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

PAMELA SHILLINGFORD and DONALD SHILLINGFORD, **Plaintiffs,**	)	**SX-97-CV-652**
v.	)	**ACTION FOR DAMAGES**
VIRGIN ISLANDS PORT AUTHORITY, **Defendant.**	)	**NOT FOR PUBLICATION**

COUNSEL:

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CABRET, MARIA M., *Senior Sitting Judge**

MEMORANDUM OPINION
(Filed September 8, 2006)

THIS MATTER is before the Court on Defendant's Motion for Judgment Not Withstanding the Verdict [hereinafter "JNOV"], Plaintiffs' Opposition, and Defendant's Reply. For the reasons that follow, Defendant's motion for a JNOV will be denied.

I. BACKGROUND

On July 31, 1997, Plaintiff Pamela Shillingford fell in the hallway of the Henry E. Rohlsen Airport. On October 30, 1997, Plaintiffs Pamela and Donald Shillingford sued the Virgin Islands Port Authority alleging that Pamela Shillingford's fall was due to Defendant's negligence and that as a result, she sustained substantial injuries. After a seven-day trial, on March 23, 2005, the jury returned a verdict in favor of the Plaintiffs, awarding Mrs. Shillingford

**Assumed senior status on July 1, 2006*

$5,000.00 in past medical expenses, $271,200.00 in past lost wages, and $800,000.00 in past and future pain and suffering. Mr. Shillingford was awarded $100,000.00 for loss of consortium. As a part of the jury verdict, Mrs. Shillingford was assessed twenty percent of the fault for her injuries, thereby decreasing the Plaintiffs' overall award from $1,176,200.00 to $940,960.00.

II. JNOV STANDARD

Courts considering a motion for JNOV should uphold the verdict if the record contains a minimum quantum of evidence from which a jury might reasonably afford relief. *Couch v. St. Croix Marine, Inc.*, 667 F. Supp. 223, 225 (D.V.I. 1987) (citing *Smollett v. Skayting Development Corp.*, 793 F.2d 547, 548 (3d Cir. 1986)). Specifically, "[i]n ruling on a motion for JNOV, the [Superior Court] must view the evidence, together with all reasonable inferences therefrom, in the light most favorable to the verdict winner." *Dunn v. Hess Oil V.I. Corp.*, 28 V.I. 526, 528, 1 F.3d 1362, 1364 (3d Cir. 1993) (citing *Rotondo v. Keene Corp.*, 956 F.2d 436, 438 (3d Cir. 1992)). It is not the job of a court to judge credibility or weigh evidence, but rather, to determine whether, after giving the verdict winner every fair and reasonable inference, there was sufficient evidence upon which a jury could reasonably find for the verdict winner. *Couch*, 667 F. Supp. at 225.

III. DISCUSSION

Defendant advances three main arguments in support of its motion for JNOV. First, Defendant claims that the jury award of $271,200.00 in past lost wages was unsubstantiated by reliable evidence in the record. Second, Defendant argues that the jury award of $800,000.00 in pain and suffering is responsive to the unwarranted instruction concerning a life expectancy table and is excessive. Finally, Defendant asserts that the statutory cap on damages should be applied to limit the Plaintiffs' recovery. The Court will address each argument in turn.

A. Past Wages

As its first basis, Defendant claims that the jury's award of past wages was the result of the unreliable testimony of Mr. Shillingford, whose statements were derived from inadmissible hearsay documents.[1] Defendant argues that Mr. Shillingford's testimony was also unreliable due to bias and a lack of accounting experience. Plaintiffs respond that Mr. Shillingford's testimony was based on his "personal knowledge, experiences, and the fact that he is directly affected by the [diminution] in his wife's income." Plaintiffs assert that Mr. Shillingford based his testimony on discussions with his wife about finances, income tax returns, and her earnings statements, all of which reflect his personal knowledge.

Hearsay is an out of court statement, made by a declarant other than the witness testifying at a trial or hearing, offered in evidence to prove the truth of the matter asserted. V.I. CODE ANN. tit. 5, § 932 (1997); *see also* FED. R. EVID. 801(c). At trial, Mr. Shillingford did not testify as to the contents of any documents stating his wife's lost wages, but rather, testified as to her lost wages based on his own personal knowledge. The documents and discussions with his wife were referenced by Mr. Shillingford to satisfy the requirement in title 5, section 833, that his testimony be based on personal knowledge.[2] Whether Mr. Shillingford was either biased

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[1] Although Defendant fails to cite any applicable law to support its argument for a JNOV concerning the jury's award of past wages, the admissibility of hearsay evidence is governed by title 5, sections 931 to 935, of the Virgin Islands Code. The Virgin Islands follows the Federal Rules of Evidence only to the extent not inconsistent with local law. SUPER. CT. R. 7. "[Superior] Court Rule 7 provides that the practice and procedure in the [Superior] Court of the Virgin Islands shall be governed by the Rules of the [Superior] Court and, to the extent not inconsistent therewith, by the Rules of the District Court, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence." *Joseph v. Government of Virgin Islands,* 226 F. Supp. 2d 726, 731 (D.V.I. 2002). Title 5 of the Virgin Islands Code contains local rules of evidence based on the Uniform Rules of Evidence adopted in 1953 by the National Conference of Commissioners on Uniform State Laws, with the cooperation of the American Law Institute.

[2] Witness competency is found in section 833 of title 5 of the Virgin Islands Code.

> As a prerequisite for the testimony of a witness on a relevant or material matter, there must be evidence that he has personal knowledge thereof, or experience, training or education if such be required. Such evidence may be by the testimony of the witness himself. The judge may reject the testimony of a witness that he perceived a matter if he finds that no trier of fact could

or unskilled in accounting were factual determinations within the jury's province to decide at trial. At that time, Defendant was afforded an opportunity to cross-examine the witness to elicit bias and unreliability.

The only matter of concern raised by Defendant post-trial is whether there was a minimum quantum of evidence to support the relief given. The Court concludes that there was a minimum quantum of evidence such that the jury could have credited the testimony of Mr. Shillingford concerning his knowledge of the family's finances before and after his wife's injury, as a sufficient factual basis upon to arrive at the verdict of $271,200.00 in favor of the Plaintiffs for past wages. Therefore, Defendant's argument concerning past wages must fail.

B. Life Expectancy Table & Excessive Damages

Defendant's second basis for requesting JNOV relief may be divided into two parts. First, Defendant objects to this Court taking judicial notice of and instructing on a life expectancy table. Second, Defendant argues that the jury verdict was excessive.

1. Life Expectancy Table

At trial, the Court took judicial notice of a life expectancy table, and thereafter included it in the final jury instructions. Defendant, without referencing any case law, argues that the instruction on the life expectancy table was improper because it was "not even part of the proposed jury instructions of the plaintiff, but was offered by the court as part of its standard jury instructions." (Def.'s Mot. for JNOV at 3.) Defendant objected to any instruction on life expectancy because, Defendant argues, there was no evidence put forth during the trial on that issue. Defendant contends that the jury could not have calculated Plaintiff's future pain and

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> reasonably believe that the witness did perceive the matter. The judge may receive conditionally the testimony of the witness as to a relevant or material matter, subject to the evidence of knowledge, experience, training or education being later supplied in the course of the trial.

V.I. CODE ANN. tit. 5, § 833 (1997); *see also* FED. R. EVID. 602.

suffering had it not received information on Plaintiff's life expectancy. Plaintiffs respond that there was ample evidence to support the jury's award for pain and suffering and to justify the court's instruction.

Title 5, section 791(2)(d), provides that judicial notice may be taken, without request by a party, of "specific facts and propositions of generalized knowledge which are capable of immediate and accurate determination by resort to easily accessible sources of indisputable accuracy." This trial involved an action for damages, some of which included future damages. Mrs. Shillingford stated during her testimony, *inter alia*, that due to her ailments she had difficulty performing daily functions – cooking, cleaning, driving, and helping her children with homework – and that she needed the assistance of her family when bathing and using the bathroom. These conditions were both embarrassing and depressing to her. The testimony of Dr. Chester Copemann and Dr. James Nelson, together, also communicated that Mrs. Shillingford's injuries were permanent. In light of this testimony, the Court felt it was prudent to instruct on the United States Department of Health and Human Services mortality table so that the jury would be able to calculate the proper measure of future pain and suffering. That the decision to instruct on this table was *sua sponte*, does not undercut its propriety, as mortality tables need not be introduced through the testimony of an expert. *See* M. C. Dransfield, *Instructions Regarding Determination of Life Expectancy in Action for Personal Injuries or Death*, 87 A.L.R. 910 (1933) (collecting cases); *Schleier v. Kaiser Found. Health Plan of the Mid-Atl. States, Inc.*, 876 F.2d 174 (D.C. Cir. 1989) (instructing on plaintiff's life expectancy without introducing the table through an expert). Finally, the fact that disallowed expert Dr. Bernard Pettingill used the same table to determine Plaintiff's life expectancy does not taint this Court's use of the document.

The Court concluded that taking judicial notice of a life expectancy table published by the United States Department of Health and Human Services and accompanying it with an appropriate cautionary instruction[3] would assist the trier of fact. The life expectancy instruction merely provides the amount of years that an African-American female of the Plaintiff's age could expect to live, as a benchmark to aid in the calculation of damages. It does not purport to take into account the additional circumstances of her injuries. In sum, the testimony by Plaintiff and the accompanying medical experts supply a sufficient factual basis for calculating future pain and suffering damages, necessitating the instruction on the life expectancy table to assist the trier of fact. Thus, Defendant's JNOV Motion based on this ground shall be denied.

2. Excessive Damages

Defendant's next assertion is that, in light of the jury finding only $5,000 in medical expenses, an award of $800,000.00 in pain and suffering is clearly excessive. Defendant claims that an award of $5,000.00 for medical expenses underscores the lack of severity of the injuries suffered by Plaintiff from which the pain and suffering award was derived. Therefore, Defendant

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[3] The final jury instructions' cautionary instruction stated the following:

> The standard table of mortality that the Court has judicially noticed in this case may be considered by you in determining how long the claimant may be expected to live. According to the table of mortality, the life expectancy in this country of a black female 47 years of age is 31.4 years
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> Life expectancy, as shown by a mortality table is merely an estimate of the probable average remaining length of life of all persons in the United States of a given age, race and sex. That estimate is based upon a limited record of experience. The inference that may reasonably drawn from life expectancy as show by the table applies only to one who has the average health and exposure to danger of people of that age, race and sex.
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> In determining the reasonably certain life expectancy of plaintiff Pamela Shillingford, you should consider, in addition to what is shown by the mortality table, all other facts and circumstances in evidence in the case bearing upon the life expectancy of plaintiff Pamela Shillingford, including plaintiff's occupation, habits, past health record, and present state of health.
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> Source: Fed. Jury Prac. & Inst. 128.21

(Jury Instr. at 40.)

requests that this Court reduce[4] the jury's award of $800,000.00. Plaintiffs respond that there is ample evidence to support the jury's sizable award.

a. Remittitur in the Virgin Islands

Court-imposed remittitur is not without precedent in the Virgin Islands. *See Dunn v. Hess Oil. V.I. Corp.*, 28 V.I. 467, 1 F.3d 1371 (3d Cir. 1993) (reducing District Court's previously reduced punitive damages award from $25 million to $2 million to $1 million for failing to warn of the dangers of asbestos); *Dunn*, 28 V.I. at 526, 1 F.3d at 1362 (affirming the District Court's remittitur from $1.3 million to $500,000.00 in compensatory damages for worker suffering from asbestosis); *Gumbs v. Pueblo Int'l, Inc.*, 823 F.2d 768 (3d Cir. 1987) (reducing District Court's previously reduced compensatory damages award from $900,000.00 to $575,000.00 to $239,117.75 for shopper who slipped and fell); *Williams v. Martin Marietta Alumina, Inc.*, 817 F.2d 1030 (3d Cir. 1987) (reducing District Court's award of compensatory damages from $317,000.00 to $100,000.00 for worker who fell from a roof and suffered minor back injuries). The post-trial remedy of remittitur, however, should not be triggered where an "award is extremely generous or that had [the Court] been deciding, [it] would have found the damages to be considerably less." *Williams*, 817 F.2d at 1038 (citations and internal quotations omitted). Instead, as *Gumbs* provides, this remedy is only appropriate, when

> the damages assessed by the jury [are] so unreasonable as to offend, even shock, the conscience of the Court. A trial judge must be extremely reluctant to interfere with the power of a jury to assess damages, and a verdict will not be set aside unless it is clear to the court that the decision of the jury was the product of *passion, prejudice or otherwise irrational behavior.*

Gumbs v. Pueblo Int'l, Inc., 21 V.I. 512, 514 (D.V.I. 1985) (emphasis added) (citing *Murray v. Beloit Power Systems, Inc.*, 79 F.R.D. 590 (D.V.I. 1978) *aff'd sub nom. Murray v. Fairbanks*

[4] Although Defendant does not use the term *remittitur*, Defendant seeks the reduction of the award for pain and suffering within the context of its requested JNOV relief. Choosing not to elevate form over substance, this Court will treat this request as one for remittitur, to the extent that a JNOV is inappropriate.

Morse 610 F.2d 149 (3d Cir. 1979) and *Tann v. Service Distributors, Inc.*, 56 F.R.D. 593 (E.D. Pa. 1972) *aff'd,* 481 F.2d 1399 (3d Cir. 1973)). The District Court in *Gumbs* explained that the remedy of remittitur does not allow a court to award an amount the court would have give, but rather only permits the reduction of an award to a "level that is no longer shocking." *Id.* at 515.

The *Gumbs* trial court cited the standard from *Murray,* where the plaintiff was awarded a final judgment in the amount of $1,747,855.60. Comparing Gumbs's injuries to those of the plaintiff in *Murray*, the trial court distinguished *Murray*, as the plaintiff there had sustained far more severe injuries, including a serious kidney ailment and confinement to a wheelchair; the plaintiff in *Murray* was prevented from performing any kind of work. In contrast, Mrs. Gumbs still worked, walking up and down 50 stairs everyday. The trial court determined that the $900,000.00 award for Mrs. Gumbs was shocking and the court therefore concluded that the facts could not support an award in excess of $575,000.00. *Id.* On appeal, the Third Circuit Court of Appeals reduced the compensatory damages award further to $239,117.75.

Gumbs v. Pueblo Int'l Inc., 823 F.2d 768 (3d Cir. 1987) supplies the proper framework for the remittitur of damages awarded by a jury in a slip and fall negligence claim. In *Gumbs,* the plaintiff, Mrs. Gumbs, slipped on cooking oil spilled in a supermarket's checkout lane, causing her to fall. Mrs. Gumbs was neither hospitalized, nor did she miss a day of work. *Id.* at 769. Mrs. Gumbs's treating physician testified that she had sprained her coccyx, suffered back spasms, and experienced abdominal and vaginal pain. The physician also opined that she might require surgery in the future. Mrs. Gumbs testified that after the fall, she found sexual relations painful, she had difficulty performing household chores, and she was no longer able to engage in outdoor activities or dancing. Finally, both Mr. and Mrs. Gumbs testified that their marital separation was the result of complications caused by Mrs. Gumbs' injuries. The jury awarded

Mrs. Gumbs $900,000.00 for past and future pain and suffering, mental anguish, and loss of enjoyment of life. Mrs. Gumbs was awarded only an insignificant sum in medical damages and was not permitted damages for economic loss or future medical expenses. Mr. Gumbs was awarded $10,000.00 for loss of consortium.[5]

On appeal, the defendant contended that the jury award to Mrs. Gumbs, even as reduced by the trial court to $575,000.00, was excessive. *Gumbs*, 823 F.2d at 771. The court of appeals noted that review of the trial court's determination with respect to remittitur is "only for abuse of discretion" and reversal and granting of a new trial is appropriate "only if the verdict is so grossly excessive as to shock the judicial conscience." *Id.* (quoting *Edynak v. Atlantic Shipping, Inc.*, 562 F.2d 215, 225-26 (3d Cir. 1977)). The court stated that "[a]lthough we do not rely on verdicts in other cases to determine whether the verdict in this case is excessive, the rationale of the court in determining the excessiveness of verdicts with comparable injuries offers us some guidelines." *Id.* at 773.

In reviewing the facts of the case the Third Circuit Court of Appeals focused on the fact that Mrs. Gumbs had been awarded only $2,892.75 in medical expenses. The court stated that

> [d]espite Gumbs' description of subjective pain and suffering, and evidence of a torn ligament and back spasm, certain undisputed facts are illuminating. Except for negative x-rays as an outpatient, Gumbs never required hospitalization and she lost no time from work. She did not have to submit to surgery; she suffered no disfigurement. Treatment prescribed for her by Dr. Payne consisted of physical therapy to relieve pain and spasm. Daily, she was able to go to and from her accounting office and climb the twenty-five steps to reach it.

Id. at 775. The panel concluded that the maximum recovery that a jury could have reasonably

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[5] Mr. Gumbs's claim for loss of consortium was based on the fact that Mrs. Gumbs found sexual relations too painful to maintain and thus such encounters became more infrequent. In addition, Mr. Gumbs endured an increased workload around the house as a result of Mrs. Gumbs's injuries. Both factors led to the couples' ultimate separation. The jury award of $10,000.00 in loss of consortium damages to Mr. Gumbs was undisturbed by the court.

awarded, without shocking the judicial conscience, was $235,000.00 for pain and suffering, mental anguish, and loss of enjoyment of life, plus $4,117.75 for medical and travel expenses. *Id.* Thus, the case was remanded to the trial court for a new trial on the issue of damages unless the plaintiffs elected to file a remittitur for damages in excess of $239,117.75.

In contrast, in *Rivera v. Virgin Islands Housing Authority*, 854 F.2d 24, 25 (3d Cir. 1988), the Third Circuit refused to reduce an award for damages. The plaintiff in *Rivera* slipped and fell on some water that had leaked onto the floor of the apartment leased from the defendant. The jury found the defendant negligent and awarded the plaintiff $250,000 in pain and suffering. On appeal, the Court of Appeals declined to reduce the award. The appellate court distinguished the plaintiff's injuries in *Rivera* from the plaintiff's injuries in *Williams,*[6] stating that the "medical evidence as to the limitation on Williams' physical activity revealed much greater capacity than the jury could have found that Rivera possessed on this record." *Rivera*, 854 F.2d at 27. The court summarized its decision as follows:

> Given the evidence summarized above we are satisfied that: (1) as a result of the October, 1984 accident Rivera sustained a herniated disc with neurological involvement, continuous pain, and inability to engage in practically any activity; (2) these injuries are not only permanent but likely to worsen with age; (3) they may cause serious urologic problems; and (4) they cannot be corrected. We

[6] In *Williams v. Martin Marietta Alumina, Inc.*, 817 F.2d 1030 (3d Cir. 1987) the Court of Appeals ordered remittitur of the jury's award. In *Williams*, the plaintiff sustained injuries from falling off a roof. Upon falling, Mr. Williams was taken to the hospital but required no hospital care, and although treated on an outpatient basis thereafter, he required no surgery. At trial evidence was produced showing that Williams could no longer work as a pipefitter or as a manual laborer as a result of his injuries, although he was still able to do other work. The court paid particular attention to Williams' own testimony.

> Williams testified that he still has pain in his lower back, that it hurts if he stands up and stretches and if he walks for any distance or sits for a long period of time. He testified he cannot sit through a whole movie, and can no longer dance. However, Williams also testified that he is able to walk up to 45 minutes before he becomes tired, he does exercise for his back including sit-ups, and he lives on the third floor and walks up and down the stairs. None of the doctors who examined Williams found him disabled or unable to work. His greatest physical limitation is that he has been instructed not to lift anything weighing more than twenty pounds.

Id. at 1040 (citations omitted). The Court concluded that, based on the record, the jury's award of $317,000.00 for pain and suffering was excessive. The Court therefore ordered a remittitur of the jury's pain and suffering award from $317,000.00 to $100,000.00. *Id.* at 1041.

> therefore cannot say that the district court abused its discretion in refusing to set aside the $250,000 award for pain and suffering.

Id. at 28. Therefore, the Third Circuit found that a pain and suffering award in the amount of $250,000.00 was not excessive.

b. Evidence of Pain and Suffering Presented at Trial

Admittedly, the cases discussed thus far are not sufficiently comparable for this Court to issue a bright line ruling on the propriety of remittitur for the instant matter. The relevant testimony at trial in this case provided the following. Mrs. Shillingford stated that she slipped and fell in an unsafe hallway of the Virgin Islands Port Authority. After falling, Mrs. Shillingford claims that, although she was in pain, she completed her business at the Port Authority and returned to work. That afternoon, after unsuccessfully seeking an appointment with Dr. Bishop, her previous treating physician, Mrs. Shillingford saw Dr. Claudius Henry. Dr. Henry diagnosed a strained groin and prescribed over-the-counter pain medication. The evening of the fall, Mrs. Shillingford experienced severe pain while attempting a bowel movement. A piece of flesh, later diagnosed as a prolapsed uterus, had protruded from her vagina. Amidst confusion, with the aid of her husband, Mrs. Shillingford pushed it back in and went to bed. Thereafter she sought medical treatment from numerous physicians on an outpatient basis, including neurologists, orthopedists, gynecologists, and psychologists. At trial, Mrs. Shillingford testified that since her fall at the Henry E. Rohlsen Airport on July 31, 1997, she suffers from headaches and back and neck pain, no longer has control of her bladder and therefore wears disposable adult diapers at all times, and now walks with a cane. She also testified that since her fall, and as a result of her injuries she is no longer able to work, do her daily chores, continue normal sexual relations with her husband, or dress herself without assistance of others. Also, she no longer participates in sports and recreational activities and has withdrawn from most social interactions.

Plaintiffs' expert Dr. James Nelson, a neurologist, diagnosed Mrs. Shillingford with a cervical strain, post-concussion syndrome, migraine headaches, stress-induced urinary incontinence and bulging cervical discs, all of which contributed to his assignment of a sixty-two percent permanent impairment rating; his testimony indicated that Mrs. Shillingford's urinary incontinence is her most serious impairment. Under his care, she was prescribed an assortment of pain killers and physical therapy. Despite the treatment, her condition did not improve and, Dr. Nelson opined that she would never be able to return to work.[7]

Plaintiffs' expert Dr. Chester Copemann, a psychologist, testified regarding Mrs. Shillingford's psychological injuries from chronic pain. After administering a battery of tests, r. Copemann diagnosed Mrs. Shillingford with a pain disorder that had psychological factors. According to Dr. Copemann, both the physical pain and thinking about her pain contributed to her overall suffering. He testified that Mrs. Shillingford suffered from depression, low self-esteem, anxiety, alienation and social withdrawal. In his opinion, Mrs. Shillingford no longer felt like a competent person due to a massive change in her life. Dr. Copemann also indicated that her cognitive function had deteriorated.

c. Assessment of Evidence at Trial in Light of Precedent

Based upon the foregoing, the Court will not reduce Plaintiff's award for pain and suffering. After considering the testimony of the Plaintiffs and several medical experts, both for Plaintiffs and Defendant, the jury credited Plaintiffs' testimony and their experts over Defendant's and awarded Mrs. Shillingford $ 800,000.00 for past and future pain and suffering, including permanent physical impairment, humiliation, mental anguish from the loss of ability to work, and loss of enjoyment of life [hereinafter "pain and suffering"] and Mr. Shillingford

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[7] Mrs. Shillingford has not worked since the day of her injury. Although Drs. Bishop and Pedersen had opined that she could return to work by the time of trial, the jury apparently credited Dr. Nelson's and Mrs. Shillingford's testimony that she was no longer fit to work.

$ 100,000.00 for loss of consortium. Although, as Defendant notes, Plaintiffs' award of $ 900,000.00 in pain and suffering and loss of consortium stands in contrast to the jury's award of $5,000.00 in past medical expenses, there is, nevertheless, a factual basis that supports the jury's award. First, unlike the plaintiffs in *Gumbs* and *Williams*, Mrs. Shillingford can no longer work. Second, unlike the plaintiff in *Rivera*, who was illiterate and unemployed, Mrs. Shillingford was an industrious and independent person who enjoyed an active lifestyle. The jury no doubt accorded weight to these factors when awarding Mrs. Shillingford pain and suffering damages, as she was entitled to an award of damages representing compensation for the mental anguish of not being able to work. Notably, this is distinct from the compensation of lost wages. Third, Mrs. Shillingford was entitled to damages for her loss of enjoyment of life, including her inability to participate in physical activities and a decreased sex life. Fourth, Mrs. Shillingford was entitled to pain and suffering damages for the physical pain and deep personal humiliation to which she testified, chief among them the regular use of adult diapers. Finally, unlike the plaintiffs in *Gumbs, Williams* and *Rivera* Mrs. Shillingford continues to suffer from a pain disorder that has psychological factors. Taking this evidence into account, Plaintiff was entitled to a more substantial award of damages than those permitted in *Gumbs*, *Williams,* and *Rivera*. Mrs. Shillingford's description of her injuries, pain, humiliation and mental anguish was not of a trivial nature. Mrs. Shillingford established a factual basis which supports an award of damages in excess of the damages awarded in the aforementioned cases. Accordingly, Defendant has failed to carry its burden to establish that the jury award for pain and suffering was grossly excessive on this evidentiary record. *See Brown v. McBro Planning and Dev. Co.*, 660 F. Supp. 1333 (D.V.I. 1987) (citations omitted); *See* 11 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARK K. KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 2807 at 79 (2d ed. 1995) (providing that the inquiry into whether a jury's award is excessive is a "special

application of the general power of the trial court to set aside a verdict that is against the weight of the evidence"); *see also Goldstein v. Manhattan Indus., Inc.*, 758 F.2d 1435 1447-48 (11th Cir. 1985) (linking the "shocks the conscience" standard to an evidentiary proof such that remittitur is proper when the jury award "exceeds the amount established by evidence").

As for Mr. Shillingford, he has established a factual basis for his award of damages despite lesser awards to the respective spouses in *Gumbs* and *Couch*. Mrs. Shillingford has been unable to maintain normal sexual relations or participate in recreational activities with her husband. Her inability to perform routine tasks such as bathing, using the bathroom, cooking, cleaning, and driving, without assistance has also increased Mr. Shillingford's burden at home. Although his injuries are similar to those of Mr. Gumbs and the amount awarded to Mr. Shillingford is greater than the $10,000.00 damages awarded to Mr. Gumbs, it is still within the realm of reasonableness. Notably, since Mr. Gumbs's award was left untouched, it is equally possible that the award for Mr. Gumbs was inadequate. Conversely, Mr. Couch's loss of consortium award, reduced from $ 100,000.00 to $ 25,000.00, did not involve life changing circumstances similar to those proved by Mr. Shillingford. Therefore, based on the facts of this case, Mr. Shillingford has established a factual basis meriting an award greater than the awards in *Gumbs* and *Couch*, and the $ 100,000.00 award does not offend this judicial conscience.

C. Statutory Cap of $25,000

Finally, Defendant contends that this Court erred in determining that the statutory cap of title 29 of the Virgin Islands Code did not apply in the present matter. While Defendant advances this argument in its JNOV Motion, this is not an appropriate ground for JNOV relief. The standard under a JNOV motion is whether the record contains the minimum quantum of evidence from which a jury might reasonably afford relief. Since Defendant seeks to revisit a

purely legal matter, Defendant's Motion is more appropriately considered a motion for reconsideration and thus, it will be treated as such.

Local Rule of Civil Procedure 7.4(3) provides that motions for reconsideration must be based on "(1) an intervening change in controlling law; (2) availability of new evidence; or (3) the need to correct clear error or prevent manifest injustice." LRCi 7.4. Defendant failed to cite this provision, though it is applicable to this Court pursuant to Superior Court Rule 7. Furthermore, Defendant does not identify the ground on which this Court should reconsider its prior ruling. No intervening change in law, new evidence, or manifest injustice is identified by Defendant in its JNOV Motion. Assuming Defendant seeks a reconsideration of the Court's ruling concerning the retroactive effect of the statutory cap based on clear error, this Court is not persuaded by Defendant's Motion. Defendant's Motion advances no new argument for why the Court's previous ruling was in error. Moreover, Defendant fails to distinguish *Jordan v. Erschen*, 45 V.I. 247 (Terr. Ct. 2003), cited as persuasive by this Court in its original ruling. Defendant merely relies, once again, on *Johnson v. Virgin Islands Port Authority, et al.*, 236 F. Supp. 2d 503 (D.V.I. 2002), a case distinguished at length in *Jordan*. Defendant has failed to show clear error in this Court's prior ruling, and therefore, Defendant's motion shall be denied.[8]

IV. CONCLUSION

For the foregoing reasons, this Court finds that the record contains the minimum quantum of evidence necessary to support the jury's award of past wages. The Court's judicial notice of life expectancy was permissible under title 5 of the Virgin Islands Code to assist the trier of fact. The jury's award of damages for pain and suffering and loss of consortium of $900,000.00 is supported by a factual basis on the record and is not so grossly excessive as to shock the judicial

[8] This Court does not reach and, thus, will not address the arguments raised by Plaintiffs in opposition to Defendant's Motion for JNOV regarding the statutory cap.

conscience. It will therefore not be disturbed. Finally, Defendant's request that this Court reconsider its prior ruling regarding the statutory cap of title 29 shall be denied.

MARIA M. CABRET
Senior Sitting Judge

ATTEST

DENISE D. ABRAMSEN
Clerk of the Court

By:_____
Deloris Allen-Copemann
Chief Deputy Clerk

Dated:_____