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An American Plaintiffs' Paradise It's a Third World economy with American-style tort law. It's the U.S. Virgin Islands. Current defendant—by Roger Parloff

Plaintiffs' ✓

AN AMERICAN PARADISE



How A Colony Gets Even

By Roger Parloff

PICTURE A POOR CARIBBEAN island, where 80 percent of the population is black, and where the economy rests primarily upon catering to rich, white American tourists.

Suppose an American product is sold there, and it turns out to be a product the U.S. manufacturer does not sell in the States anymore—or is banned from selling in the States—because it is unsafe. And suppose an islander injures him- or herself with it.

Let's also suppose a U.S. corporation builds the largest oil refinery in the world on this island—whose most valuable commodity is its natural beauty—gets enormous tax breaks from the local government, and then employs few native islanders, hiring Americans as supervisors and aliens from even poorer islands as

workers. And then someone gets injured at the refinery.

Now suppose these two injured people, represented by first-rate, American-trained plaintiffs lawyers, go into the U.S. district court on the island and sue the U.S. corporations under the most progressive American tort law theories, demanding trials before juries of their fellow islanders.

U.S. district court? Progressive tort law? Juries? Isn't this the Third World?

Yes and no. This is the U.S. Virgin Islands, one of the last places a U.S. corporate defendant wants to find itself.

The approximately 100,000 people who live here—on St. Croix, St. Thomas, and St. John—cannot vote in presidential elections, and they have no voting representative in Congress.

They inhabit what the United Nations considers one of the world's last colonies. But they can vote on juries, and when called upon to express their opinions about how corporate America has treated them, they have spoken eloquently.

To predict a jury verdict in the Virgin Islands, says aviation defense lawyer David Zeehandelaar, a partner at Philadelphia's Bolger, Picker, Hankin & Tannenbaum, "take whatever you think the case is worth and multiply it by ten." Zeehandelaar could be biased, of course; his client, Associated Aviation Underwriters, got tagged in March 1990 when a St. Croix jury awarded \$5.5 million to a doctor who had suffered primarily psychological damages from an airplane crash.

But Zeehandelaar is hardly alone in his views. The U.S. Court of Appeals for the Third



This side of paradise: Joel Holt (above) is one of the islands' top plaintiffs attorneys. At left, the view from Holt's backyard.

Circuit, which hears appeals from these three volcanic mountains sticking out of the Caribbean, has likened the islands' civil jury system to a "lottery." The late David O'Brien, one of the last two resident federal judges to sit in the islands, called it a "wheel of fortune."

Plaintiffs lawyers, some local defense lawyers, and the other past resident federal judge protest that there is no high-verdict phenomenon in the Virgin Islands, or at least no *excessive-verdict* phenomenon. What does occur, they contend, is that American corporations behave here in ways they would not behave at home, and occasionally they reap their just deserts.

Wherever the truth may lie, this is an odd jurisdiction.

"We're in it but not of it, as far as American

jurisprudence is concerned," says solo practitioner Kevin Rames of St. Croix. "Louisiana is more like New York than the Virgin Islands is like either one of them."

SOAKING UP SUN—AND CASH

The U.S. District Court of the Virgin Islands in Christiansted, St. Croix, is located on Kongensgade, which everyone calls King Street, in the renovated home of an eighteenth-century Danish planter. When a judge issues an order here, it isn't sent out in the mail; it's placed in the appropriate lawyer's cubbyhole in the clerk's office, the way mimeographed assignments were once distributed in grade schools.

"We've got a small-town atmosphere and a big litigation jurisdiction," says Joel Holt, who heads his own two-lawyer firm, and who looks

more like a third baseman than a shrewd plaintiffs lawyer: young, tanned, and basically fit, with maybe more of a paunch than he'd prefer. Like most of the lawyers in Christiansted (population 2,914) who don't have court dates, he's dressed in an open-necked short-sleeved shirt. As attorney Holt—"attorney" is a title here—strides though the narrow streets lined with 200-year-old buildings painted in fading pastels, he is accosted by passersby who ask him for advice. Though the islanders speak with the staccato West Indian accent—which modulates into a dialect unintelligible to statesiders when islanders speak with one another—Holt, 40, understands effortlessly. Some of the advice sought is legal, some of it commercial, some of it marital; almost all of it is free.

It pays back in the end, Holt says, as he

drives up a two-lane road toward his house at the very top of a hill overlooking Christiansted harbor. Islanders drive on the left side of the road, even though the United States has owned the islands since 1917, and even though almost all vehicles sold here are designed to be driven on the right. "It's the Danish influence," island residents invariably explain. But the Danish have always driven on the right.

Arriving at Holt's house is arriving indeed. The north deck near the swimming pool overlooks the white crescent of the best beach on St. Croix, while the western deck looks out on the green rolling hills of Christiansted, dotted with pink and yellow homes and sloping into the blues and greens of the harbor.

Holt is one of the premier plaintiffs lawyers on the islands. (There are about 350 lawyers in the Virgin Islands, of whom fewer than ten specialize in plaintiffs' personal injury work, according to Christiansted solo Douglas Capdeville, president of the local bar.) Holt estimates that the top three plaintiffs lawyers—Thomas Alkon, Gordon Rhea, and himself—each average about \$500,000 a year in earnings here, although it varies greatly from year to year.

Holt has done well since graduating from the University of Richmond law school in Virginia in 1977. He came to Christiansted for the first time to begin his judicial clerkship. (He says he was applying to Virginia federal judges and, because of the alphabetical proximity in his judges directory, decided to write to Virgin Islands judges too.) After the clerkship he joined a Christiansted firm but ventured off on his own after only a year. "There were still just a handful of lawyers here back then," he says. "If you were willing to work hard and you were smart, you were going to make it here much quicker than in the States," he remembers thinking. He was right.

TROUBLE IN PARADISE

From Holt's hilltop home, the words the territory presses into its license plates—"American Paradise"—could not be more apt. But the jurors who have put Holt there have a different perspective. While their standard of living is the highest in the Caribbean, it is low by American reckoning, with per-capita income averaging less than \$7,500 in 1987. The cost of living is high, the crime rate is high, the public schools are poor, and there is no accredited hospital on St. Croix.

Many residents lost everything they owned when Hurricane Hugo ravaged the island in September 1989, knocking out power, communications, and running water for months. In the desperate days after the storm, looting on St. Croix became severe, and local police, rather than quelling the disorder, joined in. President Bush dispatched six Coast Guard cutters to evacuate panicked tourists and residents and, on September 20, 1989, he sent 1,100 military police to restore civil government.

More than a year and a half after Hugo struck, in excess of \$50 million in insurance claims remain unpaid due to the bankruptcies of two insurance companies, which had inadequate reinsurance to handle the catastrophe. "Life is not easier here just because we average seventy-eight degrees,"



Sitting pretty: Thomas Alkon (left) and Gordon Rhea have won their share of million-dollar verdicts.

"If you were willing to work hard and . . . were smart, you were going to make it here much quicker than in the States," Holt remembers. He was right.

says attorney Rames.

The wide disparities in wealth on the islands, Holt acknowledges, may have something to do with residents' willingness to award high sums in jury trials. Holt and Gerald Groner, another young plaintiffs lawyer, suggest that the high awards may also reflect a boom-town mentality. They point out that the islands tripled in population between 1960 and 1980, transformed by tourism, and by the huge Hess Oil Virgin Islands Corporation oil refinery, from a dirt-road, Third World economy into a significant industrial and commercial center.

Last year more than 1.8 million tourists visited the islands, managing to drop about \$500 million during their stays. During the height of the

season, lodgings on St. Thomas can run as high as \$895 a night. In Charlotte Amalie, the commercial center of St. Thomas, it is not unusual to see four or more gargantuan ocean liners parallel-parked in the harbor, while their passengers stream into the town's nearly duty-free jewelry stores, perfumeries, liquor stores, and leather goods ("YES, WE HAVE EEL SKIN") shops.

AN ASBESTOS SURPRISE

While Holt will speculate about why some Virgin Islands jury awards are high, he denies they are excessive, particularly the verdict in the Dunn case, which he tried with co-counsel Paul Minor of Biloxi, Mississippi's three-lawyer Minor and Guice. Wil-

liam Dunn's asbestos claims against Owens-Corning Fiberglas Corporation went to trial last November before a jury of six blacks and one Puerto Rican, including one alternate. Both sides of the personal injury bar on the islands were planning to use the trial to set a benchmark value for the other 60 or so asbestos cases pending on St. Croix, all of which had been brought by former workers at either the Hess Oil refinery or the nearby bauxite processing plant.

Dunn's verdict was expected to set a lower-end price on such cases, according to two plaintiffs lawyers handling them. It was thought to have comparatively little emotional appeal, they explain, because Dunn was probably the only white among all the

asbestos plaintiffs here—he supervised a crew at the Hess plant—and because he currently lives in Texas.

Owens-Corning, based in Toledo, the only defendant that had neither settled nor gone bankrupt before the trial, had offered only \$10,000 to dispose of the case, according to Holt. Owens-Corning in-house attorney Robert McOmber won't confirm the figure but acknowledges that an offer that low "wouldn't surprise" him because the company maintained that Dunn didn't have asbestosis, just some lung scarring, which the company's experts don't consider a disability. In fact, Dunn, now 58, did not claim any loss of past or future wages and did not submit any medical expenses to the jury. He sought compensation only for pain and suffering, fear of developing cancer, and punitive damages.

In late November the jury awarded Dunn \$1.3 million in compensatory damages and \$25 million in punitive damages—a slightly higher total than what the United States paid Denmark in 1917 to acquire the Virgin Islands. The lawyers involved say they believe it to be the largest asbestos verdict for a single plaintiff ever. But both Holt and Dunn will have to wait before they'll see any money from the case, which was filed in 1987. Manhattan federal judge Constance Baker Motley, filling in on St. Croix, has not yet ruled on Owens-Corning's motions for a new trial or for a reduced award—the necessary prelude to any appeal.

MAKING DUMPERS PAY

The Dunn case was one of only 19 civil cases that went to trial last year in the district court on St. Croix. After the hurricane, criminal trials resumed in January 1990, having first priority because of speedy trial rules. Civil trials did not begin again until March. And even before Hugo there was a sizable civil backlog because the two resident federal judges had not been working at full strength for some time. Judge Almerie Christian took senior status in May 1988 and retired in December 1988; Chief Judge David O'Brien became ill with cancer in May 1989 and died that December. Neither has been replaced, leaving the caseload to a succession of visiting federal judges.

(The district court is a so-called Article I court—its functions are defined by Congress rather than by Article III of the Constitution—and it hears, in addition to federal actions, all major civil and criminal cases that would ordinarily be heard by state courts. It also hears appeals from the islands' territorial courts, which currently handle minor civil and criminal matters. The territorial courts are scheduled to begin handling all non-federal actions in October, however.)

Despite the paucity of civil trials, plaintiffs lawyers Thomas Alkon and Gordon Rhea, of Christiansted's two-lawyer Alkon & Rhea, had at least as good a year in 1990 as Joel Holt, managing to win the \$5.5 million airplane crash verdict against Zeelandelaar in March (as co-counsel with Holt's friend Groner), a seven-figure settlement in October, and a \$20.7 million verdict in December. The two verdicts were subsequently settled for seven-figure sums, says Rhea.

Though Rhea and Alkon won't comment on their earnings, Rhea, 46, emphasizes that before the firm began

collecting on the 1990 settlements early this year, he and Alkon went almost two years without substantial payment, due to the hurricane, the civil backlog, and the ordinary drought periods of plaintiffs practice. Rhea also notes that most of their cases are referred to them by other lawyers, who typically get between one fourth and one half of the fee, which is usually 33 percent of the judgment.

The \$20.7 million award last December, for an islander named Kenneth Springer, came in what is called a "dumping" case. Many companies choose to market products in the Virgin Islands that they do not sell on the U.S. mainland—some of which do not meet state regulatory standards. "When the jury finds out you were selling something you couldn't have sold on the mainland," Rhea says, "the jury gets mad."

Springer suffered multiple fractures and internal injuries when his pickup truck was broadsided by a school bus whose brakes had failed, allegedly due to a defective chassis. Rhea and co-counsel Lee Rohn—a Christiansted

never knew the chassis was going to be used for a school bus.

The Springer case was about the injuries of the man in the pickup truck. But in the course of the trial Rhea and Rohn got the point across: A chassis that wasn't good enough for a North Carolina police department was good enough for Virgin Islands schoolchildren. The jury awarded \$8.7 million in compensatory damages and \$12 million in punitive damages.

Rhea and Rohn then secured a swift seven-figure settlement by taking steps toward immediate execution of judgment, promising to force the company to come up with a multimillion-dollar appeal bond or begin reading judgment notices in the North Carolina newspapers. "We kind of had them," says Rohn, extending her cupped hand a little below waist level and pantomiming a squeeze. Although Rohn won't say precisely what the settlement was, she notes, "My client is purchasing two houses."

Moore declines to comment on the case, citing a confidentiality clause in the settlement. But he claims the dumping issue is sometimes more of a

Alkon remembers his boss saying.

The file involved a young woman who was paralyzed in an accident while riding on the back of a motorcycle. Alkon sued the manufacturer, Honda, for not having "buddy pegs"—pedals for a passenger's feet. Honda claimed the bike was only designed for one person, but Alkon countered that the seat was large enough for two. "In the face of that horrific injury," Alkon says, "you don't need much liability." At that time, he recalls, the largest verdict in the Virgin Islands belonged to the self-proclaimed King of Torts, Melvin Belli of San Francisco, who had won about \$100,000 for a client in the mid-1960s. On May 25, 1973—Alkon has little trouble recalling the date—the jury awarded Alkon's client \$1.5 million.

"[Alkon is] really the person who invented plaintiffs work in the Virgin Islands as we know it today," says Rhea, who met him shortly after that verdict when Rhea finagled a summer associateship with Alkon's firm—then the only Christiansted firm large enough to fool with such things. Though Rhea subsequently practiced in Washington, D.C., following law school—becoming executive assistant U.S. attorney in the capital—he returned to St. Croix in 1981. By then Alkon had gone out on his own, and by the end of 1981 Alkon and Rhea were partners.

At first, Rhea explains, the bulk of their cases came from the oil refinery. In 1966 Hess Oil set up what is still the largest oil refinery in the world on the southwestern coast of St. Croix. The refinery compound encompasses a sulphurous city of tubes, pipes, vats, and exhaust towers, as well as a small on-premises community of ranch houses for managerial and professional employees, who are mainly statesiders. The entire compound, which resembles an army base, is ringed with two ten-foot chain-link fences topped with barbed wire. Between 1,000 and 2,500 people work there, many of whom are hired through independent contractors on an as-needed basis. (Hess blocked some Alkon & Rhea suits by winning a 1984 ruling that the independent contractors at Hess were their "borrowed servants," and therefore confined to workers' compensation remedies only. But the island's 15-member elected legislature immediately abolished the borrowed servant doctrine by statute.)

Alkon & Rhea get both industrial accident and toxic tort cases from the refinery, Rhea says. They have handled injuries stemming from exposure to a cleaning solvent called methyl ethyl ketone, isocyanate paints, nickel and cobalt catalysts, and asbestos; they currently handle about 30 asbestos and catalyst cases, Rhea estimates. Rhea has also pursued a number of product liability actions against auto manufacturers, including General Motors, Fiat, Suzuki, Ford, Mitsubishi, and Toyota—cases that have sometimes included a dumping angle. Rhea estimates the firm has won about a dozen million-dollar-plus outcomes—verdicts or settlements—over the past eight or nine years.

GOODBYE INSURANCE, HELLO REMITTUR

By the mid-1980s the Virgin Islands had gained a reputation for high ver-

Attorney Kevin Rames, a St. Croix resident, acknowledges a strong "anticolonialist" spirit among jurors. "It's part and parcel of our history," he says.

solo practitioner who brought Rhea into the case—alleged that the accident had its origin almost 20 years earlier when Thomas Built Buses, Inc., of High Point, North Carolina, ordered a chassis in order to build a bus for a local police department. Thomas Built was sent the wrong type—a light truck chassis—which the police department rejected. So the company ordered the correct chassis for the police bus and let the truck chassis lie around on the lot for six or seven months, as Rohn tells it. Then Thomas Built got an order for a school bus from the Virgin Islands in 1969, Rohn claims. "So instead of ordering a bus chassis, they took the light truck chassis, cut it in half, extended it about five feet, put a school bus body on it . . . and sent it to the Virgin Islands," says Rohn. "The [school] bus . . . would have been illegal in North Carolina or most other states in the United States," she adds.

The company, which was represented by a highly regarded Christiansted defense lawyer, R. Eric Moore, had argued at trial that Thomas Built had not been the company that had modified the chassis—that the company only made bus bodies during the relevant time period. In addition, Moore maintained that the order was for a transit bus and the company

litigation strategy than a political reality. "Every state has its own specifications," says Moore. "[The plaintiffs lawyers always] say, 'You could not have sold it in whatever state, but you sent it here.' It looks terrible, but . . . everybody has different regulations. That makes [certain safety features] optional. So if [the buyers] don't want it, you don't put it on."

But Moore admits that dumping arguments strike a resonant chord among the islanders. He says he often sees seemingly inferior or outdated products there that he never encounters on the mainland, "like those cans with those tops you peel off and throw in the bushes. We've still got them down here."

"YOU'RE FROM NEW YORK. SEE WHAT YOU CAN DO"

Big-time personal injury work in the Virgin Islands dates from 1970, when Thomas Alkon, now 61, picked up his first plaintiffs case. Alkon, who at the time worked for a general practice firm, says he got the case after several other firms had passed on it. His boss assigned it to him, he recalls, since Alkon had done insurance defense work as an associate at New York's Mendes & Mount before coming to Christiansted in 1968. "You're from New York. See what you can do with it,"

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dicts. In 1981 Charlotte Amalie solo practitioner Peter Martin won a \$6.8 million verdict from a St. Thomas jury against the Frenchman's Reef Holiday Inn on behalf of an American sailor who had been paralyzed in a diving accident in the hotel's swimming pool. And in 1985 Alkon and co-counsel John Dema won a structured settlement worth more than \$7 million in a famous dumping case: The parents of a local 18-year-old had bought him a Taiwanese bicycle at Woolworth's for Christmas, and when the defective brakes failed a few months later, he struck a car and was left a quadriplegic. Woolworth's, the defendant, allegedly sold this low-grade variety of bike in the Virgin Islands but not at its stores on the mainland.

From 1984 to 1986 several major insurance companies that had served the islands for many years pulled out, including Fireman's Fund, Allstate, Alliance Assurance Company Limited, American Home Assurance, and American International Group. James Tunick, a St. Thomas insurance agent and the president of the Virgin Islands Insurance Association, claims that the exodus was prompted by excessive verdicts, an assumption that is shared by two officials at the Virgin Islands Department of Banking and Insurance. Spokespersons for the companies either declined comment or characterized the action as part of a broad business strategy. However, one representative, who asked not to be identified, added that "no one is going to argue with" the proposition that one factor was "extremely high jury payouts."

Alkon insists the excessive-verdict explanation "can't be" true. The large verdicts came, he argues, against multinational corporations who have off-island insurance companies. Still, there is no disputing that in 1985 the island legislature was forced to repeal compulsory auto liability insurance because too few insurance carriers remained to cover the assigned risk pool.

In 1985 the Third Circuit Court of Appeals began to use its power, until then rarely exercised, to impose appellate *remittitur*—which effectively reduces the jury verdict by ordering a new trial if the plaintiff doesn't agree to a specified lower award. The first two cases so honored were Alkon & Rhea cases. In a March 1985 decision circuit judge Collins Seitz, writing for the panel, reduced from \$500,000 to \$50,000 an award to the minor children of a deceased worker at Hess, because the children lived in England and hadn't seen their father in years. Two years later circuit judge Dolores Sloviter, writing for the court, reduced the pain and suffering portion of an award for a worker at the bauxite plant from \$317,000 to \$100,000, because the plaintiff had not been hospitalized for his injury and his injured back showed "no objective signs of neurological deficits," according to Sloviter's opinion.

Later that year circuit judge Max Rosenn reduced still another verdict, this one a slip-and-fall in a St. Thomas grocery store. The jury had awarded a local woman, Celia Gumbs, \$900,000 from the Puerto Rico-based supermarket chain, although she had not been hospitalized and did not lose a day of work. Chief Judge O'Brien, the trial judge, had already reduced the award to \$575,000, but Rosenn cut it

further, to about \$240,000. In his opinion Rosenn editorialized about what he perceived to be a problem. "This appeal presents the unfortunately increasingly familiar scenario in the Virgin Islands," wrote Rosenn, "of an enormous jury award apparently far in excess of the injuries suffered by the plaintiff." Rosenn added that a jury cannot be permitted to "treat an injury as though it were a winning lottery ticket." (There may be something to Rosenn's metaphor: According to the Census Bureau, in 1987 the Virgin Islands had 2,604 business establishments, of which 405 were lottery dealers. In 1984 attorney Joel Holt won a \$100,000 grand prize in the lottery.)

Shortly after Rosenn's opinion in *Gumbs*, Chief Judge O'Brien reduced an award in a case brought by Rohn. The jury had awarded \$400,000 to a man who had broken his wrist in a fall at a marina and another \$100,000 to his wife for loss of consortium. "This case classically demonstrates," wrote O'Brien, "what a 'wheel of fortune' a jury trial for personal injuries in the Virgin Islands can become." Judge O'Brien cut Couch's award to \$165,000 and his wife's to \$25,000.

That same year district judge Stanley Brotman reduced a jury verdict for a man who fell in a hospital and injured his knee, causing, according to his expert witness, a 5 percent permanent disability. The jury had awarded the man—who had not claimed any loss of earnings capacity and had not sought medical expenses since they had been paid by his insurance—\$1 million, plus \$150,000 for his wife. Brotman, who reduced the awards to \$200,000 and \$25,000, found the verdict "far in excess of the vast majority of damage awards given in similar cases from all over the country."

THE DENIALS

Despite the statements of his brethren, retired federal judge Almeric Christian—who sat on the district court bench here from 1970 to 1988 and now sits as a senior judge on the territorial court—denies that an excessive-verdict phenomenon exists in the Virgin Islands. Unlike judges Seitz, Sloviter, Rosenn, O'Brien, and Brotman, who are white statesiders, Christian, 71, is black and was born in Christiansted.

"I am aware of a circuit opinion calling it a lottery," says Christian. His eyes closed, his stern face tilted toward the ceiling, he subjects each sentence uttered, including a reporter's questions, to formidable scrutiny. "And I am aware of Judge O'Brien following suit. I don't agree," he says simply. "Wherever I thought [verdicts] were high I've exercised my authority to order *remittitur* or a new trial. I've done that in rare instances." Asked why he thought the appellate court held a different view, he says, "To the extent I have any view, I'd rather not say."

Alkon and Rhea also deny there is a high-verdict phenomenon in the Virgin Islands, with the exception of the dumping cases. "A couple years ago we went back," says Rhea, "and for a three-year period we looked at every plaintiffs case tried. We found out ... that [juries] were throwing out as many plaintiffs as they were finding for. In a given year the median verdict was less than one hundred thousand dollars," Rhea claims. As for the "occasional spikes," he says, "each

one has a different reason." Some resulted from defense lawyer misjudgments, he claims. "Some are flukes. It's hard to explain."

And the Third Circuit's attitude? That has Rhea stumped too. "Somewhere along the line, this myth got started," he says. "It's produced a mind-set. 'Oh, a big verdict in the Virgin Islands? It must be crazy.' I don't know how that happened or why."

But Donald Vinson, the chief executive officer of Los Angeles-based Litigation Sciences, Inc., a jury research firm, chuckles at the plaintiffs lawyers' protestations. Though he does not consider the islands the worst conceivable venue—that distinction he would award the Bronx, East St. Louis, or the Texas Gulf Coast, he says—they are "certainly a place that would cause me grave concern," assuming he was defending an off-island corporation. Island juries see no "economic or social cost to awarding a high verdict," he says, in contrast, for instance, to jurors in a region with unemployment due to a closed factory, where "people can translate a large verdict against a major corporation into [a threat to] the economic viability of their own community." (In the islands unemployment is only about 2 percent, and the largest single employer is the territorial government.)

In addition, Vinson notes, a strong "them versus us" mentality is prevalent among islanders, and the jurors' lower socioeconomic status promotes attitudes "not unlike we'd see in central cities on the mainland . . . an attitude of envy, invidious retribution . . . of striking out, of getting even."

Kevin Rames, who grew up in St. Croix, acknowledges that there is a strong "anticolonialist" spirit among the jurors. "It's part and parcel of our history and will be for the foreseeable future," he says. But this "underdog mentality" promotes, in his view, not an attitude of "invidious retribution" but rather "a profound sense of justice."

The mostly black juries do not show any apparent racial bias in their verdicts. Several of the islands' most successful plaintiffs, including the young woman on the back of the Honda, the American sailor who had the diving accident, and Dunn, the asbestos installer, were white. Similarly, St. Croix's most successful plaintiffs lawyers, Alkon, Rhea, and Holt, are white.

Does the jurors' "lack of sophistication" and their often limited educational background contribute to large awards, as one stateside defense lawyer and two St. Thomas insurance agents not so delicately allege? Are they too easily swayed by emotional arguments? Alkon denies it. The problem lies not with the jurors but with the defense lawyers who condescend to them. "Juries understand," he says.

Returning to his \$26.3 million verdict in the Dunn case, Holt points to Owens-Corning's conduct and its wealth and says, "I don't think this thing has any magic Virgin Islands thing about it."

Owens Corning in-house attorney Robert McOmber acknowledges that about 12 juries have awarded punitive damages against the company. Though he emphasizes that none have ever approached the Dunn jury's award, he

won't name the next highest.

Of five Dunn jurors contacted, three declined to comment, and a fourth's remarks were so guarded as to provide little insight. But the statements of the fifth, Ramonita Vega, betrayed no confusion about the case or the jury's function, although she was interviewed almost four months after the verdict. "This company knowingly produced a product [asbestos] that is harmful for people, [and] they did not label properly," says Vega, a housewife of Puerto Rican descent with a junior high school education.

"We thought [Dunn] was pretty much sick already, and we feared he can get worse."

Vega does recall feeling her heart start pounding when Holt first asked for \$34 million in punitive damages—\$1 million for each year since 1956, when Holt had argued, Owens-Corning first became aware that asbestos could cause cancer. But she was evidently appalled when Owens-Corning's counsel, trying to mitigate the punitive damages, brought to the jurors' attention the economic hardship the company faces due to the

more than 70,000 other suits pending against it. "That's when we decided. 'These people are really up to their necks in asbestos lawsuits. It's not just Mr. Dunn, but more people are being affected by this,'" says Vega. "They wanted us to feel sorry for this company because they had all these lawsuits. That's [their] problem," she says. "It was disgusting."

The jury's conclusion: "[We] decided that twenty-five million dollars would be enough for [Dunn]," Vega says. "They put him through all that. Now they go through it too." □

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