevert555@gmail.com

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT this Notice of Mediation complies with the page or word provisions of V.I. Civ. Pro. Rule 6-1(e) and a true and exact copy of the foregoing document was served on the following, this 8th day of April, 2022:

James L. Hymes, III, Esq.
VI Bar No. 264
P.O. Box 990
St. Thomas, VI 00804-0990
Telephone: (340) 776-3470
E-Mail: jim@hymeslawvi.com
rauna@hymeslawvi.com

Nesha R. Christian-Hendrickson, Esq.
Assistant Commissioner/Legal Counsel
USVI Department of Labor
Telephone: (340) 773-1994 ext. 2194
E-Mail: Nesha.Christian-Hendrickson@dol.vi.gov

Via: Mail ☐ // Facsimile ☐ // Hand Delivery ☐ // Email ☒ // C-Track E-File ☒ //

/s/ Julia Cassinelli /s/
Julia Cassinelli
Legal Assistant

FILED

July 29, 2022 04:11 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,

Plaintiff,

v.

MARK LONSKI and
PROPERTYKING, Inc.,

Defendants.

CIVIL NO. ST-21-CV-00079

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

MOTION TO INTERPLEAD SETTLEMENT FUNDS

COMES NOW, the plaintiff **ELVIS GEORGE**, by and through his undersigned counsel LAW OFFICE OF JULIE GERMAN EVERT (Julie German Evert, Esquire, of counsel) and hereby moves to deposit the settlement funds into the Registry of the Superior Court for the following reasons:

On or about May 26, 2022, the parties resolved all issues in this matter. A copy of the Mediated Settlement Agreement is filed herewith and made part hereof as **Exhibit “A”**. Defendants are in receipt of the total settlement funds, including the payments which were to be made over time, for a total of \$17,500.

The Virgin Islands Department of Labor (VIDOL), Worker’s Compensation Division, refuses to sign a release. Attorney Nesha R. Christian-Hendrickson, Esq., Assistant Commissioner/Legal Counsel advised Plaintiff’s counsel that the VIDOL wanted all the proceeds less legal fees and costs, which would leave the plaintiff with no recovery for his pain and suffering. See Affidavit of Julie German Evert, Esquire, attached hereto and made part hereof as **Exhibit “B”**.

On July 22nd, 2022, Plaintiff's counsel participated in a phone conference with the Commissioner of Labor (Commissioner Molloy), and his counsel, during which the Commissioner advised Plaintiff's Counsel that Worker's Compensation expected to receive all settlement funds except for legal fees and costs.

The Commissioner of Labor asserted that had Plaintiff's Counsel not filed suit, the Department of Labor would have negotiated directly with Defendants' insurance carrier. The assertion of the Commissioner of Insurance as stated above belies the fact that the Department of Labor never contacted any of the Defendants, let alone their insurance carrier. The VIDOL made no effort to contact the insurance carrier to settle the case during the two-year period in which the statute of limitations existed. Further, the undersigned is not aware of any case in which the VIDOL has instigated collection actions against small third-party defendants in cases in which Worker's Compensation funds are paid on behalf of workers.

Commissioner Molloy asserted to the undersigned that it was the policy of VIDOL to contact third-party providers, but after being informed by the undersigned that no such action or communication was EVER taken, Commissioner Molloy asserted that this would "hopefully" be the future policy of the VIDOL.

Plaintiff requests that the Court set a briefing schedule as the undersigned has been advised and informed by other plaintiffs' counsel and litigation groups, that they may wish to file amicus briefs on the subject, as this new policy will likely result in plaintiffs' counsel not taking cases in which the VIDOL will have its hand out for all proceeds less fees and costs, as plaintiffs' counsel does not work for VIDOL and will likely not work for legal fees and costs, leaving their clients nothing.

Moreover, if VIDOL takes this new position that it is entitled to all the settlement funds, less fees and costs, and plaintiffs' counsel no longer takes worker's compensation cases, then VIDOL will not ever receive money from third party insurance carriers. VIDOL in taking this position, will be cutting off its nose to spite its face, as it will receive nothing, rather than a pro rata share of the recovery for work done by outside private counsel. The undersigned has pointed this out repeatedly to Commissioner Molloy as well as to counsel for VIDOL, and his argument has fallen on deaf ears.

At this time, the plaintiff requests an order permitting Defendants to deposit the insurance proceeds into the Registry of the court.

Plaintiff requests the relief above based on V.I. R. Civ. P. which provides:

Rule 22. Interpleader (a) Grounds.

(1) *By a Plaintiff.* Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Joinder for interpleader is proper even though:

(A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or

(B) the plaintiff denies liability in whole or in part to any or all of the claimants.

(2) *By a Defendant.* A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.

(b) Relation to Other Rules and Statutes. This rule supplements — and does not limit — the joinder of parties allowed by Rule 20. This procedure is subject to 5 V.I.C. § 1391.

In this matter, defendant could potentially be exposed to double liability by the fact that the VIDOL refuses to sign the Release, thus making interpleader appropriate. The position of the VIDOL, as stated above, leaves the plaintiff with no financial recovery. Plaintiff believes the result and demand of VIDOL is inequitable and contrary to law, and plaintiff does not agree that all of

the settlement funds, less legal fees and costs, to be disbursed to VIDOL, thus making the request to interplead the settlement funds appropriate for the plaintiff to assert.

Upon information and belief, this is a case of first impression. The policies and procedures of the VIDOL for the past four to five decades are contrary to the present “position” of the VIDOL. Moreover, the VIDOL assertions through Commissioner Molloy that VIDOL would directly contact third parties and their carriers is contrary to the facts, both past and present. In short, the Court must examine the motives and policies of the VIDOL, as asserted above, as they are positions that do not appear to have ever been taken, and they are inequitable to plaintiff, and would result in plaintiff’s counsel rarely taking on a worker’s compensation case, which would result in the VIDOL recouping even less money from outside counsel.

WHEREFORE, based on the foregoing, the plaintiff respectfully requests permissions for Defendants to deposit the settlement proceeds into the Registry of the Court so that the issues above can be briefed, heard, and ruled upon.

Dated: July 29th, 2022

Respectfully submitted,
Law Office of Julie German Evert, PC

/s/ Julie German Evert, Esq. /s/
Julie German Evert, Esquire
Counsel for Plaintiff, VI Bar No. 370
5043 Norre Gade, Ste. 6
St. Thomas, VI 00802
(340) 774-2830
lawofficeofjulieevert@gmail.com
julieevert555@gmail.com

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT this Motion to Interplead complies with the page or word provisions of V.I. Civ. Pro. Rule 6-1(e) and a true and exact copy of the foregoing document was served on the following, this 29th day of July 2022:

JAMES L. HYMES III, ESQUIRE

Counsel for Defendant
P.O. Box 990
St. Thomas, VI 00804-0990
Telephone: 340-776-3479
E-Mail: jim@hymeslawvi.com

Nesha R. Christian-Hendrickson, Esq.

Assistant Commissioner/Legal Counsel
USVI Department of Labor
Telephone: (340) 773-1994 ext. 2194
E-Mail: Nesha.Christian-Hendrickson@dol.vi.gov

Via: Mail ☐ // Facsimile ☐ // Hand Delivery ☐ // Email ☒ // C-Track E-File ☒ //

/s/ Sharaya Holtrop /s/
Sharaya Holtrop
Legal Assistant

EXHIBIT A

From: David Nichols davidnicholsvi@gmail.com

Subject: George v. Lonski Civil No. ST-2021-CV-00079

Date: May 26, 2022 at 1:09 PM

To: David Nichols davidnicholsvi@gmail.com, Julie Evert julieevert555@gmail.com, Jim Hymes jim@hymeslawvi.com, James Hymes jimhymes@gmail.com, georgeelvis389@gmail.com, Peter Sanchez psanchez@topa-ins.com, pkingusvi@gmail.com

Counsel:

This will confirm the Mediated Settlement Agreement in the captioned case on May 26, 2022, upon the following terms and conditions:

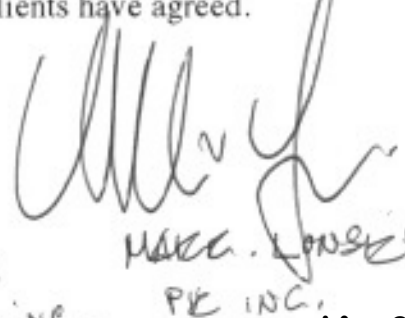
1. Ds to pay to P the sum of \$10,000.00 USD within 30 days of today's date. Ds to pay to P the additional sum of \$7,500.00 USD at the rate of \$500.00 per month commencing on or before July 1, 2022 and on or before the 1st day of every month thereafter until paid in full. Ds shall have the right to prepay in whole or in part at any time. If Ds are late with more than two payments, P shall have the right to accelerate the payment of the outstanding balance due at that time.
2. Parties to submit to the Court a joint notice of dismissal with prejudice as to all claims asserted in this action.
3. P to execute a full and complete Release of All Claims which have been asserted or which could have been asserted in this case to date against all Defendants, known or unknown, to be prepared by counsel for Ds and approved by counsel for P.
4. Parties to keep all terms of this Agreement CONFIDENTIAL.
5. Each party shall bear its own costs, expenses and attorneys' fees, except that Ds shall pay the cost of the Mediation to AMI.
6. P shall be responsible for any type of workers' comp liens, medical liens, Medicare or Medicaid liens or any other liens relating to this matter.
7. The settlement proceeds will be delivered by Ds pursuant to instructions to be provided by counsel for P.

Please confirm by "Reply to All" and confirm that these are the terms of the agreement. Please have your **clients sign a copy** of this email or email back their confirmation of this agreement so that we know that both the attorneys and their clients have agreed.

DAVID E. NICHOLS
Business & Management Consultant
1000 Blackbeard's Hill, Ste. 8E
St. Thomas, VI 00802
340-777-8109 office



Julie Lonski
PROPERTY KING, INC.



MARK LONSKI
PE INC.

JA - 0076

EXHIBIT B

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

ELVIS GEORGE,

Plaintiff,

v.

MARK LONSKI and
PROPERTYKING, Inc.,

Defendants.

CIVIL NO. ST-21-CV-00079

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

**AFFIDAVIT OF JULIE GERMAN EVERT, ESQUIRE IN SUPPORT OF
MOTION TO INTERPLEAD**

I, **JULIE GERMAN EVERT, ESQUIRE**, having been duly sworn upon my oath, hereby depose and say:

1. I am attorney of record for Plaintiff Elvis George, and in that capacity am fully familiar with all the facts set forth herein.
2. At no time prior to the commencement of this suit, did anyone from Virgin Islands Department of Labor (VIDOL) contact my client to see if his injuries were the result of an insured third party.
3. The date of the incident is July 14, 2020. I contacted the VIDOL in or about February 2, 2022 to obtain a detailed explanation of the amount of the lien as well as a breakdown of what the lien amounts represent.

LAW OFFICE OF JULIE GERMAN EVERT
5043 Norre Gade, Suite #6
St. Thomas, VI 00802
Phone: (340) 774-2830
JulieEvert555@gmail.com

February 2, 2022

Ms. Fester Smith
Claims Auditor
Workers' Compensation Administration
Virgin Islands Department of Labor

RE Elvis George
DOB: 3/21/62
Employee of VIWMA
Date of Incident: July 14, 2020

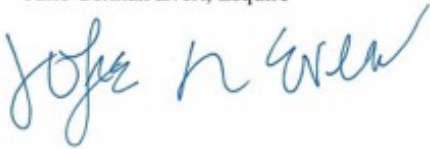
Dear Ms. Smith,

Please be advised that we represent Mr. Elvis George in a personal injury claim for injuries suffered on July 14, 2020, when Mr. George was hit by a truck being driven by Mr. Mark Lonski of Property King, Inc.

We are scheduled to mediate this matter in the next week, and we require a final Workmen's Comp lien as this is a component of damages. We understand that the lien is complete. Please email it to me at the above address.

Sincerely,

Julie German Evert, Esquire



4. The VIDOL did not have that information readily available and it took them months to put that information together.

5. Prior to the first mediation, I spoke with Attorney Nesha Christian-Hendricks via phone and advised her that the insurance policy was \$10,000.00. She asked me why I took a case when the “policy was so small”, and I explained to her that the size of the insurance policy does not motivate me to take or decline a case because I represent people who are wrongfully injured.

6. I also asked her to confirm that the VIDOL would continue their policy of waiting for the settlement amount and then accepting one third of the total amount as their fee, in view of the fact that the policy was limited to \$10,000.00. It has been my Virgin Islands legal experience for the past 30 years, that VIDOL always insists on “waiting for the settlement amount and then” discussing what share of the recovery it should receive. I explained this policy and practice to Attorney Christian-Hendricks and she advised that things were now different.

7. Attorney Hendricks insisted that the VIDOL would take all of the money less my fees and costs as the lien was large.

8. Since that date, I have engaged in multiple conversations with Attorney Hendricks and other officials at VIDOL. I have repeatedly asked Attorney Hendricks, both oral and in writing to set forth the VIDOL position in writing and she has refused to do so.

9. On or about July 22, 2022, I spoke with Commissioner Molloy of the VIDOL and he reiterated the VIDOL "position", as set forth above.

10. Commissioner Molloy advised me that had I not filed suit, the VIDOL "would have contacted the third-party insurer to settle the claim". However, when I pointed out to the Commissioner that the VIDOL had not in fact ever contacted my client or the third party or their carrier, and that the

statute of limitations had run, the Commissioner replied that this would “hopefully be VIDOL policy for the future” as it needs “recoup its money”.

11. This is a case in which the settlement amount does not properly compensate the plaintiff for his injuries, not does it compensate VIDOL for their lien.

12. I have spoken with colleagues in the USVI who handle plaintiff and insurance defense cases involving worker's compensation and many of them have expressed interest in briefing the issues that they see will result of VIDOL taking the position that VIDOL is entitled to all of the settlement or awarded damages after deducting legal fees and costs. As this is an issue of first impression, my colleagues and I request that this Honorable Court enter a sixty (60) day briefing schedule so that amicus briefs can be submitted, and all interested parties can be heard.

13. I have explained my view of the above to Commissioner Molloy and I respect his position; however, I believe his position will ultimately negatively impact the VIDOL for reasons set forth in this pleading.

14. If the Court agrees that VIDOL is entitled to all monies less my fees and costs, I will “give” my client my fee and cost reimbursement, as I do not ever take money when my client gets nothing. I will no longer take cases in which VIDOL has paid out through Worker’s Compensation. This practice, if followed, by my peers and colleagues, will result in injured parties not being compensated for their damages, and will result in VIDOL receiving no money from the claim.

15. Commissioner Molloy advised me that he “appreciated my work” and that is why VIDOL would pay my fees and costs. Again, I do not work for VIDOL and my client is Mr. Elvis George.

16. VIDOL never contacted Mr. George regarding whether he had a claim against a third party, even though VIDOL was contacted numerous times by Mr. George and his employer, VI Waste Management Authority, because there were issues with Worker’s Compensation paying the claim.

17. It is disingenuous for VIDOL to assert that it would have filed suit on behalf of Mr. George and VIDOL to collect back the monies that it has paid out through Worker's Compensation. A civil personal injury lawsuit involves more than picking up the phone and demanding money. Liability and damages need to be proven and this is an expensive process. Upon information and belief VIDOL does not have money set aside for litigation, including but not limited to depositions (transcripts cost money, and were ordered in this case); expert medical reports (reports costs money) and liability experts (who were consulted).

18. Plaintiff asserts that the position taken by VIDOL Worker's Compensation for the past 30 years, to wit: discuss with counsel the split of the lien after the settlement is procured, and before it is disbursed, is the most appropriate way to proceed. Until this action, the undersigned has never participated with Worker's Compensation during a mediation, and if Worker's Compensation is asserting they are entitled to all of their lien less attorney's fees and costs, what purpose does Worker's Compensation even have to attend the mediation?

19. The present circumstances of this case have created and will create a hornet's nest for future similar cases.

20. Worker's Compensation lawyers do not, upon information and belief, regularly work personal injury cases, nor do they commit the time needed to review all records regarding liability and damages to meaningful participate in a mediation. Worker's Comp pays claims that are covered and claims that are directly related to the incident leading to the injury. This does not make them qualified to participate in a mediation where liability and damages are the issues.

21. This new position, that has not yet even begun in practice, based on the fact that nobody from VIDOL ever contacted Mr. George or any person involved in this matter, during the time the two-year statute of limitations was in place, is going to lead to chaos.

FURTHER AFFIANT SAYETH NOT.

Dated: July 29, 2022

/s/ Julie German Evert, Esq._____

JULIE GERMAN EVERT, ESQUIRE

FILED

August 03, 2022 04:08 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,)	
	)	CIVIL NO. ST-2021-CV-00079
Plaintiff,)	
	)	ACTION FOR DAMAGES
vs.)	
	)	JURY TRIAL DEMANDED
MARK LONSKI and PROPERTY KING, INC.,)	
)	
Defendants.)	
_____)	

JOINDER OF MOTION TO INTERPLEAD

COME NOW, the Defendants, **MARK LONSKI** and **PROPERTYKING INC.**, by their undersigned attorney, James L. Hymes, III, and respectfully join the motion filed by the Plaintiff, **ELVIS GEORGE**, by and through his counsel, Law Offices of Julie German Evert, to deposit the settlement funds agreed to be paid by the Defendants to Elvis George into the Registry of the Superior Court. The Defendants confirm that on or about May 26, 2022, the parties resolved this matter at a mediation as can be seen in a copy of the Mediated Settlement Agreement, marked as Exhibit "A" and made a part of the motion filed by Elvis George.

Payment of the agreed settlement funds into the Registry of this Court is essential to permit the Defendants to discharge their duties and obligations to make payment as set forth in the negotiated Settlement Agreement. The Defendants cannot

make a payment of the negotiated Settlement Agreement without receiving in consideration therefor a full release of all claims or an order of this Court indicating that payment has been made which discharges all their duties and obligations to the Plaintiff and the Department of Labor. Authority for this position has been properly set forth and is contained in Rule 22 of the Virgin Islands Rules of Civil Procedure. Interpleader by a Defendant is authorized to prevent it from being exposed to a similar liability, R 22(2).

The Department of Labor has refused to execute a Release of All Claims as requested by the attorney for the Plaintiff. This refusal potentially exposes the Defendants to new or redundant claims by the Department of Labor. This exposure can be eliminated by permitting the Defendants to pay the agreed settlement proceeds into the Registry of the Court, which will further permit disbursement of those funds as the Court deems just and appropriate following adjudication of the dispute between the Plaintiff and the Department of Labor. The Defendants are not a party to that dispute. The interests of the Defendants is to get documentation through a release of all claims, or an order of this Court to signify that all of the claims against them have been resolved through a payment of the negotiated settlement sum.

Wherefore, the Defendants respectfully request that the Court enter an order permitting them to pay the negotiated settlement sum in satisfaction of the claims of the Plaintiff in this case, into the Registry of the Court.

Respectfully Submitted,

DATED: August 3, 2022.

LAW OFFICES OF JAMES L. HYMES, III, P.C.
Attorney for Defendants – Mark Lonski
and Propertyking, Inc.

By: /s/ James L. Hymes, III

VI Bar No. 264
P. O. Box 990
St. Thomas, VI 00804-0990
Telephone: (340) 776-3479
E-Mail: jim@hymeslawvi.com;
rauna@hymeslawvi.com

CERTIFICATE OF SERVICE

I hereby certify that on this the 3rd day of August, 2022, as an approved C-Track filer on behalf of James L. Hymes, III, I have caused an exact copy of the foregoing ***“Joinder of Motion to Interplead”*** to be served electronically through the C-Track system upon the following counsel of record.

JULIE GERMAN EVERT, ESQ.

LAW OFFICES OF JULIE GERMAN EVERT
5034 NORRE GADE STE. 6
ST. THOMAS, VI 00802
lawofficesofjulieevert@gmail.com
julieevert555@gmail.com
Attorney for Plaintiff

NESHA R. CHRISTIAN-HENDRICKSON, ESQ.

Assistant Commissioner/Legal Counsel
USVI Department of Labor
Telephone: (340) 773-1994 ext. 2194
E-Mail: Nesha.Christian-Hendrickson@dol.vi.go

/s/ Rauna Stevenson-Otto

FILED

August 04, 2022 11:09 AM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,

Plaintiff,

vs.

MARK LONSKI and PROPERTY KING, INC.,

Defendants.

CIVIL NO. ST-2021-CV-00079

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

ORDER

It appearing to the Court that the plaintiff, Elvis George, through counsel, has filed a motion for permission to remit the settlement proceeds agreed to be paid as part of a mediated settlement agreement, and it further appearing to the Court that the defendants have joined this motion and filed their own motion to interplead and pay the settlement proceeds into the Registry of the Court, and the Court, being sufficiently advised in the premises, and good and sufficient cause appearing therefor, it is now, therefore

ORDERED that the motions of the plaintiff Elvis George, and the defendants Mark Lonski and Propertyking Inc., to interplead in this action for the purpose of remitting the settlement proceeds agreed to be paid by the defendants to the plaintiff, into the Registry of the Court, be and they hereby are **GRANTED**, and it is hereby further

ORDERED that the defendants remit the settlement proceeds agreed to be paid by them to the plaintiff to the Registry of this Court within five (5) days of the entry of this order, and it is further

ORDERED that the parties, and any other interested party, shall have sixty (60) days from the date hereof to file any legal briefs in support of their position concerning the worker's compensation lien, which is the subject of this interpleader.

ENTERED this 4th day of August, 2022.

A T T E S T

TAMARA CHARLES
Clerk of the Superior Court

By: S. Venzen
for Court Clerk Supervisor

Date: 08 / 05 / 2022



THE HONORABLE SIGRID M. TEJO
Judge, Superior Court of the Virgin Islands

Distribution List:

Julie German Evert, Esq.
lawofficeofjulieevert@gmail.com
julieevert555@gmail.com

James L. Hymes, III, Esq.
jim@hymeslawvi.com
rauna@hymeslawvi.com

Nesha R. Christian-Hendrickson, Esq.
Assistant Commissioner/Legal Counsel
USVI Department of Labor
Nesha.Christian-Hendrickson@dol.vi.gov

FILED

August 05, 2022 09:36 AM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,)	
)	
Plaintiff,	)	CIVIL NO. ST-21-CV-00079
)	
v.	)	ACTION FOR DAMAGES
)	
MARK LONSKI and)	
PROPERTY KING, Inc.,	)	JURY TRIAL DEMANDED
)	
Defendants.)	
_____)	

MOTION FOR LEAVE TO INTERVENE

COMES NOW the **GOVERNMENT OF THE VIRGIN ISLANDS** (“Government”, by and through undersigned counsel and pursuant to V.I. R. Civ. P. 24, hereby files this Motion to Intervene, as a matter of right, as a party Plaintiff in the above-captioned matter. Pursuant to V.I.R. Civ. P. 24, the Government may intervene in this matter, as a matter of right, as the Government has a right pursuant statutory law to recoup monies expended on Workmen’s Compensation claims, before a party may compromise or distribute any proceeds from a third party for injuries arising from workplace injuries for which the Government has expended or paid out funds.

SUMMARY OF FACTS

1. This case was brought by Plaintiff to recover damages from his employer, related to workplace injuries, occurring on or about July 14, 2020. *See* Complaint.
2. The Government of the Virgin Islands, through the Workmen’s Compensation Division, has expended in excess of \$61,000 for Plaintiff’s care arising from his workplace injury. *See* Exh. A (Affidavit of Rainia Thomas); Exh. B (Lien and Notice of Lien).
3. The Workmen’s Compensation Division has filed a lien for the funds expended, in accordance with applicable law. *See* Exhs. A, B; see also 24 V.I.C. § 263.

4. The parties in this case have entered into a settlement agreement, to provide approximately \$17,000 to plaintiff as compensation for his workplace injury, through a third party. *See* Pl's Mot. to Interplead "Settlement Funds" and Proposed Order, dated July 29, 2022 and Def's Joinder of Mot. to Interplead, dated August 3, 2022.

5. The Government is not a party to that agreement, and no release has been presented to the Workmen's Compensation Division. *See* Exhs. A, B.

6. On or about July 29 and August 3, 2022, the parties filed a "Motion to Interplead Settlement Funds," and Joinder thereto, asking the Court to deposit the settlement proceeds into its registry; the parties have not moved to interplead the Government. *See* Pl's Mot. to Interplead "Settlement Funds" and Proposed Order, dated July 29, 2022 and Def's Joinder of Mot. to Interplead, dated August 3, 2022.

DISCUSSION

MOVANT IS ENTITLED TO INTERVENE AS A MATTER OF RIGHT.

V.I.R. Civ. P. 24 provides that a party may intervene by motion, as a matter of right, as follows:

On timely motion, the court must permit anyone to intervene who:

- (1) is given an unconditional right to intervene by a federal or Virgin Islands statute; or
- (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

V.I.R. Civ. P. 24(a). In sum, intervention is as of right where "an intervenor has an interest in the litigation that cannot be protected without joining the litigation." *See Underwood v. Streibich*, No. ST-95-CV-459, 2019 V.I. LEXIS 15, at *2-3 (Super. Ct. Feb. 15, 2019). The rule further provides for "permissive intervention" upon timely motion, of anyone who "is given a conditional right to

intervene by a federal or Virgin Islands statute”; or who “has a claim or defense that shares with the main action a common question of law or fact.” V.I.R. Civ. P. 24 (b)(1).

Moreover, it is well-settled that “liberal intervention is desirable to dispose of as much of a controversy ‘involving as many apparently concerned persons as is compatible with efficiency and due process.’” *Feller v. Brock*, 802F.2d 722, 729 (4th Cir. 1986) (quoting *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967)). The Government has a right to intervene in this action and, further satisfies the standard for permissible intervention.

This jurisdiction has adopted the Third Circuit’s test for determining whether intervention as a matter of right is appropriate, as follows: 1.) the application for intervention is timely; 2.) the applicant has a sufficient interest in the litigation; 3.) the interest may be affected or impaired, as a practical matter by the disposition of the action, and; 4.) the interest is not adequately represented by an existing party in the litigation. *Underwood v. Streibich*, No. ST-95-CV-459, 2019 V.I. LEXIS 15, at *3, n. 7 (Super. Ct. Feb. 15, 2019) (quoting *Anthony v. Indep. Ins. Advisors, Inc.*, 56 V.I. 516, 526 (V.I. 2012)).

Here, the Government timely moves for intervention and has a sufficient interest in the litigation, as a matter of law. Title 24, Section 263 expressly provides that:

The injured workman or employee or his beneficiaries **may not institute any action, nor may compromise any right of action they may have against the third person responsible for the damages, unless the Administrator is a party to the action or agrees to the compromise**, but the failure to join the Administrator shall not deprive the courts of jurisdiction over the claim or otherwise result in dismissal of the claim, **so long as the injured worker or employee acknowledges that all sums due the Government Insurance Fund are secured by any recovery.**

No compromise between the injured workman or employee, or his beneficiaries in case of death, and the third person responsible shall be valid or effective in law unless the expenses incurred by the Government Insurance Fund in the case are first paid. No judgment shall be entered in actions of this nature and no compromise whatsoever as to the rights of parties to said actions shall be approved, without making express reserve of the rights of the Government Insurance Fund to reimbursement of all expenses incurred. The clerk of the court taking cognizance of any claim of the above-described nature, shall notify the Administrator of any order entered by the case, as well as the final deposition thereof.

24 V.I.C. § 263. The law required Plaintiff to join the Government as a party OR to acknowledge the duty to repay the Government Insurance fund “all sums due” from any settlement obtained. *See id.* The parties failed to adhere to the statutory requirement to name the Government as a party, to provide actual notice of the pending action and an opportunity to safeguard its interests. That failure is despite the agency’s February 2022 notice of the lien and an express request for submission of a General Release once settlement was reached. See Exh. B. Additionally, the parties failed to present to the Government a settlement agreement and compromise that includes an acknowledgment that the Government is entitled to a refund of all sums paid, despite the lien indicating the government expended more than \$61,000 associated with the within claims. See Exhs. A, B (affidavit; lien).

This complaint was filed just more than one year ago. The parties recently filed a “Motion to Interplead Settlement Funds,” seeking to have the Court accept the settlement funds into its registry and thereafter distribute those funds to the parties, in contravention of Section 263.

Considering the totality of the circumstances, as we must, including the parties’ recent settlement and failure to adhere to the requirements of Section 263, despite notice and the express mandates of the law, and further their recent filing indicating their intent and attempt to circumvent the law, the Government’s motion is also timely. *Underwood*, 2019 V.I. LEXIS 15, at *4, n. 10. The parties further cannot claim they are now prejudiced by being required to adhere to the law; to permit such a claim would allow the parties to benefit from their deliberate disregard of legal mandates. Finally, any delay in filing the instant motion is the result of the parties’ failure to name the Government as a party, to provide actual notice of the suit, and as a result of the recent filings by the parties indicating their intent to deposit and have distributed the proceeds, without reimbursing the Government. Those filings, on or about August 3, 2022, made clear that the Government’s interests are at risk and are “no longer being adequately represented by the current parties.” *Id.* at *4-5.

Without intervention, the Government's interest in recouping its payments for the workplace injuries at issue in this case, and in adhering to statutory mandate to do so, will be substantially impaired.

Respectfully submitted,

DENISE N. GEORGE, ESQ.
ATTORNEY GENERAL

Dated: August 5, 2022

By: /s/ Venetia Harvey Velázquez
Venetia Harvey Velázquez, Esq.
Bar #: 786
Assistant Attorney General
Department of Justice
213 Estate La Reine, RR1 Box 6151
Kingshill, USVI 00850
Tel: (340) 773-0295
Email: venetia.velazquez@doj.vi.gov

CERTIFICATE OF SERVICE

I hereby certify that on this the 5th day of August, 2022, I have caused an exact copy of the foregoing Motion for Leave to Intervene to be served electronically through the C-Track system upon the following counsel of record.

Julie German Evert, Esq.
Law Office of Julie German Evert
5034 Norre Gade, Suite 6
St. Thomas, VI 00802
Email: lawofficesofjulieevert@gmail.com

James L. Hymes, III, Esq.
Law Office of James L. Hymes, III, PC
P. O. Box 990
St. Thomas, VI 00804-0990
Email: jim@hymeslawvi.com;

This document complies with the page or word limitation set forth in Rule 6-1(e).

/s/ Ivelisse Torres

FILED

August 05, 2022 09:36 AM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,

Plaintiff,

v.

**MARK LONSKI and
PROPERTY KING, Inc.,**

Defendants.

**GOVERNMENT OF THE
VIRGIN ISLANDS,**

Plaintiff -Intervenor,

v.

**ELVIS GEORGE,
MARK LONSKI and
PROPERTY KING, Inc.,**

Defendants.

)
)
) **CIVIL NO. ST-21-CV-00079**
)
) **ACTION FOR DAMAGES**

)
) **[PROPOSED] COMPLAINT IN INTERVENTION:**
) **ACTION FOR DAMAGES**

[PROPOSED] COMPLAINT IN INTERVENTION

COMES NOW the Government of the Virgin Islands (“Government”), by and through its undersigned counsel, and for its Complaint In Intervention as Plaintiff-Intervenor, states the following:

NATURE OF ACTION

1. This is an action brought pursuant to V.I.R.Civ. P. 24(a) and 24 V.I.C. § 263, to safeguard the Government's interests and obtain recoupment of funds expended for Plaintiff's care through Workers' Compensation, as statutorily required.
2. Plaintiff-Intervenor seeks to recover monies paid for care under the Workers' Compensation program, pursuant to 24 V.I.C. § 263.
3. Through this Complaint, Plaintiff-Intervenor intervenes as of right in the action commenced on or about February 12, 2021 against the named parties.

JURISDICTION AND FACTS

4. This Court has jurisdiction of the subject matter pursuant to 4 V.I.C. Section 76. 2. That the Plaintiff Government of the Virgin Islands is an unincorporated Territory of The United States and may sue and be sued in its own name pursuant to the Revised Organic Act of 1954, as amended.
5. The Division of Workers' Compensation, Department of Labor, is an agency of the Government.
6. Plaintiff, ELVIS GEORGE filed a Complaint asserting that he was injured on or about July 14, 2020, by a vehicle operated by Defendant MARK LONSKI.
7. MARK LONSKI was operating a 2019 Ford F-550 owned by Defendant PROPERTY KING, INC., a Virgin Islands Corporation, at the time of the Plaintiff's injuries. See Compl. at 1.
8. As a result of the collision set forth in the Complaint, Plaintiff suffered injuries close in time to the above-referenced incident.

9. The Government of the Virgin Islands, through the Workmen's Compensation Division, expended of \$61,205.27 for Plaintiff's care arising from his injuries. See Exh. A (Affidavit of Rainia Thomas); Exh. B (Lien and Notice of Lien).
10. The Workmen's Compensation Division has filed a lien for the funds expended, in accordance with applicable law. See Exhs. A, B; see also 24 V.I.C. § 263.
11. Plaintiff filed a Complaint to recover damages from a third party, related to his workplace injuries, occurring on or about July 14, 2020. See Complaint.
12. The parties did not name the Government as a party to that case.
13. The parties in this case have entered into a settlement agreement, to provide approximately \$17,000 to plaintiff as compensation for his workplace injury, through a third party, for Plaintiff's injuries sustained on or about July 14, 2020. See Pl's Mot. to Interplead "Settlement Funds" and Proposed Order, dated July 29, 2022 and Def's Joinder of Mot. to Interplead, dated August 3, 2022.
14. The Government is not a party to that agreement, and no release has been presented to the Workmen's Compensation Division. See Exhs. A, B.
15. On or about July 29 and August 3, 2022, the parties filed a "Motion to Interplead Settlement Funds," and Joinder thereto, asking the Court to deposit the settlement proceeds into its registry; the parties have not moved to interplead the Government. See Pl's Mot. to Interplead "Settlement Funds" and Proposed Order, dated July 29, 2022 and Def's Joinder of Mot. to Interplead, dated August 3, 2022.
16. By operation of law, Plaintiff-Intervenor is required to recoup all monies expended for Plaintiff's care, before any settlement funds may be distributed. 24 V.I.C. § 263.

CLAIM FOR RELIEF

17. Plaintiff-Intervenor incorporates by reference the allegations contained in Paragraphs 1 – 16 above, as if fully set forth herein.

18. Title 24 , Section 263 of the Virgin Islads Code provides as follows:

The injured workman or employee or his beneficiaries **may not institute any action, nor may compromise any right of action they may have against the third person responsible for the damages, unless the Administrator is a party to the action or agrees to the compromise**, but the failure to join the Administrator shall not deprive the courts of jurisdiction over the claim or otherwise result in dismissal of the claim, **so long as the injured worker or employee acknowledges that all sums due the Government Insurance Fund are secured by any recovery.**

No compromise between the injured workman or employee, or his beneficiaries in case of death, and the third person responsible shall be valid or effective in law unless the expenses incurred by the Government Insurance Fund in the case are first paid. No judgment shall be entered in actions of this nature and no compromise whatsoever as to the rights of parties to said actions shall be approved, without making express reserve of the rights of the Government Insurance Fund to reimbursement of all expenses incurred. The clerk of the court taking cognizance of any claim of the above-described nature, shall notify the Administrator of any order entered by the case, as well as the final deposition thereof.

24 V.I.C. § 263.

19. The Government provided a lien and notice to Plaintiff, in February 2022, setting forth the funds expended on Plaintiff's behalf which operated as a lien against any future recovery as against third parties. The Government further notified Plaintiff to provide a General Release, in the event the parties reached a settlement agreement. See Exh. B; see also Exh. A.

20. The parties have failed to provide a General Release, nor is the Government a party to the Settlement agreement.

21. The Government was not named as a party to the Complaint.

22. The parties have recently submitted a motion to this Court, seeking to deposit the settlement proceeds into the Court's registry, and for subsequent distribution to the original parties, in contravention of title 24, Section 263. See Pl's Mot. to Interplead Funds, dated July 29, 2022 and Def's Joinder dated August 3, 2022.
23. The Government's intervention is necessary to protect its interest, in light of the parties' expressed intention and request to seek distribution without compliance with the statutory mandate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Intervenor prays for relief as follows:

1. For declaration that the parties' failure to comply with Title 24, section 263, as alleged herein, is unlawful.
2. For an order requiring that any funds paid as part of any compromise or settlement between the Plaintiff and Defendants be first paid to the Government as recovery for funds expended for Plaintiff's care through the Government's Workers' compensation program.
3. For such other relief as this Court deems just and proper.

Respectfully submitted,

DENISE N. GEORGE, ESQ.
ATTORNEY GENERAL

By: /s/ Venetia Harvey Velázquez
Venetia Harvey Velázquez, Esq.
Bar #: 786
Assistant Attorney General
Department of Justice
213 Estate La Reine, RR1 Box 6151
Kingshill, USVI 00850
Tel: (340) 773-0295
Email: venetia.velazquez@doj.vi.gov

Dated: August 5, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this the 5th day of August, 2022, I have caused an exact copy of the foregoing Complaint Intervention to be served electronically through the C-Track system upon the following counsel of record.

Julie German Evert, Esq.
Law Office of Julie German Evert
5034 Norre Gade, Suite 6
St. Thomas, VI 00802
Email: lawofficesofjulieevert@gmail.com

James L. Hymes, III, Esq.
Law Office of James L. Hymes, III, PC
P. O. Box 990
St. Thomas, VI 00804-0990
Email: jim@hymeslawvi.com;

Ivelisse Torres

FILED

August 05, 2022 09:36 AM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,

Plaintiff,

v.

MARK LONSKI and
PROPERTY KING, Inc.,

Defendants.

CIVIL NO. ST-21-CV-00079

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

AFFIDAVIT OF RAINIA THOMAS
DIRECTOR, DIVISION OF WORKERS' COMPENSATION

I, **Rainia Thomas**, Director of the Division of Workers' Compensation, Virgin Islands

Department of Labor, being duly sworn, deposes and says:

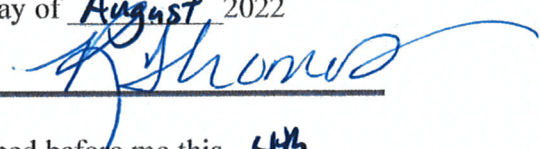
1. That I am an adult, residing on St. Croix, United States Virgin Islands;
2. That I am employed at the Department of Labor as the Director of Workers' Compensation Administration, and I have performed the duties of this office for approximately four (4) years;
3. That as Director, I oversee the operations of the Department, including, among other duties, the processing of workers' compensation claims and the filing of liens arising therefrom;
4. That I am aware that Elvis George received workers' compensation benefits from the Workers' Compensation Administration as reflected in the lien attached to this Affidavit, for injuries received on or about July 14, 2020;
5. That the lien was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

EXHIBIT
JA - 0100
tabbies

6. That the lien was kept in the course of the regularly conducted activity; and
7. That the lien was made by the regularly conducted activity as a regular practice.
8. The Division provided plaintiff's counsel with a Final Lien reflecting an expended amount of \$61,205.27.
9. In accordance with Title 24 Section 263 of the Virgin Islands Code, the Division is required to recoup all monies expended in third party cases.
10. A general release, reflecting a compromise, was never presented to the Division by the parties.

Further, Affiant sayeth naught.

Dated this 4th Day of August, 2022

Signature of Affiant 

Sworn to and subscribed before me this 4th
Day of August, 2022

My Commission Expires:



DAVINA M. MARTINEZ
Notary Public
St. Croix, USVI, U.S. Virgin Islands
NP-357-20
My Commission Expires December 4, 2024

FILED

August 05, 2022 04:59 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,)	
)	
Plaintiff,	)	CIVIL NO. ST-21-CV-00079
)	
v.	)	ACTION FOR DAMAGES
)	
MARK LONSKI and)	
PROPERTY KING, Inc.,	)	JURY TRIAL DEMANDED
)	
Defendants.)	

**NOTICE TO THE COURT
OF THE GOVERNMENT'S CLAIM OF RIGHT TO ANY SETTLEMENT PROCEEDS
UP TO \$61,205.27 AND OBJECTION TO DISBURSEMENT
OF SUCH PROCEEDS TO ANY PARTY UNTIL THE GOVERNMENT HAS BEEN
REIMBURSED PURSUANT TO 24 V.I.C. § 263**

COMES NOW the Government of the Virgin Islands ("Government") and, in response to the Court's order dated August 4, 2022,¹ files this Notice that the Government is an interested party with a claim of right to any settlement proceeds in this matter, up to \$61,205.27 and accordingly objects to disbursement of those proceeds to any other party. The reasons for the Government's objections hereto are as previously set forth in its Motion to Intervene as a matter of right, along with an accompanying pleading of the Plaintiff-Intervenor. *See* Gov't's Mot. to Intervene and Complaint of Plaintiff-Intervenor filed on Aug. 5, 2022; V.I.R. Civ. P. 24(a).

As set forth in the Government's Motion and Complaint, settlement proceeds from a third party must first be paid to the Government of the Virgin Islands, as a matter of law, as reimbursement for all monies expended in connection with the Plaintiff's injuries, prior to distribution to Plaintiff, if any. *See* 24 V.I.C. § 263; *see also* Gov't Mot. to Intervene and Plaintiff-Intervenor's Complaint, at Exhs. A, B; *compare Bertrand v. Mystic Granite & Marble, Inc.*, 63

¹ The order was signed and entered on August 4, 2022 but includes an attestation by the Clerk of August 5, 2022.

V.I. 772, 786-87 (V.I. 2015) (holding that Section 263 applied to third person liability claims, and requires that the Government recover against any settlement from such liable third parties, as reimbursement for workers' compensation expenses paid on behalf of the injured plaintiff, although a different statutory provision applied to recovery against an uninsured employer). Title 24, Section 263 expressly provides in pertinent part:

The injured workman or employee or his beneficiaries **may not institute any action, nor may compromise any right of action they may have against the third person responsible for the damages, unless the Administrator is a party to the action or agrees to the compromise**, but the failure to join the Administrator shall not deprive the courts of jurisdiction over the claim or otherwise result in dismissal of the claim, **so long as the injured worker or employee acknowledges that all sums due the Government Insurance Fund are secured by any recovery.**

No compromise between the injured workman or employee, or his beneficiaries in case of death, and the third person responsible shall be valid or effective in law unless the expenses incurred by the Government Insurance Fund in the case are first paid. No judgment shall be entered in actions of this nature and no compromise whatsoever as to the rights of parties to said actions shall be approved, without making express reserve of the rights of the Government Insurance Fund to reimbursement of all expenses incurred. The clerk of the court taking cognizance of any claim of the above-described nature, shall notify the Administrator of any order entered by the case, as well as the final deposition thereof.

24 V.I.C. § 263 (emphases added). By its plain language, that statute expressly imposes a duty on the plaintiff to obtain the agreement of the Government's Workers' Compensation administrator in any settlement with a third party and, further mandates that "all sums due" the Government be first secured by any recovery. *Id.* The statute additionally makes clear that no compromise or settlement between an injured person and a liable third person "shall be valid or effective in law unless the expenses incurred by the Government Insurance Fund in the case are first paid." *Id.* Thus, the priority of the Government is affirmatively established, and the statute expressly precludes the distribution of any settlement funds from a third party until the

Government is first made whole. *Compare Bertrand*, 63 V.I. at 786-87 (recognizing this statutory duty). Here, the Government is entitled to recover from the settlement proceeds in this matter, the sum of \$61,205.27 which it expended for the Plaintiff's care relating to the event and injuries which are the subject of his Complaint. The parties have additionally failed to comply with the statutory requirements, as set forth above, as the Government was not made a party to the litigation nor was its endorsement/agreement on the compromise sought or obtained. *See* 24 V.I.C. § 263; *see also* Gov'ts Mot. to Intervene, at Exhs. A, B. Alternatively, the plaintiff has failed to acknowledge that the Government is entitled to recovery of its expenditures from the settlement proceeds, as provided in the statute; in fact, plaintiff appears to be seeking a contrary result. *See id.*; *compare* Pl's Mot. to Interplead Settlement Funds.

Accordingly, for the reasons and authorities previously set forth in the Government's Motion to Intervene as Plaintiff-Intervenor and its accompanying pleading, and the mandates of 24 V.I.C. §263, the Government gives Notice of its claim of right to receive the settlement proceeds and proceeds deposited into the Court's registry in this matter -- up to and including the sum of \$61,205.27 that was expended for the Plaintiff's care through the Division of Workers' Compensation/Government Insurance Fund. The Government further gives notice of its objection to the disbursement of settlement funds to any party, until the sum of \$61,205.27 is repaid to the Government's Insurance Fund.

Respectfully submitted,

DENISE N. GEORGE, ESQ.
ATTORNEY GENERAL

By: /s/ Venetia Velázquez
Venetia Harvey Velázquez, Esq.
Bar #: 786
Assistant Attorney General

Dated: August 5, 2022

Department of Justice
213 Estate La Reine, RR1 Box 6151
Kingshill, USVI 00850
Tel: (340) 773-0295
Email: venetia.velazquez@doj.vi.gov

CERTIFICATE OF SERVICE

I hereby certify that on this the 5th day of August, 2022, I have caused an exact copy of the foregoing Notice to the Court in Response to Court Order to be served electronically through the C-Track system upon the following counsel of record.

Julie German Evert, Esq.
Law Office of Julie German Evert
5034 Norre Gade, Suite 6
St. Thomas, VI 00802
Email: lawofficesofjulieevert@gmail.com

James L. Hymes, III, Esq.
Law Office of James L. Hymes, III, PC
P. O. Box 990
St. Thomas, VI 00804-0990
Email: jim@hymeslawvi.com

This document complies with the page or word limitation set forth in Rule 6-1(e).

/s/ Ivelisse Torres

FILED

September 19, 2022 01:16 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,

Plaintiff,

v.

MARK LONSKI and PROPERTYKING, Inc.,

Defendants.

CIVIL NO. ST-21-CV-00079

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

**PLAINTIFF'S REQUEST FOR HEARING TO DETERMINE DISBURSEMENT OF
SETTLEMENT PROCEEDS**

COMES NOW, the Plaintiff, ELVIS GEORGE, by and through his undersigned counsel LAW OFFICE OF JULIE GERMAN EVERT (Julie German Evert, Esquire, of counsel) and respectfully requests a hearing so that this Honorable Court can determine the distribution of the settlement proceeds:

As grounds therefore, Plaintiff states the following:

1. On or about July 14, 2020, Plaintiff was injured while he was employed and working at the St. John Waste Management work site in St. John, Virgin Islands.
2. Specifically, Plaintiff was injured when a vehicle being driven by defendant MARK LONSKI and owned by PROPERTY KING, INC. reversed into Plaintiff's body.
3. Plaintiff was advised by his employer, Virgin Islands Waste Management Agency, that the claim had to be paid for by the Department of Labor Worker's Compensation Office, even though Plaintiff was insured through CIGNA as a Virgin Islands employee. Plaintiff was referred to a poster which was in a common area as Plaintiff's place of employment. A copy of that poster is attached hereto and made part hereof as **Exhibit "A"**.

4. Plaintiff underwent shoulder surgery and physical therapy in the Virgin Islands and Worker's Compensation paid the bills.
5. At no time did any individual from Worker's Compensation contact the Plaintiff or his counsel to inquire as to whether a third party might be liable for the injuries sustained by Plaintiff.
6. On or about January 18, 2022, Plaintiff's counsel contacted the Worker's Compensation office on St. Thomas to inquire about the amount of the lien. A final lien amount was provided to Plaintiff's counsel on February 11, 2022, which indicated a total of \$61,205.27. A copy of the final lien amount is attached hereto and made part hereof as **Exhibit "B"**.
7. The undersigned has been practicing personal injury law in the United States Virgin Islands since 1988.
8. In all the decades of personal injury practice in the Virgin Islands, it has been the professional practice and experience of the undersigned, that Worker's Compensation will always discuss reducing the lien amount AFTER the case is settled so that Worker's Compensation knows exactly how much money is available. Discussions concerning a reduction in the lien amount occur when the settlement figure is not enough to satisfy the lien amount.
9. In all the decades of personal injury practice in the Virgin Islands by the undersigned, it has always been the professional practice and experience that the Office of Worker's Compensation has acted fairly when the settlement amounts have been small, despite the actual amount of the lien. It has always been the experience of undersigned counsel, that in cases where the recovery is small and not enough to pay the legal fees and costs, the

plaintiff, and the lien, that the Office of Worker's Compensation has typically agreed to the Plaintiff receiving 1/3 of the settlement, counsel receiving the same amount and Worker's Compensation receiving a similar 1/3.

10. It is also the experience of the undersigned since 1988, that the expenses of the case such as the filing fee, service of process, deposition costs, costs to obtain medical records, and expert fees are always reimbursed directly to Plaintiff's counsel, as these expenses are integral to litigation.
11. It is uncontroverted that the Office of Worker's Compensation did no work or seek to recover any money from third parties in this matter.
12. It is uncontroverted that the Office of Worker's Compensation expended no money for court costs, filing fees, expert fees or deposition costs in this matter, but that Plaintiff's counsel has expended her own funds to litigate this matter.
13. It is uncontroverted that had Plaintiff's employee, Virgin Islands Waste Management Agency (VIWMA), an Agency of the Virgin Islands, not instructed Plaintiff to put the claim through Worker's Compensation, that Plaintiff would have advised his medical providers that the claim should be processed through CIGNA, under which he was insured as a fulltime Virgin Islands employee.
14. It is uncontroverted that had VIWMA instructed Plaintiff to put the claim through CIGNA that the Court would not be burdened with this issue.
15. On or about July 22, 2022, the undersigned engaged in a phone conversation with Commissioner Molloy, the Commissioner of the Virgin Islands Department of Labor.

There were other individuals from Worker's Compensation and the VIDOL who were listening in on the conversation, but who did not vocally participate.

16. During that conversation, Commissioner Molloy thanked the undersigned for doing the work and advised her that she would be paid and reimbursed pursuant to her retainer.

17. Commissioner Molloy advised the undersigned that had she not filed suit, the VIDOL "would have contacted the third-party insurer to settle the claim."

18. When the undersigned pointed out to the Commissioner that the VIDOL had not in fact ever contacted Plaintiff or the third party or their carrier, and that the statute of limitations had run, the Commissioner replied that this would "hopefully be VIDOL policy for the future" as it needs to "recoup its money."

19. The uncontroverted fact is that no employee of the Virgin Islands Government contacted Plaintiff or his counsel in the two-year period from the date of his injuries, to determine if a third party might be liable for plaintiff's injuries. Therefore, it is uncontroverted that had Plaintiff and his counsel not acted to litigate this matter there would be NO money over which VIDOL could claim, as VIDOL and VIDOJ failed to act to pursue any third party during the two-year statute of limitations period.

20. Commissioner Molloy also appeared to not understand that a phone call from a plaintiff or his counsel does not result in an insurance company automatically writing a check for the policy limits, which in this matter was merely Ten Thousand Dollars (\$10,000.00).

21. In fact, liability was never clear in this case and the case was settled because cases settle after protracted litigation, not because a defendant has necessarily done something wrong.

22. Plaintiff and his counsel took all the risk in this case and had there been no recovery, neither plaintiff nor the undersigned would be able to recoup their costs from the VIDOL or VIDOJ.
23. The position of VIDOL and VIDOJ that they are entitled to ALL of the settlement monies is bad faith in its truest form. Neither VIDOL nor VIDOJ took any risk, nor did they put in any time to litigate this matter, yet they now stand impetuously with their hands out wanting all of the recovery.
24. In this matter, this case was fiercely litigated for two and a half (2.5) years and only during mediation did the parties agreed that Defendants would pay an additional sum of money on top of the insurance policy limits.
25. The Worker's Compensation Office has been nothing but contentious in this matter, and now, even though they have their own counsel (Attorney Christian-Hendricks) for reasons which are unclear to simple civil lawyers, the Virgin Islands Department of Justice is now representing the VIDOL. That this is an even bigger waste of resources of the People's money needs to be said as this matter should have resolved months ago.
26. The undersigned is entitled to \$6,125 which is thirty-five percent (35%) of the gross proceeds as recovery pursuant to the Retainer Agreement between Plaintiff and the undersigned. The undersigned is also entitled to reimbursement of \$1,204 which are the actual dollars expended by counsel to litigate this case for costs such as the filing fee, process server fee, deposition costs and medical records.

27. Based on her conversation with Commissioner Molloy, the undersigned did not think that her fees and costs were an issue as Commissioner Molloy indicated that in “thanks” for doing the work, the VIDOL would pay the undersigned her fees and costs.
28. However, it now appears that the VIDOJ has its hand out for the full settlement, which is bad faith and unclean hands.
29. If VIDOL and VIDOL are paid the full settlement, this means that the undersigned has worked for the Virgin Islands Government for free and has permitted the Virgin Islands Government to be unjustly enriched. Neither counsel nor Plaintiff ever agreed to this arrangement.
30. The undersigned seeks a reduced fee of \$5,833.33 as well as reimbursement of \$1,204 pursuant to the letter sent to Nesha Christian-Hendrickson, Esquire, which is attached hereto and made part hereof as **Exhibit “C”**.
31. The VIDOL and VIDOJ do not appear to recognize that their present position is going to result in the Virgin Islands Government losing hundreds of thousands of dollars as the VIDOL and VIDOJ does not have the capacity and employees and ability to investigate and litigate third party claims in worker’s compensation cases. This case involved a great deal of investigation to find the proper defendants.
32. No plaintiff’s lawyer in the Virgin Island is going to work privately in a civil case only to pay VIDOL one hundred percent (100%) of the recovery, leaving her client with no money and leaving counsel out of pocket on expenses and no recovery. Insurance companies themselves rarely litigate third party claims and as is the routine practice and procedure,

insurance companies and Government entities such as Medicare, routinely negotiate their liens after the case is litigated and resolved.

33. The Virgin Islands Government wants to create a new policy where private counsel works for them for free and provides the injured party with no recovery. This is a terrible policy, and it is going to fail immediately resulting in the loss of hundreds of thousands of dollars in the Worker's Compensation Fund.

34. What should happen instead is that the VIDOL should mandate that Virgin Islands employees who are injured while employed with the Virgin Islands Government must put their medical claims through CIGNA and not Worker's Compensation. CIGNA will pay and Worker's Compensation can use its resources to pay claims for employees who are injured at work who do NOT work for the Virgin Islands Government. This would be a great issue for the incoming Inspector General as the present policy is a huge drain on public resources.

35. In this matter Plaintiff's employer, VIWMA has a sign posted in a common area that indicates that claims must be put through Worker's Compensation. See **Exhibit "A."**

36. There is an expression: "Don't cut off your nose to spite your face". The Virgin Islands Government, and specifically the Virgin Islands Department of Labor Worker's Compensation Department, is going to cut off hundreds of thousands of dollars in future payments because Virgin Islands plaintiff's lawyers are no longer going to take cases where third parties have limited insurance.

WHEREFORE, Plaintiff seeks a hearing in which the Commissioner of Labor and the appropriate people in authority at Worker's Compensation are present as they will confirm

that they did nothing in this matter until they were contacted by the undersigned, and even then, they did not have the file together in order to quickly provided a lien amount, leaving no doubt that the VIDOL would have received no monies at all, had they been left to pursue a third party in the case on their own.

Dated: September 19, 2022

Respectfully Submitted,

Law Office of Julie German Evert, PC

/s/ Julie German Evert, Esq. /s/

Julie German Evert, Esquire

5043 Norre Gade, Ste. 6

St. Thomas, VI 00802

(340) 774-2830

lawofficeofjulieevert@gmail.com

julieevert555@gmail.com

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT this Request for Hearing complies with the page or word provisions of V.I. Civ. P.R. 6-1(e) and a true and exact copy of the foregoing document was served on the following, this 19th day of September 2022:

James L. Hymes, III, Esq.

Counsel for Defendant

P.O. Box 990

St. Thomas, USVI 00804-0990

jim@hymeslawvi.com

Nesha R. Christian-Hendrickson, Esq.

Assistant Commissioner/Legal Counsel

USVI Department of Labor

4401 Sion Farm, Ste. 1

Christiansted, USVI 00820

Nesha.Christian-Hendrickson@dol.vi.gov

Honorable Gary A. Molloy

Commissioner

USVI Department of Labor

4401 Sion Farm, Ste. 1
Christiansted, USVI 00820
gary.molloy@dol.vi.gov

Venetia Harvey Velazquez, Esq.
Assistant Attorney General
Virgin Islands Department of Justice
Office of the Attorney General
213 Estate La Reine, RR1 Box 6151
Kingshill, St. Croix, USVI 00850
venetia.velazquez@doj.vi.gov

Via: **Mail** ☐ **//** **Facsimile** ☐ **//** **Hand Delivery** ☐ **//** **Email** ☒ **//** **C-Track E-File** ☒ **//**

/s/ Sharaya Holtrop /s/

Sharaya Holtrop

Paralegal

FILED

September 19, 2022 01:16 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

EXHIBIT A



WORKERS' COMPENSATION NOTICE

All employees in the U.S.V.I., in accordance with the Workers' Compensation Administration Act, are covered by insurance paid in premiums by their employers, for injuries arising out of and in the course of employment. But when in doubt . . . file.

The Employee Should:

1. Immediately give notice to employer within 48 hours of the injury or occupational disease.
2. Obtain and submit a medical report completed by a certified physician.
3. File Employee's Claim for Disability Income Benefits in cases of wages lost due to disability, and forward same to Workers' Compensation Administration within 60 days after injury.

The Employer Should:

1. Complete an Employer's Report of Injury within eight (8) days after receipt of notice and forward same to Workers' Compensation Administration.
2. Accurately determine employee's weekly wage and certify to the agency.
3. Refusal or neglect to make a report is a misdemeanor and punishable by fine under the law.

Questions may be answered by contacting the Workers' Compensation Administration from 10 a.m. to 3 p.m. at the following numbers:

St. Thomas — 340-776-3700
St. Croix — 340-692-9390

Remember: You have the right to file, not the right to benefits, unless compensability is determined by the agency.

**THE VIRGIN ISLANDS DEPARTMENT OF LABOR
WORKERS' COMPENSATION ADMINISTRATION**

Every employer within the operation of the Virgin Islands Workers' Compensation Administration Act MUST DO:

FILED

September 19, 2022 01:16 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

EXHIBIT B



GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES



Workers' Compensation Administration

4401 Sion Farm
Christiansted, VI 00820
Phone: (340) 713-3413
Fax (340) 713-3421

2353 Kronprindsen Gade
St. Thomas, USVI 00802
Phone: (340) 715-5708
Fax: (340) 715-5743

February 10, 2022

Julia Cassinelli
Legal Assistant
Law Office of Julie German Evert
5043 Norre Gade, Suite 6 (Mailing)
11A Norre Gade (Physical)
St. Thomas, VI 00802
Tel. No.: (340) 774-2830

Re: Elvis George vs. VI Waste Management Authority
Date of Injury: July 14, 2020
Case No.: 2020-0254- FINAL LIEN

Dear Attorney Evert:

Please be advised that the Workers' Compensation Administration expended the sum of **\$61,205.27** in the referenced case. The breakdown is as follows:

MEDICAL EXPENDITURES:	\$ 55,509.36
DISABILITY INCOME BENEFITS:	\$ 5,695.91

Submit the General Release along with \$5.00 for the Notary Public to **Rainia Thomas, Director, Workers Compensation Administration, #4401 Sion Farm, Christiansted, St. Croix, U.S. Virgin Islands, 00820-4245**, when a settlement agreement in this case has been effectuated.

Sincerely,

Foster A. Smith
Claims Auditor

JA - 0118

FILED

September 19, 2022 01:16 PM

ST-2021-CV-00079

**TAMARA CHARLES
CLERK OF THE COURT**

EXHIBIT C

LAW OFFICE OF JULIE GERMAN EVERT

5043 Norre Gade, Suite #6

St. Thomas, VI 00802

Phone: (340) 774-2830

lawofficeofjulieevert@gmail.com

julieevert555@gmail.com

September 1, 2022

VIA EMAIL

Nesha.Christian-Hendrickson@dol.vi.gov

Nesha R. Christian-Hendrickson, Esquire

Assistant Commissioner/Legal Counsel

Department of Labor

4401 Sion Farm, Suite 1

Christiansted, St Croix 00820

RE: ELVIS GEORGE; CASE NO. ST-2021-CV-00079

Worker's Compensation Claim # 2020-0254

Dear Attorney Christian-Hendrickson,

After a great deal of research, we agree that Worker's Compensation has a super-priority lien in regard to receiving reimbursement of funds after a settlement has been awarded. With that being said, the legal fees are one-third of the total amount of the \$17,500 settlement which equals \$5,833.33. Additionally, my expenses for this case are \$1,204. The summary of the monies are as follows:

Settlement:	\$17,500.00
Less Fees:	\$5,833.33
Less Expenses:	\$1,204.00
Balance:	\$10,462.67

Attached to this letter, please find the release that the Defendants require. Please forward it to us after signing and Attorney Hymes will arrange to exchange the check for the original Release. We will withdraw the motion for interpleader once we have an agreement.

Sincerely,

/s/

Julie German Evert, Esq.

ELVIS GEORGE v. MARK LONSKI et al.

ST-2021-CV-00079

EXPENSES

1. Process Server: \$300
2. Hill's Reporting Service deposition transcription
11/17/21 for Elvis George: \$371.25
3. CAC Reporting deposition transcription 12/21/21 for
Mark Lonski: \$447
4. EMS Records: \$10.75
5. Filing fee: \$75



MARLON A. RICHARDSON

P.O. Box 306717
St. Thomas, VI 00803
(340) 9988453 c

INVOICE: 190221-1

Julie German Evert, Esquire
5043 Norre Gade, Ste 6
St. Thomas, USVI 00802

19 February 2021

ITEM NO.	DESCRIPTION	UNIT COST	AMOUNT
1	Summons and Complaint # ST-21-CV-079 dtd 12 Feb 2021 (Elvis George vs Mark Lonski and Property King Inc)		
	Attn: Mark Lonski	\$150.00	\$150.00
	Attn: Property King Inc.	\$150.00	\$150.00

Total Amount Due \$300.00
Net 15 days

Respectfully submitted,

Marlon A. Richardson
Process Server

JA - 0122

INVOICE

Hill's Reporting Services

P.O. Box 307501
St. Thomas, VI 00803

deshill@msn.com

(340) 690-4557



Julie German Evert, Esq.

Bill to

Julie German Evert, Esq.
5043 Norre Gade, Suite 6
St. Thomas, VI 00802

Invoice details

Invoice no. : 1182
Invoice date : 01/19/2022

Product or service

Amount

1. **Stenographic Deposition**

\$371.25

Deposition transcript of Elvis George in the matter of Elvis George vs. Mark Lonski and Property King, Inc. on 11-17-21, ST-2021-CV-00079 consisting of 87 pp (Full transcript, Word Index, Condensed and ASCII)

Total **\$371.25**

Note to customer

Thank you for your business.

CAC Reporting

P. O. Box 503094

St. Thomas, VI 00805 3406432879

ccaineswhyask49@hotmail.com

**BILL TO**

Ms. Julie German Evert, Esq.
Law Office of Julie German Evert
5043 Norre Gade, Suite 6
St. Thomas, VI 00802

SHIP TO

Ms. Julie German Evert, Esq.
Law Office of Julie German
Evert
Julie German Evert, Esq.
5043 Norre Gade, Suite 6
St. Thomas, VI 00802

INVOICE # 818 DATE

01/10/2022

DUE DATE 02/09/2022**TERMS Net 30**

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
12/21/2021	Deposition	Transcript Pages - Mark Lonski	56	5.75	322.00
12/21/2021	Appearance Fee		1	125.00	125.00

ELVIS GEORGE		SUBTOTAL			447.00
		TAX			0.00
		TOTAL			447.00
		BALANCE DUE			\$447.00



GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES
— 0 —
VIRGIN ISLANDS DEPARTMENT OF HEALTH

OFFICE OF
EMERGENCY MEDICAL SERVICES

Request for Medical Records Copies

Billing for EMS Records

Patient Name Elvis George 03/21/1962
DOB

This statement is for the request of 1 copy of your Medical Records. There is a search fee of \$10.00 and \$0.25 per page.

The total cost for these copies are \$ 10.75

EMS PRID: JEMS20000237

Kimba Turnbull, NRP

EMS Administrator

HOLD TO LIGHT TO VIEW TRUE WATERMARK IN PAPER HEAT SENSITIVE RED LOCK DISAPPEARS WHEN HEATED

11257

LAW OFFICE OF JULIE GERMAN EVERT
5143 PALM PASSAGE SUITE 10A
ST THOMAS, VI 00802
(340) 774-2830

DATE 1/24/22

PAY TO THE ORDER OF COMMUNITY HEALTH CLINIC \$ 10.75

TEN DOLLARS AND 75/100 DOLLARS

FOR ELVIS GEORGE Medical Records

1FIRSTBANK
WATERFRONT BRANCH 719
ST. THOMAS, VI

SECURED BY EXIMFIELD
101-7285/2216

Details on back

Security Features

011257 221672851 7191314074

FILED

February 16, 2021
ST-2021-CV-00079
TAMARA CHARLES
CLERK OF THE COURT



Superior Court of the Virgin Islands

5400 Veterans Drive
St. Thomas VI 00802

Case #	ST-2021-CV-00079	Citation #	
Case Title	ELVIS GEORGE v. MARK LONSKI and PROPERTY KING INC.,	Judge	Hon. Denise M. Francois
Case Status	Active	Case Status Date	02-12-2021 10:09 AM
Receipt #	201783	Receipt Date	02-16-2021 10:06 AM
Payor	ELVIS GEORGE	Cashier	NS
Receipted	\$75.00	Change Due	\$0.00

Payment Methods				
Method	Card Type	Reference #	Void	Amount
Check		10886		\$75.00
				\$75.00

Cost Types				
Name	Assessment #	Starting Balance	Payment	Balance
Civil Complaint	00184414	\$75.00	\$75.00	\$0.00
		\$75.00	\$75.00	\$0.00

Assessment Items				
Name	Assessment #	Starting Balance	Payment	Balance
Civil Complaint	00184414	\$75.00	\$75.00	\$0.00
		\$75.00	\$75.00	\$0.00

FILED

September 21, 2022 02:17 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,)	
)	
Plaintiff,	)	CIVIL NO. ST-21-CV-00079
)	
v.	)	ACTION FOR DAMAGES
)	
MARK LONSKI and)	
PROPERTY KING, Inc.,	)	JURY TRIAL DEMANDED
)	
Defendants.)	
)	

**GOVERNMENT’S REPLY TO PLAINTIFF’S “REQUEST FOR HEARING TO
DETERMINE DISBURSEMENT OF SETTLEMENT PROCEEDS”, FILED IN
OPPOSITION TO THE GOVERNMENT’S MOTION TO INTERVENE AND NOTICE
OF CLAIM OF RIGHT TO THOSE FUNDS**

COMES NOW the **GOVERNMENT OF THE VIRGIN ISLANDS** (“Government”), by and through undersigned counsel and files this Reply to Plaintiff’s “Request for Hearing to Determine Disbursement of Settlement Proceeds.” Plaintiff’s “Request” appears to reflect an opposition to the Government’s previously filed Motion to Intervene and Notice of Claim to the Settlement Proceeds. By Order entered September 2, 2022, this Court ordered the parties of record to file responses or oppositions to the Government’s filings by October 3, 2022, and the Plaintiff responded by filing the instant Request for Hearing. By operation of law, the Government is entitled to the receipt of any settlement proceeds associated with Plaintiff’s injuries, up to the full amount of the lien of more than \$61,000, prior to distribution of any sums to others. The settlement amount in this case represents just approximately 28 percent of the Government’s lien. There is, therefore, no legal basis for Plaintiff’s arguments favoring disbursement to counsel, in contravention of the statute.

Let us begin with what is not in dispute. Plaintiff does not dispute that the Government expended in excess of \$61,000 on his behalf, through the Workers' Compensation program. *See* Gov'ts Mot. to Intervene at Exhs. A, B (Affidavit and Lien); *see also* Pl's Request for Hearing at Exh. C (Letter dated 9/1/22, from Attorney Evert to VIDOL, acknowledging Government's priority lien and entitlement to recover). Nor does Plaintiff dispute that the Government has a "super priority lien" which, by law, has to be satisfied before there can be any disbursement of funds to any other person. *See* Pl's Exh. C; 24 V.I.C. § 263. Rather, without citing to any legal authority, Plaintiff simply asks this Court to disregard the applicable law in that regard because: 1) the government did not take action on its own to recover the funds, and applying the law would leave counsel with no recovery, and; 2) the Plaintiff would not have filed a Workers Compensation claim, had he not been compelled by the Government to do so. Plaintiff additionally takes exception to the Attorney General's representation of the Government's Department of Labor. Plaintiff's arguments are devoid of merit.

A. THE ATTORNEY GENERAL IS THE AUTHORIZED LEGAL REPRESENTATIVE FOR THE GOVERNMENT AND ITS AGENCIES.

As a threshold matter, the Plaintiff takes umbrage with the appearance of the Department of Justice, Office of the Attorney General, as representative of the Department of Labor, "even though they have their own counsel (Attorney Christian-Hendricks¹) for reasons which are unclear to simple civil lawyers." [sic]² *See* Pl's Request for Hearing at 5. It is worth noting that the

¹ Nesha Christian-Hendrickson is the Assistant Commissioner/Legal Counsel of the Department of Labor.

² In fact, so offended is the notion of the Attorney General's representation that Plaintiff's counsel has continued to communicate directly with the Department's Commissioner and Assistant Commissioner/in-house counsel, despite acknowledging the agency is now represented by the

Attorney General is the only authorized legal representative of the departments and agencies of the executive branch of the Government before all legal tribunals. *See* 3 V.I.C. § 114 (a) (1), (6); *see also In re Wilson*, No. SX-2009-cr-554, 2014 V.I. LEXIS 129, at *7 (Super. Ct. Apr. 11, 2014); *Moses v. Fawkes*, 66 V.I. 454, 471 (V.I. 2017). The Department of Labor is a part of the executive branch. 3 V.I.C. § 351 (establishing the VIDOL). Plaintiff has pointed to no legal authority to disregard the duties of representation granted to the Attorney General alone. We turn now to the substantive issues.

B. VIRGIN ISLANDS LAW MANDATES THAT NO FUNDS RECOVERED IN A THIRD-PARTY SETTLEMENT ARISING FROM EMPLOYMENT-RELATED INJURIES CAN BE DISBURSED TO OTHERS, UNTIL THE GOVERNMENT HAS FIRST RECOVERED ALL MONIES EXPENDED ON BEHALF OF THE PLAINTIFF FOR SUCH INJURIES.

1. Distribution to the Government is Required By the Express, Plain and Unambiguous Language of the Statute.

Remarkably, counsel does not argue that the Plaintiff, as the injured party, should receive a portion of the settlement proceeds; rather, counsel argues – without citation to any authority – that the Court should order that funds be distributed instead to satisfy a contract between the Plaintiff and his counsel by paying their agreed upon contingency fees and costs. Plaintiff's emotional and equitable arguments in that regard are contrary to the plain language of the statute and finds no support in the law. Title 24, Section 263 expressly provides that:

The injured workman or employee or his beneficiaries may not institute any action, nor may compromise any right of action they may have against the third person responsible for the damages, unless the Administrator is a party to the action or agrees to the compromise, but the failure to join the Administrator shall not deprive the courts of jurisdiction over the claim or otherwise result in dismissal of the claim, so long as the injured worker or employee acknowledges

Attorney General in this matter, and despite having been provided written notice by the undersigned that doing so is inappropriate under the Rules of Professional Responsibility.

that all sums due the Government Insurance Fund are secured by any recovery.

No compromise between the injured workman or employee, or his beneficiaries in case of death, and the third person responsible shall be valid or effective in law unless the expenses incurred by the Government Insurance Fund in the case are first paid. No judgment shall be entered in actions of this nature and no compromise whatsoever as to the rights of parties to said actions shall be approved, without making express reserve **of the rights of the Government Insurance Fund to reimbursement of all expenses** incurred. The clerk of the court taking cognizance of any claim of the above-described nature, shall notify the Administrator of any order entered by the case, as well as the final deposition thereof.

24 V.I.C. § 263 (emphases added). The statute required Plaintiff to join the Government as a party OR to acknowledge the duty to repay the Government Insurance fund “all sums due” from any settlement obtained. *See id.* Moreover, the statute expressly provides that no settlement shall be valid unless the expenses -- “all expenses” – incurred by the Government are first paid. Significantly, nothing in Section 263 provides for the discretionary distribution now urged by Plaintiff, or to satisfy private contracts. Nor can the mandatory directives of the statute be altered by an administrative practice, as suggested. *See e.g., Thompson v. Pub. Emples. Rels. Bd.*, No. ST-18-CV-720, 2021 V.I. LEXIS 9, at *15-16 (Super. Ct. Feb. 4, 2021) (holding that, “An Administrative practice cannot supersede the language of a statute.”) (quoting *Free Speech Coal., Inc. v. AG of the United States*, 677 F.3d 519, 539 (3d Cir. 2012)). Nor is there any authority for supplanting or extending the plain and unambiguous language of the statute as established by the Legislature. *See Smith v. Emps. of the Bureau of Corr.*, 64 V.I. 383, 396-97 (V.I. 2016). As the Virgin Islands Supreme Court has repeatedly instructed:

When interpreting a statute, we start with the plain language. There is a presumption that legislative bodies express their intent through the ordinary meaning of the language of the statute; therefore, statutory interpretation always begins with an analysis of the plain text of the statute. *Haynes v. Otley*, 61 V.I. 547, 561 (V.I. 2014); *Bryan v. Fawkes*, 61 V.I. 416, 462 (V.I. 2014); *Rohn v.*

People, 57 V.I. 637, 646 n.6 (V.I. 2012); *Murrell v. People*, 54 V.I. 338, 352 (V.I. 2010); *Rosenberg v. XM Ventures*, 274 F.3d 137, 141 (3d Cir. 2001). *See King v. Burwell*, 135 S. Ct. 2480, 2489, 192 L. Ed. 2d 483 (2015). Accordingly, [w]here the statutory language is plain and unambiguous, further inquiry is not required.” *Rosenberg v. XM Ventures*, 274 F.3d 137, 141 (3d Cir. 2001). *See In re L.O.F.*, 62 V.I. 655, 661 (V.I. 2015); *In re Reynolds*, 60 V.I. 330, 334 (V.I. 2013); *Kelley v. Gov't of the V.I.*, 59 V.I. 742, 745 (V.I. 2013); *Zuni Pub. Sch. Dist. No. 89 v. Dep't of Educ.*, 550 U.S. 81, 93, 127 S. Ct. 1534, 167 L. Ed. 2d 449 (2007) (“[I]f the intent of [the legislative body] is clear and unambiguously expressed by the statutory language at issue, that would be the end of our analysis.”); *Marx v. General Revenue Corp.*, 133 S. Ct. 1166, 1172, 185 L. Ed. 2d 242 (2013).

Id. Plaintiff's arguments would have this Court simply disregard the express statutory language. There is no legal basis for doing so. Additionally, given the absence of any statutory basis for discretionary or equitable distribution of the proceeds, Plaintiff's request for a hearing to determine disbursement must also be rejected.

2. The Workers' Compensation Statute Provided a Statutory Remedy and Exclusive Remedy for Government Employees; In any Event, Plaintiff Benefited from the Statute.

Plaintiff similarly argues that he was – apparently, unfairly – compelled by his Government employer to file a Workers' Compensation claim following his injury, rather than a claim with CIGNA – the government-sponsored insurance. Plaintiff further argues that the Department of Labor should mandate that government employees file their claims through CIGNA rather than Workers' Compensation. Once again, this argument is made without citation to a single legal authority and ignores the bases and mandates of the Workers Compensation statute, which was intended to provide a speedy recovery and care to government employees who suffered injury at work, as defined in the statute. *See* 24 V.I.C. § 250, 251 (f). The statute accordingly is the exclusive remedy against the employer, and its reporting and coverage provisions following injury are mandatory for government workers. *See* 24 V.I.C. § 257, 284.

In that regard, the Government immediately covers the expenses required for the care of the employee, which it did in this case, to the tune of more than \$61,000. Surely, Plaintiff is not now arguing that he is somehow disadvantaged or lost a benefit from a potential settlement of \$17,000 as a result of the Government providing more than \$61,000 for the care he required following his injury? In fact, this is exactly the basis undergirding Section 263, mandating that the Government must recoup ALL of the monies expended on behalf of the injured party before anyone else can take from a settlement. That said, Plaintiff does not address how the result would have been different, as the insurer – assuming that option was even available, in light of the statutory language – would nonetheless have a similar right of subrogation. Nor does Plaintiff establish how his argument undermines the mandatory reimbursement requirements of 24 V.I.C. § 263 for the monies that have actually been expended for his benefit. It does not.

CONCLUSION

The Legislature, in enacting the Workers' Compensation statute, set forth a speedy remedy to ensure that employees – including government workers – who were injured in connection with their employment had a speedy remedy. As such, the Legislature implemented a process that required the Government of the Virgin Islands to provide for the care of its employee. However, the Legislature, in its wisdom, also provided a statutory subrogation provision in section 263, expressly prohibiting the injured employee from obtaining a settlement proceeds from a third-party actor unless the Government first recoups ALL monies expended on the Plaintiff's behalf. The language of Section 263 is express, plain, unambiguous and, importantly, mandatory. Here, consistent with the law, the Government expended more than \$61,000 on behalf of the Plaintiff. The Plaintiff does not dispute that he both accepted and benefitted from that care, or that the Government is entitled to recoup the funds expended. Rather, Plaintiff's counsel argues the Court

should disregard the mandates of the law, to pay counsel's fee and costs that were apparently part of the contract between the Plaintiff and his attorney. Where, as here the Government has spent more than \$61,000, it is entitled to the settlement proceeds of \$17,000 as a matter of law – notwithstanding Plaintiff's unsupported arguments to the contrary. Indeed, that will still not make the Government whole, as contemplated by the statute. The Government has established a legal right to settlement proceeds, and disbursement should be ordered accordingly. Moreover, as there is no valid legal basis for disregarding or departing from the clear statutory mandate in this case, Plaintiff's request for a hearing should also be denied.

Respectfully submitted,

DENISE N. GEORGE, ESQ.
ATTORNEY GENERAL

By: /s/ Venetia Velázquez
Venetia Harvey Velázquez, Esq.
Bar #: 786
Assistant Attorney General
Department of Justice
213 Estate La Reine, RR1 Box 6151
Kingshill, USVI 00850
Tel: (340) 773-0295
Email: venetia.velazquez@doj.vi.gov

Dated: September 21, 2022

This document complies with the page or word limitation set forth in Rule 6-1(e).

/s/ Venetia H. Velazquez

CERTIFICATE OF SERVICE

I hereby certify that on this the 21st day of September, 2022, I have caused an exact copy of the foregoing Reply to be served electronically through the C-Track system upon the following counsel of record.

Julie German Evert, Esq.
Law Office of Julie German Evert
5034 Norre Gade, Suite 6
St. Thomas, VI 00802
Email: lawofficesofjulieevert@gmail.com

James L. Hymes, III, Esq.
Law Office of James L. Hymes, III, PC
P. O. Box 990
St. Thomas, VI 00804-0990
Email: jim@hymeslawvi.com;

/s/ Ivelisse Torres

FILED

September 23, 2022 02:39 PM

ST-2021-CV-00079

TAMARA CHARLES

CLERK OF THE COURT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

ELVIS GEORGE,

Plaintiff,

vs.

MARK LONSKI. and PROPERTYKING, Inc.,

Defendants.

CIVIL NO. ST-2021-CV-00079

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

RESPONSE TO MOTION TO INTERVENE

COME NOW, the Defendants, **MARK LONSKI** and **PROPERTYKING, INC.**, by their undersigned attorney, James L. Hymes, III, and respectfully respond to the motion of the Department of Labor of the Government of the Virgin Islands to intervene in this case, as follows:

The Motion to Intervene must be denied for the reason that it was untimely filed. The Administrator of the Government Insurance Fund may institute proceedings against third parties within two (2) years following the date of the injury, V.I.C., Title 24 §263. The day of the injury in this case was July 14, 2020. This fact is set forth in paragraph 1 of the Plaintiff's Request for Hearing. The Motion to Intervene by the Government of the Virgin Islands is dated August 5, 2022, more than two years after the date of injury. This is the first effort by the Government of the Virgin Islands to institute an action against a third party, meaning the Defendants in this case, to seek recovery of the settlement

proceeds to satisfy the lien of the Department of Labor. Having sat on its rights, the Government should be precluded from now seeking to recover all of the settlement proceeds in this case.

The Defendants respectfully submit that it could not ever have been the intention of the Legislature to give the Department of Labor the unfettered right to all of the settlement proceeds in any given case in which it has a lien. Indeed, Title 24 §263 of the Virgin Islands Code specifically gives the Administrator the ability to compromise claims against third parties. The issues of liability in this case were hotly contested by the Defendants. There never was an absolute surety that the Plaintiff would succeed in proving his claims of liability and damages. The undersigned cannot disclose in this submission any information produced or discussed at mediation due to the confidentiality provisions of the Mediated Settlement Agreement. However, the ability to compromise liens should be an essential component to the orderly administration of claims under Section 263. Obviously, if the Plaintiff recovers nothing, the Department of Labor recovers nothing. The element of compromise is also the cornerstone of the mediation process by which this case was resolved as between the Plaintiff and the Defendants. The Department of Labor apparently has a policy that it does not participate in mediations, and it did not do so in this case. Therefore, it should not be disappointed if it is awarded no portion of the distribution of the settlement proceeds.

Accordingly, the Defendants respectfully request that the Court deny the motion of the Government to intervene in this case, and also set a time for the parties to argue their positions with respect to the distribution of the settlement proceeds.

Respectfully Submitted,

DATED: September 23, 2022.

LAW OFFICES OF JAMES L. HYMES, III, P.C.
Attorney for Defendants – Mark Lonski
and Property King, Inc.

By: /s/ James L. Hymes, III

JAMES L. HYMES, III

VI Bar No. 264

P. O. Box 990

St. Thomas, VI 00804-0990

Telephone: (340) 776-3470

E-Mail: jim@hymeslawvi.com;

rauna@hymeslawvi.com

CERTIFICATE OF SERVICE

I hereby certify that on this the 23rd day of September, 2022, as an approved C-Track filer on behalf of James L. Hymes, III, I have caused an exact copy of the foregoing ***“Response to Motion to Intervene”*** to be served electronically through the C-Track system upon the following counsel of record:

Gary.molloy@dol.vi.gov

JULIE GERMAN EVERT, ESQ.

LAW OFFICES OF JULIE GERMAN EVERT
5043 Norre Gade, Ste. 6
St. Thomas, VI 00802
lawofficesofjulieevert@gmail.com;
julieevert555@gmail.com
Attorney for Plaintiff

NESHA R. CHRISTIAN-HENDRICKSON, ESQ.

Assistant Commissioner/Legal Counsel
USVI Department of Labor
4401 Sion Farm, Ste. 1
Christiansted, USVI 00820
Nesha.Christian-Hendrickson@dol.vi.gov

THE HONORABLE GARY A. MOLLOY

Commissioner
USVI Department of Labor
4401 Sion Farm, Ste. 1
Christiansted, USVI 00820
gary.molloy@dol.vi.gov

VENETIA HARVEY VELAZQUEZ, ESQ.

Assistant Attorney General
Virgin Islands Department of Justice
213 Estate La Reine, RR1 Box 6151
Kingshill, St. Croix, USVI 00850
venetia.velazquez@doj.vi.gov

/s/ Rauna Stevenson-Otto

FILED

September 29, 2022 08:58 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,

Plaintiff,

v.

MARK LONSKI AND PROPERTY KING INC.,

Defendants.

CIVIL NO.: ST-21-CV-00079

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

**PLAINTIFF'S REPLY TO GOVERNMENT'S REPLY TO PLAINTIFF'S REQUEST
FOR HEARING TO DETERMINE DISBURSEMENT OF SETTLEMENT PROCEEDS
FILED IN OPPOSITION TO THE GOVERNMENT'S MOTION TO INTERVENE AND
NOTICE OF CLAIM OF RIGHT TO THOSE FUNDS**

The Virgin Islands Department of Labor (VIDOL), Division of Worker's Compensation is proposing a new policy, to wit: it will reap 100% of all monies obtained by private counsel in civil cases against third parties for injuries sustained by employees who are injured "on the job". This new policy is inequitable to private counsel and inequitable to plaintiffs. This policy is patently unfair because much of the monies recovered in this case were for pain and suffering, which is a cause of action for which Worker's Compensation has never paid Plaintiff or his medical providers.

If VIDOL wishes to pursue third party claims to recoup monies spent via Workmen's Compensation, they should do so, at their expense and with their time. Instead, VIDOL wants to ride the wake of private counsel and take the entire recovery, without doing any work and paying any money. VIDOL does not seem to appreciate that every case is a risk, and that money and time are not always compensable. In fact, in this case, Plaintiff's counsel has an hourly rate of \$400-\$500/hour. Her actual time in this matter far exceeds the 37% recovery, she has agreed to in the

retainer agreement. See Affidavit of Julie German Evert, Esquire, attached hereto and made part hereof as **Exhibit "A"**.

VIDOL also fails to recognize that the issue of whether the Commissioner of Labor has the authority to compromise a worker's compensation lien in order to affect a settlement between the injured worker and the third-party tortfeasor has already been decided. See *Jennings v. Richards*, (1995), 31 V.I. 188, a copy of which opinion is attached hereto and made part hereof as **Exhibit "B"**.

The Court stated in *Jennings* at 190:

Hence, the Commissioner's discretion to compromise a lien against the injured worker cannot be limited to partial compromise, but rather must encompass the power to affect *a total waiver of recovery when, in the conscientious exercise of his discretion, the Commissioner deems waiver appropriate* [emphasis added].

The *Jennings* Court noted at 190:

As counsel for plaintiff and defendants have pointed out, the opposite conclusion would engender wasteful disincentives. If, as in the case at bar, the compensable damages of the injured party far exceed the potential recovery from the tortfeasor, there can be no incentive of the injured party to initiate an action since any recovery by the plaintiff would automatically revert to the government. In a negotiated compromise among the plaintiff, the tortfeasor and the Government, both the Government and the injured party would recover something. Otherwise, the Government Fund could only be recompensed through litigation initiated by the Attorney General.

In the case at hand, the Attorney General did not initiate suit within the two-year statute of limitations for tort claims. The *Jennings* Court directly addressed the issue of legal fees incurred by private counsel for the plaintiff:

Government of the Virgin Islands v. Garvey and Maynard, V.I.Supp.Op.Civil No. 1985-7 (Dist.Ct. of St. Thomas & St. John, October 4, 1990) teaches that the government must contribute a pro rata share towards the attorney's fees paid by a private citizen in a case where the private citizen's action makes funds available to the government. There is no

reason that such a principle should not apply to cases initiated by injured employees which produce a recovery subject to lien under the worker's compensation statute.

The *Jennings* case is a seminal case on the issue of compromised liens and Plaintiff finds it curious that VIDOL has not mentioned this case in any of its pleadings. The *Jennings* case has been followed by VIDOL for more than 30 years, which is consistent with what the undersigned has indicated has occurred in Worker's Compensation cases in which she has represented numerous plaintiffs.

Two of the most respected and busy trial lawyers in the Virgin Islands share the same experience. Attorney Lee Rohn and Attorney Joel Holt have attached an Affirmation and Declaration and Release of Workers' Compensation Claims Forms. Specifically, Attorney Rohn states the following:

I, Lee J. Rohn, being first duly sworn, declare under penalty of perjury that the following is true and correct.

1. I make this affirmation of my own personal knowledge.
2. During my over thirty-eight (38) years practicing law in the Virgin Islands, I have settled hundreds of cases that had Worker's Compensation liens.
3. Worker's Compensation, through its Director, has always acknowledged that it had a duty to pay its pro rata share of the costs and fees, as it realized that without my efforts, there would have been no recovery.
4. In addition, on numerous occasions when there was limited insurance, or limited recovery, such that the client would not be able to recoup his out-of-pocket losses, or would receive very little recovery, and had large damages, Worker's Compensation would waive reimbursement completely.
5. Further, recently I have settled some older cases with large Worker's Compensation liens, and the current Director of Worker's Compensation has taken the position

that they don't keep files after ten (10) years and has waived the repayment of any funds paid by Worker's Compensation.

6. To take the position that Worker's Compensation demands full payment, without deduction of the pro rata share of costs and fees, would mean that in many cases, I would not take the case, which would result in Worker's Compensation receiving no reimbursement.
7. If Worker's Compensation continues to take the position that it can take all the settlement of a claimant, it would likewise result in Worker's Compensation receiving no payment as there would be no incentive for the claimant to bring the case, and go through the litigation, as he or she would receive nothing in return.

See Exhibit "C", attached hereto and made part hereof.

In his Declaration, Attorney Holt declares:

I, Joel H. Holt, declare, pursuant to V.I. R. CIV. P. 84, as follows:

1. I am an attorney in the U.S. Virgin Island and am familiar with the foregoing facts
2. I have settled well over 250 cases since I started practicing law in the Virgin Islands in 1979 where worker's compensation had a lien against my client's recovery.
3. Whenever I settle such a case, I always send a statement to the Department of Labor ("DOL") of a final payout, as well as a release for the Commissioner to sign.
4. Those statements always contain an allocation for attorney's fees and costs, so that the final payment is less than the total lien.
5. A sample payment and release are attached (with the names redacted).
6. The DOL has always accepted this allocation and signed the releases as tendered.
7. If such allocation for attorney fees and costs were not permitted, there are many cases that would not be accepted by my office for handling, as the worker's comp lien could exceed the amount of many of the recoveries.
8. The recognition of the attorney fees and costs is consistent with the work that was done to collect the amounts repaid to the worker's compensation fund, which the client would otherwise have to pay.

I declare under penalty of perjury pursuant to V.I.R. CIV. P. 84 that the foregoing is true and correct, executed on this 28th day of September 2022.

See Exhibit "D", attached hereto and made part hereof.

Attorney Holt has also provided the Release of All Workers' Compensation Claims Form that he uses in every Worker's Compensation case in which he represents plaintiffs. See Exhibit "E", attached hereto and made part hereof.

The *Jennings* Court recognizes that private attorneys representing individuals are working for the benefit of the private individual, the plaintiff. No private attorney is going to spend years litigating a case, expending monies on a case for filing fees, service, medical records, experts, depositions costs, expert reports and exhibits, in order to pay the Government if, and when, the case bears fruit. There is a risk involved in undertaking a civil case. That risk is financial in that there is never a guarantee of recovery. Moreover, there is no guaranty that the recovery will cover the expenses paid by counsel. In a case in which the insurance policy is inadequate or a case in which liability or damages is fiercely disputed, the actual quantum meruit time can well exceed the agreed upon percentage for recovery.

Civil litigation is pursued against third parties when the injured party has significant damages, including emotional distress, pain and suffering damages and loss of economic capacity, which are not covered by Worker's Compensation. Civil counsel represents Plaintiff to help recompense Plaintiff for his injuries and does not undertake representation to compensate VIDOL.

The Commissioner of Labor has authority to negotiate. In this case, the Commissioner of Labor advised the undersigned that her legal fees and costs would be paid from the recovery.

The Commissioner's oral promise was then breached by VIDOJ, who now is standing with hands out demanding all the recovery. This is unclean hands

Case law and equity prohibit such an action. While VIDOJ does not appear to recognize what this policy will do to VIDOL in future cases, renowned plaintiffs' counsel certainly recognize the impact of this new policy on future cases.

WHEREFORE, based on the foregoing, Plaintiff respectfully requests a hearing on this issue.

Dated: September 29, 2022

Respectfully Submitted,
Law Office of Julie German Evert, PC

/s/ Julie German Evert, Esq. /s/

Julie German Evert, Esquire

5043 Norre Gade, Ste. 6

St. Thomas, VI 00802

(340) 774-2830

lawofficeofjulieevert@gmail.com

julieevert555@gmail.com

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT this Plaintiff's Reply to the Government's Reply to the Plaintiff's Request for Hearing complies with the page or word provisions of V.I. Civ. P.R. 6-1(e) and a true and exact copy of the foregoing document was served on the following, this 29th day of September 2022:

James L. Hymes, III

Attorney for Defendant

P.O. Box 990

St. Thomas, VI 00804-0990

Email: jim@hymeslawvi.com

rauna@hymeslawvi.com

Nesha R. Christian-Hendrickson, Esq.

Assistant Commissioner/Legal Counsel

USVI Department of Labor

4401 Sion Farm, Ste. 1

Christiansted, USVI 00820

Email: Nesha.Christian-Hendrickson@dol.vi.gov

The Honorable Gary A. Molloy

Commissioner

USVI Department of Labor

4401 Sion Farm, Ste. 1

Christiansted, USVI 00820

Email: gary.molloy@dol.vi.gov

Venetia Harvey Velazquez, Esq.

Assistant Attorney General Virgin Islands

Department of Justice

213 Estate La Reine, RR1 Box 6151

Kingshill, St. Croix, USVI 00850

Email: venetia.velazquez@doj.vi.gov

Via: Mail ☐ // Facsimile ☐ // Hand Delivery ☐ // Email ☒ // C-Track E-File ☒ //

/s/ Sharaya Holtrop /s/

Sharaya Holtrop

Paralegal

FILED

October 03, 2022 10:00 AM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,)	
)	
Plaintiff,	)	CIVIL NO. ST-21-CV-00079
)	
v.	)	ACTION FOR DAMAGES
)	
MARK LONSKI and)	
PROPERTY KING, Inc.,	)	JURY TRIAL DEMANDED
)	
Defendants.)	
)	

**GOVERNMENT’S MOTION TO STRIKE AND, ALTERNATIVELY,
OBJECTION TO PLAINTIFF’S SURREPLY FILED WITHOUT LEAVE OF COURT**

COMES NOW the **GOVERNMENT OF THE VIRGIN ISLANDS** (“Government”),
by and through undersigned counsel and files this Motion to Strike and Objection to Plaintiff’s
Surreply which was improperly filed without seeking leave of court.

V.I. Rule of Civil Procedure 6-1 limits the filings and responses that may be filed as follows:

(c) Permitted Filing of Motion, Response, and Reply.

Only a motion, a response in opposition, and a reply may be served on other parties and filed with the court; further response or reply may be made only by leave of court obtained before filing. Parties may be sanctioned for violation of this limitation.

V.I.R. Civ. P. 6-1(c). Such rules serve an important purpose in bringing to a close briefing on a motion and preventing an endless back and forth between the parties that consumes judicial resources. *See e.g. In re Hardin*, No. 19-05145-LRC, 2019 Bankr. LEXIS 3063, at *4 (Bankr. N.D. Ga. Sep. 30, 2019) (citing *Thomas v. First Magnus Fin. Corp.*, 2009 WL 10712203, at *2 (N.D. Ga. Mar. 10, 2009) (court will be put “in the position of refereeing an endless volley of briefs.”). Moreover, this Court unquestionably has and may use its inherent power to control its proceedings and compel obedience to the rules and to its orders.

Here, this Court, by order entered September 12, 2022, permitted the plaintiff and defendant to file an opposition/response to the Government's motion to intervene and notice of claim of right, and ordered the Government to file a reply thereto, if any. The parties filed oppositions, and the Government replied, as ordered. Briefing was effectively closed. Plaintiff now files a second post-reply opposition, titled "Plaintiff's Reply to Government's Reply." That filing violates both the rule and the order of the Court. Significantly, the surreply seeks only to further expand on the equity, past practice and fairness arguments argued in the opposition. That is improper and violative of the rules and should be stricken. *See e.g., RES-GA Diamond Meadows, LLC v. Robertson (In re Robertson)*, Nos. 15-53700-WLH, 15-05436, 2017 Bankr. LEXIS 3229, at *2-3 (Bankr. N.D. Ga. Sep. 21, 2017)(citing *First Specialty Ins. Corp. v. 633 Partners, Ltd.*, 300 Fed. Appx. 777, 788 (11th Cir. 2008)); cf. *People of the V.I. v. Rivera*, No. SX-2012-cr-065, 2014 V.I. LEXIS 49, at *33 (Super. Ct. May 1, 2014)(applying analogous criminal rule and striking surreply, though not captioned as such, because it was filed without leave of court.), *aff'd*. on other grounds *Rivera v. People of the Virgin Islands*, 64 V.I. 540, 2016 V.I. Supreme LEXIS 16 (VI 2016).

As indicated in the Government's opening brief and Reply, the Plaintiff's arguments are without merit and become no more valid simply because they are restated. In sum, Plaintiff argues: that it is inequitable to private counsel and plaintiff to permit the government to take the entire settlement amount in this case since the government did not initiate litigation against the third party; the government does not appreciate that the case is a risk and requires investment by counsel; the government has in the past permitted the parties and counsel to recover and/or compromised its lien. Absent from plaintiff's arguments, however, is any authority offered in support of

disregarding the legislative mandate set forth in 24 VIC § 263. It is worth stating that the Government also takes risks and makes an investment, in expending thousands of dollars that it may never recoup on behalf of employees like plaintiff who are injured by third parties. And here, it is undisputed that investment is in excess of \$61,000. Does plaintiff suggest he is entitled to a windfall by benefitting from the government spending \$61,000 for his care from the injury that is the subject of this suit, by taking the settlement as compensation for that injury without restoring the public fund? That is clearly what the legislature sought to avoid in enacting section 263.

Plaintiff cites a 1995 decision by Chief Judge Thomas Moore¹ that appears to interpret section 263 as providing authority to the government to compromise liens. *Jennings v. Richards*, 31 V.I. 188, 189 (Terr. Ct. 1995). First, neither Jennings nor the statute suggest that a compromise is compelled, or that the court may now inject itself into brokering or ordering settlements.

More significantly, however, the *Jennings* decision is not good law and must be disregarded as, for whatever force that decision may have had, the Senate has since amended to make even clearer its intent. The amendment, which Plaintiff clearly did not consider, came seven years after *Jennings*, in 2002. The 2002 amendment underscored the legislature's clear and express intent to ensure the government recovered monies – all monies – spent for the care of the injured employee before anyone else could take, as follows:

SECTION 13. Title 24, section 263, Virgin Islands Code, is amended by inserting the following language at the end of the third paragraph after "compromise":

", **but** the failure to join the Administrator shall not deprive the courts of jurisdiction over the claim or otherwise result in dismissal of the claim, **so long as the injured worker or employee acknowledges that all sums due the Government Insurance Fund are secured by any recovery.**"

¹ The decision appears to erroneously identify the issuing court as the Territorial Court rather than the District Court.

2002 V.I. ALS 6529, 2002 V.I. SESS. LAWS 6529, V.I. Act 6529, 2002 V.I. Bill 248, 2002 V.I. ALS 6529, 2002 V.I. SESS. LAWS 6529, V.I. Act 6529, 2002 V.I. Bill 248 (emphasis added). But the statute goes even further in underscoring that intent, stating:

No compromise between the injured workman or employee, or his beneficiaries in case of death, and the third person responsible shall be valid or effective in law unless the expenses incurred by the Government Insurance Fund in the case are first paid. No judgment shall be entered in actions of this nature and no compromise whatsoever as to the rights of parties to said actions shall be approved, without making express reserve of the rights of the Government Insurance Fund to reimbursement of all expenses incurred. The clerk of the court taking cognizance of any claim of the above-described nature, shall notify the Administrator of any order entered by the case, as well as the final deposition thereof.

24 V.I.C. § 263 (emphases added).

Through the plain and unambiguous language of the statute, the legislature expressed its will and intent that the Government be made whole, before any settlement proceeds may be distributed. It emphasized repeatedly that ALL MONIES shall be first repaid to the government. Plaintiff would have this court ignore this plain expression of intent and rely on a single word in the statute – “compromise” -- in isolation. This, we may not do. *See Smith v. Emps. of the Bureau of Corr.*, 64 V.I. 383, 396-97 (V.I. 2016).

The settlement amount in this case represents just approximately 28 percent of the Government's lien. There is, therefore, no legal basis for Plaintiff's arguments favoring disbursement to counsel, in contravention of the painfully clear and express legislative mandate that the government must be made whole. Nor can the mandatory directives of the statute be altered by an administrative practice, as suggested. *See e.g., Thompson v. Pub. Emples. Rels. Bd.*, No. ST-18-CV-720, 2021 V.I. LEXIS 9, at *15-16 (Super. Ct. Feb. 4, 2021) (holding that, “An

Administrative practice cannot supersede the language of a statute.”) (quoting *Free Speech Coal., Inc. v. AG of the United States*, 677 F.3d 519, 539 (3d Cir. 2012)).

For these reasons and all of the reasons previously stated, the government is entitled to any settlement proceeds up to and including the amount of the undisputed lien.

CONCLUSION

The Plaintiff's surreply is improperly filed without leave of court and must be stricken as it violates the rules and the order of this court; moreover, the improper surreply simply repeats and seeks to expound upon previous arguments. It should be stricken. Nonetheless, Plaintiff offers no authority for disregarding the Legislatures plain statutory intent set forth in section 263, but rather asks this court to substitute the legislature's judgment for its own. The Court should reject the invitation to do so. Finally, Plaintiff's reliance on a 1995 decision interpreting the statutory provision in question is misplaced, as the Legislature further amended Section 263 in 2002, in which it expressly reasserted its mandate that the Government recoup ALL funds spent before any settlement may be deemed valid.

Respectfully submitted,

DENISE N. GEORGE, ESQ.
ATTORNEY GENERAL

By: /s/ Venetia Velázquez
Venetia Harvey Velázquez, Esq.
Bar #: 786
Assistant Attorney General
Department of Justice
213 Estate La Reine, RR1 Box 6151
Kingshill, USVI 00850
Tel: (340) 773-0295
Email: venetia.velazquez@doj.vi.gov

Dated: October 3, 2022

This document complies with the page or word limitation set forth in Rule 6-1(e).

/s/ Venetia H. Velazquez

CERTIFICATE OF SERVICE

I hereby certify that on this the 3rd day of October, 2022, I have caused an exact copy of the foregoing Motion to Strike and Objection to Plaintiff's Surreply to be served electronically through the C-Track system upon the following counsel of record.

Julie German Evert, Esq.
Law Office of Julie German Evert
5034 Norre Gade, Suite 6
St. Thomas, VI 00802
Email: lawofficesofjulieevert@gmail.com

James L. Hymes, III, Esq.
Law Office of James L. Hymes, III, PC
P. O. Box 990
St. Thomas, VI 00804-0990
Email: jim@hymeslawvi.com;

/s/ Ivelisse Torres

FILED

November 09, 2022 01:04 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

RECORD OF PROCEEDINGS

Status Conference

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS District of St. Thomas/St. John

Elvis George,

Plaintiff

Case Number: ST-2021-CV-00079

Action:

v.

Mark Lonski et al,

Defendant.

Type of Case: ☒ Civil ☐ Criminal ☐ Criminal Jury ☐ Family _____

Date of Hearing: November 09, 2022 Start Time: 11:04 am End Time: 1:21 pm

Type of Hearing: ☒ Remote ☐ In-Person ☐ Hybrid

Appeared: Elvis George ☒ Yes ☐ No

Warrant of Arrest issued for Contempt of Court ☐ Yes ☐ No

Amount of Bail for Contempt of Court \$ _____

ATTORNEY FOR PLAINTIFF
Julie M. German Evert, Esq.

ATTORNEY FOR DEFENDANT
James L. Hymes, III, Esq.

WITNESS FOR PLAINTIFF
**Gary Molloy, Commissioner for the Department
of Labor**

WITNESS FOR DEFENDANT

**Renia Thomas, Director of Workers
Compensation**

**Nesha Christian-Hendrickson, Assistant
Commissioner for the Department of Labor &
Legal Counsel**

☐ People of the VI Status: _____

☐ Defendant Response/Update: _____

Case Continued to:

☐ Presentence Report Request from Office of Probation

☐ Defendant Served for Next Court Hearings

Additional Notes

This matter came on before the Court for a status conference. Attorney Venetia Velazquez appeared on behalf of the Government of the Virgin Islands. The Court addressed the Government's Motion to Strike and Alternatively, Objection to

Plaintiff's Surreply Filed without Leave of Court. A release was submitted by Attorney Evert by but never signed by the Department of Labor's Assistant Commissioner, Nesha Christian-Hendrickson. Attorney Evert mentioned that she spoke to the Commissioner of the Department of Labor about the release in July 2022 and settled in August 2022. The Court went in recess to allow Attorney Velazquez to call the Commissioner of Labor, Gary Molloy, to testify to the Court. After hearing sworn testimony from the Commissioner of Labor, Renia Thomas, the Director of Worker's Compensation gave sworn testimony, followed by Nesha Christian -Hendrickson. Both attorneys cross-examined each witness. After hearing sworn testimony of all witnesses, the Court took all arguments and pleadings under advisement.

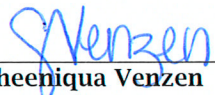
Judge Presiding:

Hon. Sigrid M. Tejo
Judge

Tamara Charles
Clerk of the Court

Court Reporter:

Zoom Recording


Sheeniqua Venzen
Court Clerk II

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

ELVIS GEORGE,	)	ST-2021-CV-00079
)	
Plaintiff,)	
)	
v.)	
)	
)	
MARK LONSKI and PROPERTY)	
KING,)	
)	
Defendants.)	
)	

Wednesday, November 9, 2022

The above-entitled matter came on for a HEARING ON ALL
PENDING MOTIONS before the Honorable SIGRID M. TEJO.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN
OFFICIAL COURT REPORTER, ENGAGED BY THE COURT,
WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS
HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND
PROCEEDINGS OF THE CASE AS RECORDED.

SANDRA HALL, RMR (Ret.)
Official Court Reporter II
(340) 778-9750 Ext. 6609

A P P E A R A N C E S:**For the Plaintiff:**

LAW OFFICE OF JULIE GERMAN EVERT
5034 Norre Gade, Suite 6
St. Thomas, VI 00802
Phone: (340) 774-2830
Fax: (340) 774-2803
BY: JULIE G. EVERT, ESQ.
lawofficesofjulieevert@gmail.com

For the Defendants:

LAW OFFICE OF JAMES L. HYMES, III, PC
P. O. Box 990
St. Thomas, VI 00804-0990
Phone: (340) 776-3470
Fax: (340) 775-3300
BY: JAMES L. HYMES, ESQ.
jim@hymeslawvi.com;

For the Government:

DEPARTMENT OF JUSTICE
213 Estate La Reine, RR1 Box 6151
Kingshill, USVI 00850
Phone: (340) 773-0295
BY: VENETIA VELAZQUEZ, ASST. ATTORNEY GENERAL
venetia.velazquez@doj.vi.gov

TABLE OF CONTENTS

EXAMINATION

Witness Name	Page
<u>Commissioner Gary Molloy</u>	
By The Court.....	53
By Ms. Evert.....	67
By Ms. Velazquez.....	76
 <u>Rainia Thomas</u>	
By The Court.....	80
By Ms. Evert.....	87
By Ms. Velazquez.....	88
 <u>Attorney Nesha Christian-Hendrickson</u>	
By The Court.....	91
By Ms. Evert.....	97
By Ms. Velazquez.....	98

P R O C E E D I N G S

(Commencing at 11:04 a.m.)

THE CLERK: Number 3, Elvis George v.
Mark Lonski, et al., Case No. ST-2021-CV-79.

MS. EVERT: Good morning, Your Honor.
Julie Evert on behalf of the plaintiff.

THE COURT: Good morning, Attorney
Evert.

MR. HYMES: Good morning, Your Honor.
James Hymes on behalf of the defendants.

MS. VELAZQUEZ: Good morning, Your
Honor. Venetia Velazquez, assistant attorney
general on behalf of the Government of the
Virgin Islands.

THE COURT: Good morning, Attorney
Hymes; good morning, Attorney Velazquez.

This matter is set at the request of
plaintiff for ruling on outstanding motions.
Are the parties ready to proceed?

MS. VELAZQUEZ: Yes, Your Honor.

MS. EVERT: Your Honor, we need a
hearing date for this, but yes, Your Honor.

THE COURT: This is the hearing date.
You were advised when you called chambers.

1 MS. EVERT: I called chambers and they
2 weren't clear. We need the commissioner of
3 Labor to testify. Is he available?

4 THE COURT: You asked for a hearing
5 date on this and the Court set one, so this is
6 the hearing date.

7 MS. EVERT: Okay, Your Honor.

8 MS. VELAZQUEZ: And, Your Honor, if I
9 may, I neglected to also indicate that I have
10 with me today Ms. Kesi Petersen, the assistant
11 director of the Division of Workers'
12 Compensation.

13 THE COURT: She needs to turn on her
14 camera then, and I need to put her back in the
15 witness room until this matter is -- we have
16 addressed any pending preliminary matters.

17 Are any other witnesses that are
18 expected to testify that have been let out of
19 the waiting room?

20 MS. EVERT: Your Honor, I was not clear
21 when I talked to Ms. La Plaz. If I can call
22 my -- if I can make a phone call I think
23 Mr. George can appear. I'm not sure if
24 Attorney Rohn is available, but I will see if I
25 can get her.

1 THE COURT: What does Attorney Rohn
2 have to do with this matter? She doesn't have
3 an appearance in this matter.

4 MS. EVERT: She filed an affirmation,
5 Your Honor, as did Attorney Holt.

6 THE COURT: Again, you filed a motion
7 asking for a hearing; Court granted that. Why
8 aren't your witnesses here?

9 MS. EVERT: Your Honor, when I called
10 the court and spoke to Ms. La Plaz last week,
11 she was not sure and I said --

12 THE COURT: She came and asked me and
13 I told her it was a hearing on the motions that
14 were pending, and that was the message relayed.

15 MS. EVERT: Right.

16 THE COURT: So you --

17 MS. EVERT: And, Your Honor, the motion
18 that was pending was the request for a hearing.
19 That was --

20 THE COURT: Right. She asked if there
21 was a hearing and I said yes, there is a
22 hearing on all outstanding motions, all
23 outstanding motions, and have your witnesses.

24 MS. EVERT: Your Honor, I was not told
25 to have the witnesses. I was told there was a

1 hearing on all outstanding motions; and the
2 motion is the --

3 THE COURT: Okay.

4 MS. EVERT: -- request for a hearing
5 date.

6 THE COURT: There is all outstanding
7 motions about whether or not the government is
8 supposed to be impleaded, whether or not the
9 court's supposed to release the money.

10 MS. EVERT: Okay. Okay, Your Honor.
11 We can proceed.

12 THE COURT: You said you needed to call
13 somebody so do you want five minutes to make
14 those phone calls?

15 MS. EVERT: Yes, Your Honor.

16 THE COURT: All right. Court will be
17 in recess for five minutes.

18 (Recess at 11:08 a.m.)

19 (This hearing resumed at 11:09 a.m., as follows:)

20 THE COURT: We're back on the record.
21 Attorney Evert.

22 MS. EVERT: Yes, Your Honor. Present.

23 THE COURT: Attorney Hymes, Attorney
24 Velazquez, are we ready to proceed?

25 MS. VELAZQUEZ: Yes, Your Honor.

1 MS. EVERT: Yes, Your Honor.

2 MR. HYMES: Yes, Your Honor.

3 THE COURT: Okay. Attorney Velazquez,
4 why should the Court allow you to implead?

5 MS. VELAZQUEZ: Well, Your Honor, the
6 government moved to intervene pursuant to V.I.
7 Rule of Civil Procedure 24(a) as of right,
8 although (b) does also apply.

9 Now, in the Third Circuit the Court can
10 look at several factors. One, we have timely
11 moved; and secondly, I think there is no
12 dispute in this case, the parties have not
13 disputed, in fact, that the Workers'
14 Compensation Division did pay out \$61,000 plus
15 on behalf of the plaintiff, Mr. Elvis George,
16 for his care.

17 Additionally, under 24 VIC, section
18 263, the government has a right as a matter of
19 law, and an interest is established, to recoup
20 those funds in -- the complete funds that have
21 been expended on behalf of Mr. Elvis George.

22 It's clear that the right of the
23 government to recoup those funds arises at the
24 time of a settlement or an attempt to
25 compromise the claims as evidenced by the plain

1 language of 24 VIC, section 293, which
2 indicates that at the time of compromise or
3 judgment the Government must first -- there
4 must first be an expressed reservation of the
5 rights of the government. So, that is clear.

6 It is also clear in this case that the
7 rights of the Government to these funds will
8 not be adequately represented by the existing
9 parties in the case as evidenced by the fact
10 that in all of the filings before the court the
11 parties are objecting to repaying the funds.
12 In fact, it appears that Mr. George believed
13 that he should obtain a windfall by benefiting
14 from the compensation through the workers' comp
15 program and then taken from the third party.

16 I think there is a plain statute on
17 this issue and all of the arguments of the
18 parties suggests that the Court should not
19 adhere to the statute and, in fact, are making
20 legislative arguments to the Court that are
21 more properly made to the Legislature.

22 THE COURT: Attorney Velazquez, why is
23 this the first case that the Department of
24 Labor is of interest in?

25 MS. VELAZQUEZ: Well, I think the

1 Department of Labor is interested in all of the
2 cases. And as a matter of law --

3 THE COURT: This is the first one that
4 the Department of Labor has moved to intervene
5 or to not sign a release.

6 MS. VELAZQUEZ: Well, I don't know that
7 it's the first case, but Your Honor could be
8 correct. But whether or not it's the first
9 case, the Department of Labor has a right as a
10 matter of law; and neither the agency nor the
11 parties have a right to compromise or to give
12 away the rights of the government as
13 established in the statute.

14 It is also my understanding that in
15 cases in which there is an automobile accident,
16 the norm has been for the Department to
17 interact with the insurer to settle those
18 claims and not necessarily with the individual
19 attorneys. So, while this may be the first
20 case that Your Honor is seeing, it may also be
21 an unusual event in that the insurer for the
22 third party tortfeasor is usually the
23 individual with which the Workers' Compensation
24 Division is dealing.

25 THE COURT: Attorney Velazquez, I take

1 a little bit of pause. In one hand you are
2 saying that past practice and procedures should
3 not be recognized, but now you're just
4 saying -- well, you just used the term "norm";
5 but this is the norm of how things are supposed
6 to be done. So which is it? Do you want me to
7 recognize past practice and procedures or the
8 norm, or the statute? I don't think it can be
9 both ways.

10 MS. VELAZQUEZ: No, no. Your Honor is
11 correct and I don't think that's what I was
12 saying. I was clarifying in response to the
13 Court's response -- or question why this may be
14 the first time you're seeing something, but I'm
15 not arguing at all for adhering to norms.

16 In fact, I don't believe the agency has
17 the authority to make a decision,
18 administratively or otherwise, to decide to
19 just not follow the statute. If the parties or
20 the agency would like a statutory amendment,
21 they need to go to the Legislature. So, that's
22 not at all what I'm arguing.

23 THE COURT: So, how is a party -- how
24 is a party supposed to know that past practice
25 and procedures that have been -- or the way

1 that things have been done for almost 20 years
2 is all of a sudden going to be set aside and
3 not recognized to their detriment?

4 MS. VELAZQUEZ: Your Honor, I don't
5 know that a past practice has been established
6 in this case. I know that in the pleadings --

7 THE COURT: Have you seen the
8 affirmations of Attorney Holt and
9 Attorney Rohn?

10 MS. VELAZQUEZ: I'm sorry?

11 THE COURT: There are affidavits from
12 Attorney Holt and Attorney Rohn; and I guess at
13 this juncture for disclosure because I don't
14 think any of these parties were aware, it was
15 disclosed in another matter back in donkey
16 years when I was a summer intern in between
17 school, I worked for Attorney Rohn and I
18 believe on at least one occasion she was my
19 late mother's attorney for a property issue.

20 MS. VELAZQUEZ: Yes, Your Honor, I
21 appreciate that. This is not the first time to
22 be sure that the government has raised this
23 issue. As the plaintiff --

24 THE COURT: I've looked in all of the
25 cases involving the Department of Labor or this

1 type of action and I have not seen a single
2 case in the record of C-Track, where the
3 Department of Labor has been a party.

4 MS. VELAZQUEZ: Yes, Your Honor, the
5 government has, in fact, challenged its ability
6 to compromise claims under section 263 in the
7 case cited by the plaintiff in the *Jennings*
8 matter in 1995. The government has also
9 challenged in the *Betran* decision that went to
10 the V.I. Supreme Court the ability -- the
11 authority to compromise. Now, in that case the
12 court ruled that 261 applied since it was an
13 uninsured employer and not 263, although
14 263 does require the government to recoup those
15 funds.

16 So, I don't think it would be accurate
17 to say that the government has never challenged
18 or raised section 263, whether or not it has
19 done so through intervention or through a
20 notice to the court; in fact, it has, and there
21 is case law indicating that the government has.
22 And I cited to the *Betran* decision in my reply
23 to the opposition I believe and the plaintiff
24 and the government has cited to the *Jennings*
25 decision. So, this is an issue that has been

1 percolating.

2 THE COURT: Anything further, Attorney
3 Velazquez?

4 MS. VELAZQUEZ: So, Your Honor, I
5 believe that the government has in its briefing
6 established the right to intervention.

7 And I just want to address several of
8 the points raised by the plaintiff and the
9 defendant in their briefing because all of the
10 arguments as I see it go to suggesting that the
11 statute is unfair. And while we may agree or
12 disagree on the issue of fairness and equity,
13 that is a question that needs to be presented
14 to the Legislature. The remedies the plaintiff
15 is seeking today needs to be presented to the
16 Legislature.

17 In addition, I want to add that to the
18 extent the agency may have in the past, and I
19 don't know that to be the case, but to the
20 extent the agency may in the past have
21 compromised those claims, the authority to
22 compromise those claims may very well be there.
23 However, I think if we look at the 2002,
24 amendments to section 263, and if we look at
25 the plain and unambiguous language of section

1 263, the Legislature clearly contemplated that
2 the government before any judgment shall be
3 entered and before any compromise shall be made
4 with a third party, that the government's
5 rights to recover all expenses incurred must be
6 expressly reserved.

7 And so I think that is the plain and
8 unambiguous language of the statute, and so far
9 I haven't seen any argument from the parties
10 that suggests that the Legislature's will
11 should be disregarded.

12 THE COURT: Attorney Evert.

13 MS. EVERT: Your Honor, this is decades
14 of policy and practice. And the fact that the
15 Department of Labor thinks they can pick up the
16 phone in a car accident case and get the case
17 settled by a phone call is not supported by
18 anything.

19 In fact, in this case there was -- the
20 policy was only \$10,000 and we were able
21 through a lot of negotiation to have the
22 defendant who did not have enough insurance to
23 put in more money. So, the actual net that the
24 Department of Labor will get is in excess of
25 \$10,000. In fact, it's \$10,462.67.

1 What we're fighting over, Your Honor,
2 is my time, my fees, my expenses. The
3 government never intervened. The government
4 knew about this claim because it was put
5 through Workers' Comp when Mr. George was
6 injured. At that time they could have done
7 something. It was not easy, Your Honor. There
8 was not a report where they could just pick up
9 the phone and call somebody. It took a very
10 long time to figure out who the proper
11 defendants were.

12 My time, I have a retainer agreement, I
13 have expenses. The government wants to stand
14 there now after 20 or 30 years and say, well,
15 now we're entitled to all the money, even
16 though we've done none of the work. Had they
17 intervened initially, they could have run with
18 the case and I would have stepped aside.

19 I don't work for free. I don't work
20 for Department of Labor. I work for my
21 clients. My client's not expecting a windfall.
22 My client is expecting what has always been
23 done with Labor until recently; and that is,
24 when there is a settlement that's not enough to
25 cover, the Department of Labor negotiates.

1 Your Honor, this is how insurance
2 companies work. When there is a claim, say,
3 with whatever the company is, say it's USAA,
4 and there is not enough money, USAA in a car
5 accident case or a claim, even a slip and fall
6 case, a claim where the insurance companies
7 paid out money does not say thank you, Attorney
8 Evert, now we're going to take all the money.
9 What they do is they negotiate. And they
10 always make sure that the plaintiff receives
11 something.

12 In this case we're not even asking that
13 the plaintiff receive something. He doesn't
14 get a windfall. We're asking that my fees get
15 paid and my costs get reimbursed. That's it.
16 The government to sit there and say now that
17 they've done this for the first time in 30
18 years is not really fair, Your Honor. I would
19 have stepped out. The policy of course is that
20 plaintiffs' lawyers are never going to take
21 cases where there is a \$10,000 policy, but
22 that's not my problem. The problem is that I'm
23 expected to be paid.

24 And I had a conversation in July and
25 the commissioner of Labor spoke with me

1 directly and the commissioner of Labor I'm
2 telling the Court as an officer of the court
3 assured me that my fees and my costs would be
4 reimbursed. And that's all that we're asking
5 for. And then the Department of Labor did a
6 complete about face.

7 So, nobody is asking for a windfall.
8 We're asking for my fees and we're asking for
9 my reimbursement of costs. There is unclean
10 hands here. The fact that the Court has looked
11 into cases to see if Labor's ever intervened,
12 the Court's not mistaken. Labor's never done
13 this. But this is not fair on a quantum meruit
14 basis and I would suggest, Your Honor, that the
15 commissioner of Labor has the power to bind the
16 Department of Labor and that I'm entitled to my
17 fees, and I'm entitled to my costs being
18 reimbursed.

19 And the fact that I will never take a
20 case like this again, nor will Attorney Rohn or
21 Attorney Holt or anybody else, is just going to
22 be money out of Department of Labor's pockets,
23 but that again isn't my issue. So, nobody's
24 looking for a windfall. I'm looking for what
25 I'm entitled to.

1 THE COURT: Thank you, Attorney Evert.

2 Attorney Velazquez, why is that not
3 reasonable --

4 MS. VELAZQUEZ: Well, Your Honor --

5 THE COURT: -- or permitted?

6 MS. VELAZQUEZ: -- the arguments of
7 Attorney Evert suggests that section 263 is a
8 condition -- is a conditional requirement
9 conditioned on the government actually entering
10 the case, filing suit and doing the work. In
11 fact, 263 is not conditional.

12 The statute is set up so that it
13 contemplates that the governor -- the
14 government could decide to file suit, or it may
15 not file suit; but if it does not file suit and
16 the employee does, that it is entitled to
17 recover those funds.

18 Additionally, no employee of this
19 government, and there are no facts before the
20 court and no testimony or evidence regarding a
21 contract, but certainly neither the agency nor
22 an employee of the court would have the right
23 to enter into a contract that violates the law,
24 which would be an illegal contract.

25 I'm not sure what the argument

1 regarding unclean hands would be based on
2 because the statute is clear. Attorney Evert
3 as an officer of this court must have reviewed
4 the statute prior to filing the case. And, in
5 fact, Attorney Evert acknowledges in her
6 filings before this court that the government,
7 in fact, has a super priority lien, and that
8 was filed in a letter to the Department of
9 Labor and it was attached to her motions as
10 Exhibit C.

11 So, there is an acknowledgment here
12 that section 263 unconditionally requires that
13 the government recoup all expenses. And this
14 is not a contract case before the court. I am
15 unaware of any separate or private agreements
16 in which --

17 THE COURT: Attorney Velazquez, how
18 does your letter, a letter dated after a
19 complaint was filed, but how is that letter a
20 lien?

21 MS. VELAZQUEZ: I'm sorry?

22 THE COURT: How does that letter -- I
23 believe you're referring to a letter of
24 February 10th, 2022. How does that constitute
25 a lien?

1 MS. VELAZQUEZ: The letter from the
2 Department of Labor, or the letter that I just
3 referenced from Attorney Evert?

4 THE COURT: The letter to Attorney
5 Evert.

6 MS. VELAZQUEZ: The Workers'
7 Compensation -- well, let me go backwards to
8 put everything to perspective because there was
9 some argument that the government should have
10 filed something sooner. The onus is on the
11 plaintiff by regulation, 24 V.I., our section
12 251-7 puts the requirement on the plaintiff to
13 notify the agency within ten days of filing a
14 lawsuit against a third party to a (inaudible)
15 that it has done so. This was not done in this
16 case.

17 The plaintiff did reach out to Workers'
18 Compensation regarding the potential for
19 settlement in this case and to request a lien,
20 which is the process the agency follows; and
21 the lien simply reflects that agencies
22 reporting of how much money has been expended
23 in the case; and it is titled: Final Lien.

24 I don't know if that answers the
25 Court's question, but the February letter from

1 the Department of Labor is notifying Attorney
2 Evert of the final lien in this case of 61,000
3 and I think \$257. So, the Department has
4 expended substantial funds in this case.

5 And to suggest that unless the
6 government files suit it should not recover the
7 funds, one, it's completely contrary to what
8 the statute provides; and two, it degrades the
9 purpose of the workers' compensation program
10 and the Government Insurance Fund, which is
11 exactly the purpose of section 263 to ensure
12 that that fund can be replenished to service
13 all other insured employees.

14 THE COURT: So, Attorney Velazquez, you
15 would rather the money sit here at the
16 courthouse, not get \$10,000 for the government,
17 and Attorney Evert not get herself \$7,000? You
18 would rather the money just sit here, money
19 that the government would not have recouped?

20 MS. VELAZQUEZ: Well, I think I would
21 rather that we adhere to the law and disburse
22 the money to the government as the statute
23 contemplates. And, you know, I
24 understand attorney -- obviously, I understand
25 Attorney Evert's desire and need to be

1 compensated --

2 THE COURT: Okay. I guess the issue,
3 Attorney Velazquez, is that the Court's been
4 presented with affidavits from attorneys who
5 have been practicing in the territory for a
6 very long time. I am very familiar with them
7 and everyone is very familiar with them. And
8 this is money -- and cases go to mediation and
9 settle; property taxes are required to be paid,
10 but sometimes property taxes are forgiven, late
11 fees are forgiven.

12 And in the interest of fairness, you
13 know, it's not breaking the law or violating
14 the law. It's making a consideration for
15 something that somebody relied on. Why is it,
16 I guess, tantamount to all or nothing in this
17 matter, where the government has been presented
18 with substantial evidence that this is the way
19 it's been done in at least 20 years; and the
20 Department of Labor hasn't presented anything
21 that said that, no, those attorneys are wrong,
22 that's not how it's been done. So, now \$17,000
23 are sitting here at the courthouse for nobody
24 to have the benefit of.

25 Why -- I guess if the government wants

1 to move forward and adhere to the statute, they
2 have every right to do that, but in an instance
3 where an individual has relied on past practice
4 and procedure to all of a sudden make an about
5 face turn and say we're not going to do that
6 anymore, even though this case was pending
7 before we made that determination, how is that
8 in fairness or is seeking justice?

9 MS. VELAZQUEZ: Your Honor, the real --
10 the crux of the issue here is, and I guess it's
11 a question we would all have to ask ourselves
12 is, does an agency -- assuming this was past
13 practice and I'm going to take Attorney Evert
14 at her word, does the agency have the right to
15 completely disregard a statute? And if past
16 agency employees have done so, is the
17 government now authorized to continue to
18 sanction illegal conduct, which based on the
19 plain language of the statute would appear to
20 be illegal conduct because the statute says
21 that we have to recoup the expenses? Now --

22 THE COURT: But, Attorney Velazquez,
23 then in looking at every agency, there will
24 never be loan forgiveness or property tax
25 forgiveness. There will never be income tax

1 late fees waivers. There will never be -- the
2 Virgin Islands Police Department would never
3 have the discretion of not issuing a ticket
4 because a law has been violated.

5 Isn't it to some extent there is
6 discretion among the agencies and the
7 commissioners to make exceptions? And that's
8 not, unfortunately, in this situation as I
9 said, before the court is substantial evidence
10 of a practice and procedure that has been in
11 place for more than decades -- I'm sorry, whose
12 phone or something is that -- past practice and
13 procedure, then to make an about face and
14 without any notification.

15 At least when there is a tax amnesty
16 that's being announced, the public is notified.
17 From June of such and such date to August of
18 such and such date, you can come in and apply
19 for a tax amnesty and you're -- you know, your
20 past late fees or whatever will be forgiven;
21 and after this date we are no longer going to
22 adhere to an amnesty.

23 The Department of Labor made no such
24 announcement to the attorneys; you know,
25 Attorney So-And-So, or even the Bar Association

1 that the Department of Labor is going to make
2 an about face and hold its guns to the statute
3 and we're not going to allow the attorneys to
4 intervene and negotiate and reach a settlement
5 and recoup their fees anymore.

6 MS. VELAZQUEZ: Your Honor, I don't
7 believe there is an equivalent because in all
8 of the examples Your Honor provided there has
9 been reserved discretion to the agencies. An
10 officer never has to make an arrest if he has a
11 probable cause. He has discretion.

12 THE COURT: That's a discretion given
13 to the heads of the department, not the
14 individual employees.

15 MS. VELAZQUEZ: Yes, there is no --
16 well, to be sure, there is no statute, there is
17 no law in the Virgin Islands that says that if
18 you have an arrestable offense that you must
19 make an arrest. And all of the other examples
20 Your Honor provided, there is discretion
21 reserved in the officer.

22 In this case, section 263 does not
23 reserve that discretion and that is the
24 difficulty I'm having. And it's not that I
25 don't understand the attorney's desire to be

1 paid. That is a contract, however, between the
2 attorney and her client, and that is not
3 provided for in section 263.

4 But what section 263 does provide and
5 in addition we have to look at the
6 2002 amendments, it provides that this case may
7 move forward only so long as the employee
8 acknowledges that all sums due to the
9 Government Insurance Fund are secured by end of
10 recovery, and that no judgment can be approved
11 without making expressed reserve of the rights
12 of the Government Insurance Funds to all
13 expenses incurred. And there is a reason for
14 that.

15 It's not just a lack of empathy, but
16 the other issue on the other side of the coin
17 is that the Government Insurance Fund is there
18 to serve all employees who might be injured.
19 So, where one employee does not -- where one
20 employee can recover from a third party and not
21 replenish the fund, the entire community stands
22 to suffer.

23 So, on the one hand we have Attorney
24 Evert's plight, which I fully understand, I'm
25 an attorney myself, but on the other hand, the

1 government is here to ensure that all injured
2 employees in the unfortunate event that they
3 are injured can be compensated through the
4 Government Insurance Fund. And that's why this
5 issue is so important and that's why the
6 Legislature saw it so important.

7 THE COURT: But the Legislature and the
8 laws are imparted upon the Department of Labor
9 to institute or initiate actions against the
10 insurance companies, and in this matter you
11 didn't. So, at this juncture what is being
12 offered is \$10,000; and allow Attorney Evert to
13 get her money, money since you said was so
14 important for the funds so that other people
15 can benefit from, otherwise, this money is just
16 going to sit here.

17 MS. VELAZQUEZ: And, Your Honor, if I
18 may, I just wanted to clarify that in the
19 statute, the statute also does not compel the
20 government to file suit. It provides that we
21 may, but it also leaves it to the -- it also
22 leaves an opportunity to the injured employee
23 to file suit if he so chooses, and then
24 provides that in that event how the
25 government -- how the government's rights will

1 be protected.

2 Now, on the second --

3 THE COURT: So, Mr. George did that,
4 but he did that now to Attorney Evert's
5 detriment. So, he did what the Department of
6 Labor didn't do and filed suit, but now you're
7 saying because -- now it's like the Department
8 of Labor wants the landfall. You didn't do any
9 of the work, but you want the benefits of
10 Mr. George's settlement because he has the
11 right to institute the lawsuit, but he has no
12 right after it's settled that all of that
13 should go to the Department of Labor.

14 How is that fair to Mr. George who is
15 doing the work of the Department of Labor,
16 which it may or may not choose to do, and it
17 may not replenish the funds that just made
18 it -- the argument that is very important so
19 that other people can benefit from it? So, he
20 does all of the work, and Attorney Evert or any
21 attorney who is in a similar situation from now
22 on will not have at least their expenses paid.

23 I can understand the Department of
24 Labor's position is Mr. George's position
25 before this court today was I want the whole

1 \$17,000 and the Department of Labor gets
2 nothing, but that's not what his position is.

3 MS. VELAZQUEZ: Well, Your Honor, I
4 think that the question you raised is a good
5 question, but I think one that should be posed
6 to the Legislature because the Legislature is
7 the one that determine that the government's
8 interest in obtaining full recoupment is
9 paramount prior to any settlement or judgment
10 being approved. And so, unfortunately I can't
11 answer what those equities are, but I think
12 that's a question that has to be posed to the
13 Legislature if an amendment of a statute is
14 required.

15 THE COURT: Wouldn't you agree in this
16 matter though that the government probably
17 would have only gotten \$10,000 from the
18 insurance company?

19 MS. VELAZQUEZ: I don't know what the
20 government would have gotten, but I know that
21 once Mr. George filed suit and recovers, then
22 the government has an interest in recouping
23 their funds, but the government, I'm not sure
24 what the government would have gotten though.
25 Based on what Attorney Evert --

1 MS. EVERT: Your Honor --

2 MS. VELAZQUEZ: -- is indicating, I
3 think Attorney Evert mentioned there was a
4 \$10,000 limit, but I can't say what the
5 government would have gotten.

6 MS. EVERT: Your Honor?

7 THE COURT: Yes, Attorney Evert.

8 MS. EVERT: Attorney Hymes has been
9 very involved with this case from the beginning
10 and I think the government counsel has a
11 misapprehension about how easy these cases are
12 resolved. So, I think it would be helpful for
13 the Court to hear from Attorney Hymes.

14 THE COURT: Attorney Hymes, do you wish
15 to address the Court? I know initially when
16 you appeared before me--and I am just bringing
17 it to the attention so we can flesh this out--I
18 do recall one status conference where Attorney
19 Evert had represented to the Court that this
20 matter was close to resolution and you had some
21 hesitations about resolving it and even wrote a
22 letter with those hesitations because of the
23 Department of Labor's lack of involvement. So,
24 it kind of appears to the Court now you've done
25 a 360 or 180 on this matter, but do you wish to

1 address the Court?

2 MR. HYMES: Yes, Your Honor. I agree
3 that the Department of Labor must be a party to
4 this type of lawsuit so I think their
5 intervention is appropriate, but I think the
6 real issue before the Court is the government's
7 demand that it take all of the settlement
8 proceeds.

9 I think the 20 years of past practice
10 and procedure that's revealed in the affidavits
11 of Attorney Rohn and Attorney Holt follow
12 directly upon the issuance of the opinion in
13 1959 by U.S. District Court Judge Moore in the
14 case of *Jennings v. Richards and Mannassah Bus*
15 *Lines*.

16 In that case the matter was before the
17 court on the question of whether the
18 commissioner of Labor has the authority to
19 compromise a workman's compensation lien in
20 order to affect a settlement between the
21 injured worker and a third party tortfeasor. I
22 mean, there has to be flexibility, the ability
23 to negotiate when, as here, the potential
24 assets to satisfy a claim are less than the
25 workman's compensation lien.

1 Now, we can't discuss what took place
2 at mediation, but at mediation there is the
3 possibility that the government might have
4 gotten nothing depending on how the facts were
5 developed either at mediation or at trial.

6 If the prospect of recovery of the
7 defense verdict, for example, would mean that
8 the Department of Labor would recover nothing,
9 then I think it is by far and away in its
10 interest to participate in the development of
11 the case, particularly in mediation, to see if
12 they can salvage something from a bad
13 situation. But I think the *Jennings* case is
14 instructive, it's right on point and I don't
15 think the amendment in 2002 removes the ability
16 of the Department of Labor to negotiate a
17 settlement.

18 THE COURT: Attorney Hymes, in
19 mediation, again, not going into details of
20 that, could not the parties have agreed to pay
21 Attorney Evert's fees and expenses and then
22 make whatever the balance of whatever agreed
23 settlement was be paid directly to the
24 Department of Labor?

25 MR. HYMES: Do I agree with that?

1 THE COURT: Could that have happened in
2 mediation?

3 MR. HYMES: I'm sorry. I'm not
4 understanding the Court's question.

5 THE COURT: Could the parties at
6 mediation instead of just settling on a number,
7 saying, you know, \$10,000; could the parties
8 have then said, okay, \$5,000 is going to go to
9 Attorney Evert's attorney's fees and expenses;
10 and \$5,000 is going to the Department of Labor
11 and we consider this matter settled? Could
12 that have happened at mediation?

13 MR. HYMES: I suppose it could happen
14 at mediation. It couldn't in this case because
15 the Department of Labor chose not to
16 participate in the mediation. They didn't
17 participate, they didn't know what was going
18 on, they didn't know what the facts were and
19 have sat back and now want all the money
20 without knowing what the real issues were.

21 So, but, yeah, I mean, you could
22 fashion any settlement you want if the parties
23 agree to it. I don't think Attorney Evert and
24 I could agree on the portion to the Department
25 of Labor without their approval because as we

1 see right here they want the whole thing. They
2 would never agree to that. It would be a
3 meaningless gesture on our part.

4 THE COURT: Thank you, Attorney Hymes.
5 Anything further?

6 MR. HYMES: No, Your Honor.

7 THE COURT: Attorney Evert, anything
8 further?

9 MS. EVERT: No, Your Honor. I think
10 the Court has a grasp of the issues.

11 THE COURT: And, Attorney Velazquez,
12 you had Ms. Petersen to appear. She was in the
13 waiting room. Do you have any need to have her
14 appear before the Court and provide any
15 information?

16 MS. VELAZQUEZ: I think everything the
17 Court requires is before the Court. This is
18 really an issue of law. As much as we are
19 hearing how much work the case took and all of
20 this, the real issue before the Court is a
21 matter of law. The right of the government to
22 preserve its recovery is set forth by statute.
23 The Legislature has defined how that should be
24 done.

25 Contrary to the statements of

1 opposing -- of the plaintiff's counsel, there
2 is no conditional requirement in section
3 263 regarding who did the work, how much work
4 it took, whether the government misapprehends
5 or not the amount of compromise that was
6 required. And so I think it really is
7 fundamentally a question of law that the Court
8 can decide on the papers and on the briefs.

9 We have submitted an affidavit. The
10 parties have not objected to or disputed the
11 amount of the moneys expended by the Workers'
12 Comp Division, and so I have nothing further to
13 add.

14 THE COURT: Thank you.

15 MS. EVERT: Your Honor, I have one
16 additional thing to add.

17 THE COURT: I had a question too for
18 you, but go ahead.

19 MS. EVERT: In one of the pleadings I
20 filed an affidavit that discussed my
21 conversations with the commissioner of Labor in
22 July wherein he advised me that of course I was
23 entitled to my fee and reimbursement, and that
24 has never been disputed.

25 THE COURT: And that was kind of what

1 my question was, Attorney Evert. The Court
2 obviously is not going to enter a ruling right
3 now. Attorney Evert, did you want time to
4 appear before the Court and have the
5 commissioner address that issue with the Court?

6 MS. EVERT: Your Honor, I have my
7 affidavit that's before the court and that has
8 not been controverted. And as the government
9 lawyer said, some of her things are not
10 controverted, so I don't think it's necessary
11 because I'm an officer of the court and the
12 affidavit's filed.

13 And if we want to get into cross
14 affidavits, everybody's had time to do that and
15 the time has long passed. So, I don't think I
16 need the commissioner to tell me what I have
17 indicated in my affidavit I was advised.

18 MS. VELAZQUEZ: Well, Your Honor, I
19 was --

20 MS. EVERT: They have never disputed
21 that.

22 MS. VELAZQUEZ: My apologies for
23 stepping on Attorney Evert.

24 Your Honor, obviously the government
25 would object to the Court accepting a

1 third-party view or perspective of what the
2 commissioner allegedly said and even -- and so
3 we would object to that. If the commissioner's
4 statements are to be considered by a court,
5 although I think they are irrelevant to this
6 consideration and section 263, if that is going
7 to be considered, then the commissioner would
8 need to be present.

9 MS. EVERT: Your Honor, they knew this
10 was a hearing as much as I did. And I'm an
11 officer of the court and I'm indicating right
12 now and I've also indicated in my affidavit
13 that the commissioner assured me that I would
14 be paid my fees and reimbursed my costs, and
15 the government hasn't done anything once again.

16 And I don't know how they get to go
17 backwards everytime they don't like something
18 and say, well, let's ignore it and we're going
19 to put our hands out for all the money when the
20 commissioner who clearly has authority bound
21 the Department of Labor by that promise that he
22 made to me in July. And that's never been
23 controverted.

24 They could have filed another
25 affidavit. They could have called the

1 commissioner this morning to say that he never
2 made that promise. And the fact that they
3 didn't do it, I would say supports my position.
4 He's not going to lie. So, I don't think we
5 need to reopen that.

6 MS. VELAZQUEZ: Your Honor, the
7 affidavit of Attorney Evert who is seeking to
8 recover in this case is obviously self-serving
9 and does not have the same force.

10 Secondly, any private contracts to the
11 extent there is one, and I don't assume that
12 there is, but to the extent that there was one,
13 it is unclear to me how that issue is even
14 relevant to this case. That would be a
15 separate matter of contract.

16 THE COURT: Because the --

17 MS. VELAZQUEZ: There is nothing in the
18 statute that provides for -- I'm sorry? Unless
19 the --

20 THE COURT: There may not be anything
21 in the statute that -- the 263 or 264, but
22 there is the authority under the commissioner's
23 job description that has the discretion to
24 enter into agreements or deviations. The
25 commissioners are the heads of their division

1 and they have that authority. All of them do.

2 And if he had a conversation with
3 Attorney Evert and that was her understanding
4 and she relied it, you had the opportunity.
5 Her affidavit has been filed, you had the
6 opportunity to speak with the commissioner.
7 And even if he didn't appear today, if that was
8 not -- if he did not make that assertion or
9 representation to Attorney Evert, you as an
10 officer of the court with him not being here
11 could have said I spoke to the commissioner and
12 the commissioner said he does not recall that
13 conversation, or he did not have a conversation
14 with her, he never spoke to her; or he did
15 speak to her, but this is what he said. And
16 that has not been raised in any of your
17 pleadings or even today.

18 MS. VELAZQUEZ: That is correct, Your
19 Honor, because of the -- one, the statement of
20 any subsequent agreements does not appear and
21 still does not appear relevant to me in this
22 context. And even if the commissioner did make
23 an agreement, any agreement would have to be
24 consistent with the law, and it would have to
25 be consistent with section 263.

1 Now, Attorney Evert's statements are
2 completely contradicted by her own
3 representations to the Court that a release was
4 submitted to the Department of Labor and they
5 refused, and they refused to sign the release
6 and have consistently refused to agree to any
7 settlement in this case. Additionally --

8 THE COURT: Have you signed the
9 release?

10 MS. VELAZQUEZ: No, we have not.

11 THE COURT: Okay. So, her
12 representation is you haven't signed it and
13 there is --

14 MS. VELAZQUEZ: Her representation is
15 that we have not signed it; that we have
16 refused. And Attorney Evert also submitted to
17 the court evidence that she submitted to the
18 Department of Labor, it's attached as Exhibit
19 C to her reply, an acknowledgment that section
20 263 presents a super priority lien, as she
21 references; and she is requesting in that
22 letter, which is dated -- I would have to look
23 at it, I think it was dated in August or
24 September, she is requesting that the
25 Department of Labor pay her for her attorney's

1 fees and costs. That is completely
2 inconsistent with any assertion that there was
3 a prior agreement with the commissioner of
4 Labor to pay. So, that controverts the
5 self-serving statements in Attorney Evert's
6 affidavit.

7 THE COURT: Okay. Let me just try to
8 go through this because maybe I'm confused. I
9 know English is not my first language.
10 Attorney Evert provided you with a release from
11 the Department of Labor, correct?

12 MS. VELAZQUEZ: Subsequent to the
13 government's filing --

14 THE COURT: She provided you with a
15 release, correct?

16 MS. VELAZQUEZ: Yes, subsequent to the
17 government's --

18 THE COURT: I understand that.

19 MS. VELAZQUEZ: -- appearance in this
20 case, yes.

21 THE COURT: So, she provided you with a
22 release, correct?

23 MS. VELAZQUEZ: Correct.

24 THE COURT: The Department of Labor has
25 never signed it, correct?

1 MS. VELAZQUEZ: The Department of Labor
2 has not signed it. And on September 1st, 2022,
3 Attorney Evert submitted a letter to the
4 department --

5 THE COURT: Attorney Velazquez,
6 Attorney Velazquez, I was an attorney. I
7 understand need to provide information, but
8 please, let me ask my questions because --

9 MS. VELAZQUEZ: I'm sorry. I'm sorry.

10 THE COURT: -- I'd like to make sure I
11 am understanding you correctly, all right?

12 A release was provided that the
13 Department of Labor has never signed, correct?

14 MS. VELAZQUEZ: That is correct. I
15 think -- I'm sorry, Your Honor. Let me make
16 sure I'm answering you correctly. I'm sorry,
17 Your Honor. I believe a release was submitted
18 and I am going to confirm that.

19 THE COURT: Okay. If nothing else it
20 was attached as Exhibit E.

21 MS. VELAZQUEZ: I believe it was
22 after -- or during the motion practice that was
23 going on, yes.

24 THE COURT: So, whether it was given to
25 you in August or September, it was at least

1 given to the Department of Labor by motion
2 practice and that's never been signed, correct?

3 MS. VELAZQUEZ: That's correct.

4 THE COURT: So the Court can assume
5 that the Department of Labor has refused to
6 sign it, correct?

7 MS. VELAZQUEZ: Correct.

8 THE COURT: And there was the
9 conversation that Attorney Evert said that she
10 had with the commissioner.

11 MS. VELAZQUEZ: Which Attorney Evert
12 indicated occurred in July.

13 THE COURT: Okay. So, what has been
14 refuted so far or is inconsistent with what she
15 has just said?

16 MS. VELAZQUEZ: What is inconsistent is
17 Attorney Evert wrote a letter on September 1st
18 of 2022, which is attached as Exhibit C to her
19 reply, which is requesting that the Department
20 of Labor pay her attorney's fees and costs; and
21 is acknowledging that the VIDOL is entitled to
22 the funds. Why would there have been such a
23 request if there was a prior agreement in July
24 to pay? That is completely inconsistent.

25 THE COURT: Okay. This is where I

1 guess English is my second language because if
2 her conversation was with the commissioner in
3 July; they settled this in August; a letter is
4 written after that in September saying here is
5 the money, here is \$17,000; I'd like now the
6 Department of Labor based on your agreement in
7 July to give me my attorney's fees and costs
8 that you said in our conversation in July; it's
9 now September, we have the proceeds; how is
10 that inconsistent?

11 MS. VELAZQUEZ: Your Honor, because
12 that is not what the letter says. The letter
13 which is attached to the court's filings says,
14 after a great deal of research we agree that
15 Workers' Compensation has a super priority lien
16 in regard to receiving reimbursement of funds
17 after a settlement has been awarded. With that
18 being said, the legal fees are one-third of the
19 total amount of the 17,500 settlement which
20 equals \$5,833.33. Additionally, my expenses
21 for this case are \$1,204. The summary of the
22 moneys are as follows. And they are
23 summarized.

24 Attached to this letter please find the
25 release that the defendants require. Please

1 forward it to us after signing and Attorney
2 Hymes will arrange to exchange the check for
3 the original release. We will withdraw the
4 motion for interpleader once we have an
5 agreement. Sincerely, Julie German Evert, Esq.

6 MS. EVERT: Your Honor, and that letter
7 makes clear that the plaintiff will not receive
8 anything. So, I don't understand how this is
9 being interpreted, but it's pretty clear. They
10 get a super priority, which means my client
11 gets nothing and I get my legal fees and costs.

12 THE COURT: The letter speaks for
13 itself. I'm just trying to understand the
14 inconsistency. Maybe the same language isn't
15 used. Attorney Evert said the Department of
16 Labor refused to sign something and maybe
17 that's not to be interpreted as a refusal, but
18 they didn't sign it so it can be interpreted as
19 a refusal.

20 I'm still trying to see how this letter
21 makes the representations. You may not like
22 the representations made by Attorney Evert, but
23 how this September 1st letter is inconsistent
24 with what's been represented to the court?
25 There was a conversation, although none of us

1 but Attorney Evert were a part of with the
2 commissioner and --

3 MS. VELAZQUEZ: Actually, Your Honor,
4 on the --

5 THE COURT: Attorney --

6 MS. VELAZQUEZ: I'm sorry, Your Honor.
7 Attorney Evert indicated that she did not have
8 a separate conversation with the commissioner;
9 that other persons from the Department of Labor
10 were participants but they were not speaking.
11 And that is accurate. We have a number of
12 persons who are on the line with the
13 commissioner and --

14 THE COURT: Was Ms. Petersen a part of
15 that?

16 MS. VELAZQUEZ: I would have to verify
17 that. I know Attorney Nesha
18 Christian-Hendrickson was a part of that. I
19 believe Ms. Rainia Thomas was. Ms. Petersen
20 may have been. And I'm happy to have her offer
21 testimony --

22 THE COURT: I'm going to --

23 (Overlapping speakers.)

24 MS. VELAZQUEZ: Ms. Thomas is also on
25 standby in the event testimony is required.

1 MS. EVERT: Your Honor, I would suggest
2 that the person that would need to appear would
3 be the commissioner because he is the one that
4 promised. I don't think any of his
5 subordinates -- I don't know them personally,
6 but the person that I don't think is going to
7 lie is the commissioner. I'm not saying the
8 other ones I don't believe, but the best person
9 to talk about the promise is the commissioner.
10 And I'm an officer of the court and they have
11 not refuted it to date.

12 THE COURT: Ms. Petersen was there,
13 Attorney Evert.

14 Ms. Petersen, good morning, almost good
15 afternoon.

16 MS. PETERSEN: Good morning, good
17 afternoon.

18 THE COURT: Ms. Petersen, were you
19 involved in the conversation with the
20 commissioner and Attorney Evert in
21 approximately July of this year?

22 MS. PETERSEN: No, I wasn't.

23 THE COURT: Okay. Thank you. I'm
24 going to put you back in the waiting room.

25 So, Attorney Velazquez, I'm still

1 trying to understand how this letter of
2 September 1st is inconsistent with what's been
3 represented to the Court.

4 MS. VELAZQUEZ: Well, I think if
5 Attorney Evert is asking on July 1st to pay me,
6 although you are entitled to the money and
7 there is no reference to any contract here, if
8 there was an agreement already inked, why would
9 Attorney Evert now be making these requests to
10 the Department of Labor? The representations
11 here are completely inconsistent with a person
12 who believes that there is a separate
13 agreement. And, in fact, in all of the filings
14 that is evident, but if the Court --

15 THE COURT: You're speaking in
16 general. First, the letter is dated September
17 1st, after the conversation. Break it down to
18 me like I'm a kindergarten student. Where is
19 this letter inconsistent?

20 MS. VELAZQUEZ: Well, I thought I just
21 did, but if the Court -- if the Court
22 require -- if the Court is viewing that
23 purported discussion as relevant to the rights
24 and responsibilities under 263, we would be
25 happy to offer testimony if we are provided a

1 five-minute recess to do so. I think if you
2 look at the letter, there is no -- there is no
3 reason to be conceding. You have the right to
4 the money, but can you please give me this --

5 THE COURT: Yes.

6 MS. VELAZQUEZ: -- if you thought you
7 had an agreement.

8 THE COURT: That's exactly why you
9 would do that. If I have an agreement and say,
10 okay, I'm going to collect apples and I'm going
11 to use this basket; can you give me the basket
12 after I deliver the apples, and you say sure;
13 so, I take the basket, I go get the apples and
14 I come back and I say, okay, now, I acknowledge
15 that all these apples belong to you, here is
16 the basket of apples, you said I could have the
17 basket back so now may I please have that
18 basket; I mean, I as a person I wouldn't just
19 come and throw the apples at you and run away
20 with the basket. I would say, now, I have
21 delivered the apples. I'm delivering you a
22 check for \$17,000; may I have my attorney's
23 fees and you can keep the balance.

24 MS. EVERT: And, Your Honor, in that
25 letter -- Your Honor --

1 MS. VELAZQUEZ: Your Honor, if I may --

2 THE COURT: Attorney Velazquez.

3 MS. VELAZQUEZ: If I may, in addition,
4 the Department of Labor, had there been such an
5 agreement, you would expect that the Department
6 of Labor would have then signed the release.
7 It has not. And so if the Court is going to
8 place significance on Attorney Evert's
9 self-serving affidavit, then we would ask that
10 we -- for an opportunity, a couple of minutes
11 to obtain the witness, the relevant witness,
12 someone who was on the call to give testimony,
13 but that issue is not relevant.

14 THE COURT: Will you be calling the
15 commissioner?

16 MS. VELAZQUEZ: I would have to -- I
17 don't know if the commissioner is presently
18 available, but I think Attorney Evert
19 acknowledged there were several people on the
20 call.

21 THE COURT: At this juncture because
22 you've already challenged the third-party
23 representation to the Court, the only testimony
24 the Court would gather would be from the
25 commissioner. So, do you want five minutes to

1 get the commissioner logged in? I will be in
2 recess for five minutes.

3 MS. VELAZQUEZ: Sure.

4 THE COURT: All right. Court's in
5 recess for five minutes.

6 (Recess at 12:22 p.m.)

7 (This hearing resumed at 12:23 p.m., as follows:)

8 MS. VELAZQUEZ: Your Honor,
9 Commissioner Molloy will be signing in shortly
10 as well as any other person who was in the room
11 during the discussion with Attorney Evert. I
12 just forwarded the link. I'm going to just
13 make sure that they're not having any problems.

14 (Pause.)

15 MS. VELAZQUEZ: Your Honor, it appears
16 the commissioner is having trouble logging in.
17 I don't know if it's because the link was
18 forwarded. I'm not sure. Can the clerk advise
19 if forwarding the link is going to affect the
20 ability of the person to use it.

21 THE CLERK: It shouldn't.

22 MS. VELAZQUEZ: Oh, he said he's
23 waiting to be let in. There he is. Thank you.
24 Thank you.

25 MR. MOLLOY: Good morning. Good

1 afternoon. Sorry.

2 MS. VELAZQUEZ: Good morning,
3 Commissioner.

4 THE COURT: Good afternoon,
5 Commissioner.

6 MS. EVERT: Good afternoon.

7 THE COURT: Madam clerk, can you swear
8 the commissioner in, please.

9 (Commissioner Gary Molloy was duly
10 sworn by the clerk of the court.)

11 THE COURT: Thank you, Commissioner.
12 You can put your hand down. Do you know why
13 you're here today?

14 MR. MOLLOY: Yes. I was just asked to
15 come and give some information on a particular
16 case involving Attorney Evert.

17 THE COURT: Yes. And do you know
18 Mr. Elvis George?

19 MR. MOLLOY: No, I do not, not
20 personally. I just know of --

21 THE COURT: Are you familiar with his
22 matter?

23 MR. MOLLOY: Vaguely, just from the
24 position of having a conversation with Attorney
25 Evert and internally with Attorney Nesha

1 Christian-Hendrickson; and the director of
2 Workers' Compensation, Ms. Rainia Thomas.

3 THE COURT: Okay. Thank you.

4 MS. EVERT: Excuse me, Your Honor.
5 Your Honor?

6 THE COURT: Yes.

7 MS. EVERT: It appears, I could be
8 wrong, but it appears that the commissioner has
9 some papers in front of him and I'm not sure if
10 he does or not.

11 THE COURT: I was getting to that. I
12 mean, I may not be working as fast as the
13 attorneys want, but I must --

14 MS. EVERT: Okay.

15 THE COURT: I am the tortoise in the
16 hare's race here.

17 So, Commissioner Molloy, I am going to
18 ask that if you have any documents in front of
19 you that you try to the best of your ability to
20 testify from your memory. If there is
21 something that you have that can refresh that
22 memory, we may explore whether or not you are
23 able to use that document to refresh your
24 recollection.

25 MR. MOLLOY: I have no documents

1 related to this case in front of me.

2 Everything that's in front of me is things that
3 I was working on before I was called to be here
4 today.

5 THE COURT: Okay. Well, put your lunch
6 down too because I'm sure we're interrupting
7 your lunch as well. Just kidding.

8 MR. MOLLOY: Okay.

9 THE COURT: All right. So, how do the
10 parties wish to proceed; the Court inquire of
11 Commissioner Molloy, or Attorney Velazquez
12 question her witness?

13 MS. EVERT: Your Honor, I would prefer
14 that the Court question since the Court knows
15 what the issues are.

16 MS. VELAZQUEZ: I do not object.

17 THE COURT: Okay. Thank you.

18 Commissioner Molloy, and as you know
19 you are here before the Court on a matter
20 involving George; Elvis George and Mark Lonski
21 and Property King, Inc. The attorneys present
22 are Julie Evert representing Mr. George; Jim
23 Hymes, Attorney Hymes representing Mark Lonski
24 and Property King.

25 Through those representations there was

1 a settlement made at mediation and the
2 Department of Labor was advised accordingly.
3 So, my questions are regarding the nature of
4 these interactions between the plaintiff's
5 counsel, Attorney Evert, and the Department of
6 Labor.

7 As the commissioner of the Department
8 of Labor, what are some of your duties and
9 responsibilities?

10 MR. MOLLOY: They are wide ranging, but
11 one of them is Workers' Compensation falls
12 under the auspices of my purview. And so, any
13 issues that require mediation or a review,
14 within that area would come under my purview,
15 as unemployment insurance, Workers'
16 Compensation, labor relations, a whole host of
17 other opportunities or issues that I deal with.

18 THE COURT: Do you deal with discretion
19 in your authority?

20 MR. MOLLOY: I do have discretion in my
21 authority.

22 THE COURT: Okay. And with matters
23 that relate to workmen's compensation, when
24 those matters are outside of the Department of
25 Labor and actions filed within this court,

1 either Superior Court or District Court, what
2 is your authority?

3 MR. MOLLOY: Internally, once the --
4 and I guess an appeal is raised within the
5 Workers' Compensation Division, it would come
6 to me to have a discussion with the director
7 and our legal counsel. And then if it moves
8 forward then we refer it to the Department of
9 Justice for them to follow through.

10 THE COURT: Okay. If it's not an
11 appeal, an individual received workmen's
12 compensation but then instituted his or her own
13 action, civil action in Superior Court, what
14 are your duties and responsibilities to that?

15 MR. MOLLOY: Well, it would come
16 through my director of workers' compensation,
17 so, for her to have any records or prepare
18 anything. And again, it would then come
19 through our legal counsel and have a
20 discussion; and then if it's coming before the
21 court, we would refer the matter to Justice.

22 THE COURT: Under the workmen's
23 compensation does the Department of Labor
24 always pursue an action against an insured?

25 MR. MOLLOY: I can speak for my tenure

FILED

March 14, 2023 09:33 AM
SCT-Civ-2022-0110
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

1 and for the most part we have.

2 THE COURT: You've instituted legal
3 actions?

4 MR. MOLLOY: Not legal action, but we
5 have provided, done additional investigations.
6 We have -- I've gotten -- through the Division
7 of Workers' Compensation we have outside
8 investigators. We have found other ways to be
9 able to try to investigate our cases and to
10 bring them to closure as quickly as possible
11 without having to go through this process.

12 THE COURT: What is your role when you,
13 not the Department of Labor, what is your role
14 when you have been contacted by an individual
15 or an individual's counsel who has been
16 receiving workmen's comp about a possible
17 settlement or release of settlement?

18 MR. MOLLOY: Well, especially in this
19 case everything, again, would go through my
20 director of workers' compensation. And once
21 there is an issue that needs to be discussed,
22 then I would then be involved to listen to
23 discussion, along with my legal counsel; and
24 then we would render a decision based on the
25 Code.

1 THE COURT: In this matter who was your
2 director of workmen's comp?

3 MR. MOLLOY: My director of workmen's
4 compensation is Ms. Rainia Thomas.

5 THE COURT: I'm sorry. What was her
6 first name?

7 MR. MOLLOY: Rainia.

8 THE COURT: Okay. Thomas. And who is
9 your legal counsel?

10 MR. MOLLOY: My legal counsel
11 internally is Ms. Nesha Christian-Hendrickson.
12 She's assistant commissioner and legal counsel.

13 THE COURT: Thank you for that
14 clarification. Do you recall a time being
15 contacted by Attorney Evert regarding
16 Mr. George's civil action?

17 MR. MOLLOY: Yes, I do.

18 THE COURT: And approximately when do
19 you recall that conversation taking place --
20 oh, wait. Let me back up. How many
21 conversations did you have with Attorney Evert?

22 MR. MOLLOY: I know Attorney Evert was
23 pursuing me very consistently. I can remember
24 having one conversation with her with both
25 legal counsel and director of workers'

1 compensation, Rainia Thomas, so that we could
2 all be on the call at the same time.

3 THE COURT: Okay. And do you recall
4 when that call was?

5 MR. MOLLOY: I do not recall
6 specifically, but I know a few months ago.

7 THE COURT: Around July, August?

8 MR. MOLLOY: A few months ago. That's
9 as specific as -- I don't have any recollection
10 as to when specifically.

11 THE COURT: Okay. But 2022?

12 MR. MOLLOY: 2022, yes.

13 THE COURT: What was the nature of the
14 conversation?

15 MR. MOLLOY: The nature of the
16 conversation was Attorney Evert, to my
17 recollection, was having -- had a discussion
18 with both director, Rainia Thomas, and Nesha
19 Christian-Hendrickson, legal counsel, about
20 this particular case; and was trying -- was
21 making reference to the fact that the
22 Department of Labor had not pursued this case;
23 and that she privately had pursued the case and
24 it had gotten to the point where settlement and
25 wanted the Department of Labor to remove its

1 lien, based on the settlement, so that the
2 attorney could retain her legal fees or recoup
3 her legal fees.

4 The claimant, Mr. George, would be able
5 to get a settlement, the attorney would be able
6 to get her legal fees. And the issue was, as I
7 can recall, was that the Department of Labor
8 had already paid out, made some payments
9 against this claim and was trying to recoup
10 what we had paid out.

11 THE COURT: Did Attorney Evert offer --
12 or was there any discussion as to where the
13 remaining money would go from any possible
14 settlement?

15 MR. MOLLOY: There was discussions and
16 several scenarios posed by Attorney Evert in
17 terms of what would be reasonable, but there
18 was nothing, no decision on my part other than
19 that we had to follow the Code based on what
20 was there.

21 THE COURT: In your tenure as
22 commissioner of Labor have you ever been
23 contacted by any other attorneys with similar
24 situations?

25 MR. MOLLOY: Not directly by the

1 attorney, no.

2 THE COURT: Has your legal counsel or
3 assistant commissioner, or Ms. Thomas ever
4 discussed with you similar cases presented by
5 attorneys?

6 MR. MOLLOY: Yes, we've had similar
7 cases discussed.

8 THE COURT: And have they been resolved
9 outside of following the Code?

10 MR. MOLLOY: To my knowledge,
11 everything that we have followed, especially
12 since I've been here, we've been following the
13 Code.

14 THE COURT: Attorney Holt and
15 Attorney Rohn have filed affidavits saying that
16 that's an inconsistent position. Would you
17 have reason to doubt them?

18 MR. MOLLOY: All I can say that they
19 are speaking about what happened prior and I
20 can't speak to what happened prior, but since
21 I've been here we've been following the Code.

22 THE COURT: How many cases have you
23 recouped money through your own investigations?

24 MR. MOLLOY: I can't say offhand if we
25 have recouped, but I do know that we have

1 through the investigation process, those cases
2 were resolved. So, I don't know if there was
3 anything for us to recoup money, but they were
4 resolved.

5 THE COURT: Okay. At the end of your
6 conversation with Attorney Evert regarding this
7 matter, what did you represent to her as the
8 position of the Department of Labor regarding
9 Mr. George's settlement?

10 MR. MOLLOY: To my recollection I think
11 Attorney Evert was requesting a letter be sent
12 from me with my position. And the only thing
13 that I represented is that I would have our
14 legal counsel submit that determination or that
15 process, but what we were going to do, we were
16 following the Code.

17 THE COURT: Okay. What is that follow
18 the Code?

19 MR. MOLLOY: Whatever the Code outlines
20 that we have to be able to recoup our money
21 that we have laid out first within the Fund.
22 The Fund has been in the red. And what we try
23 to do is make sure that any money that's been
24 expended, if we expend over that, we recoup
25 that because it goes back into the Fund to help

1 other claimants.

2 THE COURT: So, if you were presented
3 with a scenario that money that would have not
4 ordinarily been recouped or has not been
5 recouped by the Department of Labor was being
6 offered to the Department of Labor minus
7 attorney's fees, you wouldn't accept that
8 settlement? Is that the position of the
9 Department of Labor?

10 MR. MOLLOY: Not that clearly, but the
11 issue is I think in this particular case there
12 was a cap on the amount that could be -- could
13 have been, to my recollection, that could have
14 been a cap in the settlement. And so -- and it
15 already exceeded the amount of money that the
16 Department of Labor already paid out for the
17 claimant. So, as far as our concern,
18 Mr. George or any claimant would have been made
19 whole based on the requirements that we had
20 to -- that we had to live up to under the
21 Workers' Compensation Code.

22 THE COURT: So, if the cap that the
23 Department of Labor could have received was
24 \$10,000 and they were being offered more than
25 \$10,000, the Department of Labor wouldn't

1 accept that money because of attorney's fees
2 being paid first?

3 MR. MOLLOY: No. I -- I --

4 MS. VELAZQUEZ: I think that question
5 calls for the witness to speculate, Your Honor.

6 THE COURT: No. It's his position. He
7 says he can be presented by his assistant
8 commissioner, legal counsel or the director
9 with scenarios and whether or not to pursue
10 cases to recap -- recoup money; or if there is
11 no avenues to recoup money as this already is a
12 closed matter. So, he can -- if he doesn't
13 want to give his opinion on that, he is
14 perfectly fine not to, but if he has an opinion
15 on that, I'd like to know what it is.

16 MR. MOLLOY: And my opinion is simply
17 that we would follow the Code because we've
18 been -- we're in the process of trying to make
19 sure that we rebuild and not only the image,
20 but the program of workers' compensation. So,
21 anything that legal counsel puts before me and
22 the director of workers' compensation, I always
23 ask, what does the Code say.

24 So, the guidance would be that we would
25 work from the Code. So, if the Code tells me

1 that we could do it and the recommendation
2 comes that way, then that's the way I'll go.
3 If the Code doesn't -- is silent on it and I
4 get another recommendation, we follow the Code
5 as closely as we possibly can.

6 THE COURT: So, at the end of your
7 conversation with Attorney Evert this past year
8 what was your understanding with regards to
9 settlement proceeds that she was able to obtain
10 from the defendants?

11 MR. MOLLOY: What I can remember is
12 that I did -- I clearly understood where
13 Attorney Evert was coming from based on the
14 position that she had been proposing. And I
15 can't recall the specifics, but there were
16 several options discussed. And what I
17 committed to do is to make sure that we send
18 information based on the position, but the
19 position would be based on the Code. That's my
20 recollection.

21 THE COURT: Does either counsel wish to
22 ask any questions?

23 MS. EVERT: Yes, Your Honor.

24 THE COURT: Attorney Evert.

25 MS. EVERT: May I proceed?

1 THE COURT: You may.

2 **BY MS. EVERT:**

3 Q Commissioner, have you read the pleadings in this
4 case as it affects the lien from workers' comp?

5 A Not recently. So, not -- if we haven't had the
6 discussions in preparations for our call and what we
7 discussed, but I haven't looked at it recently, no.

8 Q Okay. Have you read my affidavit in this case
9 regarding my conversation with you?

10 A I have not.

11 Q So, is it fair to say that you don't recall the
12 date that we had a conversation?

13 A I don't recall the date. No, I do not.

14 Q So, if I indicated to you and in my affidavit I
15 wrote that the date was July 22 of 2022, do you have any
16 reason to believe that that's incorrect?

17 A No, I do not.

18 Q Okay. Do you recall -- did you take any notes
19 when we had a conversation?

20 A I did not.

21 Q Okay. Did you record the conversation?

22 A I did not.

23 Q Okay. Do you recall telling me in the
24 conversation -- hold on a second -- that had I not filed
25 suit, Labor would have contacted the third-party insurer

1 to settle the claim?

2 A If that was our process, then that would have
3 been the process that I would have --

4 Q Sir, that's not my question. Do you recall
5 telling me that. This is a quote: That had I, had you,
6 Attorney Evert, not filed suit, the Virgin Islands
7 Department of Labor, quote, would have contacted the
8 third-party insurer to settle the claim, end of quote.
9 Do you recall saying that or not?

10 A At this point no, I do not recall saying that.

11 Q Okay. Do you recall that I pointed out to you
12 that the Department of Labor had not, in fact, ever
13 contacted Mr. George or the third party or the third
14 party's insurance carrier? Do you recall me pointing
15 that out to you?

16 A As a part of our overall discussion, yes, I do
17 recall that.

18 Q Okay. Do you recall me pointing out to you that
19 the statute of limitations had run and that the
20 Department of Labor had never filed suit against anybody
21 in this claim?

22 A In this claim I do recall us having a discussion
23 about the fact that if you hadn't pursued it, that there
24 was -- would have been no option for the Department of
25 Labor to pursue. That's what I recall.

1 Q Okay. And do you recall saying, and this is a
2 quote: Hopefully that will be Virgin Islands Department
3 of Labor policy for the future, end of quote, as it
4 needs, quote, to recoup its money, end of quote. Do you
5 recall saying that to me?

6 A I don't recall saying exactly that, but I recall
7 us talking about recoup, making sure that the Department
8 recoups the money to put back into the Fund.

9 Q Right. But do you recall us having a
10 conversation about how Labor had done nothing in this
11 case and that the statute of limitations had expired?

12 MS. VELAZQUEZ: Asked and answered.

13 THE COURT: He said he didn't recall.

14 MS. EVERT: Okay.

15 **BY MS. EVERT:**

16 Q Sir, do you recall saying to me that you, and I'm
17 quoting, appreciated my work, end of quote?

18 A I remember us having a discussion and telling you
19 that, yes.

20 Q Okay. And, sir, do you recall saying to me --
21 hold on, let me find it -- that my fees and costs would
22 be reimbursed because I had done the work, and that Labor
23 was going to benefit from that?

24 A What I recall is that that is what you were
25 asking to make sure that happened and I --

1 Q Sir, that's not my question?

2 MS. VELAZQUEZ: Objection. Can you let
3 the witness answer.

4 THE COURT: Okay. Attorneys are going
5 to allow the Court to speak.

6 And, Attorney Evert, don't out argue
7 with the witness. Allow him.

8 Commissioner Molloy, just you can
9 answer the question.

10 MR. MOLLOY: Can you ask the question
11 again, please?

12 **BY MS. EVERT:**

13 Q Do you recall saying that you appreciated my work
14 and that is why the Department of Labor would pay my fees
15 and costs?

16 A I recall saying that I appreciated your work. I
17 recall us talking about us, why it's important for us to
18 work collaboratively together. I also recall that you
19 were asking for us to be able to make sure that the
20 claimant, Mr. George, get something and it was only fair
21 that you recoup your fees. And I made it very clear that
22 we would have to follow the Code based on the information
23 that I had gotten from my legal counsel.

24 Q And, sir, do you recall that after this
25 conversation I sent a letter to Labor and to Attorney

1 Christian-Hendrickson and indicated that Mr. George would
2 not -- that we would be willing that Mr. George not
3 receive any moneys so long as my fees and costs were
4 reimbursed? Did you see that?

5 A No, I have not seen that.

6 Q Okay. So, your legal counsel did not forward
7 that letter to you of September 1, 2022?

8 MS. VELAZQUEZ: Objection.

9 THE COURT: What's your objection?

10 MS. VELAZQUEZ: The objection is that
11 the attorney is asking for interactions between
12 Commissioner Molloy and his legal counsel; and
13 also relevance.

14 THE COURT: This whole line of
15 questioning is about the interaction. We have
16 four people in the waiting room that were
17 present during the phone conversation, so
18 whether or not he received this letter is
19 relevant.

20 Attorney Evert.

21 **BY MS. EVERT:**

22 Q Sir, did you receive the September 1, 2022,
23 letter that I sent to Attorney Christian-Hendrickson?

24 A I did not recall seeing that at this time.

25 Q Sir, do you know, are you aware that Mr. George

1 has indicated that so long as my fees and costs are paid
2 that the balance of the moneys will go to Department of
3 Labor?

4 A No, I'm not aware.

5 Q Okay. And, sir, are you aware that the insurance
6 policy was for \$10,000?

7 A I am aware that the -- that the cap was 10,000
8 based on our discussion.

9 Q Okay. And, sir, are you aware that in mediation
10 I was able to negotiate a settlement of \$17,000 total?

11 A I remember that discussion that we had on the
12 call and that's where the issue came up about the amount
13 that the Department of Labor had already outlaid on
14 behalf of Mr. George.

15 Q Okay. Sir, that wasn't my question. Do you
16 recall that the settlement is actually \$7,000 in excess
17 of the policy limits?

18 A I know that of the 17,000 figure is a part of
19 what you negotiated and that's what I know.

20 Q And, sir, are you aware that what my client is
21 willing to do is pay my legal fees and expenses, giving
22 Department of Labor an excess of \$10,000; specifically,
23 \$10,462.67? Were you aware that that's what's on the
24 table today?

25 A I do not -- no, I am not aware that that's what's

1 on the table today, but what I am aware of is that the
2 Department of Labor paid out in excess for Mr. George and
3 the Fund needs to recoup the funding so that we can help
4 other claimants.

5 Q Okay. Sir, are you aware that had somebody from
6 Labor, even though it didn't happen, contacted the
7 insurer, the most they would have received is \$10,000?

8 MS. VELAZQUEZ: Objection; speculation.

9 THE COURT: If he knows.

10 **BY MS. EVERT:**

11 Q Are you aware that --

12 MS. EVERT: Judge, is there a ruling?

13 THE COURT: I said if he knows.

14 MS. EVERT: Okay.

15 MR. MOLLOY: The only thing that I am
16 aware of is that the cap on that particular
17 claim was \$10,000.

18 **BY MS. EVERT:**

19 Q Okay. Sir, you do have the authority to make
20 promises on behalf of Department of Labor, correct?

21 THE COURT: Rephrase your question,
22 Attorney Evert.

23 **BY MS. EVERT:**

24 Q Sir, do you have authority to negotiate workers'
25 comp claims?

1 A Negotiate, yes, we do.

2 Q And you indicated that the nature of our
3 conversation was that I wanted Labor to remove the lien
4 for legal fees and costs, is that accurate?

5 A Not on legal fees --

6 MS. VELAZQUEZ: Objection; asked and
7 answered.

8 THE COURT: No. She's asking for
9 clarification and needs clarifying.

10 **BY MS. EVERT:**

11 Q This is from my notes from what you said ten
12 minutes ago. You wanted Labor -- I'm sorry.

13 THE COURT: Proceed.

14 MR. MOLLOY: What I recall, again, is
15 that I don't recall the amount in excess that
16 the Department of Labor had already paid out
17 for Mr. George because based on his claim
18 everything Department of Labor had already
19 settled.

20 Now, there is an opportunity to recoup
21 some of that and that is all I recall us trying
22 to determine what would happen. And the
23 discussion was that you wanted us to be able to
24 accept less so that you could be able to get
25 your legal fees. That's what I recall.

1 **BY MS. EVERT:**

2 Q Okay. And, in fact, you would -- Labor would be
3 receiving \$400 more than they would have received had
4 they just received the policy on their own, correct?

5 MS. VELAZQUEZ: Objection; speculation.

6 THE COURT: If he knows.

7 MR. MOLLOY: I don't know, but I do
8 know that we have paid out in excess to settle
9 Mr. George's claim; and any excess that we can
10 recoup, we would need to be able to put it back
11 into the Fund so that we can help other
12 claimants.

13 **BY MS. EVERT:**

14 Q Understood. Sir, who are the investigators that
15 are investigating --

16 THE COURT: Attorney Evert, I'm not
17 going to permit that. That's not discovery.

18 MS. EVERT: All right.

19 THE COURT: This is regarding the
20 conversation.

21 MS. EVERT: Okay. Your Honor -- well,
22 let me just ask one more or two more.

23 **BY MS. EVERT:**

24 Q Sir, have you been involved in the litigation
25 regarding this lien that's happened in the last few

1 months?

2 THE COURT: Not relevant, Attorney
3 Evert.

4 MS. VELAZQUEZ: Thank you.

5 MS. EVERT: Okay.

6 **BY MS. EVERT:**

7 Q Have you ever been asked to refute my affidavit
8 that I just reviewed with you?

9 MS. VELAZQUEZ: Objection.

10 THE COURT: The objection?

11 MS. VELAZQUEZ: Well, attorney/client
12 privilege, number one; and also relevance. The
13 witness has testified and answered all of the
14 questions regarding the statements Attorney
15 Evert asked, and now she's trying to bolster
16 her own position in the affidavit.

17 THE COURT: Attorney Evert, do you have
18 any other questions?

19 MS. EVERT: No, Your Honor.

20 THE COURT: Attorney Velazquez?

21 MS. VELAZQUEZ: Yes, Your Honor, I just
22 have a couple.

23 **BY MS. VELAZQUEZ:**

24 Q Commissioner Molloy, if an agency enters into a
25 contract, are there rules and regulations that the agency

1 must follow?

2 A Yes.

3 Q So, if you made an agreement or a contract to
4 expend government funds, would you have reduced that to
5 writing?

6 A Yes.

7 Q And would anyone else have to sign off on such an
8 agreement?

9 A In this particular case, yes. Well, in the case
10 of workers' compensation, no, but in other cases, it
11 would have to go through the Division of Property and
12 Procurement formally.

13 Q Okay. So, there would be a written contract?

14 A Yes, or an agreement; or an MOA, a memorandum of
15 agreement.

16 Q A written MOA or contract?

17 A Yes.

18 Q Okay. As commissioner of Labor, do you enter
19 into oral contracts to pay government funds to other
20 individuals?

21 A At no time during my tenure, no.

22 MS. VELAZQUEZ: Thank you.

23 THE COURT: Commissioner, what was your
24 intent in this telephone conversation with
25 Attorney Evert? If it was going to be none

1 binding, what was the point of having assistant
2 commissioner, legal counsel and the director of
3 workmen's comp be part of the conversation?

4 MR. MOLLOY: Well, Attorney Evert was
5 trying -- had left several messages for me, and
6 at the time we were dealing with a lot of
7 different issues. So, what I decided to do
8 since it was workers' compensation related, I
9 wanted everybody on the call at the same time
10 so that I can -- we can have the discussion
11 with everybody, all the players that were there
12 so that I can understand what was being asked
13 and understand everybody's position at the same
14 time.

15 THE COURT: In your tenure as
16 commissioner of Labor, have you ever negotiated
17 or departed from the statute in an attempt to
18 ensure equity?

19 THE WITNESS: I have not. And, again,
20 all the negotiations that we've had especially
21 when it comes to workers' compensation,
22 Attorney Nesha Christian-Hendrickson and
23 Director Rainia Thomas would be involved in all
24 of those processes.

25 THE COURT: Thank you, Commissioner.

1 I'm going to ask Ms. Thomas in from the
2 waiting room. May the commissioner be excused?

3 MS. VELAZQUEZ: I have nothing further
4 from the commissioner.

5 MS. EVERT: Nor do I, Your Honor.

6 THE COURT: Thank you, Commissioner
7 Molloy. Have a good day. You may be excused.

8 MR. MOLLOY: Thank you.

9 MS. VELAZQUEZ: Your Honor, may I be
10 permitted just one minute to let my secretary
11 notify the Bureau of Corrections that I will be
12 late for my one o'clock meeting.

13 THE COURT: Yes, you may.

14 MS. VELAZQUEZ: Thank you.

15 (Recess at 12:58 p.m.)

16 (This hearing resumes at 12:59, as follows:)

17 MS. VELAZQUEZ: Thank you, Your Honor.
18 My apologies. We have a consent decree case.

19 THE COURT: Ms. Thomas, can you turn on
20 your video camera and unmute your mike, please.
21 Ms. Thomas?

22 Attorney Velazquez, can you see if you
23 can reach Ms. Thomas to turn on her mike and
24 video, please.

25 MS. VELAZQUEZ: Yes.

1 MS. THOMAS: Can you guys hear me?

2 THE COURT: We can hear you now. We
3 can't see you.

4 MS. THOMAS: Can you see me now?

5 THE COURT: Yes, I can. Thank you.

6 MS. THOMAS: Okay.

7 THE COURT: Good afternoon, Ms. Thomas.

8 MS. THOMAS: Good afternoon.

9 THE COURT: You've been called into
10 court and do you know why you're here?

11 MS. THOMAS: Yes, I do.

12 THE COURT: Madam clerk, can you place
13 Ms. Thomas under oath.

14 (Rainia Thomas is duly sworn
15 by the clerk of the court.)

16 THE COURT: Thank you, Ms. Thomas.
17 Please state your name for the record.

18 MS. THOMAS: Rainia Thomas.

19 THE COURT: How are you employed?

20 MS. THOMAS: I work at the Department
21 of Labor, Workers' Comp Division as a director.

22 THE COURT: Okay. And as the director
23 of workmen's compensation what are your duties
24 and responsibilities?

25 MS. THOMAS: My duties are to carry out

1 all of the statutes that are associated with
2 the worker's comp laws. We issue indemnity
3 benefits, help injured workers return to work.

4 THE COURT: What is your involvement
5 with issues or with actions that are workmen
6 compensation actions that are outside of the
7 Department of Labor that are begun here in the
8 Superior Court?

9 MS. THOMAS: Repeat that for me.

10 THE COURT: What is your duties or
11 responsibilities with regards to matters of
12 workmen's compensations that are filed in
13 Superior Court?

14 MS. THOMAS: At points I represent the
15 Department.

16 THE COURT: Okay. And if the
17 Department --

18 MS. THOMAS: -- and answer any
19 questions associated with the claims or any
20 cases for our workers' comp claims.

21 THE COURT: If the Department of Labor
22 wasn't a party to it and the injured worker,
23 injured employee instituted his own or her own
24 civil action in Superior Court, what duties or
25 responsibilities do you have?

1 MS. THOMAS: None that I am aware of.

2 THE COURT: If you became aware of an
3 action that was initiated in Superior Court,
4 what are your duties and responsibilities?

5 MS. THOMAS: To testify as it relates
6 to that specific workers' comp claim.

7 THE COURT: Do you recall Mr. George,
8 Elvis George?

9 MS. THOMAS: Yes, I heard of the case.

10 THE COURT: And are you familiar with
11 how much was paid out in the matter?

12 MS. THOMAS: Not offhand as this is a
13 St. Thomas file and I don't have the
14 information in front of me.

15 THE COURT: Okay. Are you
16 familiar with -- or what do you remember about
17 Mr. George's case?

18 MS. THOMAS: I didn't handle the case
19 firsthand as I am not in that St. Thomas
20 district. Just from brief conversations I know
21 there was a third-party lawsuit involved in the
22 case where I think he was -- he works for V.I.
23 Waste Management Authority. I think he was
24 rear ended.

25 THE COURT: Okay. And do you recall

1 who his attorney was or is?

2 MS. THOMAS: No, not offhand. I think
3 it might be Attorney Evert.

4 THE COURT: Do you recall a
5 conversation between Attorney Evert and
6 Commissioner Molloy that you and Assistant
7 Director Hendrickson was -- were a part of.

8 MS. THOMAS: Attorney
9 Christian-Hendrickson our assistant
10 commissioner?

11 THE COURT: Yes.

12 MS. THOMAS: Yes.

13 THE COURT: And yourself and the
14 commissioner and Attorney Evert?

15 MS. THOMAS: Yes.

16 THE COURT: And when was that
17 conversation?

18 MS. THOMAS: I cannot tell you the
19 date. I don't recall the exact date.

20 THE COURT: Were you all in the same
21 room, or was it all by telephonic or by Zoom?

22 MS. THOMAS: I think it was -- we
23 definitely weren't in the same room. I think
24 it was all entered by Zoom or Teams or on a
25 conference call. I can't recall the exact.

1 THE COURT: And do you recall why you
2 were called to participate in that
3 conversation?

4 MS. THOMAS: I know Attorney Evert
5 wrote a letter requesting that she speaks
6 directly with the commissioner pertaining to
7 that Elvis George case.

8 THE COURT: Okay. And what do you
9 recall of that conversation that the four of
10 you had, or that the commissioner and Attorney
11 Evert had and that you may have overheard?

12 MS. THOMAS: From my recollection
13 Attorney Evert was asking that -- I think she
14 was trying to recoup moneys for her claimant.
15 She stated that we, the Department, had no
16 right to recoup the funds that we expended out
17 on the claim. So, the commissioner told her
18 that we indeed have the right and --

19 THE COURT: Go ahead. Please mute your
20 mikes if you're not addressing the Court.

21 MS. THOMAS: That indeed that the
22 Department did have the right to recoup all the
23 funds that we expended out in the file.

24 THE COURT: Do you recall any
25 discussion of moneys being returned to the

1 Department of Labor minus attorney fees and
2 expenses that Attorney Evert may have incurred?

3 MS. THOMAS: From my recollection, yes,
4 I think it was supposed to be her expense minus
5 her expense from what the settlement was, and
6 then the balance would go to the Department.

7 THE COURT: And what was the result of
8 that discussion?

9 MS. THOMAS: I think the commissioner
10 was clear. He stated that the stance that we
11 have, the Department have and that was it. I
12 think she was supposed to file a motion, she
13 tried to file a motion or to do something with
14 the courts. I think that's where we are here
15 now.

16 THE COURT: And what's the position or
17 stance of the Department of Labor? Can you
18 clarify what you mean by --

19 MS. THOMAS: That we're --

20 THE COURT: I'm sorry. Can you clarify
21 by what you mean by that was the stance of the
22 Department of Labor?

23 MS. THOMAS: That the Department needs
24 to collect what we expended out pertaining to
25 that Elvis George file.

1 THE COURT: Was there any agreement as
2 to Attorney Evert's expenses being paid?

3 MS. THOMAS: I think it was minus her
4 fees. So, whatever the settlement amount minus
5 her fee, the balance will go to the Department.

6 THE COURT: And that was agreed to in
7 that telephone conversation?

8 MS. THOMAS: I think it was, yes --
9 well, not agreed to. Let me say that. I think
10 there was a lot of back and forth. I guess she
11 wasn't happy with, like I said, the stance that
12 the Department take and she said she was going
13 to take legal action.

14 THE COURT: Do you know any situation
15 similar to this where the Department of Labor
16 has accepted a sum of money from -- in a matter
17 minus attorney's fees?

18 MS. THOMAS: Not that I could think of
19 off the top of my head.

20 THE COURT: Have you ever had the
21 occasion to work with Attorney Rohn or Attorney
22 Holt on settlements of workmen's compensation
23 cases?

24 MS. THOMAS: Yes.

25 THE COURT: Have they ever tendered

1 money to the Department of Labor minus their
2 fees?

3 MS. THOMAS: Yes.

4 THE COURT: Would you say that's common
5 practice in the St. Croix District?

6 MS. THOMAS: I would say so.

7 THE COURT: And I am limiting it to
8 St. Croix because I'm assuming you are in the
9 St. Croix office?

10 MS. THOMAS: Yes. I'm territorial
11 wide, but I handle -- yeah.

12 THE COURT: More matters in St. Croix
13 than St. Thomas?

14 MS. THOMAS: Yes.

15 THE COURT: So, you would be more
16 familiar with the attorneys in St. Croix?

17 THE WITNESS: Yes, that's safe to say.

18 THE COURT: Thank you, Ms. Thomas.

19 Attorney Evert, Attorney Velazquez, any
20 questions?

21 MS. EVERT: I do, Your Honor.

22 **BY MS. EVERT:**

23 Q Ms. Thomas, has the Department of Labor ever sent
24 a notice to members of the Virgin Islands Bar saying that
25 they will now expect to receive a hundred percent of any

1 moneys incurred in outside civil litigation?

2 A No, not that I am aware of.

3 MS. EVERT: All right. I have nothing
4 further, Your Honor.

5 THE COURT: Thank you.

6 Attorney Velazquez. You're muted
7 Attorney Velazquez. You're muted.

8 MS. VELAZQUEZ: Sorry about that.

9 THE COURT: That's okay.

10 **BY MS. VELAZQUEZ:**

11 Q Good afternoon, Ms. Thomas. You indicated that
12 you did not know the amount that was paid out on behalf
13 of Mr. George, correct?

14 A Not off the top of my head, correct.

15 Q And who would know?

16 A Ms. Petersen.

17 Q Could you say her full name?

18 A Ms. Kesi Petersen.

19 MS. EVERT: Your Honor, for the record
20 we don't dispute the amount that Labor says was
21 paid out.

22 THE COURT: I understand that, Attorney
23 Evert, but let Attorney Velazquez ask her
24 questions so we can move this along.

25 MS. VELAZQUEZ: Thank you.

1 **BY MS. VELAZQUEZ:**

2 Q And you indicated that you have had cases
3 involving Attorney Rohn and Holt, correct?

4 A Yes.

5 Q Were those auto accident cases?

6 A A range of cases from auto accidents to third
7 parties. I'm familiar and I've worked with both
8 attorneys.

9 Q You indicated that one of your responsibilities
10 is to carry out the laws of the Virgin Islands?

11 A Correct.

12 Q And does the law -- is it your -- is it the view
13 of the Workers' Comp Division that the laws of the Virgin
14 Islands requires it to recoup funds it has paid out?

15 A Yes.

16 MS. EVERT: Your Honor, objection;
17 asked and answered.

18 THE COURT: It's just a question. She
19 answered it. Let's just move it along.

20 Keep it relevant to the questions.

21 MS. EVERT: Okay.

22 MS. VELAZQUEZ: I have no further
23 questions.

24 THE COURT: Thank you. May Ms. Thomas
25 be excused?

1 MS. EVERT: No objection. Yes, Your
2 Honor.

3 THE COURT: Thank you, Ms. Thomas. You
4 may be excused.

5 MS. THOMAS: Okay.

6 MS. VELAZQUEZ: And, Your Honor, if --
7 because the parties are not disputing the
8 amount then we would ask that Ms. Kesi Petersen
9 be excused as well. And as to Attorney
10 Christian-Hendrickson -- I'm sorry. Someone is
11 speaking. Someone needs to mute. Okay. I'm
12 sorry.

13 As to Attorney Christian-Hendrickson, I
14 would ask the Court in advance for a ruling
15 limiting any questions to the facts of the
16 case. And I have an objection to any questions
17 that delve into attorney/client privilege and
18 any discussions of Attorney Christiansen [sic]
19 with Commissioner Molloy, who is her client.

20 THE COURT: She's being called for the
21 telephone conversation. I will keep it to that
22 inside of the discovery requests.

23 Ms. Petersen, if you can hear me, thank
24 you for your patience. Your testimony is not
25 going to be needed. You're excused. Go and

1 enjoy lunch albeit late. Thank you.

2 MS. PETERSEN: Thank you. Have a good
3 day.

4 THE COURT: Assistant Commissioner?

5 MS. CHRISTIAN-HENDRICKSON: Good
6 morning.

7 THE COURT: Good morning. You wear a
8 variety of hats. I'm going to just -- no
9 disrespect to your title as counsel. I'm going
10 to address you as Assistant Commissioner, if
11 that is fine.

12 MS. CHRISTIAN-HENDRICKSON: That's
13 fine. Good afternoon. Sorry.

14 THE COURT: Madam clerk, could you
15 swear the assistant commissioner in?

16 (ATTORNEY NESHA CHRISTIAN-HENDRICKSON DULY
17 sworn by the clerk of the court.)

18 THE COURT: Okay. Please state your
19 name for the record.

20 MS. CHRISTIAN-HENDRICKSON: Nesha
21 Christian-Hendrickson.

22 THE COURT: And how are you employed?

23 MS. CHRISTIAN-HENDRICKSON: I am the
24 assistant commissioner and legal counsel for
25 the Virgin Islands Department of Labor.

1 THE COURT: As assistant commissioner
2 do you have authority over the Division of
3 Workmen's Compensation?

4 MS. CHRISTIAN-HENDRICKSON: I do.

5 THE COURT: And are you familiar with a
6 matter that involve Mr. Elvis George?

7 MS. CHRISTIAN-HENDRICKSON: I am.

8 THE COURT: Do you recall a
9 conversation that occurred between the
10 commissioner, Attorney Evert and your -- well,
11 I don't know if you participated in the
12 conversation, but you and Ms. Thomas were
13 present?

14 MS. CHRISTIAN-HENDRICKSON: I was
15 present. I did not speak on the call.

16 THE COURT: Okay. And approximately
17 when was that phone call?

18 MS. CHRISTIAN-HENDRICKSON: I can't
19 tell you the exact month, but it was earlier
20 this year.

21 THE COURT: This -- over the summer?

22 MS. CHRISTIAN-HENDRICKSON: Yes, that
23 sounds about right.

24 THE COURT: And what was nature of the
25 conversation?

1 MS. CHRISTIAN-HENDRICKSON: Attorney
2 Evert was seeking to -- she did not appreciate
3 and did not agree with the position that I had
4 taken in the Department in this particular
5 matter, so she reached out to the commissioner
6 to have him essentially change the position
7 that I had communicated to her.

8 THE COURT: And what was that position?

9 MS. CHRISTIAN-HENDRICKSON: That we had
10 to not follow the law, which would require us
11 to be able to recoup the fees that were in this
12 case.

13 THE COURT: And has there ever been a
14 time where the Department of Labor has accepted
15 a settlement minus the fees that an attorney
16 incurred to obtain the settlement?

17 MS. CHRISTIAN-HENDRICKSON: I had heard
18 of that in terms of me previous coming on
19 board, but in the times that I have been here
20 this administration and the previous
21 administration did not do that. So, I had
22 heard of it as a activity for the former
23 director, but not with this current director.
24 And when I came on as legal counsel I made sure
25 that we followed the law.

1 THE COURT: Since when have you been
2 legal counsel?

3 MS. CHRISTIAN-HENDRICKSON: I began in
4 2016. In the summer of 2016.

5 THE COURT: Do you recall anything else
6 regarding the settlement that was obtained in
7 this matter by Attorney Evert?

8 MS. CHRISTIAN-HENDRICKSON: Just that
9 the amount of the settlement that she received
10 was significantly less than the amount that we
11 had expended in the case and that was the
12 reason why I put forward the position that we
13 had to -- if the settlement had been in excess,
14 then we would have been able to compromise
15 differently. But since the settlement was
16 significantly lower, we had to be able to
17 follow the process defined in 263.

18 THE COURT: Were you aware that there
19 was an insurance policy in this matter?

20 MS. CHRISTIAN-HENDRICKSON: Yes.

21 THE COURT: And are you aware of the
22 insurance policy limit?

23 MS. CHRISTIAN-HENDRICKSON: My
24 understanding is it's about \$10,000; but I
25 believe the settlement was around \$17,000

1 overall.

2 THE COURT: So, and Attorney Evert was
3 proposing releasing the money minus her fees to
4 the Department of Labor, correct? That was
5 your understanding?

6 MS. CHRISTIAN-HENDRICKSON: No. My
7 understanding is that she wanted to have a
8 compromise for the amount; that she would get a
9 portion, her client would get a portion and we
10 would get a portion. And I could not agree to
11 that based on how I read the law.

12 THE COURT: All right. Would there
13 have been any agreement if your understanding
14 was inaccurate and she was just seeking the
15 reimbursement of her attorney's fees and
16 releasing \$10,462.67 to the Department of Labor
17 and that Mr. George would receive nothing else?

18 MS. VELAZQUEZ: I'm sorry. Objection.

19 THE COURT: It's my question.
20 Attorney?

21 MS. CHRISTIAN-HENDRICKSON: Could you
22 repeat the question again? I'm sorry.

23 MS. VELAZQUEZ: I'm making a record.

24 THE COURT: If your understanding was
25 inaccurate in that Attorney Evert was not

1 seeking money for her client, she was seeking
2 reimbursement for her fees and expenses and
3 that the balance would go to the Department of
4 Labor, would your position have changed?

5 MS. CHRISTIAN-HENDRICKSON: Not as I
6 read the law. I don't believe my position
7 would have changed, but that was never stated
8 to me. And it was never stated to me in
9 writing, it was never stated to --

10 THE COURT: You never received a letter
11 from Attorney Evert dated September 1st, 2022,
12 addressed to you?

13 MS. CHRISTIAN-HENDRICKSON: I did --

14 THE COURT: You didn't receive it by
15 e-mail?

16 MS. CHRISTIAN-HENDRICKSON: I did
17 receive a letter from her.

18 THE COURT: And in that letter she
19 indicated settlement was \$17,500; her fees were
20 \$5,833; and expenses \$1,204; and that \$10,462
21 would be turned over to the Department of
22 Labor?

23 MS. CHRISTIAN-HENDRICKSON: Yes,
24 however, at the same time there was
25 communication to our staff that she did not

1 agree with that position almost very soon after
2 that. So, it was confusing to me and I reached
3 out to -- at that time we were represented by
4 counsel so I engaged with her about what was
5 the process whether we could sign it or not.
6 And I was advised that we had to wait because
7 there was other matters that the court was
8 reviewing in reference to this. So, although I
9 received that e-mail, it was conflicting.

10 THE COURT: Conflicting with the
11 conversation or with past practice and
12 procedure or with -- what was it conflicting
13 with?

14 MS. CHRISTIAN-HENDRICKSON: With the
15 conversations that I had with her and that she
16 had had with our staff.

17 THE COURT: Attorney Evert, do you have
18 any questions?

19 Thank you, Assistant Commissioner.

20 MS. CHRISTIAN-HENDRICKSON: You're
21 welcome.

22 MS. EVERT: Thank you, Your Honor. I
23 do.

24 **BY MS. EVERT:**

25 Q Attorney Christian-Hendrickson, did you ever

1 respond to my September 1, 2022, letter in writing?

2 A I did not respond because at that point I was
3 represented by the Attorney General's Office, which is
4 the practice in any matters. I do not represent the
5 Department outside of the office, the government does and
6 that would have been the Attorney General's Office, so I
7 did not respond, no.

8 MS. EVERT: I have nothing further,
9 Your Honor.

10 THE COURT: Attorney Velazquez?

11 MS. VELAZQUEZ: I do have perhaps one
12 question.

13 **BY MS. VELAZQUEZ:**

14 Q Attorney Christian-Hendrickson, are you aware of
15 any provision in section 263 that makes an exception for
16 attorney's fees and costs?

17 A I am not.

18 MS. EVERT: Objection, Your Honor.
19 This was supposed to be limited to the phone
20 conversation, and we're not veering off or at
21 least we were told not to veer off.

22 THE COURT: Attorney Velazquez.

23 MS. VELAZQUEZ: Your Honor, Attorney
24 Evert just asked a question about a September
25 letter, and did you respond, and what have you

1 done in the past. And so -- and Your Honor
2 also asked questions regarding --

3 THE COURT: I did and I asked -- the
4 Court doesn't limit what the Court can inquire
5 into. The Court limits what the attorneys can
6 inquire into. So, unless there is something
7 otherwise that says I can't do what I did, I am
8 allowed to issue orders and I issued an order
9 that the parties' conversation be limited based
10 on your motion to prevent Attorney Evert from
11 going on discovery binge or attorney/client
12 privilege. So, it was based on your motions.

13 I allowed the Attorney Evert to ask the
14 one question about the letter because Assistant
15 Commissioner said she never received it and
16 that was a limited question. So, to go back
17 into other issues, I'm not going to allow it,
18 Attorney Velazquez.

19 MS. VELAZQUEZ: Thank you. No further
20 questions. And, Your Honor, just for the
21 record -- yeah, no further questions and no
22 disrespect to the Court in objecting, but my
23 understanding is I do have to make a record
24 regardless of where the question is coming
25 from, but I appreciate that. Thank you.

1 THE COURT: All right. May the
2 assistant commissioner be excused?

3 MS. VELAZQUEZ: Nothing from the
4 government.

5 THE COURT: Attorney Evert, you are
6 muted. I am assuming that's a no, she may be
7 excused?

8 MS. EVERT: No objection.

9 THE COURT: Attorney --

10 MR. HYMES: No objection.

11 THE COURT: Assistant Commissioner, you
12 may be excused. Thank you so much.

13 MS. CHRISTIAN-HENDRICKSON: Thank you.
14 Have a nice day.

15 THE COURT: Thank you. The Court will
16 take the arguments of Counsel, the pleadings
17 before it and the testimony for the witnesses
18 and render a written order in this matter. Is
19 there anything else that the Court needs to
20 address in this matter?

21 MS. EVERT: No, Your Honor. Thank you
22 for taking all of this time. Appreciate it.

23 MR. HYMES: No, Your Honor. Thank you.

24 MS. VELAZQUEZ: Thank you. Have a good
25 day.

1 THE COURT: All right. Thank you,
2 Counsel. Have a good day.

3 THE COURT: That concludes the jury
4 calendar for today.

5 **(This hearing concluded at 1:21 p.m.)**

6

7

8

9

10 *****

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, SANDRA HALL, Registered Merit Reporter,
(Ret.), of the Superior Court of the Virgin Islands,
Division of St. Croix, do hereby certify that I
transcribed the hearing held via JAVS, in my official
capacity, the Hearing on Motions of November 9, 2022, in
the case of *Elvis George v. Mark Lonski, et al.*,
ST-2021-CV-00079.

I FURTHER CERTIFY that the foregoing 101 pages,
are true and accurate, to the best of my ability, and
constitute the official transcript of said proceedings as
transcribed by me from the JAVS recording.

I HAVE HEREUNTO subscribed my name, this 30th
day of January 2023.

/s/ Sandra Hall 1/30/2023



SANDRA HALL, RMR (Ret.)

FILED

November 14, 2022 04:14 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,

Plaintiff,

vs.

MARK LONSKI and PROPERTY KING,

Defendants.

)
) Case No.: ST-21-CV-00079
)
)
)
)
)
)
)
)
)

ORDER

THIS MATTER came before the Court for a hearing on all pending motions on November 9, 2022. Plaintiff appeared and was represented by Attorney Julie German Evert, Esquire. Defendants were presented by Attorney James L. Hymes, III. The Department of Labor was presented by Attorney Venetia H. Velazquez. Pending before the Court are the following:

1. Motion for Leave to Intervene filed August 5, 2022, by the Government of the Virgin Islands;
2. Plaintiff's Request for Hearing to Determine Disbursement of Settlement Proceeds filed September 19, 2022;
3. Government's Reply to Plaintiff's Request for Hearing to Determine Disbursement of Settlement Proceeds filed in Opposition to the Government's Motion to Intervene and Notice of Claim of Right to those Funds filed September 21, 2022;
4. Defendants' Response to Motion to Intervene filed September 23, 2022;
5. Plaintiff's Reply to Government's Reply to Plaintiff's Request for Hearing to Determine Disbursement of Settlement Proceeds filed in Opposition to the Government's Motion to Intervene and Notice of Claim of Right to those Funds filed September 29, 2022; and
6. Government's Motion to Strike and, Alternatively Objection to Plaintiff's Surreply filed without Leave of Court filed October 3, 2022.

BACKGROUND

On February 12, 2021, Plaintiff filed a Complaint for an action for damages against Defendant for injuries he sustained as the result of an accident involving Defendants on July 14, 2020. Plaintiff's injuries occurred while he was employed and working at the St. John Waste Management (WMA) facility in St. John. WMA referred Plaintiff to the Department of Labor Workers' Compensation Administration (WCA) to ensure payment of Plaintiff's claims and related payments. Plaintiff had never been contacted by the Department of Labor to institute an action to recover payments made to Plaintiff for his injuries.

On or about January 18, 2022, Plaintiff's counsel contacted the WCA to receive information pertaining to any lien that the Department of Labor may have regarding payments associated with Plaintiff's injuries. By letter dated February 10, 2022, WCA informed Plaintiff's counsel that the WCA had expended Sixty-One Thousand Two Hundred Five Dollars and Twenty-Seven Cents (\$61,205.27). The letter further advised counsel to "submit the General Release along with \$5.00 for the Notary Public ... when a settlement agreement in this case has been effectuated."

Sometime in July 2022, Plaintiff's counsel had a telephone conversation with Commissioner Molloy, Assistant Commissioner/Legal Counsel Attorney Nesha R.Christian-Hendrickson, and Ms. Rainia Thomas. Attorney Christian-Hendrickson and Ms. Thomas were present but did not participate in the conversation. There appears to be a disagreement as to the ultimate resolution of the meeting, but it was undisputed that during the meeting, the Commissioner was informed of the possibility of the matter settling and that Plaintiff's counsel was seeking reimbursement for her attorney's fees and expenses. The Department of Labor disputes that there was an agreement regarding payment of attorney's fees. However, it appears there have been occasions when WCA has accepted settlement payments less the associated attorney's fees and expenses.

On August 5, 2022, the Government filed a Motion to Intervene as a matter of right pursuant to V.I.R. Civ. P. 24 because the "Government has a right pursuant to statutory law to recoup monies expended on Workmen's Compensation claims, before a party may compromise or distribute proceeds from a third party for injuries arising from workplace injuries for which Government has expended or paid out funds."

On September 1, 2022, Plaintiff's counsel sent a letter to Assistant Commissioner/ Legal Counsel Christian-Hendrickson indicating the matter had settled for \$17,500.00 and less her attorney's fees and expenses, the total amount due WCA would be \$10,462.67. Enclosed with the letter was a release required by Defendants. No one from the Department of Labor responded to the letter and it is the position of the Department of Labor that it is entitled to the entire settlement proceeds to be paid back into the Government Insurance Funds.

ANALYSIS

A. THE GOVERNMENT'S MOTION TO INTERVENE IS DENIED AS UNTIMELY

Plaintiff sustained his injuries on July 14, 2020, while working at the St. John Waste Management office. Plaintiff was referred to the WCA to seek payment for his medical bills and expenses. While there is not record as to when those payments began, it clear that payments began before February 10, 2022. At no time between July 14, 2020, and February 10, 2022, did the Department of Labor institute legal action against Defendants to recover money to repay the Government Insurance Fund. It was not until after a telephone conversation between the Commissioner of Labor and Plaintiff's counsel in July 2022, that the Department of Labor then decided to take part in this proceeding.

It is clear from the record that on February 2, 2022, the Department of Labor was sent a letter from Plaintiff's counsel requesting a final WCA lien. The WCA responded by letter dated February 10, 2022. Additionally, Ms. Petersen, the Assistant Director: Worker's Compensation Administration, was copied on a letter dated April 7, 2022, that the matter was scheduled for mediation on May 26, 2022. From the information before the Court, the Department of Labor neither attended the mediation nor initiated any action to stop or intervene in the mediation.

Title 24 V.I.C. § 263, in relevant part, provides that "when an injured workman or employee, or his beneficiaries in case of death, may be entitled to institute an action for damages against a third person in cases where the Government Insurance Fund, in accordance with the terms of this chapter, is obliged to compensate in any manner or to furnish treatment, the **Administrator shall subrogate himself to the rights of the workman or employee or of his beneficiaries, and**

may institute proceedings against such third person in the name of the injured workman or employee or of his beneficiaries, within two years following the date of the injury, and any sum which as a result of the action, or by virtue of a judicial compromise, may be obtained in excess of the expenses incurred in the case shall be delivered to the injured workman or employee or to his beneficiaries entitled thereto¹. (Emphasis added.)

While the exact date when the Department of Labor became aware of Plaintiff's injury is not part of the record, the record is clear that Plaintiff reported his injury to the WCA and began receiving compensation. It is also clear that at no time did the Department of Labor institute proceedings on behalf of the Plaintiff following his reporting of his injury. It is further clear from the record that two years have passed since Plaintiff's injuries. The Department of Labor, while on notice of not only Plaintiff's injury, but this pending matter did nothing to subrogate its' claim until August 5, 2022, more than two years after Plaintiff's injury.

The Court finds that the Department of Labor's attempt to intervene is untimely and denied.

B. THE COURT FINDS THAT GIVEN THE CIRCUMSTANCES IN THIS MATTER, EQUITY REQUIRES THE COURT DISBURSE THE MONEY TO BOTH THE DEPARTMENT OF LABOR AND PLAINTIFF'S COUNSEL

Title 24 V.I.C. § 263 states that an injured government employee can neither institute an action nor compromise the right of action without the assent and participation of the Commissioner of Labor, and the statute as a whole contemplates that all parties to a suit to recover damages for an injured employee may compromise their claims in aid of settlement, as long as each party expressly consents to the compromise². The issue that remains before the Court is did the Commissioner in the telephone conversation in July 2022, result in an agreement that the Department of Labor would accept the settlement proceeds less Plaintiff's counsel's attorney's fees and expenses.

¹ Title 24 V.I.C. § 263.

² Jennings v. Richards, 31 V.I. 188, 1995 V.I. LEXIS 1 (V.I. Terr. Ct. 1995).

The testimony before the Court, regarding the July 2022 conversation, is that the Commissioner of Labor advised Plaintiff's counsel that he was required to follow the Virgin Islands Code as it pertains to these matters and during his tenure, he has never agreed to accept a settlement less attorney's fees and expenses. The Assistant Commissioner further added there was no agreement. Ms. Thomas added that she is familiar with Attorneys Holt and Rohn and in the past, in similar matters, have accepted settlements, less their attorney's fees and expenses. Additionally, there is a September 1, 2022, letter sent to the Assistant Commissioner/Legal Counsel regarding the settlement and disbursement of proceeds. The letter also included a proposed release. The letter was never responded to by the Department of Labor.

The settlement proposed by Plaintiff would result in the WCA and the Government Insurance Fund receiving Ten Thousand Four Hundred Sixty-Two Dollars and Sixty-Seven Cents (\$10,462.67), Four Hundred Dollars (\$400.00) more than if the WCA had initiated an action against Defendants. While it is the policy of the Commissioner to ensure that the Government Insurance Fund is reimbursed for all funds expended so that the funds are available for other recipients, this is situation where the Department of Labor, but for Plaintiff's action, would not have received any compensation to replace in the Fund. The Court further finds that the Commissioner is vested with the discretionary authority to enter into compromise agreements without violating the Code, and in fact, it is the practice and procedure of many Government agencies to do so, in order to collect monies that it due, i.e. property tax amnesties and income tax extensions, to name a few.

Accordingly, the Court finds, that in this matter, and this matter only, the decision of this Court is specific to these facts and circumstances and are not binding on any future WCA actions³, it is hereby

ORDERED that the Department of Labor and/or the Worker's Compensation Administration execute the General Release associated with this matter no later than November 21, 2022; and it is further

ORDERED that the Cashier of the Superior Court shall release to Plaintiff's counsel, from the funds deposited by Defendants on August 9, 2022, the sum of Six Thousand Thirty-Seven

³ The Court notes that perhaps, in an abundance of caution, the Department of Labor and/or WCA should be the legal community on notice that this past practice and procedure will no longer be recognized by the Department.

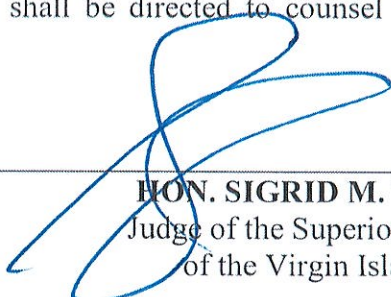
Dollars and Thirty-Three Cents (\$6,037.33) as and for attorney's fees and expenses; and it is further

ORDERED that the Cashier of the Superior Court release the remaining Ten Thousand Four Hundred Sixty-Two Dollars and Sixty-Seven Cents (\$10,462.67) to the Department of Labor, Worker's Compensation Administration to be placed back into the Government Insurance Fund; and it is further

ORDERED that the Government's Motion to Strike Surreply is DENIED⁴; and it is further

ORDERED that a copy of this Order shall be directed to counsel of record and the Department of Labor.

Dated: November 14, 2022.



HON. SIGRID M. TEJO
Judge of the Superior Court
of the Virgin Islands

ATTEST:

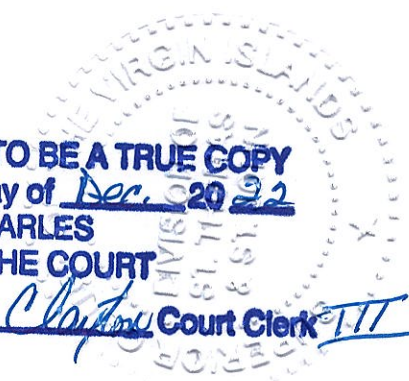
TAMARA CHARLES

Clerk of the Court ____ / ____ / ____

By:



LATOYA CAMACHO
Court Clerk Supervisor 11 / 14 / 2022


CERTIFIED TO BE A TRUE COPY
This 13th day of Dec. 2022
TAMARA CHARLES
CLERK OF THE COURT

By  **Court Clerk TTT**

⁴ Plaintiff filed a request for Hearing to which the Government replied, and Plaintiff replied which is permitted under the Rules of Civil Procedure. Therefore, it is not a surreply needing leave of Court to be filed.

FILED

November 14, 2022 04:15 PM
ST-2021-CV-00079
TAMARA CHARLES
CLERK OF THE COURT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
District of St. Thomas/St. John

Elvis George,

Plaintiff

Case Number: ST-2021-CV-00079

Action: Personal Injury

v.

Mark Lonski et al,

Defendant.

NOTICE of ENTRY
Of AN
ORDER RE: ALL PENDING MOTIONS ON NOVEMBER
9, 2022

To: Julie M. German Evert, Esq.

Venetia H. Velazquez, Esq.

James L. Hymes, III, Esq.

Department of Labor – Workers’
Compensation Administration

Please take notice that on November 14, 2022
a(n) Order Re: All Pending Motions on November 9, 2022
dated November 14, 2022 was entered
by the Clerk in the above-titled matter.

Dated: November 14, 2022

Tamara Charles
Clerk of the Court

By: _____

Sheeniqua Venzen
Court Clerk II

FILED

December 02, 2022 04:53 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,)	
)	
Plaintiff,	)	CIVIL NO. ST-21-CV-00079
)	
v.	)	ACTION FOR DAMAGES
)	
MARK LONSKI and)	
PROPERTY KING, Inc.,	)	JURY TRIAL DEMANDED
)	
Defendants.)	
_____)	

**GOVERNMENT’S MOTION FOR STAY OF JUDGMENT
PENDING APPEAL PURSUANT TO V.I.R. APP. P. 8**

COMES NOW the Government of the Virgin Islands and, pursuant to V.I. R. App. P..

8(a), files this Motion to Stay of Judgment Pending an Appeal of the Court’s order entered

November 14, 2022.

BACKGROUND

The Plaintiff, an injured employee, obtained benefits from the Government Insurance Fund, Workers’ Compensation (WC) in excess of \$61,000, for injuries resulting from the acts of a third-party. *See* Gov’t Mot. to Intervene at Exh. B. The Plaintiff filed suit, but did not join the Government as a party. Plaintiff asserted that the injury occurred on July 14, 2020 and, on February 2, 2022, his counsel contacted the agency regarding the WC lien. *See* Pl’s Mot. to Interplead funds at Exh. B. On February 10, 2022, the agency provided Plaintiff with a lien for expenditures of behalf of Plaintiff totaling more than \$61,000. *See* Order of Court, Nov. 14, 2022; Mot. to Intervene at Exh. A; *see also* 24 V.I.C. § 263. Plaintiff does not dispute the lien amount reflecting the Government’s expenditure of more than \$61,000 on the Plaintiff’s behalf, as his counsel represented at the hearing in this matter. Indeed, Plaintiff concedes that the law, as

applicable to this case, creates a “super priority lien” in favor of the Government. *See* Pl’s Request for Hearing Re Disbursement, at Exh. C (letter dated September 1, 2022).

In August 2022, Plaintiff, through his counsel filed a notice with the Court and served the same on the Virgin Islands Department of Labor (VIDOL), indicating he had reached a mediated settlement with a third party related to his compensated injuries, and moved the Court to pay those proceeds into the Court’s registry. *See* Pl’s Mot. to Interplead “Settlement Funds” (dated Aug. 3, 2022). The Government/VIDOL was not made a party to that Agreement and, at the time of its filing, no request for Release had been presented to the VIDOL. *See* Mot. to Intervene at Exhs. A, B. The Court entered an order granting the parties’ motion to deposit the funds in the Court’s Registry and inviting interested parties to file a notice or claim as to those proceeds. *See* Order entered August 4, 2022. The Government/VIDOL did so, filing a Notice of Claim of Right to the proceeds pursuant to Title 24, Section 263 of the V.I. Code, referencing an existing Workers’ Compensation lien, which was required to be repaid to the Fund prior to distribution. *See* Govt’s Notice of Claim of Right to Settlement Proceeds, filed August 5, 2022. On the same date, the Government additionally filed a Motion to Intervene as of right, in the above-captioned matter, in order to protect its interest in recouping funds expended on behalf of the plaintiff pursuant to Section 263. *See* Mot. to intervene filed Aug. 5, 2022; *see also* V.I.R. Civ. P. 24(a).

While those filings were pending before the Court, on September 1, 2022, Plaintiff’s counsel submitted a General Release of claims to the agency for approval and execution; it is undisputed that the agency did not execute that document and, in fact, never responded. *See* Order entered Nov. 14, 2022, at 5; Pl’s Request for Hearing at Exh. C (Letter submitting Release, dated September 1, 2022).

The Plaintiff does not dispute that he received Workers' Compensation benefits in excess of \$61,000 and also does not dispute that the Government has a "super-priority lien" to recoup those funds, under applicable law, as earlier referenced. However, Plaintiff objected to the Government's notice of right to the settlement funds, arguing that, notwithstanding the plain language of Section 263, the Government was required to compensate Plaintiff's counsel, as it had initiated the litigation on behalf of the Plaintiff and where the Government failed to file its own claim.

Plaintiff also asserted that the head of the agency had orally agreed, in July 2022, to compensate counsel for work undertaken for the Plaintiff. However, on September 1, 2022, Plaintiff's counsel wrote to the agency acknowledging the agency's primary right to recoup the funds and seeking an agreement by the agency to compensate her for legal fees and costs, and indicating the Motion for Interpleader would be withdrawn an agreement were reached, as follows:

After a great deal of research, we agree that Worker's Compensation has a super-priority lien in regard to receiving reimbursement of funds after a settlement has been awarded. With that being said, the legal fees are one-third of the total amount of the \$17,500 settlement which equals \$5,833.33. Additionally, my expenses for this case are \$1,204. . . .

Attached to this letter, please find the release that the Defendants require. Please forward it to us after signing and Attorney Hymes will arrange to exchange the check for the original Release. **We will withdraw the motion for interpleader once we have an agreement.**

Pl's Request for Hearing re Disbursement, at Exh. C (Letter dated September 1, 2022) (emphasis added). Consistent with Plaintiff's September 1, 2022 letter, the agency head and two other witnesses also testified at the hearing on this matter that the agency never agreed to pay counsel but, rather, insisted that the Fund be fully reimbursed from the settlement fund. The Commissioner of the agency testified that the agency requires such reimbursement to the Fund, to ensure that other injured claimants may receive benefits, which the Court acknowledged. *See* Order dated

Nov. 14, 2022 at 5. He further testified that the Fund is currently depleted. Ms. Thomas (Director of WC) and the Assistant Commissioner also testified there was no such agreement. The Court did not find the existence of an agreement, as Plaintiff claimed.¹ *Id.* The Government has not been joined in the Action and has not agreed to compromise its claims. *See* 24 V.I.C. § 263.

On November 14, 2022, following a hearing, the Court denied the Government’s Motion to Intervene as untimely and ostensibly also denied the Government’s claim of right to the settlement funds. Rather, the Court ordered that Plaintiff’s Counsel be first compensated for attorneys fees for representing the Plaintiff, in excess of \$6,000 from the funds in the Court’s registry. The Court reasoned that, “While it is the policy of the Commissioner to ensure that the Government Insurance Fund is reimbursed funds expended so that the funds are available for other recipients, this is a situation where the Department of Labor, but for Plaintiff’s action, would not have received any compensation to replace in the Fund.” Nov. 14, 2022 Order, at 5. Moreover, while the Court additionally held that, “the Commissioner is vested with the “discretionary authority” to enter into compromise agreements without violating the law, the Court nonetheless ordered “that the Department of Labor and/or the Worker’s Compensation Administration execute

¹ The Government argued that Section 263 was mandatory and that the issue before the Court was a matter of law, not fact. The Court disagreed, determining that the only issue before the Court was whether “the Commissioner in a telephone conversation in July 2022, result in an agreement that the Department of Labor would accept the settlement proceeds less Plaintiff’s counsel’s attorney’s fees and expenses.” *See* Nov. 14, 2022 Order at 4. However, the Order acknowledges that testimony of the Commissioner was that he never agreed to accepting settlement less attorneys fees. *Id.* at 5. Two other witnesses present during the telephone conversation – Ms. Thomas and Ass’t Commissioner Hendrickson – also testified that no such agreement was made during that call. The Court noted, however, that Ms. Thomas testified that the agency had made such compromises in the past with at least two attorneys. *Id.* at 5. The Court found that, while the Plaintiff had submitted a proposed Release to the agency on September 1, 2022, the agency never responded. *Id.* The existence of such an agreement was not established at the hearing, and the Court did not so find. *Id.* Rather, the Court granted Plaintiff’s counsel’s relief, on other grounds.

the General Release² associated with this matter no later than November 21, 2022.” *Id. at 5*(first *Order paragraph*). The Government intends to appeal that decision.

ARGUMENT

A Motion for Stay of Judgment or Order of the Superior Court, pending appeal, may be properly filed in this Court, setting forth “the reasons for the relief requested and the facts relied upon.” V.I.R. App. P. 8 (b). In determining a motion for stay pending appeal, this Court is required to consider: (1) whether the litigant has made a strong showing that he is likely to succeed on the merits; (2) whether the litigant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceedings; and (4) where the public interest lies.” *Suid v. Law Office of Karin A. Bentz*, 2021 V.I. Supreme LEXIS 3, at *1-2 (V.I. Feb. 19, 2021) (*citing In re Najawicz*, S. Ct. Crim.Nos. 2008-0098, 099, 2009 V.I. Supreme LEXIS 2, *5-6, [WL], at *3 (V.I. Jan. 8, 2009) (unpublished)). However, the Virgin Islands Supreme Court has established that, “[t]he first of these factors is ordinarily the most important.” *Id.* (*citing Rojas v. Two/Morrow Ideas Enterprises, Inc.*, S. Ct. Civ. No. 2008-0071, 2009 V.I. Supreme LEXIS 6, *5 [WL], at *2 (V.I. Jan. 22, 2009) (unpublished) (*citing Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986))). The Government has a strong likelihood of prevailing on the merits in its appeal, as the court committed plain error of law in its determinations. Absent a stay, the Government will be irreparably harmed, as its ability to preserve its statutory claim of right to funds from a settlement between an injured employee and a third

² On September 1, 2022, Plaintiff submitted a General Release to the agency for execution, which was not accepted or acted upon by the agency. *Id. at 5*. The Court’s order, requiring execution of “the Release,” would compel the Government to accept and execute the document submitted by Plaintiff.

party, in a suit brought by the Plaintiff (in which the Government was not a party), will be forever foreclosed and such funds will be dissipated.

1. LIKELIHOOD OF SUCCESS ON THE MERITS AND THE PUBLIC'S INTEREST

At the outset, the Court's application of the law or interpretation of a statute is subject to plenary review. *See Cornelius v. Bank of Nova Scotia*, 67 V.I. 806, 816-17 (2017) (citations omitted). *Bradford v. Cramer*, 54 V.I. 669, 672 (V.I. 2011). The existence of an error "that was obvious under existing law" constitutes plain error. *Id.* Importantly, a Court's "failure to appropriately consider the requirements of a statute in applying it is reversible error." *Id.* (citing *Dupigny v. Tyson*, 66 V.I. 434, 452, [WL], at *9 (V.I. 2017)). Moreover, to the extent a court may appropriately exercise discretion, it abuses that discretion where it makes a decision that "rests upon a clearly erroneous finding of fact, an errant conclusion of law, or an improper application of law to fact." *Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 607-608 (V.I. 2012) (internal citations omitted).

In this case, the Court's determinations constitute plain error of law, and an abuse of discretion; the Government has a strong likelihood of success on the merits of its appeal, as: A) The Court's order violated applicable statute where: 1) the trial court did not address the plain and unambiguous language of the applicable statute establishing the priority of the Government and mandating that all funds expended on behalf of an injured employee be first repaid before any distribution; 2) the trial court erred in failing to address the statutory requisites in matters where the injured employee sues a third party tortfeasor and in determining that the Government's failure to bring suit limits – or removes – its statutory priority and right to recovery in a suit by the employee against a third party; 3) the trial court erred where it ostensibly construed the statutory authority or discretionary authority of the agency to enter into compromises as a bar to the agency's exercise of discretion

not to enter such compromises and, additionally; B) the trial court abused its discretion and overreached in compelling the agency, by order, to involuntarily execute a General Release of its rights, amounting to a forced settlement and a violation of the separation of powers doctrine; C) the trial court erred in its determination that the Government was barred from intervening to protect its rights under V.I.R. Civ. P. 24, after receiving notice of a settlement, based on the two-year statute of limitations for bringing suits against the third parties.

A. THE TRIAL COURT FAILED TO ADDRESS AND APPLY THE PLAIN LANGUAGE OF THE STATUTE APPLICABLE IN SUITS BY AN INJURED EMPLOYEE AGAINST A THIRD PARTY TORTFEASOR, AND SUPPLANTED ITS EQUITABLE DETERMINATION FOR THE EXPRESSED WILL OF THE LEGISLATURE.

1) The Trial Court Ignored the Plain and Unambiguous Language in 24 V.I.C. 263, establishing the priority of the Government to Recoup “All Monies” Expended for an Injured Employee Before Any Settlement May be Disbursed In a Suit Brought by the Employee Against a Third Party.

The issue in this case is whether the Government is entitled, by operation of law, to obtain full reimbursement of all monies expended for Workers’ Compensation benefits for an injured employee, from settlement proceeds obtained in a suit by the employee against a third party for injuries for which he received WC benefits before those funds may be disbursed. The Legislature has plainly and unequivocally answered that question in the affirmative. Indeed, the Plaintiff has himself conceded before the Court that the Government has a “super-priority lien” to recoup its expenses, by operation of law. *See* Pl’s Request for Hearing Re Disbursement, at Exh. C (letter dated September 1, 2022). Despite the plain language of the applicable statute, to that effect and rendering any settlement or judgment void unless the Government’s interests are protected in suits filed by an injured employee, the Court determined the contrary and appeared to condition the statutory rights, recovery and priority of the Government on whether it filed suit. That determination misapplies the law.

Where the language of a statute is plain and unambiguous, the Court's application and construction must necessarily begin and end with that plain language. *See Smith v. Emps. of the Bureau of Corr.*, 64 V.I. 383, 396-97 (V.I. 2016). As the Virgin Islands Supreme Court has repeatedly instructed:

When interpreting a statute, we start with the plain language. There is a presumption that legislative bodies express their intent through the ordinary meaning of the language of the statute; therefore, statutory interpretation always begins with an analysis of the plain text of the statute. *Haynes v. Ottley*, 61 V.I. 547, 561 (V.I. 2014); *Bryan v. Fawkes*, 61 V.I. 416, 462 (V.I. 2014); *Rohn v. People*, 57 V.I. 637, 646 n.6 (V.I. 2012); *Murrell v. People*, 54 V.I. 338, 352 (V.I. 2010); *Rosenberg v. XM Ventures*, 274 F.3d 137, 141 (3d Cir. 2001). *See King v. Burwell*, 135 S. Ct. 2480, 2489, 192 L. Ed. 2d 483 (2015). Accordingly, [w]here the statutory language is plain and unambiguous, further inquiry is not required." *Rosenberg v. XM Ventures*, 274 F.3d 137, 141 (3d Cir. 2001). *See In re L.O.F.*, 62 V.I. 655, 661 (V.I. 2015); *In re Reynolds*, 60 V.I. 330, 334 (V.I. 2013); *Kelley v. Gov't of the V.I.*, 59 V.I. 742, 745 (V.I. 2013); *Zuni Pub. Sch. Dist. No. 89 v. Dep't of Educ.*, 550 U.S. 81, 93, 127 S. Ct. 1534, 167 L. Ed. 2d 449 (2007) ("[I]f the intent of [the legislative body] is clear and unambiguously expressed by the statutory language at issue, that would be the end of our analysis."); *Marx v. General Revenue Corp.*, 133 S. Ct. 1166, 1172, 185 L. Ed. 2d 242 (2013).

Id.; *see also For the Expungement of Criminal Record of Callwood*, 66 V.I. 299, 306 (V.I. 2017) ("It is well-established that '[i]f the language [of a statute] is clear and unambiguous, there is no need to resort to any other rule o[f] statutory construction.'") (citing *Shoy v. People*, 55 V.I. 919, 926 (V.I. 2011) (citing *Dodd v. United States*, 545 U.S. 353, 359, 125 S. Ct. 2478, 162 L. Ed. 2d 343 (2005)); *accord, Gilbert v. People*, 52 V.I. 350, 356 (V.I. 2009)). In that regard, it is not for the judiciary to determine the merits or equities of a statutory direction or to subsume the role of the co-equal legislative branch; rather, its role is to apply the plain direction of the law. *See Smith*, cited *supra*; *In re L.O.F.*, 62 V.I. 655, 661, 2015 V.I. Supreme LEXIS 13, *8-9 (V.I. 2015). In doing so, the Court must construe the statute as a whole, and not give effect to words or portions of the statute in isolation; rather, it must apply the whole statute, "giv[ing] effect to every provision,

making sure to avoid interpreting any provision in a manner that would render it — or another provision — wholly superfluous and without an independent meaning or function of its own” and consistent with its objective. *In re L.O.F.*, 62 V.I. 655, 661, 2015 V.I. Supreme LEXIS 13, *8-9 (V.I. 2015) (internal and other citations omitted); *In re Infant Sherman*, 49 V.I. 452, 463 (V.I. 2008) (“[W]hen reviewing a statute, each statutory provision should be read by reference to the whole statute . . . Similarly, the statute should be interpreted to give consistent, harmonious and sensible effect to all its parts.”)(internal citations and quotations omitted); *compare Davis v. Am. Youth Soccer Org.*, 64 V.I. 37, 48 (Super. Ct. 2016) (“[W]hen construing a statute, it is inappropriate to single out specific words and ignore the remaining language.”) (emphasis added). Our courts have additionally made clear that an agency cannot alter or eradicate the mandatory directives of a statute through an administrative practice. *See e.g., Thompson v. Pub. Emples. Rels. Bd.*, No. ST-18-CV-720, 2021 V.I. LEXIS 9, at *15-16 (Super. Ct. Feb. 4, 2021) (holding that, “An Administrative practice cannot supersede the language of a statute.”) (quoting *Free Speech Coal., Inc. v. AG of the United States*, 677 F.3d 519, 539 (3d Cir. 2012)). The Virgin Islands Supreme Court has additionally made clear that where a statute is clear on its face, the court must carry out its mandates and may not insert ambiguity into an otherwise clear statute, to avoid its mandatory provisions. *See Re Expungement*, 66 V.I. at 306.

Applicable here is Title 24, Section 263. Where, as here, an injured employee sues a third-party tortfeasor in connection with injuries for which he received Workers Compensation benefits, the statute sets forth the following mandates:

The injured workman or employee or his beneficiaries **may not institute any action, nor may compromise any right of action they may have against the third person responsible for the damages, unless the Administrator is a party to the action or agrees to the compromise**, but the failure to join the Administrator shall not deprive the courts of jurisdiction over the claim or otherwise result in dismissal of the claim, **so long as the injured worker or employee acknowledges**

that all sums due the Government Insurance Fund are secured by any recovery.

No compromise between the injured workman or employee, or his beneficiaries in case of death, and the third person responsible shall be valid or effective in law unless the expenses incurred by the Government Insurance Fund in the case are first paid. No judgment shall be entered in actions of this nature and no compromise whatsoever as to the rights of parties to said actions shall be approved, without making express reserve of the rights of the Government Insurance Fund to reimbursement of all expenses incurred. The clerk of the court taking cognizance of any claim of the above-described nature, shall notify the Administrator of any order entered by the case, as well as the final deposition thereof.

24 V.I.C. § 263 (emphases added). In that regard, the statute mandates that the Administrator is **either** joined as a party or agrees to a compromise in such suits. *Id.* Significantly, the Legislature further amended the statute in 2002 to further make clear its intent to permit suits to be brought solely by an injured employee against a third party, but “so long as the injured worker or employee acknowledges that **all sums** due the Government Insurance Fund are secured by any recovery.” *Id.* (emphasis added); see 2002 V.I. ALS 6529, 2002 V.I. SESS. LAWS 6529, V.I. Act 6529, 2002 V.I. Bill 248, 2002 V.I. ALS 6529, 2002 V.I. SESS. LAWS 6529, V.I. Act 6529, 2002 V.I. Bill 248.

As set forth above, the statute also makes clear that no compromise between an injured employee and a third person is valid and effective, “**unless the expenses incurred by the Government Insurance Fund in the case are first paid.**” *Id.* (emphasis mine). Moreover, the statute additionally expressly prohibits the entry of any judgment or approval of any settlement in actions between an injured employee and a third-party, “**without making express reserve** of the rights of the Government Insurance Fund to reimbursement of **all expenses incurred**” on behalf of the injured employee. *Id.*

The statute is plain and unambiguous in mandating reimbursement to the Government Insurance Fund. As the Court appeared to recognize, and as the Commissioner testified, that mandate serves an important -- perhaps even urgent -- purpose in ensuring that the Fund is replenished to permit other injured claimants to obtain benefits. Order Nov. 14, 2022 at 5. Noticeably absent from Section 263 is any reservation or exception from its mandates if the employee, rather than the Government, filed suit, or any condition that the Government first pay attorneys fees incurred pursuant to a private contract, or other equitable considerations. *Id.*

The Court's order improperly considered, against the Government, its decision not to file a lawsuit and effectively declined to implement the statutory mandates, instead turning to equity in an area where the Legislature has spoken, in order to grant Plaintiff's requested relief. (Significantly, the relief granted benefitted only Plaintiff's counsel; Plaintiff obtained no recovery). That was contrary to law.

- 2) **The Court erred in failing to address and apply the statutory requisites in matters where the injured employee sues a third party tortfeasor, and in determining that the Government's failure to bring suit limits -- or removes -- its statutory priority and right to recovery in a suit by the employee against a third party, in violation of 24 VIC 263.**

In making its determination, the Court additionally applied only the second paragraph of the statute, applicable to suits brought by the Government (which is inapplicable to this case), and disregarded the remainder of the statute setting forth the Legislature's directive for suits brought by an injured employee against a third party, and the Government's rights that unconditionally flow from such suits. Rather, the Court imposed a new standard for the Government's right to full recovery, based on whether it filed suit or whether the Government, "but for Plaintiff's action, would not have received any compensation to replace in the Fund." *See* Order, at 5. That

determination is contrary to the plain and unambiguous language of the statute and constitutes error.

In addition to the statutory provisions as set forth, the entire statutory scheme makes clear that the Government's right to recovery is not based on whether it filed suit or not. Indeed, Section 263 provides that the Government may file suit, while also recognizing the right of the injured employee to also file suit. However, the statute sets forth the process to be applied in each instance. *See 24 V.I.C. 263*. In that regard, should the Government sue, it is subrogated to the injured employee but, nonetheless, is required to turn over to the employee any sums recovered in excess of the Government's expenditures. *Id.* (second paragraph). On the other hand, where an injured employee files suit, the statute provides that the employee cannot enter settlement, nor can such settlement be approved or judgment entered, without the government first recouping ALL MONIES expended. *Id.* (paragraphs 3 and 4). That provision also requires that the Government either be joined in the suit or agree to any compromise. *Id.* The statute thus ensures that, while the Government cannot obtain a greater benefit than its actual expenses in the event it sues and must turn over any excess to the injured employee, an injured employee also cannot obtain the benefits from a separate suit without first reimbursing the Government fully. *Id.* The Legislature thus made it abundantly clear that the Government must be made whole, in any event – whether or not it exercises its authority to file suit – if an injured employee sues and obtains settlement. The Court acknowledged only the second paragraph of the statute, applicable to Government suits and effectively punished the Government for not exercising its discretionary authority in that regard, while completely ignoring the statutory provisions directly applicable to suits brought by an injured employee, as applicable in this case. This violates the Supreme Court's direction in the authorities earlier cited that, in construing a statute, the Court must apply the plain and

unambiguous language, and may not view terms or sections in isolation but, rather, must apply the entire statutory scheme to fulfil the Legislature's objectives. It appeared that both the Plaintiff and the Court put great emphasis on the needs of Plaintiff's counsel to satisfy a private contractual agreement with the client, while completely disregarding the Government's loss of more than \$61,000 and the concomitant risk to the fund and the needs of other claimants, as the agency testified. Order, at 4-5. Indeed, the Government was characterized in this case as seeking a "handout" -- as a mere welfare case -- for seeking to recoup its funds as required by law. See e.g., Pl's Request for Hearing at 5-6.

- 3) **The trial court erred where it ostensibly construed the agency's discretionary authority to comprise claims with a third party, as provided in the statute, as a bar to the agency's exercise of discretion not to enter such compromises and further that any past compromises bar the agency from later declining to do so.**

Finally, the Court appeared to convert the Government's discretionary authority to compromise claims, provided in the penultimate paragraph of the statute, into one that is mandatory or compelled, ordering the agency to enter into a compromise over its objections. In so doing, the Court opined that the agency had exercised its authority to compromise claims in the past and suggested that it could not thereafter decline to exercise its authority in that regard. See Order at 5 and n. 3. However, nothing in the statute compels that result; indeed, the statute is to the contrary.

After setting forth its clear direction that the Fund recoup all monies expended from any settlement between an injured employee and a third party, the Legislature subsequently provided in the final paragraph of the statute that, "The Administrator may compromise as to his rights against a third party responsible for the damages. No such extrajudicial compromise, however, shall affect the rights of the workman or employee, or of his beneficiaries, without their express consent and approval." 24 V.I.C. § 263 (emphasis added).

This provision clearly contemplates that the agency may enter into extrajudicial compromises without affecting the right of the injured employee to separately file suit, as Plaintiff has done in this case. However, nothing in this grant of authority diminishes or alters the mandatory language of the statute that the Government be first fully reimbursed from any settlement obtained in a suit brought by an injured employee. Nor was there any authority presented for the suggestion that the agency is required to compromise its rights in every instance. *See e.g.,* Re Expungement, 66 V.I. at 306. Certainly, it cannot be gainsaid that if the agency has, in the past, agreed to forego the repayment of funds from settlements, in violation of the Legislature’s mandate set forth in section 263, that the Government would forever be compelled to continue to violate the law. That would be tantamount to permitting an agency to amend the law, by fiat, simply by disregarding it, thereby elevating agency practice over statutory mandates. *See e.g., Thompson*, 2021 V.I. LEXIS 9, at *15-16 (“An Administrative practice cannot supersede the language of a statute.”) (quoting *Free Speech Coal., Inc. v. AG of the United States*, 677 F.3d 519, 539 (3d Cir. 2012)).

4) TRIAL COURT ERRED IN DIRECTING VIDOL TO EXECUTE A GENERAL RELEASE OF ITS RIGHTS AND ENTER COMPROMISE, IN VIOLATION OF THE SEPARATION OF POWERS DOCTRINE AND AMOUNTING TO A JUDICIALLY-IMPOSED SETTLEMENT AND RELEASE.

In its November 14, 2022 order, the Court held the agency is vested with “discretionary authority” to enter into compromise agreements. Order, at 5. Nonetheless, the Court expressly ordered the agency to exercise that discretionary authority, by compelling execution of a general release of the Government’s rights. *Id.* at 5. That was an inappropriate judicial intrusion into the discretionary authority of an executive branch agency and effected a forced settlement and compromise. The Court’s order in that regard violates the separation of powers doctrine and, further, constituted a forced settlement.

The Separation of Powers doctrine, applicable to the Virgin Islands through the Revised Organic Act of 1954, prohibits one branch of government from exercising powers reserved to another coordinate branch of government. *Bryan v. Fawkes*, 61 V.I. 201, 214 (V.I. 2014) (*Kendall v. Russell*, 572 F.3d 126, 135 (3d Cir. 2009) (quoting *Smith v. Magras*, 124 F.3d 457, 465, 37 V.I. 464 (3d Cir. 1997)) (citations omitted)). Therefore, “unless otherwise expressly provided or incidental to the powers conferred, the Legislature cannot exercise either executive or judicial power; the executive cannot exercise either legislative or judicial power; [and] the judiciary cannot exercise either executive or legislative power.” *Id.* at 212 (quoting *Springer v. Gov’t of the Philippine Islands*, 277 U.S. 189, 201-02, 48 S. Ct. 480, 72 L. Ed. 845 (1928)). Accordingly, while it is in this court’s power to interpret the law, it must refrain from usurping the discretionary authority of the executive branch to implement policy, by directing the agency to exercise its discretion in a particular way by judicial order. *See, e.g., State ex rel. Missouri Growth Assn v. State Tax Commission*, 998 S.W.2d 786, 788 (Mo. Banc 1999) (precluding judicial action, through mandamus remedy, to “control the judgment or discretion of a public official.”); *compare Hunt v. Government of the V.I.*, 382 F.2d 38, 45 (1967) (distinguishing “ministerial act” to which an order may apply, as “one that is so plainly defined as to be free from doubt and is the equivalent to a positive demand.”); *Donastorg v. Virgin Islands*, 45 V.I. 259, 277, 2003 V.I. LEXIS 8, *34-35, 2003 WL 21653354 (concluding that the Court may only compel the ministerial action itself, but could not direct the exercise of discretion in a particular way).

Here, the Court first usurped the lawmaking authority of the legislative branch, by completely disregarding the statutory mandates and replacing its judgment for that of the legislature, thus intruding into the role of the Legislative Branch.

Additionally, the Court encroached into the role of the executive branch, by ordering the executive agency to execute the General Release offered by the Plaintiff and, thus, settle its statutory claims and rights, thus usurping and directing matters left to the discretion of that branch of government, with its own judgments. The Court did so despite expressly construing Section 263 as providing the executive agency with the “discretionary authority” to compromise claims under that statute. In doing so, the Court not only violated the Separation of Powers doctrine, but also compelled the Government to enter into a forced settlement of its statutory rights and claims and improperly injected itself into – and, indeed, directed -- a party’s settlement determination. That, too, constituted error, as it is the role of litigants, not courts, to decide whether or not they “choose” to settle their claims, nor is it the role of courts to force a settlement onto a party. *See, e.g., In re Rum Fungus Claims*, 71 V.I. 380, 385 (Super. Ct. 2019).

5) THE TRIAL COURT ERRED IN ITS DETERMINATION THAT THE GOVERNMENT’S FAILURE TO FILE A CIVIL SUIT AGAINST THE THIRD-PARTY TORTFEASOR WITHIN THE TWO-YEAR STATUTE OF LIMITATIONS BARRED THE GOVERNMENT FROM INTERVENING AS A MATTER OF RIGHT, PURSUANT TO V.I.R. CIV. P. 24(a), TO PROTECT ITS RIGHTS PURSUANT TO 24 V.I.C. § 263, AFTER THE PARTIES FILED A NOTICE OF SETTLEMENT AND MOVED TO PAY SUCH FUNDS INTO THE COURT’S REGISTRY FOR DISTRIBUTION.

After the Plaintiff, on August 3, 2022, notified the Court of a mediated settlement and moved to “Interplead the Settlement Funds”, the Government on August 5, 2022 filed a Motion to Intervene as a Matter of right and by permission to protect its rights under 24 VIC 263. *See* Mot. to Intervene. On August 4, 2022, the Court granted the Plaintiff’s motion, ordering that the settlement proceeds be deposited with the Court. In that order, the Court also invited interested parties to file any notice of claims as to the funds by a date certain; that order was served on the Workers Compensation Division. Order entered Aug. 4, 2022. In response to that Order, the

Government then filed a “Notice of Claim of Right to the Funds” on August 5, 2022 and, on even date, also filed a Motion to Intervene.

The Court held a hearing, at which it was determined that the Plaintiff had discussions with the agency sometime in July 2022 and wrote a letter to the agency in September 2022, regarding the action and impending settlement; additionally, the Plaintiff wrote to the agency on February 2, 2022 requesting a final Workers’ Compensation lien. *See* Order entered Nov. 14, 2022, at 3-4. Subsequently, the Government took steps to preserve its rights by filing a Motion to Intervene and Notice of Claim on August 5, 2022.

Pursuant to 24 V.I. R. & Regs. § 251-7, an injured employee who files an action against a third party, relating to his compensated injuries, “shall notify the Agency within ten (10) working days of the date of filing of the action by delivering to the Director a copy of the complaint in the action,” to permit the agency to take action pursuant to 24 V.I.C. 263. *See* 24 V.I. R. & Regs. § 251-7(“Third Party Liability”). The regulation further provides claimants notice that any settlement obtained in such suit must be paid to reimburse the Fund, as required by law and shall not be “unreasonably delayed.” *Id.* Established law thus put both claimants and counsel on notice in carrying out the purposes of Section 263.

As the Court acknowledged, there was no evidence on the record that Plaintiff previously advised the Government of the third-party tortfeasor or that he had filed a lawsuit, prior to the dates noted in the order, as earlier set forth. *Id.* Despite the above facts establishing the Government moved to intervene to preserve its rights to the funds almost immediately after learning of the settlement and just months after Plaintiff requested a WC lien, the Court found the Motion to Intervene untimely based on the Government’s failure to act from the time of injury and the inception of the lawsuit. Order at 3. The Court looked backward, to the date of Plaintiff’s injury

on July 14, 2020, and effectively concluded that the Government's payment of Workers Compensation benefits to Plaintiff following that injury in determining that the Motion to Intervene was untimely. Order at 3, 4. Additionally, the Court held that the Government's failure to institute its own lawsuit within two years of Plaintiff's injury rendered the Intervention Motion untimely. *Id.* In so holding, the Court applied the statute of limitations for the Government to institute a lawsuit under the second paragraph of this case – a provision that is inapplicable where, as here, the injured employee has filed suit and the Government sought to intervene to protect its rights to funds as the issue arose. *Id.*; *see also* 24 V.I.C. 263; 24 V.I. R. & Regs. § 251-7. That was error.

Here, the parties failed to adhere to the statutory requirement to name the Government as a party in order to provide actual notice of the pending action and an opportunity to safeguard its interests. Additionally, the parties failed to present to the Government a settlement agreement and compromise that includes an acknowledgment that the Government is entitled to a refund of all sums paid, despite the lien indicating the government expended more than \$61,000 associated with the within claims. *See* Exhs. A, B (affidavit; lien). A proposed General Release was sent to the Government only on or about September 1, 2022 – after the Government moved to intervene and filed a notice of claim in this matter.

The Government moved for intervention, pursuant to Rule 24(a) (as of right) and 24(b) (permissive). As to Rule 24(a), the rule requires that “the court must permit anyone to intervene” who has an unconditional right to do so under an applicable statute or who “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.” *V.I. R. CIV. P. Rule 24(a)*;

See *Underwood v. Streibich*, No. ST-95-CV-459, 2019 V.I. LEXIS 15, at *2-3 (Super. Ct. Feb. 15, 2019). The Government met that standard, having established that it had a claim of interest in the settlement funds to be protected, and which could not be adequately protected by the existing parties. Having made the necessary showing, the Court was required to permit such intervention. For permissive intervention under Rule 24(b), the Court may permit intervention by the Government, on timely motion, if the request is based on “any regulation , order, requirement, or agreement issued or made under a statute or executive order.” V.I. R. Civ. P. 24; *see also* Govt’s Mot. to Intervene. The Government established that it had filed the motion to intervene timely, after learning of the impending settlement and proposed distribution of funds, and of the parties’ apparent intent to disregard the requirement, of Section 263 and 24 V.I.R.R. 251-7, that the funds be appropriately submitted for repayment into the Fund. Moreover, there was no delay or prejudice to the parties.

The Court failed to address or apply the Government’s statutory interest provided in Section 263, and the requirements of Rule 24(a). Additionally, the court erroneously looked backward to the time of injury, despite the evidence of record and its finding indicating the Plaintiff’s communication with the agency regarding the potential claims and settlement only since February 2022, in determining the Government’s motion was untimely (presumably under either Rule 24(a) or 24(b)). Order dated Nov. 14, 2022, at 3-4. In view of the foregoing, the Government has a strong likelihood of prevailing on the merits, on appeal.

2. REMAINING PRONGS ALL MILITATE IN FAVOR OF THE GOVERNMENT

There is a great interest in maintaining the status quo pending a determination on appeal. If the Court’s order is not stayed, the funds will likely be distributed, and the Government will lose its ability to recoup those funds. Additionally, absent a stay, the Government will be forced to

enter into an involuntary contract that binds the people of the Territory, by judicial compulsion. Conversely, a stay pending appeal will not substantially injure Plaintiff. Indeed, Plaintiff stands to recover nothing at all in his settlement with the third-party. Rather, the only beneficiary is Plaintiff's counsel, who is advocating for payment of her attorneys fees and costs associated with her representation of the Plaintiff and seeking to avoid the clear requirements of 24 V.I.C. § 263 and 24 V.I.R.R. § 251-7. If the Government does not prevail on appeal -- which is unlikely in light of governing law -- distribution of the funds could then be completed. However, maintaining the disputed funds in the Court's Registry until a determination on appeal will not substantially injure the parties. Finally, a stay is in the public's interest. While the funds in this case may seem insubstantial, as the Commissioner testified and the Court recognized, it is of paramount importance that the Insurance Fund be replenished to ensure that the other injured employees in this community may obtain a benefit when they most need it. To do otherwise, and to set a precedent that sanctions such violations of the statute, will visit grave harm to the public's interest and put other claimants at risk. Indeed, that is precisely what the Legislature sought to avoid in mandating recoupment in 24 V.I.C. § 263.

CONCLUSION

For the foregoing reasons, a Stay of Judgment is warranted. The Government accordingly requests that this Court stays its judgment entered on November 14, 2022, pending an appeal in this matter.

Respectfully submitted,

DENISE N. GEORGE, ESQ.
ATTORNEY GENERAL

By: /s/ Venetia Velázquez
Venetia Harvey Velázquez, Esq.
Bar #: 786

Dated: December 2, 2022

Assistant Attorney General
Department of Justice
213 Estate La Reine, RR1 Box 6151
Kingshill, USVI 00850
Tel: (340) 773-0295
Email: venetia.velazquez@doj.vi.gov

This document complies with the page or word limitation set forth in Rule 6-1(e).

/s/ Venetia H. Velazquez

CERTIFICATE OF SERVICE

I hereby certify that on this the 2nd day of December, 2022, I have caused an exact copy of the foregoing Motion for Stay of Judgment to be served electronically through the C-Track system upon the following counsel of record.

Julie German Evert, Esq.
Law Office of Julie German Evert
5034 Norre Gade, Suite 6
St. Thomas, VI 00802
Email: lawofficesofjulieevert@gmail.com

James L. Hymes, III, Esq.
Law Office of James L. Hymes, III, PC
P. O. Box 990
St. Thomas, VI 00804-0990
Email: jim@hymeslawvi.com;

/s/ Ivelisse Torres
Legal Assistant

FILED

December 06, 2022 05:55 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,

Plaintiff,

v.

MARK LONSKI AND PROPERTY KING INC.,

Defendants.

CIVIL NO.: ST-21-CV-00079

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

**PLAINTIFF'S MOTION TO JOIN DEFENDANT'S OPPOSITION TO
MOTION FOR STAY**

COMES NOW, Plaintiff ELVIS GEORGE, by and through his undersigned counsel, LAW OFFICE OF JULIE GERMAN EVERT, (Julie German Evert, Esquire, of counsel) and hereby joins Defendant's Opposition to Motion for Stay.

Plaintiff joins as the reasons set forth in the Defendant's Opposition to Motion for Stay are on point and true. This Court should find that the Government has waived its right to recover the money it paid to Mr. George for lost wages, and to others for medical services provided to Mr. George. Plaintiff should be awarded attorney's fees and costs.

WHEREFORE, the Motion to Stay should be denied for the foregoing reasons.

Dated: December 6, 2022.

Respectfully Submitted,
Law Office of Julie German Evert, PC

/s/ Julie German Evert, Esq. /s/

Julie German Evert, Esquire

5043 Norre Gade, Ste. 6

St. Thomas, VI 00802

(340) 774-2830

lawofficeofjulieevert@gmail.com

julieevert555@gmail.com

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT this document complies with the page or word provisions of V.I. Civ. P.R. 6-1(e) and a true and exact copy of the foregoing document was served on the following, this 6th day of December 2022:

James L. Hymes, III, Esq.

Attorney for Defendant

P.O. Box 990

St. Thomas, VI 00804-0990

Email: jim@hymeslawvi.com

rauna@hymeslawvi.com

Venetia Harvey Velazquez, Esq.

Assistant Attorney General Virgin Islands

Department of Justice

213 Estate La Reine, RR1 Box 6151

Kingshill, St. Croix, USVI 00850

Email: venetia.velazquez@doj.vi.gov

Via: Mail ☐ // Facsimile ☐ // Hand Delivery ☐ // Email ☒ // C-Track E-File ☒ //

/s/ Sharaya Holtrop /s/

Sharaya Holtrop

Paralegal

FILED

December 06, 2022 03:58 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,)	
	)	CIVIL NO. ST-2021-CV-00079
Plaintiff,)	
	)	ACTION FOR DAMAGES
vs.)	
	)	JURY TRIAL DEMANDED
MARK LONSKI and PROPERTY KING, INC.,)	
)	
Defendants.)	

OPPOSITION TO MOTION TO STAY

COME NOW Mark Lonski and Propertyking Inc., by their undersigned attorney, James L. Hymes, III, and respectfully state to the Court that the motion of the Government to stay the Order of this Court entered on November 14, 2022, pending an appeal to the Virgin Islands Supreme Court, must be denied for the reason that the Government has failed to timely subrogate its rights to those of the plaintiff within two (2) years of the date of plaintiff's injury.

The plaintiff was injured on July 14, 2020. The Government of the Virgin Islands had two years from that date to subrogate itself to the interests of the plaintiff to recover from a third-party, sums paid to Mr. George either by way of lost wages, or for medical expenses due for services rendered to him as a result of his injury. The Government had to know the dates on which payments for lost wages and medical services were paid, since it made those payments. Those payments were made after the July 14,

2020 date on which the plaintiff was injured, and before February 10, 2022 when the Government advised plaintiff's counsel of the total amount of the lien indicating that payments had stopped being made by that time.

The fact that the plaintiff filed an action against third parties was no secret. Anyone could search the public records of the Superior Court of the Virgin Islands to determine if Mr. George, a person for whom the Government had made payments for lost wages and the receipt of medical services, had filed a civil action for damages.

The Virgin Islands Code gives the Department of Labor two (2) years from the date of an injury within which to seek to recover payments made by its Division of Workers' Compensation of the Department of Labor. In this case no efforts were made to do so within two years of the date of the injury to Mr. George. Therefore, this Court should find that the Government has waived its right to recover the money it paid to Mr. George for lost wages, and to others for medical services provided to Mr. George.

Accordingly, the Motion to Stay should be denied the foregoing reasons.

Respectfully Submitted,

DATED: December 6, 2022.

LAW OFFICES OF JAMES L. HYMES, III, P.C.
Attorney for Defendants – Mark Lonski
and Propertyking, Inc.

By: */s/ James L. Hymes, III*

JAMES L. HYMES, III

VI Bar No. 264

P. O. Box 990

St. Thomas, VI 00804-0990

Telephone: (340) 776-3479

E-Mail: jim@hymeslawvi.com;

rauna@hymeslawvi.com

CERTIFICATE OF SERVICE

I hereby certify that on this the 6th day of December, 2022, as an approved C-Track filer on behalf of James L. Hymes, III, I have caused an exact copy of the foregoing ***“Opposition to Motion to Stay”*** to be served electronically through the C-Track system upon the following counsel of record.

JULIE GERMAN EVERT, ESQ.

LAW OFFICES OF JULIE GERMAN EVERT
5034 NORRE GADE STE. 6
ST. THOMAS, VI 00802
lawofficesofjulieevert@gmail.com
julieevert555@gmail.com
Attorney for Plaintiff

NESHA R. CHRISTIAN-HENDRICKSON, ESQ.

Assistant Commissioner/Legal Counsel
USVI Department of Labor
Telephone: (340) 773-1994 ext. 2194
E-Mail: Nesha.Christian-Hendrickson@dol.vi.go

/s/ Rauna Stevenson-Otto

c:\george\2022-12-06...Opposition to Motion to Stay

FILED

December 12, 2022 04:54 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,)	
)	
Plaintiff,	)	CIVIL NO. ST-21-CV-00079
)	
v.	)	ACTION FOR DAMAGES
)	
MARK LONSKI and)	
PROPERTY KING, Inc.,	)	JURY TRIAL DEMANDED
)	
Defendants.)	
)	

**REPLY TO THE PARTIES' OPPOSITION TO GOVERNMENT'S MOTION
FOR STAY PENDING APPEAL.**

COMES NOW the **GOVERNMENT OF THE VIRGIN ISLANDS** (“Government” or “Government/VIDOL”), by and through undersigned counsel, and files this Reply to the Defendants’ Opposition to the Government’s Motion for Stay of Judgment Pending and the Plaintiff’s joinder thereto. The sole basis cited by the parties opposition to the motion for stay is an assertion that the Government’s failure to file an independent suit within the statute of limitations somehow now precludes the Government from recovering monies expended by the fund, on Plaintiff’s behalf, under applicable law. That argument has no basis in law, which likely accounts for the absence of any citation to authority. Nor do the parties offer any argument relevant to the imposition, or denial of, a stay under prevailing standards.

Government’s Right to Recovery Is Not Limited or Barred By Its Failure to File Suit.

As previously set forth in the Motion for Stay, nothing in the applicable law limits or bars the Government’s recovery of funds expended for the plaintiff, based on whether or not it filed suit. Like the Court, the parties continue to erroneously apply the statutory procedures relevant to cases in which the Government initiates a civil action to this case, while outrightly ignoring the

express provisions set forth by the Legislature to be applied where, as here, an injured employee files suit. That analysis has been fully set forth in the Government's opening brief and need not be repeated here. Rather, one need only look to the plain and unambiguous language of 24 V.I.C. § 263 applicable to this suit, which permits a suit brought solely by the employee, without naming the Government, only on the condition the Plaintiff first "acknowledges that all sums due the Government Insurance Fund are secured by any recovery." *Id.* The plain language of the statute further provides that no compromise between an employee and a third person shall be valid, and "[n]o judgment shall be entered in actions of this nature and no compromise whatsoever as to the rights of parties to said actions shall be approved, without making express reserve of the rights of the Government Insurance Fund to reimbursement of all expenses incurred." *Id.* Absolutely nothing in the statute bars such recovery unless the Government itself filed suit.

The parties' argument that the Government's ability to recover is barred unless the Government also filed suit within two years is absurd. Following that argument, an employee would be able to readily circumvent the Legislature's will, simply by filing a lawsuit, without naming the Government as a party, right before the statute of limitations expires or delaying the negotiation of settlement until expiration of the limitations period, thereby foreclosing any recovery as the parties argue. Such arguments are wholly inapposite to the plain language of the statute and the objectives to be served thereby.

Parties' Argument that the Government Had a Duty to Search the Court's Records to Determine if the Injured Employee Filed Suit, in Order to Preserve its Rights, is Erroneous.

Like the Court, the parties appear to argue that the Government should have known there was a third party tortfeasor and that the employee had sued such third party, simply by virtue of the injury and payment of Workers' Compensation benefits and have, somehow, waived its right

to recover. The parties now additionally argue the Government should have known of the employee's lawsuit against the third party because, "an action against third parties was no secret. Anyone could search the public records of the Superior Court of the Virgin Islands to determine if Mr. George, a person for whom the Government had made payments for lost wages and the receipt of medical services, had filed a civil action for damages." *See* Opposition to Stay, at 2 and Plaintiff's Joinder.

This argument appears to be an acknowledgment that the Plaintiff failed to notify the Government that there was a third-party tortfeasor and of his lawsuit, and ignores the employee's duty, as established in applicable rules and regulations. *See* 24 V.I. R. & Regs. § 251-7("Third Party Liability"). Pursuant to V.I.R.R. 251-7, the employee was required notify the agency within ten days of the filing of an action, by delivery a copy of the complaint to the WC Director. It must additionally be restated that the parties' argument also ignores the mandates of Section 263, which permit a lawsuit by an injured employee to move forward without the Government as a party, but conditions the court's jurisdiction to hear such actions on the employee's express acknowledgment that the Government would be first entitled to reimbursement from any recovery. 24 VIC § 263.

This lawsuit was filed in 2021. As the Court's order acknowledged, the evidence of record was that the Plaintiff communicated with the agency regarding the lawsuit on February 2, 2022, when it requested a lien. That lien was provided on February 10, 2022. Plaintiff then had discussions with the agency in July 2022 and subsequently filed a "Motion to Interplead Settlement Funds" in August 2022. The Plaintiff then submitted a Release to the agency and notice of the settlement on or about September 1, 2022 – almost one month after the Government filed its Motion to Intervene and Notice of Claim to those funds (on August 5, 2022). Surely, the parties are not suggesting that the Government's right to recoupment is premised on the Government

combing the courts' records to determine whether all employees who received workers' compensation benefits have filed suit against a third party, notwithstanding the regulation to the contrary and the unconditional statutory duties set forth in 24 VIC § 263.

Indeed, Plaintiff has previously conceded before the Court that the Government is entitled to reimbursement under section 263 as a "super priority lien" holder. *See* Pl's Request for Hearing Re Disbursement, at Exh. C (letter dated September 1, 2022). The present arguments are, therefore, not only disingenuous, but simply wrong.

The parties have not analyzed any of the prongs required for stay, in their objections thereto, nor have the parties refuted the Government's additional legal and constitutional arguments made in its Motion for Stay. The Government has filed a Notice of Appeal with the Supreme Court, SCT-Civ-2022-0110, and maintaining the status quo is in the public's interest. A stay is warranted, for all of the reasons set forth in the Government's previously filed Motion for Stay.

CONCLUSION

For the reasons stated herein, and in the Government's opening brief, a Stay of Judgment Pending Appeal is warranted. The Government accordingly requests that this Court stay its judgment entered on November 14, 2022, pending an appeal which has been filed in this matter.

Respectfully submitted,

DENISE N. GEORGE, ESQ.
ATTORNEY GENERAL

By: /s/ Venetia Velázquez
Venetia Harvey Velázquez, Esq.
Bar #: 786
Assistant Attorney General
Department of Justice
213 Estate La Reine, RR1 Box 6151

Dated: December 12, 2022

Kingshill, USVI 00850
Tel: (340) 773-0295
Email: venetia.velazquez@doj.vi.gov

This document complies with the page or word limitation set forth in Rule 6-1(e).

/s/ Venetia H. Velázquez

CERTIFICATE OF SERVICE

I hereby certify that on this the 12th day of December, 2022, I have caused an exact copy of the foregoing Motion for Stay of Judgment to be served electronically through the C-Track system upon the following counsel of record.

Julie German Evert, Esq.
Law Office of Julie German Evert
5034 Norre Gade, Suite 6
St. Thomas, VI 00802
Email: lawofficesofjulieevert@gmail.com

James L. Hymes, III, Esq.
Law Office of James L. Hymes, III, PC
P. O. Box 990
St. Thomas, VI 00804-0990
Email: jim@hymeslawvi.com;

/s/ Venetia H. Velázquez

FILED

January 05, 2023 01:17 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,

Plaintiff,

v.

**MARK LONSKI and
PROPERTY KING, INC.,**

Defendants.

CASE NO. ST-2021-CV-00079

ORDER

THIS MATTER is before the Court on the following:

1. Government's Motion for Stay of Judgment Pending Appeal Pursuant to V.I. R. App. P. 8 filed on December 2, 2022;
2. Opposition to Motion to Stay filed by Defendants on December 6, 2022;
3. Plaintiff's Motion to Join Defendant's Opposition to Motion for Stay filed on December 6, 2022; and
4. Reply to the Parties' Opposition to Government's Motion for Stay Pending Appeal filed on December 12, 2022.

The Government of the Virgin Islands, on behalf of the Department of Labor, filed a Notice of Appeal on December 6, 2022. The Government now seeks a stay of the Order signed on November 14, 2022, requiring (1) the Department of Labor to execute a General Release for the \$17,500 in the Court's registry, (2) that \$6,037.33 of the funds be distributed to Plaintiff's attorney, and (3) that \$10,462.67 of the funds be distributed to the Department of Labor Workers' Compensation Administration ("WCA"). Plaintiff and Defendants argue that the Department of Labor is two years too late in seeking to recover the payments made to Plaintiff

through the WCA. In abundance of caution, the Court will grant the stay while this matter is under appeal to prevent injury to either party. Accordingly, it is hereby

ORDERED that the Government's Motion for Stay of Judgment Pending Appeal

Pursuant to V.I. R. App. P. 8 is **GRANTED**; and it is further

ORDERED that the parties shall move the Court to lift the stay at the conclusion of the appeal; and it is further

ORDERED that a copy of this Order be directed to counsel of record.

DATED: January 5, 2023



HON. SIGRID M. TEJO

Judge of the Superior Court of the Virgin Islands

ATTEST:

TAMARA CHARLES

Clerk of the Court


By:

Latoya Camacho

Court Clerk Supervisor

1 / 9 / 2023

FILED

March 08, 2023 02:18 PM
SCT-Civ-2022-0110
VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

**SUPERIOR COURT OF THE VIRGIN ISLANDS
OFFICE OF THE CLERK
DIVISION OF ST. THOMAS / ST. JOHN**

Date: March 8, 2023

Veronica Handy, Esq.
Clerk of the Court
Supreme Court of the Virgin Islands
P.O. Box 590
St. Thomas, USVI 00801

CASE CAPTION: Elvis George v. Mark Lonski and Property King Inc.,

SUPER. CT. CASE NO. ST-2021-CV-00079 SCT CASE NO. SCT-CIV-2022.0110

Dear Attorney Handy:

Pursuant to the Supreme Court's Scheduling Order entered on **January 31, 2023** in the above-noted case, which requires this office to file the e-Record on or before **February 14, 2022**, please find enclosed an Index of documents required and the documents referenced therein.

This letter further serves as the Certificate of Completion.

Sincerely,

TAMARA CHARLES
CLERK OF THE COURT


By: Paula Claxton
Court Clerk III

Received by: _____
Dated: _____

March 8, 2023

INDEX

CASE CAPTION: Elvis George

SUPER. CT. CASE NO. ST-2021-CV-00079 SCT CASE NO. SCT-CIV-2021-00110

DOCUMENT (S)	PAGES NOS.
CERTIFIED DOCKET SHEET:	07
ORDER DATED: <u>11-14-2022</u>	07
TRANSCRIPTS: November 9, 2022	102
COVER LETTER:	01
TOTAL PAGES:	117

Sincerely,

TAMARA CHARLES
CLERK OF THE COURT

By: Paula Clayton
PAULA CLAXTON
COURT CLERK III

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

ELVIS GEORGE,	)	ST-2021-CV-00079
)	
Plaintiff,)	
)	
v.)	
)	
MARK LONSKI and PROPERTY)	
KING,)	
)	
Defendants.)	

Wednesday, November 9, 2022

The above-entitled matter came on for a HEARING ON ALL
PENDING MOTIONS before the Honorable SIGRID M. TEJO.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN
OFFICIAL COURT REPORTER, ENGAGED BY THE COURT,
WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS
HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND
PROCEEDINGS OF THE CASE AS RECORDED.

SANDRA HALL, RMR (Ret.)
Official Court Reporter II
(340) 778-9750 Ext. 6609

A P P E A R A N C E S:

For the Plaintiff:

LAW OFFICE OF JULIE GERMAN EVERT
5034 Norre Gade, Suite 6
St. Thomas, VI 00802
Phone: (340) 774-2830
Fax: (340) 774-2803
BY: JULIE G. EVERT, ESQ.
lawofficesofjulieevert@gmail.com

For the Defendants:

LAW OFFICE OF JAMES L. HYMES, III, PC
P. O. Box 990
St. Thomas, VI 00804-0990
Phone: (340) 776-3470
Fax: (340) 775-3300
BY: JAMES L. HYMES, ESQ.
jim@hymeslawvi.com;

For the Government:

DEPARTMENT OF JUSTICE
213 Estate La Reine, RR1 Box 6151
Kingshill, USVI 00850
Phone: (340) 773-0295
BY: VENETIA VELAZQUEZ, ASST. ATTORNEY GENERAL
venetia.velazquez@doj.vi.gov

TABLE OF CONTENTS

EXAMINATION

Witness Name	Page
<u>Commissioner Gary Molloy</u>	
By The Court.....	53
By Ms. Evert.....	67
By Ms. Velazquez.....	76
 <u>Rainia Thomas</u>	
By The Court.....	80
By Ms. Evert.....	87
By Ms. Velazquez.....	88
 <u>Attorney Nesha Christian-Hendrickson</u>	
By The Court.....	91
By Ms. Evert.....	97
By Ms. Velazquez.....	98

P R O C E E D I N G S

(Commencing at 11:04 a.m.)

THE CLERK: Number 3, Elvis George v.
Mark Lonski, et al., Case No. ST-2021-CV-79.

MS. EVERT: Good morning, Your Honor.
Julie Evert on behalf of the plaintiff.

THE COURT: Good morning, Attorney
Evert.

MR. HYMES: Good morning, Your Honor.
James Hymes on behalf of the defendants.

MS. VELAZQUEZ: Good morning, Your
Honor. Venetia Velazquez, assistant attorney
general on behalf of the Government of the
Virgin Islands.

THE COURT: Good morning, Attorney
Hymes; good morning, Attorney Velazquez.

This matter is set at the request of
plaintiff for ruling on outstanding motions.
Are the parties ready to proceed?

MS. VELAZQUEZ: Yes, Your Honor.

MS. EVERT: Your Honor, we need a
hearing date for this, but yes, Your Honor.

THE COURT: This is the hearing date.
You were advised when you called chambers.

1 MS. EVERT: I called chambers and they
2 weren't clear. We need the commissioner of
3 Labor to testify. Is he available?

4 THE COURT: You asked for a hearing
5 date on this and the Court set one, so this is
6 the hearing date.

7 MS. EVERT: Okay, Your Honor.

8 MS. VELAZQUEZ: And, Your Honor, if I
9 may, I neglected to also indicate that I have
10 with me today Ms. Kesi Petersen, the assistant
11 director of the Division of Workers'
12 Compensation.

13 THE COURT: She needs to turn on her
14 camera then, and I need to put her back in the
15 witness room until this matter is -- we have
16 addressed any pending preliminary matters.

17 Are any other witnesses that are
18 expected to testify that have been let out of
19 the waiting room?

20 MS. EVERT: Your Honor, I was not clear
21 when I talked to Ms. La Plaz. If I can call
22 my -- if I can make a phone call I think
23 Mr. George can appear. I'm not sure if
24 Attorney Rohn is available, but I will see if I
25 can get her.

1 THE COURT: What does Attorney Rohn
2 have to do with this matter? She doesn't have
3 an appearance in this matter.

4 MS. EVERT: She filed an affirmation,
5 Your Honor, as did Attorney Holt.

6 THE COURT: Again, you filed a motion
7 asking for a hearing; Court granted that. Why
8 aren't your witnesses here?

9 MS. EVERT: Your Honor, when I called
10 the court and spoke to Ms. La Plaz last week,
11 she was not sure and I said --

12 THE COURT: She came and asked me and
13 I told her it was a hearing on the motions that
14 were pending, and that was the message relayed.

15 MS. EVERT: Right.

16 THE COURT: So you --

17 MS. EVERT: And, Your Honor, the motion
18 that was pending was the request for a hearing.
19 That was --

20 THE COURT: Right. She asked if there
21 was a hearing and I said yes, there is a
22 hearing on all outstanding motions, all
23 outstanding motions, and have your witnesses.

24 MS. EVERT: Your Honor, I was not told
25 to have the witnesses. I was told there was a

1 hearing on all outstanding motions; and the
2 motion is the --

3 THE COURT: Okay.

4 MS. EVERT: -- request for a hearing
5 date.

6 THE COURT: There is all outstanding
7 motions about whether or not the government is
8 supposed to be impleaded, whether or not the
9 court's supposed to release the money.

10 MS. EVERT: Okay. Okay, Your Honor.
11 We can proceed.

12 THE COURT: You said you needed to call
13 somebody so do you want five minutes to make
14 those phone calls?

15 MS. EVERT: Yes, Your Honor.

16 THE COURT: All right. Court will be
17 in recess for five minutes.

18 (Recess at 11:08 a.m.)

19 (This hearing resumed at 11:09 a.m., as follows:)

20 THE COURT: We're back on the record.
21 Attorney Evert.

22 MS. EVERT: Yes, Your Honor. Present.

23 THE COURT: Attorney Hymes, Attorney
24 Velazquez, are we ready to proceed?

25 MS. VELAZQUEZ: Yes, Your Honor.

1 MS. EVERT: Yes, Your Honor.

2 MR. HYMES: Yes, Your Honor.

3 THE COURT: Okay. Attorney Velazquez,
4 why should the Court allow you to implead?

5 MS. VELAZQUEZ: Well, Your Honor, the
6 government moved to intervene pursuant to V.I.
7 Rule of Civil Procedure 24(a) as of right,
8 although (b) does also apply.

9 Now, in the Third Circuit the Court can
10 look at several factors. One, we have timely
11 moved; and secondly, I think there is no
12 dispute in this case, the parties have not
13 disputed, in fact, that the Workers'
14 Compensation Division did pay out \$61,000 plus
15 on behalf of the plaintiff, Mr. Elvis George,
16 for his care.

17 Additionally, under 24 VIC, section
18 263, the government has a right as a matter of
19 law, and an interest is established, to recoup
20 those funds in -- the complete funds that have
21 been expended on behalf of Mr. Elvis George.

22 It's clear that the right of the
23 government to recoup those funds arises at the
24 time of a settlement or an attempt to
25 compromise the claims as evidenced by the plain

1 language of 24 VIC, section 293, which
2 indicates that at the time of compromise or
3 judgment the Government must first -- there
4 must first be an expressed reservation of the
5 rights of the government. So, that is clear.

6 It is also clear in this case that the
7 rights of the Government to these funds will
8 not be adequately represented by the existing
9 parties in the case as evidenced by the fact
10 that in all of the filings before the court the
11 parties are objecting to repaying the funds.
12 In fact, it appears that Mr. George believed
13 that he should obtain a windfall by benefiting
14 from the compensation through the workers' comp
15 program and then taken from the third party.

16 I think there is a plain statute on
17 this issue and all of the arguments of the
18 parties suggests that the Court should not
19 adhere to the statute and, in fact, are making
20 legislative arguments to the Court that are
21 more properly made to the Legislature.

22 THE COURT: Attorney Velazquez, why is
23 this the first case that the Department of
24 Labor is of interest in?

25 MS. VELAZQUEZ: Well, I think the

1 Department of Labor is interested in all of the
2 cases. And as a matter of law --

3 THE COURT: This is the first one that
4 the Department of Labor has moved to intervene
5 or to not sign a release.

6 MS. VELAZQUEZ: Well, I don't know that
7 it's the first case, but Your Honor could be
8 correct. But whether or not it's the first
9 case, the Department of Labor has a right as a
10 matter of law; and neither the agency nor the
11 parties have a right to compromise or to give
12 away the rights of the government as
13 established in the statute.

14 It is also my understanding that in
15 cases in which there is an automobile accident,
16 the norm has been for the Department to
17 interact with the insurer to settle those
18 claims and not necessarily with the individual
19 attorneys. So, while this may be the first
20 case that Your Honor is seeing, it may also be
21 an unusual event in that the insurer for the
22 third party tortfeasor is usually the
23 individual with which the Workers' Compensation
24 Division is dealing.

25 THE COURT: Attorney Velazquez, I take

1 a little bit of pause. In one hand you are
2 saying that past practice and procedures should
3 not be recognized, but now you're just
4 saying -- well, you just used the term "norm";
5 but this is the norm of how things are supposed
6 to be done. So which is it? Do you want me to
7 recognize past practice and procedures or the
8 norm, or the statute? I don't think it can be
9 both ways.

10 MS. VELAZQUEZ: No, no. Your Honor is
11 correct and I don't think that's what I was
12 saying. I was clarifying in response to the
13 Court's response -- or question why this may be
14 the first time you're seeing something, but I'm
15 not arguing at all for adhering to norms.

16 In fact, I don't believe the agency has
17 the authority to make a decision,
18 administratively or otherwise, to decide to
19 just not follow the statute. If the parties or
20 the agency would like a statutory amendment,
21 they need to go to the Legislature. So, that's
22 not at all what I'm arguing.

23 THE COURT: So, how is a party -- how
24 is a party supposed to know that past practice
25 and procedures that have been -- or the way

1 that things have been done for almost 20 years
2 is all of a sudden going to be set aside and
3 not recognized to their detriment?

4 MS. VELAZQUEZ: Your Honor, I don't
5 know that a past practice has been established
6 in this case. I know that in the pleadings --

7 THE COURT: Have you seen the
8 affirmations of Attorney Holt and
9 Attorney Rohn?

10 MS. VELAZQUEZ: I'm sorry?

11 THE COURT: There are affidavits from
12 Attorney Holt and Attorney Rohn; and I guess at
13 this juncture for disclosure because I don't
14 think any of these parties were aware, it was
15 disclosed in another matter back in donkey
16 years when I was a summer intern in between
17 school, I worked for Attorney Rohn and I
18 believe on at least one occasion she was my
19 late mother's attorney for a property issue.

20 MS. VELAZQUEZ: Yes, Your Honor, I
21 appreciate that. This is not the first time to
22 be sure that the government has raised this
23 issue. As the plaintiff --

24 THE COURT: I've looked in all of the
25 cases involving the Department of Labor or this

1 type of action and I have not seen a single
2 case in the record of C-Track, where the
3 Department of Labor has been a party.

4 MS. VELAZQUEZ: Yes, Your Honor, the
5 government has, in fact, challenged its ability
6 to compromise claims under section 263 in the
7 case cited by the plaintiff in the *Jennings*
8 matter in 1995. The government has also
9 challenged in the *Betran* decision that went to
10 the V.I. Supreme Court the ability -- the
11 authority to compromise. Now, in that case the
12 court ruled that 261 applied since it was an
13 uninsured employer and not 263, although
14 263 does require the government to recoup those
15 funds.

16 So, I don't think it would be accurate
17 to say that the government has never challenged
18 or raised section 263, whether or not it has
19 done so through intervention or through a
20 notice to the court; in fact, it has, and there
21 is case law indicating that the government has.
22 And I cited to the *Betran* decision in my reply
23 to the opposition I believe and the plaintiff
24 and the government has cited to the *Jennings*
25 decision. So, this is an issue that has been

1 percolating.

2 THE COURT: Anything further, Attorney
3 Velazquez?

4 MS. VELAZQUEZ: So, Your Honor, I
5 believe that the government has in its briefing
6 established the right to intervention.

7 And I just want to address several of
8 the points raised by the plaintiff and the
9 defendant in their briefing because all of the
10 arguments as I see it go to suggesting that the
11 statute is unfair. And while we may agree or
12 disagree on the issue of fairness and equity,
13 that is a question that needs to be presented
14 to the Legislature. The remedies the plaintiff
15 is seeking today needs to be presented to the
16 Legislature.

17 In addition, I want to add that to the
18 extent the agency may have in the past, and I
19 don't know that to be the case, but to the
20 extent the agency may in the past have
21 compromised those claims, the authority to
22 compromise those claims may very well be there.
23 However, I think if we look at the 2002,
24 amendments to section 263, and if we look at
25 the plain and unambiguous language of section

1 263, the Legislature clearly contemplated that
2 the government before any judgment shall be
3 entered and before any compromise shall be made
4 with a third party, that the government's
5 rights to recover all expenses incurred must be
6 expressly reserved.

7 And so I think that is the plain and
8 unambiguous language of the statute, and so far
9 I haven't seen any argument from the parties
10 that suggests that the Legislature's will
11 should be disregarded.

12 THE COURT: Attorney Evert.

13 MS. EVERT: Your Honor, this is decades
14 of policy and practice. And the fact that the
15 Department of Labor thinks they can pick up the
16 phone in a car accident case and get the case
17 settled by a phone call is not supported by
18 anything.

19 In fact, in this case there was -- the
20 policy was only \$10,000 and we were able
21 through a lot of negotiation to have the
22 defendant who did not have enough insurance to
23 put in more money. So, the actual net that the
24 Department of Labor will get is in excess of
25 \$10,000. In fact, it's \$10,462.67.

1 What we're fighting over, Your Honor,
2 is my time, my fees, my expenses. The
3 government never intervened. The government
4 knew about this claim because it was put
5 through Workers' Comp when Mr. George was
6 injured. At that time they could have done
7 something. It was not easy, Your Honor. There
8 was not a report where they could just pick up
9 the phone and call somebody. It took a very
10 long time to figure out who the proper
11 defendants were.

12 My time, I have a retainer agreement, I
13 have expenses. The government wants to stand
14 there now after 20 or 30 years and say, well,
15 now we're entitled to all the money, even
16 though we've done none of the work. Had they
17 intervened initially, they could have run with
18 the case and I would have stepped aside.

19 I don't work for free. I don't work
20 for Department of Labor. I work for my
21 clients. My client's not expecting a windfall.
22 My client is expecting what has always been
23 done with Labor until recently; and that is,
24 when there is a settlement that's not enough to
25 cover, the Department of Labor negotiates.

1 Your Honor, this is how insurance
2 companies work. When there is a claim, say,
3 with whatever the company is, say it's USAA,
4 and there is not enough money, USAA in a car
5 accident case or a claim, even a slip and fall
6 case, a claim where the insurance companies
7 paid out money does not say thank you, Attorney
8 Evert, now we're going to take all the money.
9 What they do is they negotiate. And they
10 always make sure that the plaintiff receives
11 something.

12 In this case we're not even asking that
13 the plaintiff receive something. He doesn't
14 get a windfall. We're asking that my fees get
15 paid and my costs get reimbursed. That's it.
16 The government to sit there and say now that
17 they've done this for the first time in 30
18 years is not really fair, Your Honor. I would
19 have stepped out. The policy of course is that
20 plaintiffs' lawyers are never going to take
21 cases where there is a \$10,000 policy, but
22 that's not my problem. The problem is that I'm
23 expected to be paid.

24 And I had a conversation in July and
25 the commissioner of Labor spoke with me

1 directly and the commissioner of Labor I'm
2 telling the Court as an officer of the court
3 assured me that my fees and my costs would be
4 reimbursed. And that's all that we're asking
5 for. And then the Department of Labor did a
6 complete about face.

7 So, nobody is asking for a windfall.
8 We're asking for my fees and we're asking for
9 my reimbursement of costs. There is unclean
10 hands here. The fact that the Court has looked
11 into cases to see if Labor's ever intervened,
12 the Court's not mistaken. Labor's never done
13 this. But this is not fair on a quantum meruit
14 basis and I would suggest, Your Honor, that the
15 commissioner of Labor has the power to bind the
16 Department of Labor and that I'm entitled to my
17 fees, and I'm entitled to my costs being
18 reimbursed.

19 And the fact that I will never take a
20 case like this again, nor will Attorney Rohn or
21 Attorney Holt or anybody else, is just going to
22 be money out of Department of Labor's pockets,
23 but that again isn't my issue. So, nobody's
24 looking for a windfall. I'm looking for what
25 I'm entitled to.

1 THE COURT: Thank you, Attorney Evert.
2 Attorney Velazquez, why is that not
3 reasonable --

4 MS. VELAZQUEZ: Well, Your Honor --

5 THE COURT: -- or permitted?

6 MS. VELAZQUEZ: -- the arguments of
7 Attorney Evert suggests that section 263 is a
8 condition -- is a conditional requirement
9 conditioned on the government actually entering
10 the case, filing suit and doing the work. In
11 fact, 263 is not conditional.

12 The statute is set up so that it
13 contemplates that the governor -- the
14 government could decide to file suit, or it may
15 not file suit; but if it does not file suit and
16 the employee does, that it is entitled to
17 recover those funds.

18 Additionally, no employee of this
19 government, and there are no facts before the
20 court and no testimony or evidence regarding a
21 contract, but certainly neither the agency nor
22 an employee of the court would have the right
23 to enter into a contract that violates the law,
24 which would be an illegal contract.

25 I'm not sure what the argument

1 regarding unclean hands would be based on
2 because the statute is clear. Attorney Evert
3 as an officer of this court must have reviewed
4 the statute prior to filing the case. And, in
5 fact, Attorney Evert acknowledges in her
6 filings before this court that the government,
7 in fact, has a super priority lien, and that
8 was filed in a letter to the Department of
9 Labor and it was attached to her motions as
10 Exhibit C.

11 So, there is an acknowledgment here
12 that section 263 unconditionally requires that
13 the government recoup all expenses. And this
14 is not a contract case before the court. I am
15 unaware of any separate or private agreements
16 in which --

17 THE COURT: Attorney Velazquez, how
18 does your letter, a letter dated after a
19 complaint was filed, but how is that letter a
20 lien?

21 MS. VELAZQUEZ: I'm sorry?

22 THE COURT: How does that letter -- I
23 believe you're referring to a letter of
24 February 10th, 2022. How does that constitute
25 a lien?

1 MS. VELAZQUEZ: The letter from the
2 Department of Labor, or the letter that I just
3 referenced from Attorney Evert?

4 THE COURT: The letter to Attorney
5 Evert.

6 MS. VELAZQUEZ: The Workers'
7 Compensation -- well, let me go backwards to
8 put everything to perspective because there was
9 some argument that the government should have
10 filed something sooner. The onus is on the
11 plaintiff by regulation, 24 V.I., our section
12 251-7 puts the requirement on the plaintiff to
13 notify the agency within ten days of filing a
14 lawsuit against a third party to a (inaudible)
15 that it has done so. This was not done in this
16 case.

17 The plaintiff did reach out to Workers'
18 Compensation regarding the potential for
19 settlement in this case and to request a lien,
20 which is the process the agency follows; and
21 the lien simply reflects that agencies
22 reporting of how much money has been expended
23 in the case; and it is titled: Final Lien.

24 I don't know if that answers the
25 Court's question, but the February letter from

1 the Department of Labor is notifying Attorney
2 Evert of the final lien in this case of 61,000
3 and I think \$257. So, the Department has
4 expended substantial funds in this case.

5 And to suggest that unless the
6 government files suit it should not recover the
7 funds, one, it's completely contrary to what
8 the statute provides; and two, it degrades the
9 purpose of the workers' compensation program
10 and the Government Insurance Fund, which is
11 exactly the purpose of section 263 to ensure
12 that that fund can be replenished to service
13 all other insured employees.

14 THE COURT: So, Attorney Velazquez, you
15 would rather the money sit here at the
16 courthouse, not get \$10,000 for the government,
17 and Attorney Evert not get herself \$7,000? You
18 would rather the money just sit here, money
19 that the government would not have recouped?

20 MS. VELAZQUEZ: Well, I think I would
21 rather that we adhere to the law and disburse
22 the money to the government as the statute
23 contemplates. And, you know, I
24 understand attorney -- obviously, I understand
25 Attorney Evert's desire and need to be

1 compensated --

2 THE COURT: Okay. I guess the issue,
3 Attorney Velazquez, is that the Court's been
4 presented with affidavits from attorneys who
5 have been practicing in the territory for a
6 very long time. I am very familiar with them
7 and everyone is very familiar with them. And
8 this is money -- and cases go to mediation and
9 settle; property taxes are required to be paid,
10 but sometimes property taxes are forgiven, late
11 fees are forgiven.

12 And in the interest of fairness, you
13 know, it's not breaking the law or violating
14 the law. It's making a consideration for
15 something that somebody relied on. Why is it,
16 I guess, tantamount to all or nothing in this
17 matter, where the government has been presented
18 with substantial evidence that this is the way
19 it's been done in at least 20 years; and the
20 Department of Labor hasn't presented anything
21 that said that, no, those attorneys are wrong,
22 that's not how it's been done. So, now \$17,000
23 are sitting here at the courthouse for nobody
24 to have the benefit of.

25 Why -- I guess if the government wants

1 to move forward and adhere to the statute, they
2 have every right to do that, but in an instance
3 where an individual has relied on past practice
4 and procedure to all of a sudden make an about
5 face turn and say we're not going to do that
6 anymore, even though this case was pending
7 before we made that determination, how is that
8 in fairness or is seeking justice?

9 MS. VELAZQUEZ: Your Honor, the real --
10 the crux of the issue here is, and I guess it's
11 a question we would all have to ask ourselves
12 is, does an agency -- assuming this was past
13 practice and I'm going to take Attorney Evert
14 at her word, does the agency have the right to
15 completely disregard a statute? And if past
16 agency employees have done so, is the
17 government now authorized to continue to
18 sanction illegal conduct, which based on the
19 plain language of the statute would appear to
20 be illegal conduct because the statute says
21 that we have to recoup the expenses? Now --

22 THE COURT: But, Attorney Velazquez,
23 then in looking at every agency, there will
24 never be loan forgiveness or property tax
25 forgiveness. There will never be income tax

1 late fees waivers. There will never be -- the
2 Virgin Islands Police Department would never
3 have the discretion of not issuing a ticket
4 because a law has been violated.

5 Isn't it to some extent there is
6 discretion among the agencies and the
7 commissioners to make exceptions? And that's
8 not, unfortunately, in this situation as I
9 said, before the court is substantial evidence
10 of a practice and procedure that has been in
11 place for more than decades -- I'm sorry, whose
12 phone or something is that -- past practice and
13 procedure, then to make an about face and
14 without any notification.

15 At least when there is a tax amnesty
16 that's being announced, the public is notified.
17 From June of such and such date to August of
18 such and such date, you can come in and apply
19 for a tax amnesty and you're -- you know, your
20 past late fees or whatever will be forgiven;
21 and after this date we are no longer going to
22 adhere to an amnesty.

23 The Department of Labor made no such
24 announcement to the attorneys; you know,
25 Attorney So-And-So, or even the Bar Association

1 that the Department of Labor is going to make
2 an about face and hold its guns to the statute
3 and we're not going to allow the attorneys to
4 intervene and negotiate and reach a settlement
5 and recoup their fees anymore.

6 MS. VELAZQUEZ: Your Honor, I don't
7 believe there is an equivalent because in all
8 of the examples Your Honor provided there has
9 been reserved discretion to the agencies. An
10 officer never has to make an arrest if he has a
11 probable cause. He has discretion.

12 THE COURT: That's a discretion given
13 to the heads of the department, not the
14 individual employees.

15 MS. VELAZQUEZ: Yes, there is no --
16 well, to be sure, there is no statute, there is
17 no law in the Virgin Islands that says that if
18 you have an arrestable offense that you must
19 make an arrest. And all of the other examples
20 Your Honor provided, there is discretion
21 reserved in the officer.

22 In this case, section 263 does not
23 reserve that discretion and that is the
24 difficulty I'm having. And it's not that I
25 don't understand the attorney's desire to be

1 paid. That is a contract, however, between the
2 attorney and her client, and that is not
3 provided for in section 263.

4 But what section 263 does provide and
5 in addition we have to look at the
6 2002 amendments, it provides that this case may
7 move forward only so long as the employee
8 acknowledges that all sums due to the
9 Government Insurance Fund are secured by end of
10 recovery, and that no judgment can be approved
11 without making expressed reserve of the rights
12 of the Government Insurance Funds to all
13 expenses incurred. And there is a reason for
14 that.

15 It's not just a lack of empathy, but
16 the other issue on the other side of the coin
17 is that the Government Insurance Fund is there
18 to serve all employees who might be injured.
19 So, where one employee does not -- where one
20 employee can recover from a third party and not
21 replenish the fund, the entire community stands
22 to suffer.

23 So, on the one hand we have Attorney
24 Evert's plight, which I fully understand, I'm
25 an attorney myself, but on the other hand, the

1 government is here to ensure that all injured
2 employees in the unfortunate event that they
3 are injured can be compensated through the
4 Government Insurance Fund. And that's why this
5 issue is so important and that's why the
6 Legislature saw it so important.

7 THE COURT: But the Legislature and the
8 laws are imparted upon the Department of Labor
9 to institute or initiate actions against the
10 insurance companies, and in this matter you
11 didn't. So, at this juncture what is being
12 offered is \$10,000; and allow Attorney Evert to
13 get her money, money since you said was so
14 important for the funds so that other people
15 can benefit from, otherwise, this money is just
16 going to sit here.

17 MS. VELAZQUEZ: And, Your Honor, if I
18 may, I just wanted to clarify that in the
19 statute, the statute also does not compel the
20 government to file suit. It provides that we
21 may, but it also leaves it to the -- it also
22 leaves an opportunity to the injured employee
23 to file suit if he so chooses, and then
24 provides that in that event how the
25 government -- how the government's rights will

1 be protected.

2 Now, on the second --

3 THE COURT: So, Mr. George did that,
4 but he did that now to Attorney Evert's
5 detriment. So, he did what the Department of
6 Labor didn't do and filed suit, but now you're
7 saying because -- now it's like the Department
8 of Labor wants the landfall. You didn't do any
9 of the work, but you want the benefits of
10 Mr. George's settlement because he has the
11 right to institute the lawsuit, but he has no
12 right after it's settled that all of that
13 should go to the Department of Labor.

14 How is that fair to Mr. George who is
15 doing the work of the Department of Labor,
16 which it may or may not choose to do, and it
17 may not replenish the funds that just made
18 it -- the argument that is very important so
19 that other people can benefit from it? So, he
20 does all of the work, and Attorney Evert or any
21 attorney who is in a similar situation from now
22 on will not have at least their expenses paid.

23 I can understand the Department of
24 Labor's position is Mr. George's position
25 before this court today was I want the whole

1 \$17,000 and the Department of Labor gets
2 nothing, but that's not what his position is.

3 MS. VELAZQUEZ: Well, Your Honor, I
4 think that the question you raised is a good
5 question, but I think one that should be posed
6 to the Legislature because the Legislature is
7 the one that determine that the government's
8 interest in obtaining full recoupment is
9 paramount prior to any settlement or judgment
10 being approved. And so, unfortunately I can't
11 answer what those equities are, but I think
12 that's a question that has to be posed to the
13 Legislature if an amendment of a statute is
14 required.

15 THE COURT: Wouldn't you agree in this
16 matter though that the government probably
17 would have only gotten \$10,000 from the
18 insurance company?

19 MS. VELAZQUEZ: I don't know what the
20 government would have gotten, but I know that
21 once Mr. George filed suit and recovers, then
22 the government has an interest in recouping
23 their funds, but the government, I'm not sure
24 what the government would have gotten though.
25 Based on what Attorney Evert --

1 MS. EVERT: Your Honor --

2 MS. VELAZQUEZ: -- is indicating, I
3 think Attorney Evert mentioned there was a
4 \$10,000 limit, but I can't say what the
5 government would have gotten.

6 MS. EVERT: Your Honor?

7 THE COURT: Yes, Attorney Evert.

8 MS. EVERT: Attorney Hymes has been
9 very involved with this case from the beginning
10 and I think the government counsel has a
11 misapprehension about how easy these cases are
12 resolved. So, I think it would be helpful for
13 the Court to hear from Attorney Hymes.

14 THE COURT: Attorney Hymes, do you wish
15 to address the Court? I know initially when
16 you appeared before me--and I am just bringing
17 it to the attention so we can flesh this out--I
18 do recall one status conference where Attorney
19 Evert had represented to the Court that this
20 matter was close to resolution and you had some
21 hesitations about resolving it and even wrote a
22 letter with those hesitations because of the
23 Department of Labor's lack of involvement. So,
24 it kind of appears to the Court now you've done
25 a 360 or 180 on this matter, but do you wish to

1 address the Court?

2 MR. HYMES: Yes, Your Honor. I agree
3 that the Department of Labor must be a party to
4 this type of lawsuit so I think their
5 intervention is appropriate, but I think the
6 real issue before the Court is the government's
7 demand that it take all of the settlement
8 proceeds.

9 I think the 20 years of past practice
10 and procedure that's revealed in the affidavits
11 of Attorney Rohn and Attorney Holt follow
12 directly upon the issuance of the opinion in
13 1959 by U.S. District Court Judge Moore in the
14 case of *Jennings v. Richards and Mannassah Bus*
15 *Lines*.

16 In that case the matter was before the
17 court on the question of whether the
18 commissioner of Labor has the authority to
19 compromise a workman's compensation lien in
20 order to affect a settlement between the
21 injured worker and a third party tortfeasor. I
22 mean, there has to be flexibility, the ability
23 to negotiate when, as here, the potential
24 assets to satisfy a claim are less than the
25 workman's compensation lien.

1 Now, we can't discuss what took place
2 at mediation, but at mediation there is the
3 possibility that the government might have
4 gotten nothing depending on how the facts were
5 developed either at mediation or at trial.

6 If the prospect of recovery of the
7 defense verdict, for example, would mean that
8 the Department of Labor would recover nothing,
9 then I think it is by far and away in its
10 interest to participate in the development of
11 the case, particularly in mediation, to see if
12 they can salvage something from a bad
13 situation. But I think the *Jennings* case is
14 instructive, it's right on point and I don't
15 think the amendment in 2002 removes the ability
16 of the Department of Labor to negotiate a
17 settlement.

18 THE COURT: Attorney Hymes, in
19 mediation, again, not going into details of
20 that, could not the parties have agreed to pay
21 Attorney Evert's fees and expenses and then
22 make whatever the balance of whatever agreed
23 settlement was be paid directly to the
24 Department of Labor?

25 MR. HYMES: Do I agree with that?

1 THE COURT: Could that have happened in
2 mediation?

3 MR. HYMES: I'm sorry. I'm not
4 understanding the Court's question.

5 THE COURT: Could the parties at
6 mediation instead of just settling on a number,
7 saying, you know, \$10,000; could the parties
8 have then said, okay, \$5,000 is going to go to
9 Attorney Evert's attorney's fees and expenses;
10 and \$5,000 is going to the Department of Labor
11 and we consider this matter settled? Could
12 that have happened at mediation?

13 MR. HYMES: I suppose it could happen
14 at mediation. It couldn't in this case because
15 the Department of Labor chose not to
16 participate in the mediation. They didn't
17 participate, they didn't know what was going
18 on, they didn't know what the facts were and
19 have sat back and now want all the money
20 without knowing what the real issues were.

21 So, but, yeah, I mean, you could
22 fashion any settlement you want if the parties
23 agree to it. I don't think Attorney Evert and
24 I could agree on the portion to the Department
25 of Labor without their approval because as we

1 see right here they want the whole thing. They
2 would never agree to that. It would be a
3 meaningless gesture on our part.

4 THE COURT: Thank you, Attorney Hymes.
5 Anything further?

6 MR. HYMES: No, Your Honor.

7 THE COURT: Attorney Evert, anything
8 further?

9 MS. EVERT: No, Your Honor. I think
10 the Court has a grasp of the issues.

11 THE COURT: And, Attorney Velazquez,
12 you had Ms. Petersen to appear. She was in the
13 waiting room. Do you have any need to have her
14 appear before the Court and provide any
15 information?

16 MS. VELAZQUEZ: I think everything the
17 Court requires is before the Court. This is
18 really an issue of law. As much as we are
19 hearing how much work the case took and all of
20 this, the real issue before the Court is a
21 matter of law. The right of the government to
22 preserve its recovery is set forth by statute.
23 The Legislature has defined how that should be
24 done.

25 Contrary to the statements of

1 opposing -- of the plaintiff's counsel, there
2 is no conditional requirement in section
3 263 regarding who did the work, how much work
4 it took, whether the government misapprehends
5 or not the amount of compromise that was
6 required. And so I think it really is
7 fundamentally a question of law that the Court
8 can decide on the papers and on the briefs.

9 We have submitted an affidavit. The
10 parties have not objected to or disputed the
11 amount of the moneys expended by the Workers'
12 Comp Division, and so I have nothing further to
13 add.

14 THE COURT: Thank you.

15 MS. EVERT: Your Honor, I have one
16 additional thing to add.

17 THE COURT: I had a question too for
18 you, but go ahead.

19 MS. EVERT: In one of the pleadings I
20 filed an affidavit that discussed my
21 conversations with the commissioner of Labor in
22 July wherein he advised me that of course I was
23 entitled to my fee and reimbursement, and that
24 has never been disputed.

25 THE COURT: And that was kind of what

1 my question was, Attorney Evert. The Court
2 obviously is not going to enter a ruling right
3 now. Attorney Evert, did you want time to
4 appear before the Court and have the
5 commissioner address that issue with the Court?

6 MS. EVERT: Your Honor, I have my
7 affidavit that's before the court and that has
8 not been controverted. And as the government
9 lawyer said, some of her things are not
10 controverted, so I don't think it's necessary
11 because I'm an officer of the court and the
12 affidavit's filed.

13 And if we want to get into cross
14 affidavits, everybody's had time to do that and
15 the time has long passed. So, I don't think I
16 need the commissioner to tell me what I have
17 indicated in my affidavit I was advised.

18 MS. VELAZQUEZ: Well, Your Honor, I
19 was --

20 MS. EVERT: They have never disputed
21 that.

22 MS. VELAZQUEZ: My apologies for
23 stepping on Attorney Evert.

24 Your Honor, obviously the government
25 would object to the Court accepting a

1 third-party view or perspective of what the
2 commissioner allegedly said and even -- and so
3 we would object to that. If the commissioner's
4 statements are to be considered by a court,
5 although I think they are irrelevant to this
6 consideration and section 263, if that is going
7 to be considered, then the commissioner would
8 need to be present.

9 MS. EVERT: Your Honor, they knew this
10 was a hearing as much as I did. And I'm an
11 officer of the court and I'm indicating right
12 now and I've also indicated in my affidavit
13 that the commissioner assured me that I would
14 be paid my fees and reimbursed my costs, and
15 the government hasn't done anything once again.

16 And I don't know how they get to go
17 backwards everytime they don't like something
18 and say, well, let's ignore it and we're going
19 to put our hands out for all the money when the
20 commissioner who clearly has authority bound
21 the Department of Labor by that promise that he
22 made to me in July. And that's never been
23 controverted.

24 They could have filed another
25 affidavit. They could have called the

1 commissioner this morning to say that he never
2 made that promise. And the fact that they
3 didn't do it, I would say supports my position.
4 He's not going to lie. So, I don't think we
5 need to reopen that.

6 MS. VELAZQUEZ: Your Honor, the
7 affidavit of Attorney Evert who is seeking to
8 recover in this case is obviously self-serving
9 and does not have the same force.

10 Secondly, any private contracts to the
11 extent there is one, and I don't assume that
12 there is, but to the extent that there was one,
13 it is unclear to me how that issue is even
14 relevant to this case. That would be a
15 separate matter of contract.

16 THE COURT: Because the --

17 MS. VELAZQUEZ: There is nothing in the
18 statute that provides for -- I'm sorry? Unless
19 the --

20 THE COURT: There may not be anything
21 in the statute that -- the 263 or 264, but
22 there is the authority under the commissioner's
23 job description that has the discretion to
24 enter into agreements or deviations. The
25 commissioners are the heads of their division

1 and they have that authority. All of them do.

2 And if he had a conversation with
3 Attorney Evert and that was her understanding
4 and she relied it, you had the opportunity.
5 Her affidavit has been filed, you had the
6 opportunity to speak with the commissioner.
7 And even if he didn't appear today, if that was
8 not -- if he did not make that assertion or
9 representation to Attorney Evert, you as an
10 officer of the court with him not being here
11 could have said I spoke to the commissioner and
12 the commissioner said he does not recall that
13 conversation, or he did not have a conversation
14 with her, he never spoke to her; or he did
15 speak to her, but this is what he said. And
16 that has not been raised in any of your
17 pleadings or even today.

18 MS. VELAZQUEZ: That is correct, Your
19 Honor, because of the -- one, the statement of
20 any subsequent agreements does not appear and
21 still does not appear relevant to me in this
22 context. And even if the commissioner did make
23 an agreement, any agreement would have to be
24 consistent with the law, and it would have to
25 be consistent with section 263.

1 Now, Attorney Evert's statements are
2 completely contradicted by her own
3 representations to the Court that a release was
4 submitted to the Department of Labor and they
5 refused, and they refused to sign the release
6 and have consistently refused to agree to any
7 settlement in this case. Additionally --

8 THE COURT: Have you signed the
9 release?

10 MS. VELAZQUEZ: No, we have not.

11 THE COURT: Okay. So, her
12 representation is you haven't signed it and
13 there is --

14 MS. VELAZQUEZ: Her representation is
15 that we have not signed it; that we have
16 refused. And Attorney Evert also submitted to
17 the court evidence that she submitted to the
18 Department of Labor, it's attached as Exhibit
19 C to her reply, an acknowledgment that section
20 263 presents a super priority lien, as she
21 references; and she is requesting in that
22 letter, which is dated -- I would have to look
23 at it, I think it was dated in August or
24 September, she is requesting that the
25 Department of Labor pay her for her attorney's

1 fees and costs. That is completely
2 inconsistent with any assertion that there was
3 a prior agreement with the commissioner of
4 Labor to pay. So, that controverts the
5 self-serving statements in Attorney Evert's
6 affidavit.

7 THE COURT: Okay. Let me just try to
8 go through this because maybe I'm confused. I
9 know English is not my first language.
10 Attorney Evert provided you with a release from
11 the Department of Labor, correct?

12 MS. VELAZQUEZ: Subsequent to the
13 government's filing --

14 THE COURT: She provided you with a
15 release, correct?

16 MS. VELAZQUEZ: Yes, subsequent to the
17 government's --

18 THE COURT: I understand that.

19 MS. VELAZQUEZ: -- appearance in this
20 case, yes.

21 THE COURT: So, she provided you with a
22 release, correct?

23 MS. VELAZQUEZ: Correct.

24 THE COURT: The Department of Labor has
25 never signed it, correct?

1 MS. VELAZQUEZ: The Department of Labor
2 has not signed it. And on September 1st, 2022,
3 Attorney Evert submitted a letter to the
4 department --

5 THE COURT: Attorney Velazquez,
6 Attorney Velazquez, I was an attorney. I
7 understand need to provide information, but
8 please, let me ask my questions because --

9 MS. VELAZQUEZ: I'm sorry. I'm sorry.

10 THE COURT: -- I'd like to make sure I
11 am understanding you correctly, all right?

12 A release was provided that the
13 Department of Labor has never signed, correct?

14 MS. VELAZQUEZ: That is correct. I
15 think -- I'm sorry, Your Honor. Let me make
16 sure I'm answering you correctly. I'm sorry,
17 Your Honor. I believe a release was submitted
18 and I am going to confirm that.

19 THE COURT: Okay. If nothing else it
20 was attached as Exhibit E.

21 MS. VELAZQUEZ: I believe it was
22 after -- or during the motion practice that was
23 going on, yes.

24 THE COURT: So, whether it was given to
25 you in August or September, it was at least

1 given to the Department of Labor by motion
2 practice and that's never been signed, correct?

3 MS. VELAZQUEZ: That's correct.

4 THE COURT: So the Court can assume
5 that the Department of Labor has refused to
6 sign it, correct?

7 MS. VELAZQUEZ: Correct.

8 THE COURT: And there was the
9 conversation that Attorney Evert said that she
10 had with the commissioner.

11 MS. VELAZQUEZ: Which Attorney Evert
12 indicated occurred in July.

13 THE COURT: Okay. So, what has been
14 refuted so far or is inconsistent with what she
15 has just said?

16 MS. VELAZQUEZ: What is inconsistent is
17 Attorney Evert wrote a letter on September 1st
18 of 2022, which is attached as Exhibit C to her
19 reply, which is requesting that the Department
20 of Labor pay her attorney's fees and costs; and
21 is acknowledging that the VIDOL is entitled to
22 the funds. Why would there have been such a
23 request if there was a prior agreement in July
24 to pay? That is completely inconsistent.

25 THE COURT: Okay. This is where I

1 guess English is my second language because if
2 her conversation was with the commissioner in
3 July; they settled this in August; a letter is
4 written after that in September saying here is
5 the money, here is \$17,000; I'd like now the
6 Department of Labor based on your agreement in
7 July to give me my attorney's fees and costs
8 that you said in our conversation in July; it's
9 now September, we have the proceeds; how is
10 that inconsistent?

11 MS. VELAZQUEZ: Your Honor, because
12 that is not what the letter says. The letter
13 which is attached to the court's filings says,
14 after a great deal of research we agree that
15 Workers' Compensation has a super priority lien
16 in regard to receiving reimbursement of funds
17 after a settlement has been awarded. With that
18 being said, the legal fees are one-third of the
19 total amount of the 17,500 settlement which
20 equals \$5,833.33. Additionally, my expenses
21 for this case are \$1,204. The summary of the
22 moneys are as follows. And they are
23 summarized.

24 Attached to this letter please find the
25 release that the defendants require. Please

1 forward it to us after signing and Attorney
2 Hymes will arrange to exchange the check for
3 the original release. We will withdraw the
4 motion for interpleader once we have an
5 agreement. Sincerely, Julie German Evert, Esq.

6 MS. EVERT: Your Honor, and that letter
7 makes clear that the plaintiff will not receive
8 anything. So, I don't understand how this is
9 being interpreted, but it's pretty clear. They
10 get a super priority, which means my client
11 gets nothing and I get my legal fees and costs.

12 THE COURT: The letter speaks for
13 itself. I'm just trying to understand the
14 inconsistency. Maybe the same language isn't
15 used. Attorney Evert said the Department of
16 Labor refused to sign something and maybe
17 that's not to be interpreted as a refusal, but
18 they didn't sign it so it can be interpreted as
19 a refusal.

20 I'm still trying to see how this letter
21 makes the representations. You may not like
22 the representations made by Attorney Evert, but
23 how this September 1st letter is inconsistent
24 with what's been represented to the court?
25 There was a conversation, although none of us

1 but Attorney Evert were a part of with the
2 commissioner and --

3 MS. VELAZQUEZ: Actually, Your Honor,
4 on the --

5 THE COURT: Attorney --

6 MS. VELAZQUEZ: I'm sorry, Your Honor.
7 Attorney Evert indicated that she did not have
8 a separate conversation with the commissioner;
9 that other persons from the Department of Labor
10 were participants but they were not speaking.
11 And that is accurate. We have a number of
12 persons who are on the line with the
13 commissioner and --

14 THE COURT: Was Ms. Petersen a part of
15 that?

16 MS. VELAZQUEZ: I would have to verify
17 that. I know Attorney Nesha
18 Christian-Hendrickson was a part of that. I
19 believe Ms. Rainia Thomas was. Ms. Petersen
20 may have been. And I'm happy to have her offer
21 testimony --

22 THE COURT: I'm going to --

23 (Overlapping speakers.)

24 MS. VELAZQUEZ: Ms. Thomas is also on
25 standby in the event testimony is required.

1 MS. EVERT: Your Honor, I would suggest
2 that the person that would need to appear would
3 be the commissioner because he is the one that
4 promised. I don't think any of his
5 subordinates -- I don't know them personally,
6 but the person that I don't think is going to
7 lie is the commissioner. I'm not saying the
8 other ones I don't believe, but the best person
9 to talk about the promise is the commissioner.
10 And I'm an officer of the court and they have
11 not refuted it to date.

12 THE COURT: Ms. Petersen was there,
13 Attorney Evert.

14 Ms. Petersen, good morning, almost good
15 afternoon.

16 MS. PETERSEN: Good morning, good
17 afternoon.

18 THE COURT: Ms. Petersen, were you
19 involved in the conversation with the
20 commissioner and Attorney Evert in
21 approximately July of this year?

22 MS. PETERSEN: No, I wasn't.

23 THE COURT: Okay. Thank you. I'm
24 going to put you back in the waiting room.

25 So, Attorney Velazquez, I'm still

1 trying to understand how this letter of
2 September 1st is inconsistent with what's been
3 represented to the Court.

4 MS. VELAZQUEZ: Well, I think if
5 Attorney Evert is asking on July 1st to pay me,
6 although you are entitled to the money and
7 there is no reference to any contract here, if
8 there was an agreement already inked, why would
9 Attorney Evert now be making these requests to
10 the Department of Labor? The representations
11 here are completely inconsistent with a person
12 who believes that there is a separate
13 agreement. And, in fact, in all of the filings
14 that is evident, but if the Court --

15 THE COURT: You're speaking in
16 general. First, the letter is dated September
17 1st, after the conversation. Break it down to
18 me like I'm a kindergarten student. Where is
19 this letter inconsistent?

20 MS. VELAZQUEZ: Well, I thought I just
21 did, but if the Court -- if the Court
22 require -- if the Court is viewing that
23 purported discussion as relevant to the rights
24 and responsibilities under 263, we would be
25 happy to offer testimony if we are provided a

1 five-minute recess to do so. I think if you
2 look at the letter, there is no -- there is no
3 reason to be conceding. You have the right to
4 the money, but can you please give me this --

5 THE COURT: Yes.

6 MS. VELAZQUEZ: -- if you thought you
7 had an agreement.

8 THE COURT: That's exactly why you
9 would do that. If I have an agreement and say,
10 okay, I'm going to collect apples and I'm going
11 to use this basket; can you give me the basket
12 after I deliver the apples, and you say sure;
13 so, I take the basket, I go get the apples and
14 I come back and I say, okay, now, I acknowledge
15 that all these apples belong to you, here is
16 the basket of apples, you said I could have the
17 basket back so now may I please have that
18 basket; I mean, I as a person I wouldn't just
19 come and throw the apples at you and run away
20 with the basket. I would say, now, I have
21 delivered the apples. I'm delivering you a
22 check for \$17,000; may I have my attorney's
23 fees and you can keep the balance.

24 MS. EVERT: And, Your Honor, in that
25 letter -- Your Honor --

1 MS. VELAZQUEZ: Your Honor, if I may --

2 THE COURT: Attorney Velazquez.

3 MS. VELAZQUEZ: If I may, in addition,
4 the Department of Labor, had there been such an
5 agreement, you would expect that the Department
6 of Labor would have then signed the release.
7 It has not. And so if the Court is going to
8 place significance on Attorney Evert's
9 self-serving affidavit, then we would ask that
10 we -- for an opportunity, a couple of minutes
11 to obtain the witness, the relevant witness,
12 someone who was on the call to give testimony,
13 but that issue is not relevant.

14 THE COURT: Will you be calling the
15 commissioner?

16 MS. VELAZQUEZ: I would have to -- I
17 don't know if the commissioner is presently
18 available, but I think Attorney Evert
19 acknowledged there were several people on the
20 call.

21 THE COURT: At this juncture because
22 you've already challenged the third-party
23 representation to the Court, the only testimony
24 the Court would gather would be from the
25 commissioner. So, do you want five minutes to

1 get the commissioner logged in? I will be in
2 recess for five minutes.

3 MS. VELAZQUEZ: Sure.

4 THE COURT: All right. Court's in
5 recess for five minutes.

6 (Recess at 12:22 p.m.)

7 (This hearing resumed at 12:23 p.m., as follows:)

8 MS. VELAZQUEZ: Your Honor,
9 Commissioner Molloy will be signing in shortly
10 as well as any other person who was in the room
11 during the discussion with Attorney Evert. I
12 just forwarded the link. I'm going to just
13 make sure that they're not having any problems.

14 (Pause.)

15 MS. VELAZQUEZ: Your Honor, it appears
16 the commissioner is having trouble logging in.
17 I don't know if it's because the link was
18 forwarded. I'm not sure. Can the clerk advise
19 if forwarding the link is going to affect the
20 ability of the person to use it.

21 THE CLERK: It shouldn't.

22 MS. VELAZQUEZ: Oh, he said he's
23 waiting to be let in. There he is. Thank you.
24 Thank you.

25 MR. MOLLOY: Good morning. Good

1 afternoon. Sorry.

2 MS. VELAZQUEZ: Good morning,
3 Commissioner.

4 THE COURT: Good afternoon,
5 Commissioner.

6 MS. EVERT: Good afternoon.

7 THE COURT: Madam clerk, can you swear
8 the commissioner in, please.

9 (Commissioner Gary Molloy was duly
10 sworn by the clerk of the court.)

11 THE COURT: Thank you, Commissioner.
12 You can put your hand down. Do you know why
13 you're here today?

14 MR. MOLLOY: Yes. I was just asked to
15 come and give some information on a particular
16 case involving Attorney Evert.

17 THE COURT: Yes. And do you know
18 Mr. Elvis George?

19 MR. MOLLOY: No, I do not, not
20 personally. I just know of --

21 THE COURT: Are you familiar with his
22 matter?

23 MR. MOLLOY: Vaguely, just from the
24 position of having a conversation with Attorney
25 Evert and internally with Attorney Nesha

1 Christian-Hendrickson; and the director of
2 Workers' Compensation, Ms. Rainia Thomas.

3 THE COURT: Okay. Thank you.

4 MS. EVERT: Excuse me, Your Honor.
5 Your Honor?

6 THE COURT: Yes.

7 MS. EVERT: It appears, I could be
8 wrong, but it appears that the commissioner has
9 some papers in front of him and I'm not sure if
10 he does or not.

11 THE COURT: I was getting to that. I
12 mean, I may not be working as fast as the
13 attorneys want, but I must --

14 MS. EVERT: Okay.

15 THE COURT: I am the tortoise in the
16 hare's race here.

17 So, Commissioner Molloy, I am going to
18 ask that if you have any documents in front of
19 you that you try to the best of your ability to
20 testify from your memory. If there is
21 something that you have that can refresh that
22 memory, we may explore whether or not you are
23 able to use that document to refresh your
24 recollection.

25 MR. MOLLOY: I have no documents

1 related to this case in front of me.
2 Everything that's in front of me is things that
3 I was working on before I was called to be here
4 today.

5 THE COURT: Okay. Well, put your lunch
6 down too because I'm sure we're interrupting
7 your lunch as well. Just kidding.

8 MR. MOLLOY: Okay.

9 THE COURT: All right. So, how do the
10 parties wish to proceed; the Court inquire of
11 Commissioner Molloy, or Attorney Velazquez
12 question her witness?

13 MS. EVERT: Your Honor, I would prefer
14 that the Court question since the Court knows
15 what the issues are.

16 MS. VELAZQUEZ: I do not object.

17 THE COURT: Okay. Thank you.

18 Commissioner Molloy, and as you know
19 you are here before the Court on a matter
20 involving George; Elvis George and Mark Lonski
21 and Property King, Inc. The attorneys present
22 are Julie Evert representing Mr. George; Jim
23 Hymes, Attorney Hymes representing Mark Lonski
24 and Property King.

25 Through those representations there was

1 a settlement made at mediation and the
2 Department of Labor was advised accordingly.
3 So, my questions are regarding the nature of
4 these interactions between the plaintiff's
5 counsel, Attorney Evert, and the Department of
6 Labor.

7 As the commissioner of the Department
8 of Labor, what are some of your duties and
9 responsibilities?

10 MR. MOLLOY: They are wide ranging, but
11 one of them is Workers' Compensation falls
12 under the auspices of my purview. And so, any
13 issues that require mediation or a review,
14 within that area would come under my purview,
15 as unemployment insurance, Workers'
16 Compensation, labor relations, a whole host of
17 other opportunities or issues that I deal with.

18 THE COURT: Do you deal with discretion
19 in your authority?

20 MR. MOLLOY: I do have discretion in my
21 authority.

22 THE COURT: Okay. And with matters
23 that relate to workmen's compensation, when
24 those matters are outside of the Department of
25 Labor and actions filed within this court,

1 either Superior Court or District Court, what
2 is your authority?

3 MR. MOLLOY: Internally, once the --
4 and I guess an appeal is raised within the
5 Workers' Compensation Division, it would come
6 to me to have a discussion with the director
7 and our legal counsel. And then if it moves
8 forward then we refer it to the Department of
9 Justice for them to follow through.

10 THE COURT: Okay. If it's not an
11 appeal, an individual received workmen's
12 compensation but then instituted his or her own
13 action, civil action in Superior Court, what
14 are your duties and responsibilities to that?

15 MR. MOLLOY: Well, it would come
16 through my director of workers' compensation,
17 so, for her to have any records or prepare
18 anything. And again, it would then come
19 through our legal counsel and have a
20 discussion; and then if it's coming before the
21 court, we would refer the matter to Justice.

22 THE COURT: Under the workmen's
23 compensation does the Department of Labor
24 always pursue an action against an insured?

25 MR. MOLLOY: I can speak for my tenure

1 and for the most part we have.

2 THE COURT: You've instituted legal
3 actions?

4 MR. MOLLOY: Not legal action, but we
5 have provided, done additional investigations.
6 We have -- I've gotten -- through the Division
7 of Workers' Compensation we have outside
8 investigators. We have found other ways to be
9 able to try to investigate our cases and to
10 bring them to closure as quickly as possible
11 without having to go through this process.

12 THE COURT: What is your role when you,
13 not the Department of Labor, what is your role
14 when you have been contacted by an individual
15 or an individual's counsel who has been
16 receiving workmen's comp about a possible
17 settlement or release of settlement?

18 MR. MOLLOY: Well, especially in this
19 case everything, again, would go through my
20 director of workers' compensation. And once
21 there is an issue that needs to be discussed,
22 then I would then be involved to listen to
23 discussion, along with my legal counsel; and
24 then we would render a decision based on the
25 Code.

1 THE COURT: In this matter who was your
2 director of workmen's comp?

3 MR. MOLLOY: My director of workmen's
4 compensation is Ms. Rainia Thomas.

5 THE COURT: I'm sorry. What was her
6 first name?

7 MR. MOLLOY: Rainia.

8 THE COURT: Okay. Thomas. And who is
9 your legal counsel?

10 MR. MOLLOY: My legal counsel
11 internally is Ms. Nesha Christian-Hendrickson.
12 She's assistant commissioner and legal counsel.

13 THE COURT: Thank you for that
14 clarification. Do you recall a time being
15 contacted by Attorney Evert regarding
16 Mr. George's civil action?

17 MR. MOLLOY: Yes, I do.

18 THE COURT: And approximately when do
19 you recall that conversation taking place --
20 oh, wait. Let me back up. How many
21 conversations did you have with Attorney Evert?

22 MR. MOLLOY: I know Attorney Evert was
23 pursuing me very consistently. I can remember
24 having one conversation with her with both
25 legal counsel and director of workers'

1 compensation, Rainia Thomas, so that we could
2 all be on the call at the same time.

3 THE COURT: Okay. And do you recall
4 when that call was?

5 MR. MOLLOY: I do not recall
6 specifically, but I know a few months ago.

7 THE COURT: Around July, August?

8 MR. MOLLOY: A few months ago. That's
9 as specific as -- I don't have any recollection
10 as to when specifically.

11 THE COURT: Okay. But 2022?

12 MR. MOLLOY: 2022, yes.

13 THE COURT: What was the nature of the
14 conversation?

15 MR. MOLLOY: The nature of the
16 conversation was Attorney Evert, to my
17 recollection, was having -- had a discussion
18 with both director, Rainia Thomas, and Nesha
19 Christian-Hendrickson, legal counsel, about
20 this particular case; and was trying -- was
21 making reference to the fact that the
22 Department of Labor had not pursued this case;
23 and that she privately had pursued the case and
24 it had gotten to the point where settlement and
25 wanted the Department of Labor to remove its

1 lien, based on the settlement, so that the
2 attorney could retain her legal fees or recoup
3 her legal fees.

4 The claimant, Mr. George, would be able
5 to get a settlement, the attorney would be able
6 to get her legal fees. And the issue was, as I
7 can recall, was that the Department of Labor
8 had already paid out, made some payments
9 against this claim and was trying to recoup
10 what we had paid out.

11 THE COURT: Did Attorney Evert offer --
12 or was there any discussion as to where the
13 remaining money would go from any possible
14 settlement?

15 MR. MOLLOY: There was discussions and
16 several scenarios posed by Attorney Evert in
17 terms of what would be reasonable, but there
18 was nothing, no decision on my part other than
19 that we had to follow the Code based on what
20 was there.

21 THE COURT: In your tenure as
22 commissioner of Labor have you ever been
23 contacted by any other attorneys with similar
24 situations?

25 MR. MOLLOY: Not directly by the

1 attorney, no.

2 THE COURT: Has your legal counsel or
3 assistant commissioner, or Ms. Thomas ever
4 discussed with you similar cases presented by
5 attorneys?

6 MR. MOLLOY: Yes, we've had similar
7 cases discussed.

8 THE COURT: And have they been resolved
9 outside of following the Code?

10 MR. MOLLOY: To my knowledge,
11 everything that we have followed, especially
12 since I've been here, we've been following the
13 Code.

14 THE COURT: Attorney Holt and
15 Attorney Rohn have filed affidavits saying that
16 that's an inconsistent position. Would you
17 have reason to doubt them?

18 MR. MOLLOY: All I can say that they
19 are speaking about what happened prior and I
20 can't speak to what happened prior, but since
21 I've been here we've been following the Code.

22 THE COURT: How many cases have you
23 recouped money through your own investigations?

24 MR. MOLLOY: I can't say offhand if we
25 have recouped, but I do know that we have

1 through the investigation process, those cases
2 were resolved. So, I don't know if there was
3 anything for us to recoup money, but they were
4 resolved.

5 THE COURT: Okay. At the end of your
6 conversation with Attorney Evert regarding this
7 matter, what did you represent to her as the
8 position of the Department of Labor regarding
9 Mr. George's settlement?

10 MR. MOLLOY: To my recollection I think
11 Attorney Evert was requesting a letter be sent
12 from me with my position. And the only thing
13 that I represented is that I would have our
14 legal counsel submit that determination or that
15 process, but what we were going to do, we were
16 following the Code.

17 THE COURT: Okay. What is that follow
18 the Code?

19 MR. MOLLOY: Whatever the Code outlines
20 that we have to be able to recoup our money
21 that we have laid out first within the Fund.
22 The Fund has been in the red. And what we try
23 to do is make sure that any money that's been
24 expended, if we expend over that, we recoup
25 that because it goes back into the Fund to help

1 other claimants.

2 THE COURT: So, if you were presented
3 with a scenario that money that would have not
4 ordinarily been recouped or has not been
5 recouped by the Department of Labor was being
6 offered to the Department of Labor minus
7 attorney's fees, you wouldn't accept that
8 settlement? Is that the position of the
9 Department of Labor?

10 MR. MOLLOY: Not that clearly, but the
11 issue is I think in this particular case there
12 was a cap on the amount that could be -- could
13 have been, to my recollection, that could have
14 been a cap in the settlement. And so -- and it
15 already exceeded the amount of money that the
16 Department of Labor already paid out for the
17 claimant. So, as far as our concern,
18 Mr. George or any claimant would have been made
19 whole based on the requirements that we had
20 to -- that we had to live up to under the
21 Workers' Compensation Code.

22 THE COURT: So, if the cap that the
23 Department of Labor could have received was
24 \$10,000 and they were being offered more than
25 \$10,000, the Department of Labor wouldn't

1 accept that money because of attorney's fees
2 being paid first?

3 MR. MOLLOY: No. I -- I --

4 MS. VELAZQUEZ: I think that question
5 calls for the witness to speculate, Your Honor.

6 THE COURT: No. It's his position. He
7 says he can be presented by his assistant
8 commissioner, legal counsel or the director
9 with scenarios and whether or not to pursue
10 cases to recap -- recoup money; or if there is
11 no avenues to recoup money as this already is a
12 closed matter. So, he can -- if he doesn't
13 want to give his opinion on that, he is
14 perfectly fine not to, but if he has an opinion
15 on that, I'd like to know what it is.

16 MR. MOLLOY: And my opinion is simply
17 that we would follow the Code because we've
18 been -- we're in the process of trying to make
19 sure that we rebuild and not only the image,
20 but the program of workers' compensation. So,
21 anything that legal counsel puts before me and
22 the director of workers' compensation, I always
23 ask, what does the Code say.

24 So, the guidance would be that we would
25 work from the Code. So, if the Code tells me

1 that we could do it and the recommendation
2 comes that way, then that's the way I'll go.
3 If the Code doesn't -- is silent on it and I
4 get another recommendation, we follow the Code
5 as closely as we possibly can.

6 THE COURT: So, at the end of your
7 conversation with Attorney Evert this past year
8 what was your understanding with regards to
9 settlement proceeds that she was able to obtain
10 from the defendants?

11 MR. MOLLOY: What I can remember is
12 that I did -- I clearly understood where
13 Attorney Evert was coming from based on the
14 position that she had been proposing. And I
15 can't recall the specifics, but there were
16 several options discussed. And what I
17 committed to do is to make sure that we send
18 information based on the position, but the
19 position would be based on the Code. That's my
20 recollection.

21 THE COURT: Does either counsel wish to
22 ask any questions?

23 MS. EVERT: Yes, Your Honor.

24 THE COURT: Attorney Evert.

25 MS. EVERT: May I proceed?

1 THE COURT: You may.

2 BY MS. EVERT:

3 Q Commissioner, have you read the pleadings in this
4 case as it affects the lien from workers' comp?

5 A Not recently. So, not -- if we haven't had the
6 discussions in preparations for our call and what we
7 discussed, but I haven't looked at it recently, no.

8 Q Okay. Have you read my affidavit in this case
9 regarding my conversation with you?

10 A I have not.

11 Q So, is it fair to say that you don't recall the
12 date that we had a conversation?

13 A I don't recall the date. No, I do not.

14 Q So, if I indicated to you and in my affidavit I
15 wrote that the date was July 22 of 2022, do you have any
16 reason to believe that that's incorrect?

17 A No, I do not.

18 Q Okay. Do you recall -- did you take any notes
19 when we had a conversation?

20 A I did not.

21 Q Okay. Did you record the conversation?

22 A I did not.

23 Q Okay. Do you recall telling me in the
24 conversation -- hold on a second -- that had I not filed
25 suit, Labor would have contacted the third-party insurer

1 to settle the claim?

2 A If that was our process, then that would have
3 been the process that I would have --

4 Q Sir, that's not my question. Do you recall
5 telling me that. This is a quote: That had I, had you,
6 Attorney Evert, not filed suit, the Virgin Islands
7 Department of Labor, quote, would have contacted the
8 third-party insurer to settle the claim, end of quote.
9 Do you recall saying that or not?

10 A At this point no, I do not recall saying that.

11 Q Okay. Do you recall that I pointed out to you
12 that the Department of Labor had not, in fact, ever
13 contacted Mr. George or the third party or the third
14 party's insurance carrier? Do you recall me pointing
15 that out to you?

16 A As a part of our overall discussion, yes, I do
17 recall that.

18 Q Okay. Do you recall me pointing out to you that
19 the statute of limitations had run and that the
20 Department of Labor had never filed suit against anybody
21 in this claim?

22 A In this claim I do recall us having a discussion
23 about the fact that if you hadn't pursued it, that there
24 was -- would have been no option for the Department of
25 Labor to pursue. That's what I recall.

1 Q Okay. And do you recall saying, and this is a
2 quote: Hopefully that will be Virgin Islands Department
3 of Labor policy for the future, end of quote, as it
4 needs, quote, to recoup its money, end of quote. Do you
5 recall saying that to me?

6 A I don't recall saying exactly that, but I recall
7 us talking about recoup, making sure that the Department
8 recoups the money to put back into the Fund.

9 Q Right. But do you recall us having a
10 conversation about how Labor had done nothing in this
11 case and that the statute of limitations had expired?

12 MS. VELAZQUEZ: Asked and answered.

13 THE COURT: He said he didn't recall.

14 MS. EVERT: Okay.

15 **BY MS. EVERT:**

16 Q Sir, do you recall saying to me that you, and I'm
17 quoting, appreciated my work, end of quote?

18 A I remember us having a discussion and telling you
19 that, yes.

20 Q Okay. And, sir, do you recall saying to me --
21 hold on, let me find it -- that my fees and costs would
22 be reimbursed because I had done the work, and that Labor
23 was going to benefit from that?

24 A What I recall is that that is what you were
25 asking to make sure that happened and I --

1 Q Sir, that's not my question?

2 MS. VELAZQUEZ: Objection. Can you let
3 the witness answer.

4 THE COURT: Okay. Attorneys are going
5 to allow the Court to speak.

6 And, Attorney Evert, don't out argue
7 with the witness. Allow him.

8 Commissioner Molloy, just you can
9 answer the question.

10 MR. MOLLOY: Can you ask the question
11 again, please?

12 **BY MS. EVERT:**

13 Q Do you recall saying that you appreciated my work
14 and that is why the Department of Labor would pay my fees
15 and costs?

16 A I recall saying that I appreciated your work. I
17 recall us talking about us, why it's important for us to
18 work collaboratively together. I also recall that you
19 were asking for us to be able to make sure that the
20 claimant, Mr. George, get something and it was only fair
21 that you recoup your fees. And I made it very clear that
22 we would have to follow the Code based on the information
23 that I had gotten from my legal counsel.

24 Q And, sir, do you recall that after this
25 conversation I sent a letter to Labor and to Attorney

1 Christian-Hendrickson and indicated that Mr. George would
2 not -- that we would be willing that Mr. George not
3 receive any moneys so long as my fees and costs were
4 reimbursed? Did you see that?

5 A No, I have not seen that.

6 Q Okay. So, your legal counsel did not forward
7 that letter to you of September 1, 2022?

8 MS. VELAZQUEZ: Objection.

9 THE COURT: What's your objection?

10 MS. VELAZQUEZ: The objection is that
11 the attorney is asking for interactions between
12 Commissioner Molloy and his legal counsel; and
13 also relevance.

14 THE COURT: This whole line of
15 questioning is about the interaction. We have
16 four people in the waiting room that were
17 present during the phone conversation, so
18 whether or not he received this letter is
19 relevant.

20 Attorney Evert.

21 **BY MS. EVERT:**

22 Q Sir, did you receive the September 1, 2022,
23 letter that I sent to Attorney Christian-Hendrickson?

24 A I did not recall seeing that at this time.

25 Q Sir, do you know, are you aware that Mr. George

1 has indicated that so long as my fees and costs are paid
2 that the balance of the moneys will go to Department of
3 Labor?

4 A No, I'm not aware.

5 Q Okay. And, sir, are you aware that the insurance
6 policy was for \$10,000?

7 A I am aware that the -- that the cap was 10,000
8 based on our discussion.

9 Q Okay. And, sir, are you aware that in mediation
10 I was able to negotiate a settlement of \$17,000 total?

11 A I remember that discussion that we had on the
12 call and that's where the issue came up about the amount
13 that the Department of Labor had already outlaid on
14 behalf of Mr. George.

15 Q Okay. Sir, that wasn't my question. Do you
16 recall that the settlement is actually \$7,000 in excess
17 of the policy limits?

18 A I know that of the 17,000 figure is a part of
19 what you negotiated and that's what I know.

20 Q And, sir, are you aware that what my client is
21 willing to do is pay my legal fees and expenses, giving
22 Department of Labor an excess of \$10,000; specifically,
23 \$10,462.67? Were you aware that that's what's on the
24 table today?

25 A I do not -- no, I am not aware that that's what's

1 on the table today, but what I am aware of is that the
2 Department of Labor paid out in excess for Mr. George and
3 the Fund needs to recoup the funding so that we can help
4 other claimants.

5 Q Okay. Sir, are you aware that had somebody from
6 Labor, even though it didn't happen, contacted the
7 insurer, the most they would have received is \$10,000?

8 MS. VELAZQUEZ: Objection; speculation.

9 THE COURT: If he knows.

10 **BY MS. EVERT:**

11 Q Are you aware that --

12 MS. EVERT: Judge, is there a ruling?

13 THE COURT: I said if he knows.

14 MS. EVERT: Okay.

15 MR. MOLLOY: The only thing that I am
16 aware of is that the cap on that particular
17 claim was \$10,000.

18 **BY MS. EVERT:**

19 Q Okay. Sir, you do have the authority to make
20 promises on behalf of Department of Labor, correct?

21 THE COURT: Rephrase your question,
22 Attorney Evert.

23 **BY MS. EVERT:**

24 Q Sir, do you have authority to negotiate workers'
25 comp claims?

1 A Negotiate, yes, we do.

2 Q And you indicated that the nature of our
3 conversation was that I wanted Labor to remove the lien
4 for legal fees and costs, is that accurate?

5 A Not on legal fees --

6 MS. VELAZQUEZ: Objection; asked and
7 answered.

8 THE COURT: No. She's asking for
9 clarification and needs clarifying.

10 **BY MS. EVERT:**

11 Q This is from my notes from what you said ten
12 minutes ago. You wanted Labor -- I'm sorry.

13 THE COURT: Proceed.

14 MR. MOLLOY: What I recall, again, is
15 that I don't recall the amount in excess that
16 the Department of Labor had already paid out
17 for Mr. George because based on his claim
18 everything Department of Labor had already
19 settled.

20 Now, there is an opportunity to recoup
21 some of that and that is all I recall us trying
22 to determine what would happen. And the
23 discussion was that you wanted us to be able to
24 accept less so that you could be able to get
25 your legal fees. That's what I recall.

1 **BY MS. EVERT:**

2 Q Okay. And, in fact, you would -- Labor would be
3 receiving \$400 more than they would have received had
4 they just received the policy on their own, correct?

5 MS. VELAZQUEZ: Objection; speculation.

6 THE COURT: If he knows.

7 MR. MOLLOY: I don't know, but I do
8 know that we have paid out in excess to settle
9 Mr. George's claim; and any excess that we can
10 recoup, we would need to be able to put it back
11 into the Fund so that we can help other
12 claimants.

13 **BY MS. EVERT:**

14 Q Understood. Sir, who are the investigators that
15 are investigating --

16 THE COURT: Attorney Evert, I'm not
17 going to permit that. That's not discovery.

18 MS. EVERT: All right.

19 THE COURT: This is regarding the
20 conversation.

21 MS. EVERT: Okay. Your Honor -- well,
22 let me just ask one more or two more.

23 **BY MS. EVERT:**

24 Q Sir, have you been involved in the litigation
25 regarding this lien that's happened in the last few

1 months?

2 THE COURT: Not relevant, Attorney
3 Evert.

4 MS. VELAZQUEZ: Thank you.

5 MS. EVERT: Okay.

6 **BY MS. EVERT:**

7 Q Have you ever been asked to refute my affidavit
8 that I just reviewed with you?

9 MS. VELAZQUEZ: Objection.

10 THE COURT: The objection?

11 MS. VELAZQUEZ: Well, attorney/client
12 privilege, number one; and also relevance. The
13 witness has testified and answered all of the
14 questions regarding the statements Attorney
15 Evert asked, and now she's trying to bolster
16 her own position in the affidavit.

17 THE COURT: Attorney Evert, do you have
18 any other questions?

19 MS. EVERT: No, Your Honor.

20 THE COURT: Attorney Velazquez?

21 MS. VELAZQUEZ: Yes, Your Honor, I just
22 have a couple.

23 **BY MS. VELAZQUEZ:**

24 Q Commissioner Molloy, if an agency enters into a
25 contract, are there rules and regulations that the agency

1 must follow?

2 A Yes.

3 Q So, if you made an agreement or a contract to
4 expend government funds, would you have reduced that to
5 writing?

6 A Yes.

7 Q And would anyone else have to sign off on such an
8 agreement?

9 A In this particular case, yes. Well, in the case
10 of workers' compensation, no, but in other cases, it
11 would have to go through the Division of Property and
12 Procurement formally.

13 Q Okay. So, there would be a written contract?

14 A Yes, or an agreement; or an MOA, a memorandum of
15 agreement.

16 Q A written MOA or contract?

17 A Yes.

18 Q Okay. As commissioner of Labor, do you enter
19 into oral contracts to pay government funds to other
20 individuals?

21 A At no time during my tenure, no.

22 MS. VELAZQUEZ: Thank you.

23 THE COURT: Commissioner, what was your
24 intent in this telephone conversation with
25 Attorney Evert? If it was going to be none

1 binding, what was the point of having assistant
2 commissioner, legal counsel and the director of
3 workmen's comp be part of the conversation?

4 MR. MOLLOY: Well, Attorney Evert was
5 trying -- had left several messages for me, and
6 at the time we were dealing with a lot of
7 different issues. So, what I decided to do
8 since it was workers' compensation related, I
9 wanted everybody on the call at the same time
10 so that I can -- we can have the discussion
11 with everybody, all the players that were there
12 so that I can understand what was being asked
13 and understand everybody's position at the same
14 time.

15 THE COURT: In your tenure as
16 commissioner of Labor, have you ever negotiated
17 or departed from the statute in an attempt to
18 ensure equity?

19 THE WITNESS: I have not. And, again,
20 all the negotiations that we've had especially
21 when it comes to workers' compensation,
22 Attorney Nesha Christian-Hendrickson and
23 Director Rainia Thomas would be involved in all
24 of those processes.

25 THE COURT: Thank you, Commissioner.

1 I'm going to ask Ms. Thomas in from the
2 waiting room. May the commissioner be excused?

3 MS. VELAZQUEZ: I have nothing further
4 from the commissioner.

5 MS. EVERT: Nor do I, Your Honor.

6 THE COURT: Thank you, Commissioner
7 Molloy. Have a good day. You may be excused.

8 MR. MOLLOY: Thank you.

9 MS. VELAZQUEZ: Your Honor, may I be
10 permitted just one minute to let my secretary
11 notify the Bureau of Corrections that I will be
12 late for my one o'clock meeting.

13 THE COURT: Yes, you may.

14 MS. VELAZQUEZ: Thank you.

15 (Recess at 12:58 p.m.)

16 (This hearing resumes at 12:59, as follows:)

17 MS. VELAZQUEZ: Thank you, Your Honor.
18 My apologies. We have a consent decree case.

19 THE COURT: Ms. Thomas, can you turn on
20 your video camera and unmute your mike, please.
21 Ms. Thomas?

22 Attorney Velazquez, can you see if you
23 can reach Ms. Thomas to turn on her mike and
24 video, please.

25 MS. VELAZQUEZ: Yes.

1 MS. THOMAS: Can you guys hear me?

2 THE COURT: We can hear you now. We
3 can't see you.

4 MS. THOMAS: Can you see me now?

5 THE COURT: Yes, I can. Thank you.

6 MS. THOMAS: Okay.

7 THE COURT: Good afternoon, Ms. Thomas.

8 MS. THOMAS: Good afternoon.

9 THE COURT: You've been called into
10 court and do you know why you're here?

11 MS. THOMAS: Yes, I do.

12 THE COURT: Madam clerk, can you place
13 Ms. Thomas under oath.

14 (Rainia Thomas is duly sworn
15 by the clerk of the court.)

16 THE COURT: Thank you, Ms. Thomas.
17 Please state your name for the record.

18 MS. THOMAS: Rainia Thomas.

19 THE COURT: How are you employed?

20 MS. THOMAS: I work at the Department
21 of Labor, Workers' Comp Division as a director.

22 THE COURT: Okay. And as the director
23 of workmen's compensation what are your duties
24 and responsibilities?

25 MS. THOMAS: My duties are to carry out

1 all of the statutes that are associated with
2 the worker's comp laws. We issue indemnity
3 benefits, help injured workers return to work.

4 THE COURT: What is your involvement
5 with issues or with actions that are workmen
6 compensation actions that are outside of the
7 Department of Labor that are begun here in the
8 Superior Court?

9 MS. THOMAS: Repeat that for me.

10 THE COURT: What is your duties or
11 responsibilities with regards to matters of
12 workmen's compensations that are filed in
13 Superior Court?

14 MS. THOMAS: At points I represent the
15 Department.

16 THE COURT: Okay. And if the
17 Department --

18 MS. THOMAS: -- and answer any
19 questions associated with the claims or any
20 cases for our workers' comp claims.

21 THE COURT: If the Department of Labor
22 wasn't a party to it and the injured worker,
23 injured employee instituted his own or her own
24 civil action in Superior Court, what duties or
25 responsibilities do you have?

1 MS. THOMAS: None that I am aware of.

2 THE COURT: If you became aware of an
3 action that was initiated in Superior Court,
4 what are your duties and responsibilities?

5 MS. THOMAS: To testify as it relates
6 to that specific workers' comp claim.

7 THE COURT: Do you recall Mr. George,
8 Elvis George?

9 MS. THOMAS: Yes, I heard of the case.

10 THE COURT: And are you familiar with
11 how much was paid out in the matter?

12 MS. THOMAS: Not offhand as this is a
13 St. Thomas file and I don't have the
14 information in front of me.

15 THE COURT: Okay. Are you
16 familiar with -- or what do you remember about
17 Mr. George's case?

18 MS. THOMAS: I didn't handle the case
19 firsthand as I am not in that St. Thomas
20 district. Just from brief conversations I know
21 there was a third-party lawsuit involved in the
22 case where I think he was -- he works for V.I.
23 Waste Management Authority. I think he was
24 rear ended.

25 THE COURT: Okay. And do you recall

1 who his attorney was or is?

2 MS. THOMAS: No, not offhand. I think
3 it might be Attorney Evert.

4 THE COURT: Do you recall a
5 conversation between Attorney Evert and
6 Commissioner Molloy that you and Assistant
7 Director Hendrickson was -- were a part of.

8 MS. THOMAS: Attorney
9 Christian-Hendrickson our assistant
10 commissioner?

11 THE COURT: Yes.

12 MS. THOMAS: Yes.

13 THE COURT: And yourself and the
14 commissioner and Attorney Evert?

15 MS. THOMAS: Yes.

16 THE COURT: And when was that
17 conversation?

18 MS. THOMAS: I cannot tell you the
19 date. I don't recall the exact date.

20 THE COURT: Were you all in the same
21 room, or was it all by telephonic or by Zoom?

22 MS. THOMAS: I think it was -- we
23 definitely weren't in the same room. I think
24 it was all entered by Zoom or Teams or on a
25 conference call. I can't recall the exact.

1 THE COURT: And do you recall why you
2 were called to participate in that
3 conversation?

4 MS. THOMAS: I know Attorney Evert
5 wrote a letter requesting that she speaks
6 directly with the commissioner pertaining to
7 that Elvis George case.

8 THE COURT: Okay. And what do you
9 recall of that conversation that the four of
10 you had, or that the commissioner and Attorney
11 Evert had and that you may have overheard?

12 MS. THOMAS: From my recollection
13 Attorney Evert was asking that -- I think she
14 was trying to recoup moneys for her claimant.
15 She stated that we, the Department, had no
16 right to recoup the funds that we expended out
17 on the claim. So, the commissioner told her
18 that we indeed have the right and --

19 THE COURT: Go ahead. Please mute your
20 mikes if you're not addressing the Court.

21 MS. THOMAS: That indeed that the
22 Department did have the right to recoup all the
23 funds that we expended out in the file.

24 THE COURT: Do you recall any
25 discussion of moneys being returned to the

1 Department of Labor minus attorney fees and
2 expenses that Attorney Evert may have incurred?

3 MS. THOMAS: From my recollection, yes,
4 I think it was supposed to be her expense minus
5 her expense from what the settlement was, and
6 then the balance would go to the Department.

7 THE COURT: And what was the result of
8 that discussion?

9 MS. THOMAS: I think the commissioner
10 was clear. He stated that the stance that we
11 have, the Department have and that was it. I
12 think she was supposed to file a motion, she
13 tried to file a motion or to do something with
14 the courts. I think that's where we are here
15 now.

16 THE COURT: And what's the position or
17 stance of the Department of Labor? Can you
18 clarify what you mean by --

19 MS. THOMAS: That we're --

20 THE COURT: I'm sorry. Can you clarify
21 by what you mean by that was the stance of the
22 Department of Labor?

23 MS. THOMAS: That the Department needs
24 to collect what we expended out pertaining to
25 that Elvis George file.

1 THE COURT: Was there any agreement as
2 to Attorney Evert's expenses being paid?

3 MS. THOMAS: I think it was minus her
4 fees. So, whatever the settlement amount minus
5 her fee, the balance will go to the Department.

6 THE COURT: And that was agreed to in
7 that telephone conversation?

8 MS. THOMAS: I think it was, yes --
9 well, not agreed to. Let me say that. I think
10 there was a lot of back and forth. I guess she
11 wasn't happy with, like I said, the stance that
12 the Department take and she said she was going
13 to take legal action.

14 THE COURT: Do you know any situation
15 similar to this where the Department of Labor
16 has accepted a sum of money from -- in a matter
17 minus attorney's fees?

18 MS. THOMAS: Not that I could think of
19 off the top of my head.

20 THE COURT: Have you ever had the
21 occasion to work with Attorney Rohn or Attorney
22 Holt on settlements of workmen's compensation
23 cases?

24 MS. THOMAS: Yes.

25 THE COURT: Have they ever tendered

1 money to the Department of Labor minus their
2 fees?

3 MS. THOMAS: Yes.

4 THE COURT: Would you say that's common
5 practice in the St. Croix District?

6 MS. THOMAS: I would say so.

7 THE COURT: And I am limiting it to
8 St. Croix because I'm assuming you are in the
9 St. Croix office?

10 MS. THOMAS: Yes. I'm territorial
11 wide, but I handle -- yeah.

12 THE COURT: More matters in St. Croix
13 than St. Thomas?

14 MS. THOMAS: Yes.

15 THE COURT: So, you would be more
16 familiar with the attorneys in St. Croix?

17 THE WITNESS: Yes, that's safe to say.

18 THE COURT: Thank you, Ms. Thomas.

19 Attorney Evert, Attorney Velazquez, any
20 questions?

21 MS. EVERT: I do, Your Honor.

22 **BY MS. EVERT:**

23 Q Ms. Thomas, has the Department of Labor ever sent
24 a notice to members of the Virgin Islands Bar saying that
25 they will now expect to receive a hundred percent of any

1 moneys incurred in outside civil litigation?

2 A No, not that I am aware of.

3 MS. EVERT: All right. I have nothing
4 further, Your Honor.

5 THE COURT: Thank you.

6 Attorney Velazquez. You're muted

7 Attorney Velazquez. You're muted.

8 MS. VELAZQUEZ: Sorry about that.

9 THE COURT: That's okay.

10 **BY MS. VELAZQUEZ:**

11 Q Good afternoon, Ms. Thomas. You indicated that
12 you did not know the amount that was paid out on behalf
13 of Mr. George, correct?

14 A Not off the top of my head, correct.

15 Q And who would know?

16 A Ms. Petersen.

17 Q Could you say her full name?

18 A Ms. Kesi Petersen.

19 MS. EVERT: Your Honor, for the record
20 we don't dispute the amount that Labor says was
21 paid out.

22 THE COURT: I understand that, Attorney
23 Evert, but let Attorney Velazquez ask her
24 questions so we can move this along.

25 MS. VELAZQUEZ: Thank you.

1 BY MS. VELAZQUEZ:

2 Q And you indicated that you have had cases
3 involving Attorney Rohn and Holt, correct?

4 A Yes.

5 Q Were those auto accident cases?

6 A A range of cases from auto accidents to third
7 parties. I'm familiar and I've worked with both
8 attorneys.

9 Q You indicated that one of your responsibilities
10 is to carry out the laws of the Virgin Islands?

11 A Correct.

12 Q And does the law -- is it your -- is it the view
13 of the Workers' Comp Division that the laws of the Virgin
14 Islands requires it to recoup funds it has paid out?

15 A Yes.

16 MS. EVERT: Your Honor, objection;
17 asked and answered.

18 THE COURT: It's just a question. She
19 answered it. Let's just move it along.

20 Keep it relevant to the questions.

21 MS. EVERT: Okay.

22 MS. VELAZQUEZ: I have no further
23 questions.

24 THE COURT: Thank you. May Ms. Thomas
25 be excused?

1 MS. EVERT: No objection. Yes, Your
2 Honor.

3 THE COURT: Thank you, Ms. Thomas. You
4 may be excused.

5 MS. THOMAS: Okay.

6 MS. VELAZQUEZ: And, Your Honor, if --
7 because the parties are not disputing the
8 amount then we would ask that Ms. Kesi Petersen
9 be excused as well. And as to Attorney
10 Christian-Hendrickson -- I'm sorry. Someone is
11 speaking. Someone needs to mute. Okay. I'm
12 sorry.

13 As to Attorney Christian-Hendrickson, I
14 would ask the Court in advance for a ruling
15 limiting any questions to the facts of the
16 case. And I have an objection to any questions
17 that delve into attorney/client privilege and
18 any discussions of Attorney Christiansen [sic]
19 with Commissioner Molloy, who is her client.

20 THE COURT: She's being called for the
21 telephone conversation. I will keep it to that
22 inside of the discovery requests.

23 Ms. Petersen, if you can hear me, thank
24 you for your patience. Your testimony is not
25 going to be needed. You're excused. Go and

1 enjoy lunch albeit late. Thank you.

2 MS. PETERSEN: Thank you. Have a good
3 day.

4 THE COURT: Assistant Commissioner?

5 MS. CHRISTIAN-HENDRICKSON: Good
6 morning.

7 THE COURT: Good morning. You wear a
8 variety of hats. I'm going to just -- no
9 disrespect to your title as counsel. I'm going
10 to address you as Assistant Commissioner, if
11 that is fine.

12 MS. CHRISTIAN-HENDRICKSON: That's
13 fine. Good afternoon. Sorry.

14 THE COURT: Madam clerk, could you
15 swear the assistant commissioner in?

16 (ATTORNEY Nesha Christian-Hendrickson duly
17 sworn by the clerk of the court.)

18 THE COURT: Okay. Please state your
19 name for the record.

20 MS. CHRISTIAN-HENDRICKSON: Nesha
21 Christian-Hendrickson.

22 THE COURT: And how are you employed?

23 MS. CHRISTIAN-HENDRICKSON: I am the
24 assistant commissioner and legal counsel for
25 the Virgin Islands Department of Labor.

1 THE COURT: As assistant commissioner
2 do you have authority over the Division of
3 Workmen's Compensation?

4 MS. CHRISTIAN-HENDRICKSON: I do.

5 THE COURT: And are you familiar with a
6 matter that involve Mr. Elvis George?

7 MS. CHRISTIAN-HENDRICKSON: I am.

8 THE COURT: Do you recall a
9 conversation that occurred between the
10 commissioner, Attorney Evert and your -- well,
11 I don't know if you participated in the
12 conversation, but you and Ms. Thomas were
13 present?

14 MS. CHRISTIAN-HENDRICKSON: I was
15 present. I did not speak on the call.

16 THE COURT: Okay. And approximately
17 when was that phone call?

18 MS. CHRISTIAN-HENDRICKSON: I can't
19 tell you the exact month, but it was earlier
20 this year.

21 THE COURT: This -- over the summer?

22 MS. CHRISTIAN-HENDRICKSON: Yes, that
23 sounds about right.

24 THE COURT: And what was nature of the
25 conversation?

1 MS. CHRISTIAN-HENDRICKSON: Attorney
2 Evert was seeking to -- she did not appreciate
3 and did not agree with the position that I had
4 taken in the Department in this particular
5 matter, so she reached out to the commissioner
6 to have him essentially change the position
7 that I had communicated to her.

8 THE COURT: And what was that position?

9 MS. CHRISTIAN-HENDRICKSON: That we had
10 to not follow the law, which would require us
11 to be able to recoup the fees that were in this
12 case.

13 THE COURT: And has there ever been a
14 time where the Department of Labor has accepted
15 a settlement minus the fees that an attorney
16 incurred to obtain the settlement?

17 MS. CHRISTIAN-HENDRICKSON: I had heard
18 of that in terms of me previous coming on
19 board, but in the times that I have been here
20 this administration and the previous
21 administration did not do that. So, I had
22 heard of it as a activity for the former
23 director, but not with this current director.
24 And when I came on as legal counsel I made sure
25 that we followed the law.

1 THE COURT: Since when have you been
2 legal counsel?

3 MS. CHRISTIAN-HENDRICKSON: I began in
4 2016. In the summer of 2016.

5 THE COURT: Do you recall anything else
6 regarding the settlement that was obtained in
7 this matter by Attorney Evert?

8 MS. CHRISTIAN-HENDRICKSON: Just that
9 the amount of the settlement that she received
10 was significantly less than the amount that we
11 had expended in the case and that was the
12 reason why I put forward the position that we
13 had to -- if the settlement had been in excess,
14 then we would have been able to compromise
15 differently. But since the settlement was
16 significantly lower, we had to be able to
17 follow the process defined in 263.

18 THE COURT: Were you aware that there
19 was an insurance policy in this matter?

20 MS. CHRISTIAN-HENDRICKSON: Yes.

21 THE COURT: And are you aware of the
22 insurance policy limit?

23 MS. CHRISTIAN-HENDRICKSON: My
24 understanding is it's about \$10,000; but I
25 believe the settlement was around \$17,000

1 overall.

2 THE COURT: So, and Attorney Evert was
3 proposing releasing the money minus her fees to
4 the Department of Labor, correct? That was
5 your understanding?

6 MS. CHRISTIAN-HENDRICKSON: No. My
7 understanding is that she wanted to have a
8 compromise for the amount; that she would get a
9 portion, her client would get a portion and we
10 would get a portion. And I could not agree to
11 that based on how I read the law.

12 THE COURT: All right. Would there
13 have been any agreement if your understanding
14 was inaccurate and she was just seeking the
15 reimbursement of her attorney's fees and
16 releasing \$10,462.67 to the Department of Labor
17 and that Mr. George would receive nothing else?

18 MS. VELAZQUEZ: I'm sorry. Objection.

19 THE COURT: It's my question.

20 Attorney?

21 MS. CHRISTIAN-HENDRICKSON: Could you
22 repeat the question again? I'm sorry.

23 MS. VELAZQUEZ: I'm making a record.

24 THE COURT: If your understanding was
25 inaccurate in that Attorney Evert was not

1 seeking money for her client, she was seeking
2 reimbursement for her fees and expenses and
3 that the balance would go to the Department of
4 Labor, would your position have changed?

5 MS. CHRISTIAN-HENDRICKSON: Not as I
6 read the law. I don't believe my position
7 would have changed, but that was never stated
8 to me. And it was never stated to me in
9 writing, it was never stated to --

10 THE COURT: You never received a letter
11 from Attorney Evert dated September 1st, 2022,
12 addressed to you?

13 MS. CHRISTIAN-HENDRICKSON: I did --

14 THE COURT: You didn't receive it by
15 e-mail?

16 MS. CHRISTIAN-HENDRICKSON: I did
17 receive a letter from her.

18 THE COURT: And in that letter she
19 indicated settlement was \$17,500; her fees were
20 \$5,833; and expenses \$1,204; and that \$10,462
21 would be turned over to the Department of
22 Labor?

23 MS. CHRISTIAN-HENDRICKSON: Yes,
24 however, at the same time there was
25 communication to our staff that she did not

1 agree with that position almost very soon after
2 that. So, it was confusing to me and I reached
3 out to -- at that time we were represented by
4 counsel so I engaged with her about what was
5 the process whether we could sign it or not.
6 And I was advised that we had to wait because
7 there was other matters that the court was
8 reviewing in reference to this. So, although I
9 received that e-mail, it was conflicting.

10 THE COURT: Conflicting with the
11 conversation or with past practice and
12 procedure or with -- what was it conflicting
13 with?

14 MS. CHRISTIAN-HENDRICKSON: With the
15 conversations that I had with her and that she
16 had had with our staff.

17 THE COURT: Attorney Evert, do you have
18 any questions?

19 Thank you, Assistant Commissioner.

20 MS. CHRISTIAN-HENDRICKSON: You're
21 welcome.

22 MS. EVERT: Thank you, Your Honor. I
23 do.

24 **BY MS. EVERT:**

25 Q Attorney Christian-Hendrickson, did you ever

1 respond to my September 1, 2022, letter in writing?

2 A I did not respond because at that point I was
3 represented by the Attorney General's Office, which is
4 the practice in any matters. I do not represent the
5 Department outside of the office, the government does and
6 that would have been the Attorney General's Office, so I
7 did not respond, no.

8 MS. EVERT: I have nothing further,
9 Your Honor.

10 THE COURT: Attorney Velazquez?

11 MS. VELAZQUEZ: I do have perhaps one
12 question.

13 **BY MS. VELAZQUEZ:**

14 Q Attorney Christian-Hendrickson, are you aware of
15 any provision in section 263 that makes an exception for
16 attorney's fees and costs?

17 A I am not.

18 MS. EVERT: Objection, Your Honor.
19 This was supposed to be limited to the phone
20 conversation, and we're not veering off or at
21 least we were told not to veer off.

22 THE COURT: Attorney Velazquez.

23 MS. VELAZQUEZ: Your Honor, Attorney
24 Evert just asked a question about a September
25 letter, and did you respond, and what have you

1 done in the past. And so -- and Your Honor
2 also asked questions regarding --

3 THE COURT: I did and I asked -- the
4 Court doesn't limit what the Court can inquire
5 into. The Court limits what the attorneys can
6 inquire into. So, unless there is something
7 otherwise that says I can't do what I did, I am
8 allowed to issue orders and I issued an order
9 that the parties' conversation be limited based
10 on your motion to prevent Attorney Evert from
11 going on discovery binge or attorney/client
12 privilege. So, it was based on your motions.

13 I allowed the Attorney Evert to ask the
14 one question about the letter because Assistant
15 Commissioner said she never received it and
16 that was a limited question. So, to go back
17 into other issues, I'm not going to allow it,
18 Attorney Velazquez.

19 MS. VELAZQUEZ: Thank you. No further
20 questions. And, Your Honor, just for the
21 record -- yeah, no further questions and no
22 disrespect to the Court in objecting, but my
23 understanding is I do have to make a record
24 regardless of where the question is coming
25 from, but I appreciate that. Thank you.

1 THE COURT: All right. May the
2 assistant commissioner be excused?

3 MS. VELAZQUEZ: Nothing from the
4 government.

5 THE COURT: Attorney Evert, you are
6 muted. I am assuming that's a no, she may be
7 excused?

8 MS. EVERT: No objection.

9 THE COURT: Attorney --

10 MR. HYMES: No objection.

11 THE COURT: Assistant Commissioner, you
12 may be excused. Thank you so much.

13 MS. CHRISTIAN-HENDRICKSON: Thank you.
14 Have a nice day.

15 THE COURT: Thank you. The Court will
16 take the arguments of Counsel, the pleadings
17 before it and the testimony for the witnesses
18 and render a written order in this matter. Is
19 there anything else that the Court needs to
20 address in this matter?

21 MS. EVERT: No, Your Honor. Thank you
22 for taking all of this time. Appreciate it.

23 MR. HYMES: No, Your Honor. Thank you.

24 MS. VELAZQUEZ: Thank you. Have a good
25 day.

1 THE COURT: All right. Thank you,
2 Counsel. Have a good day.

3 THE COURT: That concludes the jury
4 calendar for today.

5 **(This hearing concluded at 1:21 p.m.)**

6

7

8

9

10 *****

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, SANDRA HALL, Registered Merit Reporter,
(Ret.), of the Superior Court of the Virgin Islands,
Division of St. Croix, do hereby certify that I
transcribed the hearing held via JAVS, in my official
capacity, the Hearing on Motions of November 9, 2022, in
the case of *Elvis George v. Mark Lonski, et al.*,
ST-2021-CV-00079.

I FURTHER CERTIFY that the foregoing 101 pages,
are true and accurate, to the best of my ability, and
constitute the official transcript of said proceedings as
transcribed by me from the JAVS recording.

I HAVE HEREUNTO subscribed my name, this 30th
day of January 2023.

/s/ Sandra Hall 1/30/2023

SANDRA HALL, RMR (Ret.)

CERTIFIED TO BE A TRUE COPY
This 8th day of March 20 23
TAMARA CHARLES
CLERK OF THE COURT

By Paula Clayton Court Clerk III

Superior Court of the Virgin Islands

Docket Sheet

Case #	ST-2021-CV-00079	Judge	Hon. Sigrid M. Tejo
Case Title	George v. Lonski et al	Case Type	Civil - Tort - Personal Injury

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
104	03-07-2023 04:26 PM	Notice - Notice From The Supreme Court Regarding Appeal Received	Official		Supreme Court Scheduling Order received. Ordered that pursuant to V.I.R.APP.P. 11(b), the Clerk of the Superior Court SHALL FILE the E-RECORD on or before February 14, 2023.	Supreme Court of the Virgin Islands
103	01-09-2023 02:51 PM	Notice - Notice Of Entry	Official		Notice of Entry of an Order Granting the Government's Motion for Stay of Judgment Pending Appeal	C'Aylah Charleswell Court Clerk I
102	01-09-2023 01:17 PM	Order - Order Granting	Official		Order Granting the Government's Motion for Stay of Judgment Pending Appeal Pursuant to VIR App. P. 8	Hon. Sigrid M. Tejo
101	12-22-2022 12:42 PM	Transcript - FTR Transcript Request	Official		FTR Transcript Requested	Myers, Tracy, Esq.
98	12-13-2022 08:52 AM	Appeal - Certified Docket Forwarded To Supreme Court	Official		Certified Docket Sheet and Order Forwarded To Supreme Court of the Virgin Islands	Paula Claxton, Court Clerk III
99	12-13-2022 01:23 PM	Response - Reply	Official		Reply to the Parties Opposition to Government's Motion for Stay Pending Appeal filed by Venetia Harvey Velázquez, Esq.	Venetia H. Velazquez On Behalf of Department of Labor- Worker's Compensation Administration
100	12-13-2022 01:28 PM	Notice - Notice to the Court	Official		Notice of Amended Certificate of Service re: Opposition to Motion to Stay	
95	12-07-2022 02:29 PM	Motion - Opposition Motion	Official		Plaintiff's Motion to Join Defendant's Opposition to Motion for Stay	Julie M. German Evert On Behalf of Elvis George
94	12-07-2022 01:59 PM	Response - Opposition Received	Official		Opposition to Motion to Stay	James L. Hymes, III, Esq. On Behalf of Mark Lonski
97	12-12-2022 05:08 PM	Notice - Notice From The Supreme Court Regarding Appeal Received	Official		Supreme Court Docketing Order received. Appeal Docketed as SCT-CIV-2022-0110.	Supreme Court of the Virgin Islands
96	12-12-2022 05:02 PM	Notice - Notice Of Appeal Received	Official		Notice Of Appeal Received from the Supreme Court.	Supreme Court of the Virgin Islands
93	12-05-2022 10:37 AM	Notice - Proposed Order	Official		Proposed Order	Venetia H. Velazquez On Behalf of Department of

**Superior Court of the Virgin Islands
Docket Sheet**

Case #	ST-2021-CV-00079	Judge	Hon. Sigrid M. Tejo
Case Title	George v. Lonski et al	Case Type	Civil - Tort - Personal Injury

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
						Labor- Worker's Compensation Administration
92	12-05-2022 10:35 AM	Motion - Motion Received	Official		Government's Motion for Stay of Judgment Pending Appeal Pursuant to V. I. R. APP. P. 8	Venetia H. Velazquez On Behalf of Department of Labor- Worker's Compensation Administration
91	11-16-2022 04:28 PM	Service - Return of Service Issued	Official		Return of Service Issued to the Department of Labor- Worker's Compensation Administration	
90	11-14-2022 04:15 PM	Notice - Notice Of Entry	Official		Notice of Entry of an Order Re: All Pending Motions on November 9, 2022	Sheeniqua Venzen, Court Clerk II
89	11-14-2022 04:14 PM	Order - Order	Official		Order Re: All Pending Motions on November 9, 2022	Hon. Sigrid M. Tejo
88	11-09-2022 01:04 PM	Hearing - Record Of Proceeding	Official		Record Of Proceeding (Status Conference) for 11-09-2022	Sheeniqua Venzen, Court Clerk II
87	10-03-2022 12:12 PM	Response - Objection Received	Official		Government's Motion To Strike And, Alternatively, Objection To Plaintiff's Surreply Filed Without Leave Of Court	Velasquez, Venetia , Esq.
86	09-30-2022 09:04 AM	Affidavit - Affidavit	Official		Affidavit	
85	09-30-2022 09:03 AM	Notice - Exhibit	Official		Exhibit	
84	09-30-2022 09:03 AM	Notice - Exhibit	Official		Exhibit	
83	09-30-2022 09:02 AM	Notice - Exhibit	Official		Exhibit	
82	09-30-2022 09:01 AM	Notice - Exhibit	Official		Exhibit	
81	09-30-2022 08:59 AM	Response - Reply	Official		Plaintiff's Reply To Government's Reply To Plaintiff's Request For Hearing To Determine Disbursement Of Settlement Proceeds Filed In Opposition To The Government's Motion To Intervene And Notice Of Claim Of Right To Those Funds	Julie M. German Evert On Behalf of Elvis George
80	09-26-2022 04:33 PM	Response - Response	Official		Response to Motion to Intervene	James L. Hymes, III, Esq. On Behalf of Mark Lonski
79	09-23-2022 10:06 AM	Notice - Notice Of Entry	Official		Notice of Entry of an Order Scheduling Matter for a	Sheeniqua Venzen, Court Clerk II

Superior Court of the Virgin Islands

Docket Sheet

Case #	ST-2021-CV-00079	Judge	Hon. Sigrid M. Tejo
Case Title	George v. Lonski et al	Case Type	Civil - Tort - Personal Injury

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					Status Conference	
77	09-21-2022 02:27 PM	Response - Response	Official		Government's Reply To Plaintiff's Request For Hearing To Determine Disbursement Of Settlement Proceeds Filed In Opposition To The Government's Motion To Intervene And Notice Of Claim Of Right To Those Funds	Velazquez, Venetia, Esq.
78	09-23-2022 10:05 AM	Order - Order Scheduling Hearing	Official		Order Scheduling Matter for Hon. Sigrid M. Tejo a Status Conference	
76	09-19-2022 01:41 PM	Notice - Exhibit	Official		Exhibit	
75	09-19-2022 01:41 PM	Notice - Exhibit	Official		Exhibit	
74	09-19-2022 01:40 PM	Notice - Exhibit	Official		Exhibit	
73	09-19-2022 01:39 PM	Motion - Motion For Hearing Received	Official		Plaintiff's Request For Hearing To Determine Disbursement Of Settlement Proceeds	Julie M. German Evert On Behalf of Elvis George
72	09-07-2022 10:43 AM	Notice - Notice Of Entry	Official		Notice of Entry of an Order Setting Deadline	Sheeniqua Venzen, Court Clerk II
71	09-07-2022 10:42 AM	Order - Order	Official		Order Setting Deadline	Hon. Sigrid M. Tejo
70	08-09-2022 04:34 PM	Notice - Notice of Compliance with Court's Order	Official		Notice of Compliance with Order Of The Court	James L. Hymes, III, Esq. On Behalf of Mark Lonski
69	08-09-2022 12:15 PM	Financial - Payment Received	Official		Receipt #: 225167 Payor: Property King INC., Amount: \$17,500.00	
68	08-09-2022 11:35 AM	Notice - Notice of Appearance	Official		Notice of Appearance	Velasquez, Venetia, Esq.
67	08-08-2022 08:37 AM	Notice - Notice to the Court	Official		Notice to the Court Of The Government's Claim Of Right To Any Settlement Proceeds Up to \$61, 205.27 And Objection To Disbursement Of Such Proceeds To Any Party Until The Government Has Been re-imbursed Pursuant to 24 V.I.C. 263	Velasquez, Venetia, Esq.
65	08-05-2022 11:06 AM	Notice - Notice Of Entry	Official		Notice of Entry of an Order Setting Deadline	Sheeniqua L. Venzen, Court Clerk II
64	08-05-2022 09:49 AM	Notice - Proposed Order	Official		Proposed Order	
63	08-05-2022 09:48 AM	Initiating Document - Complaint	Official		Proposed Complaint In Intervention Received	
62	08-05-2022 09:47 AM	Motion - Motion To	Official		Motion For Leave to	Velasquez, Venetia,

Superior Court of the Virgin Islands
Docket Sheet

Case #	ST-2021-CV-00079	Judge	Hon. Sigrid M. Tejo
Case Title	George V. Lonski et al	Case Type	Civil - Tort - Personal Injury

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
		Intervene Received			Intervene Comes Now The Government Of The Virgin Islands Received	Esq.
61	08-04-2022 12:33 PM	Notice - Proposed Order	Official		Proposed Order	
66	08-05-2022 11:09 AM	Order - Order	Official		Order Setting Deadline	Hon. Sigrid M. Tejo
60	08-03-2022 04:18 PM	Motion - Motion Received	Official		Joinder Of Motion To Interplead	James L. Hymes, III, Esq. On Behalf of Mark Lonski
59	08-02-2022 09:40 AM	Affidavit - Affidavit	Official		Affidavit In Support of Motion To interplead	
58	08-02-2022 09:24 AM	Motion - Motion Received	Official		Motion To Interplead Settlement Funds	Julie M. German Evert On Behalf of Elvis George
57	06-13-2022 02:50 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of an Order Setting a Deadline	Latoya A. Camacho, Court Clerk Supervisor
56	06-13-2022 02:48 PM	Order - Order	Official		Order Setting a Deadline Ordered that by July 29th,2022 the parties shall either: (1) file the appropriate Stipulation Agreement and/or Notice of Dismissal to close this matter or (2) advise the Court why the filing would be premature or otherwise	Hon. Sigrid M. Tejo
55	05-27-2022 03:15 PM	Notice - Mediation Report	Official		Mediation Report Received- The Conflict has been completely resolved	David E. Nichols, Esq.-Mediator
54	04-11-2022 03:23 PM	Notice - Notice to the Court	Official		Notice of Mediation	Julie M. German Evert On Behalf of Elvis George
53	04-05-2022 03:18 PM	Notice - Notice to the Court	Official		Informational Notice	James L. Hymes, III, Esq. On Behalf of Property King INC.
52	03-15-2022 04:07 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of an Order Scheduling Matter for a Status Conference	Latoya A. Camacho, Court Clerk Supervisor
51	03-15-2022 03:45 PM	Order - Order Scheduling Hearing	Official		Order Scheduling Matter for a Status Conference	Hon. Sigrid M. Tejo
50	02-15-2022 01:59 PM	Notice - Notice Of Service	Official		Notice of Production filed by	Julie German Evert, Esquire
49	02-10-2022 09:31 AM	Notice - Notice Of Service	Official		Notice of Production	Julie M. German Evert On Behalf of Elvis George
48	02-08-2022 03:30 PM	Notice - Notice Of Service	Official		Notice of Production	Julie M. German Evert On Behalf of Elvis George

**Superior Court of the Virgin Islands
Docket Sheet**

Case #	ST-2021-CV-00079	Judge	Hon. Sigrid M. Tejo
Case Title	George v. Lonski et al	Case Type	Civil - Tort - Personal Injury

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
47	01-25-2022 01:38 PM	Notice - Notice Of Service	Official		Notice Of Service	
46	01-24-2022 01:00 AM	Notice - Notice Of Service	Official		Notice Of Service	Julie M. German Evert On Behalf of Elvis George
45	12-16-2021 05:15 PM	Notice - Notice of Entry of Official Judgment/Order			Notice of Entry of Order	
44	12-15-2021 05:13 PM	Order - Order	Official		Order signed by Judge Sigrid Hon. Sigrid M. Tejo M. Tejo	
43	12-03-2021 02:24 PM	Notice - Notice to the Court	Official		Notice to the Court	Julie M. German Evert On Behalf of Elvis George
42	11-03-2021 02:35 PM	Notice - Notice of Filing	Official		Notice to Take Deposition of the Plaintiff, Elvis George	
41	11-02-2021 04:17 PM	Notice - Notice Of Service	Official		Notice of Production of Documents	Julie M. German Evert On Behalf of Elvis George
40	10-27-2021 10:35 AM	Notice - Notice Of Service	Official		Notice Of Service	
39	10-22-2021 08:32 AM	Notice - Notice of Filing	Official		Amended Notice of Production	
38	10-20-2021 11:21 AM	Notice - Notice of Filing	Official		Notice of Production	Julie M. German Evert On Behalf of Elvis George
37	10-13-2021 09:30 AM	Hearing - Record Of Proceeding	Official		Record Of Proceeding completed by the clerk	Tashika Hector Court Clerk II
36	10-07-2021 10:54 AM	Notice - Notice to the Court	Official		Notice to the Court filed by James L. Hymes, III, Esq.	James L. Hymes, III, Esq.
35	08-02-2021 03:34 PM	Notice - Notice of Entry of Official Judgment/Order	Official		Notice of Entry of Judgment/Order	
34	08-02-2021 03:32 PM	Order - Order	Official		Amended Scheduling Order signed by Judge Sigrid M. Tejo	
33	07-30-2021 04:50 PM	Notice - Notice Of Service	Official		Notice Of Service	
32	07-30-2021 04:28 PM	Notice - Notice Of Service	Official		Notice Of Service	
31	07-30-2021 04:27 PM	Notice - Notice Of Service	Official		Notice Of Service	
30	07-30-2021 04:26 PM	Notice - Notice Of Service	Official		Notice Of Service	
29	07-30-2021 03:45 PM	Notice - Notice Of Service	Official		Notice Of Service of Rule 26 Initial Disclosures of the Plaintiff , Elvis George	
28	07-29-2021 11:59 AM	Notice - Proposed Order	Official		Proposed Order	Elvis George Julie German Evert, Esquire
27	07-29-2021 11:57 AM	Motion - Motion To Amend Received	Official		Stipulated Motion to Amend Scheduling Order	Elvis George Julie German Evert, Esquire
26	06-24-2021 09:58 AM	Notice - Notice Of Service	Official		Notice Of Service of Mark Lonski's Response to Plaintiff's Request for	James L. Hymes, III Esq.

Superior Court of the Virgin Islands

Docket Sheet

Case #	ST-2021-CV-00079	Judge	Hon. Sigrid M. Tejo
Case Title	George v. Lonski et al	Case Type	Civil - Tort - Personal Injury

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					Production of Documents	
25	06-24-2021 09:57 AM	Notice - Notice Of Service	Official		Notice Of Service of Mark Lonski's Response to Plaintiff's 1st Set of Interrogatories	James L. Hymes, III Esq.
24	06-24-2021 09:03 AM	Notice - Notice Of Service	Official		Notice Of Service of PK's Response to Plaintiff's Request for Production of Documents	James L. Hymes III, Esq.
23	06-24-2021 09:02 AM	Notice - Notice Of Service	Official		Notice Of Service of PK's Response to Plaintiff's First Set of Interrogatories	James L. Hymes III, Esq.
22	04-09-2021 11:42 AM	Notice - Notice of Entry of Judgment/Order			Notice of Entry of Judgment/Order	
21	04-09-2021 11:39 AM	Action - File Returned To Clerk's Office	Official		File Returned To Clerk's Office with an Order dated 04/07/2021	
20	04-07-2021 11:40 AM	Order - Order	Official		Order signed by Judge Sigrid M. Tejo	
19	03-26-2021 02:57 PM	Action - File Forwarded To Judge's Chambers	Official		File Forwarded To Judge's Chambers with a Joint Stipulated Scheduling Order dated 03/25/2021	
18	03-26-2021 11:02 AM	Motion - Motion Received	Official		Joint Stipulated Scheduling Order	Julie German Evert, Esquire & James L Hymes, III, Esq.
17	03-16-2021 09:12 AM	Notice - Notice of Entry of Judgment/Order			Notice of Entry of Judgment/Order	
16	03-12-2021 02:16 PM	Notice - Notice Of Service	Official		NOTICE OF SERVICE OF PLAINTIFF'S INTERROGATORIES AND REQUEST FOR DOCUMENT PRODUCTION TO DEFENDANT MARK LONSKI	Elvis George Julie German Evert, Esquire
15	03-12-2021 01:22 PM	Notice - Notice Of Service	Official		Notice Of Service	Elvis George Julie German Evert, Esquire
14	03-12-2021 09:01 AM	Order - Order	Official		Order signed by Judge Sigrid M. Tejo	
13	03-09-2021 07:46 AM	Answer - Answer	Official		ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT	JAMES L. HYMES, III
12	03-02-2021 02:38 PM	Notice - Notice Of Reassignment	Official		Notice Of Reassignment	
11	02-21-2021 11:17 AM	Notice - Notice of Appearance	Official		Notice of Appearance	JAMES L. HYMES, III, ESQUIRE
10	02-18-2021 04:30 PM	Notice - Notice of Entry of Judgment/Order	Official		Notice of Entry of Order dated February 18, 2021 to:	

**Superior Court of the Virgin Islands
Docket Sheet**

Case #	ST-2021-CV-00079	Judge	Hon. Sigrid M. Tejo
Case Title	George v. Lonski et al	Case Type	Civil - Tort - Personal Injury

#	Filed Date	Docket Entry Type	Status	Outcome	Description	Submitted By
					Julie German Evert, Esq.	
9	02-18-2021 04:30 PM	Order - Order of Recusal	Official		Order of Recusal	Hon. Denise M. Francois
8	02-16-2021 10:06 AM	Financial - Payment Received	Official		Receipt #: 201783 Payor: ELVIS GEORGE, Amount: \$75.00	
7	02-12-2021 04:27 PM	Service - Summons Issued	Official		Summons Issued	
6	02-12-2021 04:27 PM	Service - Summons Issued	Official		Summons Issued	
5	02-12-2021 04:26 PM	Initiating Document - Docket Letter Processed	Official		Docket Letter Processed	
4	02-12-2021 12:48 PM	Initiating Document - Complaint	Official		Verified Complaint Received	
3	02-12-2021 12:47 PM	Initiating Document - Litigant Personal Data Form	Official		Civil Litigant Personal Data Form	
2	02-12-2021 12:47 PM	Service - Summons Received	Official		Summons Received	
1	02-12-2021 12:46 PM	Service - Summons Received	Official		Summons Received	

CERTIFIED TO BE A TRUE COPY

This 8th day of March 20 23

TAMARA CHARLES

CLERK OF THE COURT

By Paula Clayton Court Clerk III

FILED

November 14, 2022 04:14 PM

ST-2021-CV-00079

TAMARA CHARLES
CLERK OF THE COURT

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

ELVIS GEORGE,

Plaintiff,

vs.

MARK LONSKI and PROPERTY KING,

Defendants.

Case No.: ST-21-CV-00079

ORDER

THIS MATTER came before the Court for a hearing on all pending motions on November 9, 2022. Plaintiff appeared and was represented by Attorney Julie German Evert, Esquire. Defendants were presented by Attorney James L. Hymes, III. The Department of Labor was presented by Attorney Venetia H. Velazquez. Pending before the Court are the following:

1. Motion for Leave to Intervene filed August 5, 2022, by the Government of the Virgin Islands;
2. Plaintiff's Request for Hearing to Determine Disbursement of Settlement Proceeds filed September 19, 2022;
3. Government's Reply to Plaintiff's Request for Hearing to Determine Disbursement of Settlement Proceeds filed in Opposition to the Government's Motion to Intervene and Notice of Claim of Right to those Funds filed September 21, 2022;
4. Defendants' Response to Motion to Intervene filed September 23, 2022;
5. Plaintiff's Reply to Government's Reply to Plaintiff's Request for Hearing to Determine Disbursement of Settlement Proceeds filed in Opposition to the Government's Motion to Intervene and Notice of Claim of Right to those Funds filed September 29, 2022; and
6. Government's Motion to Strike and, Alternatively Objection to Plaintiff's Surreply filed without Leave of Court filed October 3, 2022.

BACKGROUND

On February 12, 2021, Plaintiff filed a Complaint for an action for damages against Defendant for injuries he sustained as the result of an accident involving Defendants on July 14, 2020. Plaintiff's injuries occurred while he was employed and working at the St. John Waste Management (WMA) facility in St. John. WMA referred Plaintiff to the Department of Labor Workers' Compensation Administration (WCA) to ensure payment of Plaintiff's claims and related payments. Plaintiff had never been contacted by the Department of Labor to institute an action to recover payments made to Plaintiff for his injuries.

On or about January 18, 2022, Plaintiff's counsel contacted the WCA to receive information pertaining to any lien that the Department of Labor may have regarding payments associated with Plaintiff's injuries. By letter dated February 10, 2022, WCA informed Plaintiff's counsel that the WCA had expended Sixty-One Thousand Two Hundred Five Dollars and Twenty-Seven Cents (\$61,205.27). The letter further advised counsel to "submit the General Release along with \$5.00 for the Notary Public ... when a settlement agreement in this case has been effectuated."

Sometime in July 2022, Plaintiff's counsel had a telephone conversation with Commissioner Molloy, Assistant Commissioner/Legal Counsel Attorney Nesha R.Christian-Hendrickson, and Ms. Rainia Thomas. Attorney Christian-Hendrickson and Ms. Thomas were present but did not participate in the conversation. There appears to be a disagreement as to the ultimate resolution of the meeting, but it was undisputed that during the meeting, the Commissioner was informed of the possibility of the matter settling and that Plaintiff's counsel was seeking reimbursement for her attorney's fees and expenses. The Department of Labor disputes that there was an agreement regarding payment of attorney's fees. However, it appears there have been occasions when WCA has accepted settlement payments less the associated attorney's fees and expenses.

On August 5, 2022, the Government filed a Motion to Intervene as a matter of right pursuant to V.I.R. Civ. P. 24 because the "Government has a right pursuant to statutory law to recoup monies expended on Workmen's Compensation claims, before a party may compromise or distribute proceeds from a third party for injuries arising from workplace injuries for which Government has expended or paid out funds."

On September 1, 2022, Plaintiff's counsel sent a letter to Assistant Commissioner/ Legal Counsel Christian-Hendrickson indicating the matter had settled for \$17,500.00 and less her attorney's fees and expenses, the total amount due WCA would be \$10,462.67. Enclosed with the letter was a release required by Defendants. No one from the Department of Labor responded to the letter and it is the position of the Department of Labor that it is entitled to the entire settlement proceeds to be paid back into the Government Insurance Funds.

ANALYSIS

A. THE GOVERNMENT'S MOTION TO INTERVENE IS DENIED AS UNTIMELY

Plaintiff sustained his injuries on July 14, 2020, while working at the St. John Waste Management office. Plaintiff was referred to the WCA to seek payment for his medical bills and expenses. While there is not record as to when those payments began, it clear that payments began before February 10, 2022. At no time between July 14, 2020, and February 10, 2022, did the Department of Labor institute legal action against Defendants to recover money to repay the Government Insurance Fund. It was not until after a telephone conversation between the Commissioner of Labor and Plaintiff's counsel in July 2022, that the Department of Labor then decided to take part in this proceeding.

It is clear from the record that on February 2, 2022, the Department of Labor was sent a letter from Plaintiff's counsel requesting a final WCA lien. The WCA responded by letter dated February 10, 2022. Additionally, Ms. Petersen, the Assistant Director: Worker's Compensation Administration, was copied on a letter dated April 7, 2022, that the matter was scheduled for mediation on May 26, 2022. From the information before the Court, the Department of Labor neither attended the mediation nor initiated any action to stop or intervene in the mediation.

Title 24 V.I.C. § 263, in relevant part, provides that "when an injured workman or employee, or his beneficiaries in case of death, may be entitled to institute an action for damages against a third person in cases where the Government Insurance Fund, in accordance with the terms of this chapter, is obliged to compensate in any manner or to furnish treatment, the **Administrator shall subrogate himself to the rights of the workman or employee or of his beneficiaries, and**

may institute proceedings against such third person in the name of the injured workman or employee or of his beneficiaries, within two years following the date of the injury, and any sum which as a result of the action, or by virtue of a judicial compromise, may be obtained in excess of the expenses incurred in the case shall be delivered to the injured workman or employee or to his beneficiaries entitled thereto¹. (Emphasis added.)

While the exact date when the Department of Labor became aware of Plaintiff's injury is not part of the record, the record is clear that Plaintiff reported his injury to the WCA and began receiving compensation. It is also clear that at no time did the Department of Labor institute proceedings on behalf of the Plaintiff following his reporting of his injury. It is further clear from the record that two years have passed since Plaintiff's injuries. The Department of Labor, while on notice of not only Plaintiff's injury, but this pending matter did nothing to subrogate its' claim until August 5, 2022, more than two years after Plaintiff's injury.

The Court finds that the Department of Labor's attempt to intervene is untimely and denied.

B. THE COURT FINDS THAT GIVEN THE CIRCUMSTANCES IN THIS MATTER, EQUITY REQUIRES THE COURT DISBURSE THE MONEY TO BOTH THE DEPARTMENT OF LABOR AND PLAINTIFF'S COUNSEL

Title 24 V.I.C. § 263 states that an injured government employee can neither institute an action nor compromise the right of action without the assent and participation of the Commissioner of Labor, and the statute as a whole contemplates that all parties to a suit to recover damages for an injured employee may compromise their claims in aid of settlement, as long as each party expressly consents to the compromise². The issue that remains before the Court is did the Commissioner in the telephone conversation in July 2022, result in an agreement that the Department of Labor would accept the settlement proceeds less Plaintiff's counsel's attorney's fees and expenses.

¹ Title 24 V.I.C. § 263.

² Jennings v. Richards, 31 V.I. 188, 1995 V.I. LEXIS 1 (V.I. Terr. Ct. 1995).

The testimony before the Court, regarding the July 2022 conversation, is that the Commissioner of Labor advised Plaintiff's counsel that he was required to follow the Virgin Islands Code as it pertains to these matters and during his tenure, he has never agreed to accept a settlement less attorney's fees and expenses. The Assistant Commissioner further added there was no agreement. Ms. Thomas added that she is familiar with Attorneys Holt and Rohn and in the past, in similar matters, have accepted settlements, less their attorney's fees and expenses. Additionally, there is a September 1, 2022, letter sent to the Assistant Commissioner/Legal Counsel regarding the settlement and disbursement of proceeds. The letter also included a proposed release. The letter was never responded to by the Department of Labor.

The settlement proposed by Plaintiff would result in the WCA and the Government Insurance Fund receiving Ten Thousand Four Hundred Sixty-Two Dollars and Sixty-Seven Cents (\$10,462.67), Four Hundred Dollars (\$400.00) more than if the WCA had initiated an action against Defendants. While it is the policy of the Commissioner to ensure that the Government Insurance Fund is reimbursed for all funds expended so that the funds are available for other recipients, this is situation where the Department of Labor, but for Plaintiff's action, would not have received any compensation to replace in the Fund. The Court further finds that the Commissioner is vested with the discretionary authority to enter into compromise agreements without violating the Code, and in fact, it is the practice and procedure of many Government agencies to do so, in order to collect monies that it due, i.e. property tax amnesties and income tax extensions, to name a few.

Accordingly, the Court finds, that in this matter, and this matter only, the decision of this Court is specific to these facts and circumstances and are not binding on any future WCA actions³, it is hereby

ORDERED that the Department of Labor and/or the Worker's Compensation Administration execute the General Release associated with this matter no later than November 21, 2022; and it is further

ORDERED that the Cashier of the Superior Court shall release to Plaintiff's counsel, from the funds deposited by Defendants on August 9, 2022, the sum of Six Thousand Thirty-Seven

³ The Court notes that perhaps, in an abundance of caution, the Department of Labor and/or WCA should be the legal community on notice that this past practice and procedure will no longer be recognized by the Department.

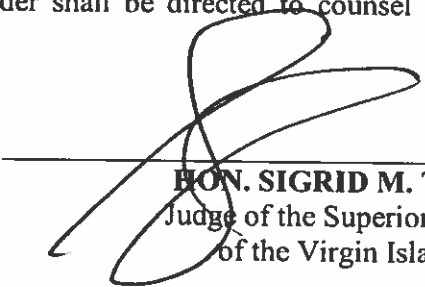
Dollars and Thirty-Three Cents (\$6,037.33) as and for attorney's fees and expenses; and it is further

ORDERED that the Cashier of the Superior Court release the remaining Ten Thousand Four Hundred Sixty-Two Dollars and Sixty-Seven Cents (\$10,462.67) to the Department of Labor, Worker's Compensation Administration to be placed back into the Government Insurance Fund; and it is further

ORDERED that the Government's Motion to Strike Surreply is DENIED⁴; and it is further

ORDERED that a copy of this Order shall be directed to counsel of record and the Department of Labor.

Dated: November 14, 2022.



HON. SIGRID M. TEJO
Judge of the Superior Court
of the Virgin Islands

ATTEST:

TAMARA CHARLES

Clerk of the Court ____/____/____

By:



LATOYA CAMACHO
Court Clerk Supervisor 11/14/2022

CERTIFIED TO BE A TRUE COPY
This 8th day of March 20 23
TAMARA CHARLES
CLERK OF THE COURT

By Paula Clayton Court Clerk III

⁴ Plaintiff filed a request for Hearing to which the Government replied, and Plaintiff replied which is permitted under the Rules of Civil Procedure. Therefore, it is not a surreply needing leave of Court to be filed.

FILED

November 14, 2022 04:15 PM

ST-2021-CV-00079

TAMARA CHARLES

CLERK OF THE COURT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
District of St. Thomas/St. John

Elvis George,

Plaintiff

Case Number: ST-2021-CV-00079

Action: Personal Injury

v.

Mark Lonski et al,

Defendant.

NOTICE of ENTRY
Of AN
ORDER RE: ALL PENDING MOTIONS ON NOVEMBER
9, 2022

To: Julie M. German Evert, Esq.

Venetia H. Velazquez, Esq.

James L. Hymes, III, Esq.

Department of Labor – Workers’
Compensation Administration

Please take notice that on November 14, 2022
a(n) Order Re: All Pending Motions on November 9, 2022
dated November 14, 2022 was entered
by the Clerk in the above-titled matter.

Dated: November 14, 2022

Tamara Charles
Clerk of the Court

By: _____

Sheeniqua Venzen
Court Clerk II