

**PRESENTATION OF ATTORNEY GENERAL  
GORDON C. RHEA  
DEPARTMENT OF JUSTICE'S TESTIMONY  
THIRTY-SIXTH LEGISLATURE OF THE VIRGIN ISLANDS  
IN RE: BILL NO. 36-0042  
COMMITTEE ON BUDGET, APPROPRIATIONS AND  
FINANCE  
JUNE 12, 2025**

Good afternoon, Chairman Novelle Francis, Jr., Committee on Budget, Appropriations and Finance members, other Senators, Legislative staff, and the listening and viewing audiences. I am Attorney General Gordon Rhea. I am here today with Christopher Timmons, Chief of the Department of Justice's Civil Division. It is an honor and privilege to appear before you this afternoon.

The Department of Justice appreciates the opportunity to comment on Bill No. 36-0042. The Department of Justice has completed a preliminary review of Bill No. 36-0042 and offers the following comments.

Bill No. 36-0042 seeks to amend title 33 of the Virgin Islands Code, subtitle 3, chapter 118, section 3411, to increase the maximum judgement amount for the award of damages against the Government of the Virgin Islands. As presented, Bill No. 36-0042 seeks to increase the amount of money that a claimant can recover from the Government from \$25,000 to \$150,000.

Currently, the Virgin Islands Tort Claims Act places a cap on the government's damages in exchange for waiver of the government's sovereign immunity. Although a cap of \$25,000 exists, courts within the territory have construed that cap in a manner that has greatly expanded the government's liability; for example, courts have routinely held that the Virgin Islands Tort Claims Act permits multiple judgments in one lawsuit to persons with independent causes of action as a result of a single tortious incident or occurrence.<sup>1</sup>

In other words, "limitation of liability under Virgin Islands Tort Claims Act applies to recovery by each individual claimant without regard to number of claimants in a given lawsuit, and [the] act permits multiple judgments in one lawsuit to persons with independent causes of action as a result of a single tortious incident or occurrence."<sup>2</sup> As a result, while the current cap has been set at \$25,000 by statute, the actual damages the government is routinely responsible for is often multiples of this amount.

Because each state and territory has the independence to govern itself and enact its own policies and laws, states employ different methods to reduce tort liability, including limiting the jurisdiction's duties to the public, prohibiting

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<sup>1</sup> See *Lloyd v. Gov't of the V.I.*, 39 V.I. 18, 25

<sup>2</sup> See *Connor v. Gov't of the V.I.*, 2013 V.I. LEXIS 81, \*15, citing *Lloyd*

punitive and exemplary damages – including damages for pain and suffering – creating statutory caps – either aggregate or per-incident – and sovereign immunity.

For example, in Alabama, the “recovery of damages under any judgment against a governmental entity shall be limited to \$100,000.00 for bodily injury or death for one person in any single occurrence. Recovery of damages under any judgment or judgments against a governmental entity shall be limited to \$300,000.00 in the aggregate where more than two persons have claims or judgments on account of bodily injury or death arising out of any single occurrence.”<sup>3</sup> Recovery for property damage or loss is also limited to \$100,000. Settlements for claims of bodily injury, death or property damage in excess of the statutory limits are expressly prohibited in Alabama.

Like Alabama, many states cap their liability to a single person at a lower amount and provide a slightly higher limitation for all claims in the aggregate. For example, Florida limits the government’s liability to \$200,000 per person, and \$300,000 in the aggregate<sup>4</sup>; other states such as Nevada and Virginia, which both cap their liability at \$100,000, apply their caps in the aggregate.<sup>5 6</sup> And importantly, Virginia limits its waiver of sovereign immunity to claims for negligence.

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<sup>3</sup> AL Code § 11-93-2

<sup>4</sup> F.S.A. § 768.28 (5)

<sup>5</sup> [\*Conty of Clark ex rel. University Med. Ctr. v. Upchurch by & Through Upchurch\*, 114 Nev. 749, 759-760 \(NRS 41.035](#) allows one statutory limitation regardless of the number of actors)

<sup>6</sup> [Va. Code Ann. § 8.01-195.3](#)

While the Department of Justice does not object to increasing the maximum judgement amount for the award of damages against the Government of the Virgin Islands, the Department has some concerns about the proposed legislation.

To the extent that the Legislature sees fit to increase the potential recovery amount in lawsuits brought against the Government of the Virgin Islands, as this bill contemplates, the Department of Justice would encourage and implore that the Legislature right the wrong that the Courts have created through interpretation. The Department of Justice would propose an additional amendment that makes clear that the government's liability under the Virgin Islands Tort Claims Act is limited to a specific and defined amount "in the aggregate for all claims arising from or relating to any act or occurrence or series of related acts or occurrences causing injury or harm to a plaintiff or group of plaintiffs suing the government and/or any individual who acted within the scope of government employment."

Additionally, unlike the Federal Tort Claims Act, which extends to and covers torts committed by federal employees in their official capacity, in the Virgin Islands, while the government becomes a defendant, claims continue against the individual official or employee – who will be personally liable for the judgment in excess of the cap on the government's liability. The Department of Justice would propose this issue also be addressed. The Federal Tort Claims Act provides that the government

shall be substituted as the party defendant upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment, and any action or proceeding commenced against that officer or employee shall be deemed an action against the government and the government shall be substituted as the party defendant. In those cases, the individual capacity defendant – the government employee – is dismissed. This is not unique to the federal government; in fact, this is the way most state tort claims acts are structured. The Department of Justice believes this should be the case in the Virgin Islands.

The Federal Tort Claims Act does, however, provide exceptions to its waiver of liability. Among other things, to the extent claims arise out of an employee's intentional actions or willful misconduct, or the exercise of discretion in the performance of their duties, there is no waiver. The Virgin Islands Tort Claims Act carves out claims arising out of the gross negligence of an employee but not claims arising out of intentional torts or willful misconduct. This seems a bit illogical. If an employee is reckless but does not intend harm the government is not responsible; but if the employee intentionally harms someone, it is. There is no logical reason the Government of the Virgin Islands should be liable for the intentional acts of its employees. The Department of Justice believes this should be cured by amendment as well.

Finally, it should be noted that many jurisdictions including New York, Florida and others draw a statutory distinction between a “public duty” such as a duty to investigate, or to maintain the road, from a “specific duty,” (i.e. where there is a special relationship between the alleged tortfeasor and the plaintiff) maintaining sovereign immunity and immunizing their personnel from all liability from the former.<sup>7</sup> The common-law of many other jurisdictions provide this protection in the absence of a statute. A statutory distinction of this nature would be helpful in defense of claims against the Government of the Virgin Islands because notwithstanding the “public duty doctrine<sup>8</sup>” which provides to the contrary, our Courts have recently interpreted statutes creating a general duty — such as the Department of Public Works’ duty to maintain roadways — as a basis upon which to find liability to any member of the public at large.<sup>9</sup> On this basis it is extremely important to reinstate the public duty doctrine in the Virgin Islands by statute, to

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<sup>7</sup> See ex. *Lewis v. City of St. Petersburg*, 98 F. Supp.2d 1344 (M.D. Fla. 2000) *aff’d in part, rev’d in part*, 260 F.3d 1260 (11th Cir. 2001) Public duty exception. A governmental entity is not liable for a tort caused by the breaching of a duty owed to the public at large.

<sup>8</sup> In *Perez*, the Third Circuit found that the public duty doctrine was the law of the Virgin Islands in a situation where a “duty [arose] under legislative enactments or administrative regulations.” [\*Perez v. Government of the Virgin Islands\*, 847 F.2d 104](#) The public duty doctrine effectively immunizes the government and its officials from liability for a plaintiff’s injuries except where a “special relationship” exists between the plaintiff and the government or official or where the official’s acts are ministerial. *Ficek v. Morken*, 2004 ND 158, 685 N.W.2d 98, 101-102 (N.D. 2004) (citing *South v. Maryland*, 59 U.S. 396, 403, 15 L. Ed. 433 (1855)).

<sup>9</sup> See [\*Simkins v. The Bank of Nova Scotia\*, 2025 VI 2](#)

protect the government's coffers from claims where in most jurisdictions no duty would be found.

As to the proper adjustment, the Department of Justice firmly believes that if the Legislature increases the liability cap to \$150,000, as proposed, the Government of the Virgin Islands will be hamstrung in its future efforts to settle claims and will be forced to try all claims brought against it, as the plaintiff's bar will have little incentive to settle cases on terms that the government can afford. The current cap enables the Government to settle claims on a reasonable basis.

A balance must be struck. As a result, the Department of Justice would propose limiting any increase in the cap to somewhere between \$50,000 and \$100,000 but only if the law is amended to make this an aggregate cap on all claims and causes of action to be apportioned among all plaintiffs harmed by a government employee or employees acting within the scope of their duties in a single occurrence. It may be appropriate to follow the lead of some of the other jurisdictions and increase the cap to \$50,000 per plaintiff and \$100,000 in the aggregate for all claims arising from the same act, occurrence or series of events.

I thank the Committee for allowing the Department of Justice to testify on Bill No. 36-0042. This concludes my formal remarks. I respectfully welcome any questions this body may have.