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2 For Publication

3 **IN THE SUPERIOR COURT**  
4 **OF THE**  
5 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

6 **R. SANDERS HICKEY, JAMES E. )**  
7 **HICKEY, T.L DAWSON, TRACY C. )**  
8 **ANDERSON, DOUGLAS A. FREELEY, )**  
9 **THOMAS A. McKINNON, CHARLES F. )**  
10 **JONES, and PETER V. PLATT )**

11 Plaintiffs,

12 v.

13 **CYNTHIA S. COTTONE and )**  
14 **JOSEPH R. COTTONE IN THEIR )**  
15 **CAPACITIES AS ADMINISTRATORS )**  
16 **OF THE ESTATE OF CHARLES J. )**  
17 **COTTONE, and OCCIDENTAL )**  
18 **TRADING, LTD., )**

19 Defendants.

**CIVIL ACTION NO. 99-0125**

**ORDER FOR DISTRIBUTION OF**  
**ASSETS OF OCCIDENTAL TRADING,**  
**LTD.**

20 THIS MATTER came on for hearing on March 11, 2003, to determine the distribution of  
21 assets of the dissolved Occidental Trading, Limited. Based upon arguments of counsel and the  
22 materials on file, the Court issues the following order.

23 **FINDINGS OF FACT**

24 1. Occidental Trading, Limited was incorporated sometime in 1993. It had ceased to have any  
25 meaningful business purpose by early in 1994, but was not dissolved until October 29, 1995,  
26 by action of the CNMI Corporate Registrar. It has no liabilities.

27 2. Occidental's assets are:

28 a. Outstanding invoices to Advance Textile Corporation (ATC) as follows:

Summary of Invoices to ATC from Occidental

Invoice Number	Amount
001/93	\$ 26,550.00
002/93	29,358.43
003/93	30,000.00
004/93	62,935.26

1	005/93	18,750.71
2	011/93	63,715.66
3	Total:	\$231,310.06

4

5 b. 2.5 million common shares of ATC stock.

6 c. A note from a Georgia limited partnership, Peninsula L.P. I, executed November 7,  
7 1994, in the amount of \$261,245.

8 3. ATC is in Chapter 11 bankruptcy. During the motion hearing, the parties estimated that  
9 ATC's repayment to creditors will be 15 cents to 17 cents on the dollar.

10 4. Under Occidental's Articles of Incorporation, Article II, Section 3, upon dissolution, holders  
11 of preferred stock in Occidental are to receive \$1 per preferred share, less any dividend  
12 payments on each share. Occidental paid no dividends.

13 5. There are currently 1.164 million Occidental preferred shares outstanding. Ownership of  
14 these shares is as shown on the table below, labeled "Final Distribution of Occidental  
15 Assets." Initial purchase price for these shares was \$1 per share.

16 6. The total assets of Occidental are substantially less than \$1.164 million.

17 **CONCLUSIONS OF LAW**

18 There are two primary disputes in this case. First, the parties dispute the meaning of a  
19 particular term in Occidental's Articles of Incorporation. The term provides for the distribution of  
20 assets upon dissolution of Occidental. The relevant section reads:

21 Upon any liquidation of the Corporation commenced prior to January 1, 1995, (i) the  
22 holders of the then outstanding shares of Preferred Stock shall be entitled to receive  
23 . . . an amount equal to \$1.00 per share less dividends received per share, before any  
24 payment may be made or assets distributed to the holders of the outstanding shares  
25 of the Corporation's Common Stock, and (ii) thereafter, and in the event of  
26 liquidation of the Corporation occurring on or after January 1, 1995, any net assets  
27 of the Corporation remaining after the foregoing distributions shall be divided among  
28 all of the Corporation's shareholders (Preferred, Common and other) ratably in  
accordance with their stock holdings.

26 Occidental Articles of Incorporation, Article II, Section 3.

27 Because dissolution occurred after January 1, 1995, Defendants argue that clause (ii) requires  
28 that Occidental assets be distributed ratably among all shareholders without any initial distribution

1 to preferred shareholders. Plaintiffs counter that the language of clause (ii) does not change the initial  
2 \$1 per preferred share distribution - it simply adds a provision that common and preferred shares will  
3 receive the same treatment once the initial distribution has been made.<sup>1</sup> Plaintiffs have the better  
4 argument. Clause (ii) specifically refers to “foregoing distributions” that must occur before any  
5 ratable distribution to all shareholders. There is nothing else this language could refer to but the  
6 initial \$1 per preferred share distribution. Therefore, before distributing anything under clause (ii),  
7 Occidental must satisfy clause (i), to wit, it must distribute \$1.164 million to its preferred  
8 shareholders.

9 The second matter of dispute concerned both how much common stock was issued and who  
10 owned it. However, because Occidental does not have sufficient assets to pay what it is due preferred  
11 shareholders, common shareholders will receive nothing in the final distribution. The common  
12 shares are therefore valueless and ownership of them is of no consequence. The question is moot and  
13 the Court will issue no ruling on it.

#### 14 CONCLUSION

15 For the reasons stated above, IT IS HEREBY ORDERED that all assets of Occidental Trading  
16 Limited be distributed to the preferred shareholders, in the percentages and amounts shown on the  
17 chart below.

#### 18 Final Distribution of Occidental Assets

19 Shareholder	Preferred	Percentage of	ATC Stock 2.5	ATC Invoices	Peninsula L.P.
	Shares Held	Total Pref.	Million Shares	\$ 231,310	Note \$261,245
		Shares			
21 T.L Dawson	250,000	21.5%	536,942	\$ 49,680	\$ 56,168
22 Doug Freely	125,000	10.7%	268,471	\$ 24,840	\$ 27,953
23 James Hickey	200,000	17.2%	429,553	\$ 39,744	\$ 44,934
24 Sanders					
25 Hickey	200,000	17.2%	429,553	\$ 39,744	\$ 44,934

26  
27 <sup>1</sup> There was initially some dispute over whether the Articles of Incorporation or an offering prepared for  
28 Occidental by Charles Cottone should control. However, Defendants conceded at oral argument that the Articles of  
Incorporation should control.

1	Charles Jones	200,000	17.2%	429,553	\$ 39,744	\$ 44,934
2	Thomas					
3	McKinnon	119,000	10.2%	255,584	\$ 23,648	\$ 26,647
4	Peter Platt	70,000	6.0%	150,344	\$ 13,910	\$ 15,675
5						
6	TOTALS	1,164,000	100%	2,500,000	\$231,310	\$261,245

7  
8 IT IS FURTHER ORDERED that this shall serve as a final judgment in the proceeding. Each  
9 party to bear its own costs.

10 SO ORDERED this 30th day of May 2003.

11  
12  
13  
14 /s/ \_\_\_\_\_

15 JUAN T. LIZAMA, Associate Judge