



THE PATE LAW FIRM

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VIA EMAIL senatorcarlajoseph@legvi.org

Senator Carla J. Joseph
Chair, Committee on Rules & Judiciary
36th Legislature of the Virgin Islands

Re: Bill 36-0112

Dear Members of the Committee on Rules and Judiciary,

I am Russell Pate, an attorney practicing in the U.S. Virgin Islands for nearly twenty years. I am also the current President of the Virgin Islands Bar Association, and for the past 60 years, the only second-time elected President of the VI Bar Association. I am intimately familiar with court delay in the U.S. Virgin Islands, and the problems of lack of court funding, staffing, resources, and deteriorating courthouses and courtrooms.

I highly commend this Committee on Bill 36-0112. This bill is very self-explanatory, so I will be brief. First, raising filing fees. This is for “big” cases filed in the Superior Court (contract, real estate, divorce, foreclosure, debt collection, business disputes and personal injury) to match up with filing fees across the United States. (This does not apply to small claims in Magistrate Court which will remain at \$50.)

Filing fees are not at the discretion of the judge, like a penalty in a civil case. (Any fines or fees that are at the court’s discretion in civil or criminal cases, go to the General Fund, so there’s no conflict of interest). However, non-discretionary statutory set filing fees can be sourced and kept with the Court to create a secure and steady revenue stream of money that can be leveraged for capital improvement. We here all know of the age and condition of the Territorial (now Superior) Courts on St. Croix and St. Thoms. The buildings are old.

Further, this bill makes filing fees more fair. Instead of the Plaintiff just paying \$150 to file his or her or a corporate entity’s lawsuit; any party that counter-sues or brings other parties in (i.e., third-parties) pays a filing fee of \$150 too for seeking affirmative relief of damages. For example, in toxic refinery litigation, where dozens of companies may sue dozens of other companies in one lawsuit, that case filing should not just be \$150 when 50 companies are suing 50 other companies. One complex lawsuit could generate 100 affirmative counter, cross or third-party claims, creating a \$15,000 filing fee; and rightly so, for the complexity and amount of money in dispute.



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I will now move on to the section regarding pre-judgment interest. At present, a business or person seeking money for harm caused – if there is no sum certain money amount at the filing of the Complaint (what is sometimes called liquidated damages) then no pre-judgment interest can be awarded.

Pre-judgment interest in the Virgin Islands is 9%, which is consistent with many States, though a number of states follow Massachusetts and have higher 13% pre-judgment interest. So, if you have a business case for breach of contract for liquidated damages pending in court for 10 years, or if you have a foreclosure case for a sum-certain pending for 10 years, you can get 9% prejudgment interest. However, if your case is a personal injury or a breach of contract for non-liquidated damages (which includes consequential or incidental damages) or for any other human non-economic damages, there is no prejudgment interest.

Unfortunately, the lack of money-interest creates a perverse incentive for more court delay – as the defending parties have incentive to delay as the value of money goes down overtime. This Econ 101. Why pay more now (by amicable resolution) when you can pay less 5 or 10 years down the road. Generally, 97% of all civil case settle. But when a case settles is a big issue of fairness; Settling in year 1 of litigation versus year 10, right before trial, is a huge difference multiplying massive burdens on the court and the justice system. Under current V.I. law, waiting to year 10 to settle is incentivized for the wrongdoer as it reduces the real value of money paid because there is no prejudgment interest.

To promote earlier resolution many States have statutes which burden the party who rejected a fair and reasonable settlement offer with paying costs and interest on the delay. Bill 36-0112 looks very similar to Connecticut statute at C.G.S.A. § 52-192a, which that statute's goal was to make Parties internalize all costs of tactical delay. Bill 36-0112's interest provision creates an incentive for the parties not to delay litigation, knowing that interest costs will reflect inflation and the consumer price increases (which is, sadly, very high lately and likely to increase further with tariffs).

In sum, This Bill promotes fairness and timeliness. The interest provision will help people, particularly people and business that were done wrong and seek redress in a court of law. I am happy to take any questions, as I thoroughly enjoy the Q&A and discussion the most. Thank you.

Best Regards,

J. Russell B. Pate, Esq.
Attorney at Law