

1 **III. ISSUES**

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- 3 A. Whether a motion for partial summary judgment is permitted in the Commonwealth in
- 4 light of the Commonwealth Supreme Court's decision in *Bank of Saipan v. Superior*
- 5 *Court (Carlsmith)*, 2001 MP 7 (Original Action No. 2000-004.).
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- 7 B. Whether the court should grant Plaintiff's Motion for Partial Summary Judgment on the
- 8 merits where Plaintiff claims that undisputed facts establish that the Commonwealth is
- 9 liable to Plaintiff for the negligent handling of a dead body.

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11 **IV. ANALYSIS**

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13 A. Motions for Partial Summary Judgment in Light of Recent

14 Commonwealth Supreme Court Decisions.

15 Plaintiff moves for partial summary judgment as to the issue of the Commonwealth's liability in

16 Plaintiff's first cause of action, negligent handling of a dead body.

17 The Commonwealth asserts that: (1) a motion for partial summary judgment cannot be made

18 without first filing a motion for full summary judgment; (2) the Commonwealth Supreme Court has held

19 in *Bank of Saipan* that a party cannot file a motion for partial summary judgment; and (3) partial

20 summary judgment motions are never appropriate in negligence actions.

21 Plaintiff responds by asserting that: (1) motions for partial summary judgment are expressly

22 permitted Commonwealth Rule of Civil Procedure 56(a); and (2) the present matter can be

23 distinguished from *Bank of Saipan* because motions for partial summary judgment are permitted in

24 instances where liability is the only issue to be decided.

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1 judgment may be proper as to some issues but not others. *See Barker v. Norman*, 651 F.2d 1107,
2 1123 (5th Cir. 1981). *See also Thrasher*, 152 F. Supp. 2d at 295 ("[t]he plain language of [Rule] 56
3 indicates that it is not appropriate to use summary judgment as a vehicle for fragmented adjudication of
4 non-determinative issues."); *Lies v. Farrell Lines, Inc.*, 641 F.2d 765, 769 (9th Cir. 1981) (*citing* 6
5 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 56.20 (2d ed. 1976)) (partial summary
6 judgments are "intended to avoid a useless trial of facts and issues over which there was really never
7 any controversy and which would tend to confuse and complicate a lawsuit").

8 Plaintiff only seeks partial summary judgment as to the issue of liability. As such, the concerns
9 espoused by the Supreme Court in *Bank of Saipan* are not at issue. Also, in *Bank of Saipan*, the
10 Supreme Court cited a decision wherein a District Court held that partial summary judgment was
11 appropriate when the only issue disposed of was liability. *See Bank of Saipan*, 2001 MP 7, ¶ 20 n.6
12 (*citing Kendall McGaw Lab., Inc.*, 125 F.R.D. 420 (D.N.J. 1989)).

13 Furthermore, although partial summary judgment may not always be appropriate, Rule 56(a) and
14 Rule 56(c) also authorize motions for partial summary judgment. Commonwealth Rules of Civil
15 Procedure, Rule 56(a) states: "[a] party seeking to recover *upon a claim, counterclaim, or*
16 *cross-claim . . . may . . . move . . . for a summary judgment in the party's favor upon all or any part*
17 *thereof.*" (emphasis added.) *See also Thrasher*, 152 F. Supp. 2d at 295. Commonwealth Rules of
18 Civil Procedure, Rule 56(c) states: "[a] summary judgment, interlocutory in character, may be
19 rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."
20 *See also Thrasher*, 152 F. Supp. 2d at 295. "The clear implication is that the issue of liability is the
21 only non-determinative issue which may be disposed of on summary judgment." *Id.*

22 Plaintiff seeks partial summary judgment as to the issue of the Commonwealth's liability for
23 allegedly mishandling a dead body. Accordingly, Plaintiff's motion is properly before the court and
24 may be decided on its merits.

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1 B. Merits of Plaintiff's Motion for Partial Summary Judgment on the
2 Liability of Commonwealth as to the First Cause of Action.

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4 Plaintiff moves for partial summary judgment as to the issue of the Commonwealth's liability in
5 Plaintiff's first cause of action, negligent handling of a dead body. Plaintiff contends that it is
6 uncontroverted that: (1) the Commonwealth (CHC) had custody and possession of Mrs. Cepeda's
7 body from December 3, 2000, until December 11, 2000; (2) Mrs. Cepeda's body started to
8 decompose during this time; and (3) Mrs. Cepeda's body emitted an intolerable odor due to the
9 decomposition. Plaintiff asserts that these allegedly uncontroverted facts establish that the
10 Commonwealth is liable for breaching its duty to properly maintain the body of Mrs. Cepeda.

11 The Commonwealth, however, claims that a genuine issue of material fact exists which precludes
12 entry of summary judgment. Specifically, the Commonwealth contends that a genuine issue of material
13 fact exists, as to whether the decomposition of Mrs. Cepeda's body occurred due to negligence on the
14 part of CHC or due to "unavoidable equipment failure."

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16 1. Negligent Handling of a Dead Body / RESTATEMENT (SECOND) OF TORTS § 868.

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18 The tort claim for "negligent interference with a dead body" has not been addressed by
19 Commonwealth courts. The court, therefore, must turn to the common law pursuant to 7 CMC §
20 3401, which states in pertinent part:

21 In all proceedings, the rules of the common law, as expressed in the
22 restatements of the law approved by the American Law Institute and, to
23 the extent not so expressed as generally understood and applied in the
24 United States, shall be the rules of decision in the courts of the
Commonwealth, in the absence of written law or local customary
law to the contrary . . .

25 *See also Ada v. Sablan*, 1 N.M.I. 415, 424-25 (1990).

26 The RESTATEMENT (SECOND) OF TORTS, § 868 (1979), states, "[o]ne who intentionally,
27 recklessly or negligently removes, withholds, mutilates or operates upon the body of a dead person or
28 prevents its proper interment or cremation is subject to liability to a member of the family of the

1 deceased who is entitled to the disposition of the body.”

2 The RESTATEMENT establishes that a person must exercise a degree of care in handling the
3 body of a dead person. Plaintiff alleges that the Commonwealth (CHC) is liable for negligently
4 handling Mrs. Cepeda’s body. Generally, “[n]egligence is the failure to exercise reasonable and
5 ordinary care, and by the term ‘reasonable and ordinary care’ is meant that degree of care which an
6 ordinarily careful and prudent person would exercise under the same or similar circumstances or
7 conditions." *McEwan v. Spokane Intern. R. Co.*, 325 F.2d 491, 495 (9th Cir. 1963). "Negligence
8 may consist in the doing of some act which a reasonably prudent person would not do under the same
9 or similar circumstances, or in the failure to do something which a reasonably prudent person would
10 have done under the same or similar circumstances." *Id.*

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12 2. *Res Ipsa Loquitur* Does Not Apply to the Present Action.

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14 Plaintiff has suggested that the doctrine of *res ipsa loquitur* may operate to establish that the
15 Commonwealth (CHC) was negligent as a matter of law. The Commonwealth, however, objects to
16 the introduction of this issue and contends that even if the doctrine were addressed, it should be found
17 inapplicable in the present matter.

18 *Res ipsa loquitur* is an evidentiary rule which allows inference of negligence to be drawn from a
19 certain set of facts. Prerequisites for application of doctrine of *res ipsa loquitur* are: (1) that the
20 accident is of kind which ordinarily does not occur unless someone has been negligent; (2) that the
21 accident was caused by agency or instrumentality within exclusive control of defendant; and (3) that
22 the accident was not due to any voluntary action or contribution on part of the plaintiff. *See Southern*
23 *Arizona York Refrigeration Co. v. Bush Mfg. Co.*, 331 F.2d. 1, 7 (9th Cir. 1964).

24 The New York Court of Appeals has held that the doctrine of *res ipsa loquitur* does not apply
25 in a negligence action against a funeral home, after the plaintiffs' mother's body fluids leaked from
26 casket throughout funeral mass and graveside service, as it was not within common knowledge of
27 laymen whether funeral home deviated from accepted principles and practices of mortuary science.
28 *See Savage v. Thomas J. Shea Funeral Home Inc.*, 212 A.D.2d. 875, 876 (N.Y. App. Div. 1995).

1 The court finds the reasoning set forth in *Savage*, though distinguishable in that it dealt with a
2 mortuary service rather than a hospital, to be persuasive. Accordingly, the court finds that the doctrine
3 of *res ipsa loquitur* does not apply to the present matter and does not operate to establish that the
4 Commonwealth (CHC) was negligent as a matter of law.

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6 3. Genuine Issues of Material Fact Remain.
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8 It is uncontroverted that: (1) the Commonwealth (CHC) had custody and possession of Mrs.
9 Cepeda's body from December 3, 2000, until December 11, 2000; and (2) Mrs. Cepeda's body
10 started to decompose during this time. There is conflicting evidence, however, as to the cause of the
11 decomposition. Plaintiff asserts that the decomposition was caused by the Commonwealth's
12 negligence. The Commonwealth denies such an allegation and asserts that the decomposition was
13 caused by "unavoidable equipment failure". *See* Defs.' Opp'n to Pl.'s Mot. for Partial Summ. J.
14 (Declaration of Gregory W. Horst).

15 Plaintiff bears the burden of establishing the absence of a "genuine issue of material fact." A
16 "genuine issue" is one that can only be resolved by a trier of fact because it may be resolved in favor of
17 either party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-249, 106 S. Ct. 2505, 2510, 91
18 L. Ed. 2d 202 (1986). A "material fact" is one that can affect the outcome of the suit under the
19 governing substantive law. *Id.*

20 Regardless of the cause of the decomposition, neither party has set forth facts establishing the
21 existence or non-existence of a negligent act. The court cannot, therefore, find that Mrs. Cepeda's
22 body decomposed because of a failure of the Commonwealth (CHC) to exercise reasonable and
23 ordinary care.

24 Also, there has been no evidence that the decomposition was proximately caused by a failure of
25 the Commonwealth (CHC) to exercise a certain standard of care. Accordingly,
26 genuine issues of material fact remain which necessarily preclude entry of partial summary judgment.

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2 **V. CONCLUSION**
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4 For the foregoing reasons, the court finds that neither the Supreme Court's decision in *Bank of*
5 *Saipan* nor Commonwealth Rules of Civil Procedure 56(a) require that Plaintiff file a motion for full
6 summary judgment prior to filing a motion for partial summary judgment.

7 Additionally, the court finds that the Supreme Court's decision in *Bank of Saipan* does not
8 preclude motions for partial summary judgment where liability for negligence is the only issue to be
9 decided.

10 The court finds that the doctrine of *res ipsa loquitur* does not apply to the present matter and
11 does not operate to establish that the Commonwealth (CHC) was negligent as a matter of law.

12 The court also finds that the neither party has set forth facts establishing the existence or
13 non-existence of a negligent act and have not established that the decomposition was proximately
14 caused by a failure of the Commonwealth (CHC) to exercise a certain standard of care. As such,
15 genuine issues of material fact remain which necessarily preclude entry of partial summary judgment.
16 Accordingly, Plaintiff's Motion for Partial Summary Judgment is hereby **DENIED**.

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18 So ORDERED this 28th day of January, 2002.
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22 /s/ _____

23 JUAN T. LIZAMA, Associate Judge
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