

1. **For Publication**

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

6. **IN RE THE ESTATE OF**  
7. **ANGEL MALITE,**  
8. **Deceased.**

**CIVIL ACTION NO. 97-0369**

**ORDER DENYING MOVANTS’**  
**OBJECTION TO THE DISTRIBUTION**  
**OF ATTORNEYS’ FEES IN CIVIL**  
**ACTION NO. 04-563**

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10. This matter was last before the Court on June 1, 2006, on the objection of certain heirs to the  
11. distribution of \$1,138,500.00 in attorneys’ fees to Antonio Atalig and Reynaldo Yana. Said counsel  
12. represented Jesus Tudela, the Administrator of the Estate of Angel Malite (“the Estate”), in the  
13. settlement of *Commonwealth v. Demapan-Castro, et al.*, Civil Action No. 04-563 (the “Civil  
14. Action”).

15. Movants, including Lourdes Rangamar, Rosa Malite and Romber Sinounou, and Angel  
16. Taman, were represented by Matthew Smith and Steven Nutting.<sup>1</sup> Movants claimed that they had  
17. not received notice of the Court’s approval of the attorneys’ fee agreement (the “Agreement”), and  
18. had thus been denied their due process rights to object to the distribution.

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23. <sup>1</sup> Mr. Nutting played a role in the negotiations that ultimately led to the settlement of the Civil Action. The  
24. settlement entitled the Estate to a reward for land compensation of \$3.45 million.

1. **A. The Administrator was the sole representative of the Estate in the Civil Action and the**  
2. **only person with standing to object to the Agreement.**

3. 1. Parties who failed to timely intervene in the Civil Action now have no standing to  
4. contest issues settled in that action.

5. Probate law provides for the appointment of a single administrator to settle all of the affairs  
6. of an estate.<sup>2</sup> The purpose of appointing this administrator is to designate a party responsible for  
7. marshalling the assets of the estate, paying the debts of the decedent and estate, and distributing the  
8. residue of the estate to the legal heirs. *In re Estate of Lis*, No. 1-04-1934, 2006 WL 845595 (Ill.  
9. App. Mar 31, 2006) at \*9. This purpose would be frustrated if multiple heirs could take such actions.  
10. Any party claiming a relation to the deceased could purport to take action on behalf of the estate. In  
11. the instant case, Jesus Tudela was the chosen representative of the Estate. He alone had standing to  
12. litigate claims on its behalf.

13. The Court takes notice that some of the same heirs now objecting to the distribution were  
14. signatories to the Agreement.<sup>3</sup> Further, as Mr. Nutting took a role in negotiating the settlement, he  
15. must have been aware of the Agreement. According to Mr. Yana, but for the Commonwealth's  
16. consent to the Agreement, the settlement would not have been reached. If Mr. Nutting's clients  
17. objected to this central component of the settlement, surely Mr. Nutting could have filed a motion to  
18. intervene on their behalf.

19. Although the Civil Action was open for many years, none of the Movants ever intervened.  
20. The case was finally settled, complete with the attorneys' fee agreement, on March 13, 2006.<sup>4</sup> Now,

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21. <sup>2</sup> See Com. R. Prob. P. 18 (emphasis added): "The Court shall appoint *an administrator* for the estate who under  
22. the circumstances will best be able to administer the estate."

23. <sup>3</sup> See the signed contingency fee agreements with Rombert Sinounou , Lourdes Rangamar, and Rosa Malite,  
24. attached as Exhibit A to Mr. Renaldo's and Mr. Atalig's March 10, 2006 request for grant of attorneys' fees.

<sup>4</sup> The Court approved the Agreement on or about May 11, 2006. Movants state they had no knowledge of the  
approval until now.

1. on June 2, 2006, the dispute over the Agreement is post-hoc speculation. It should have been raised  
2. in the proper format before the matter was settled.

3. 2. Parties cannot use the probate court to circumvent their lack of standing in the Civil  
4. Action.

5. The fact that Movants brought the instant motion under the probate caption as opposed to  
6. the Civil Action caption does not place this issue within the realms of probate. The Estate is a party  
7. in the Civil Action only because Angel Malite is deceased and unavailable to litigate the issue of  
8. compensation for his land on his own behalf. Angel Malite's civil claim survives through the Estate,  
9. as represented by its administrator.

10. The Court never issued an order in the probate action suggesting any relationship between  
11. the heirs' rights to the property of the Estate and the Estate's position in the Civil Action. The  
12. transfer of the award in the Civil Action to the Estate in the probate case does not endow the heirs  
13. with standing in the Civil Action.<sup>5</sup> The money transferred is simply that which has been awarded to  
14. the Estate as a "survivor" in the Civil Action, and is now ready for distribution in the probate action.

15. **B. Distribution pursuant to the Agreement does not appear to have escaped the**  
16. **safeguards of due process.**

17. The Court found the Agreement, which provided for a 33% contingency fee, to be  
18. reasonable on its face. *Cf. Courtney v. Babel*, 198 N.W.2d 566 (Minn. 1972); *Monday v. Robert J.*  
19. *Anderson, P.C.*, 77 P.3d 855 (Colo. App. 2003); *McCullough v. Waterside Associates*, No.  
20. CV010183809S, 2005 WL 757988 (Conn. Super. Feb. 23, 2005). There is no indication that it  
21. violated the due process of the Estate, as represented by the Administrator. The Court gave the

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21. <sup>5</sup> Money was transferred pursuant to the Court's March 13, 2006 approval of the settlement, which stated, "The  
22. amount of Three million four hundred fifty thousand dollars and 00/100 (\$3,450,000.00) shall be paid into the  
23. Commonwealth Superior court pursuant to Rule 67 of the Commonwealth Rules of Civil Procedure until an order of  
24. distribution and the approval of attorneys fees and costs is entered in *In re the Estate of Angel Malite*, Civil Action No.  
97-0369, in accordance with the laws of the Commonwealth of the Northern Mariana Islands and the Rules of Probate  
Procedure pursuant to Section 4 of the Settlement."

The Agreement could not have even existed in the probate case, as 8 CMC § 2926 prohibits the calculation of  
attorneys' fees as a percentage of the value of all or any part of an estate.

1. Administrator ten days to object to the Agreement. On May 18, 2006, Administrator submitted a  
2. waiver to any objection to fees.

3.           Only those who having standing in a case have a right to due process in that case. *See*  
4. *Microsystems Software, Inc. v. Scandinavia Online AB*, 226 F.3d 35 (1<sup>st</sup> Cir. 2000) (finding that, (1)  
5. nonparties who had participated in proceedings before district court but declined to seek  
6. intervention lacked standing to appeal from injunction, and (2) prohibiting appeal did not violate  
7. nonparties' right to due process.) To allow any individual to enter into a case and claim a denial of  
8. due process would create chaos. Any number of individuals who might or might not have any  
9. relation to Angel Malite could enter the case and effectively prevent the distribution from ever  
10. happening.

11.           Here, the Administrator was the only party representing the Estate. No other individual  
12. intervened before the case was settled, in spite of ample opportunity to do so. These individuals  
13. cannot now claim that they have been denied due process.

14.           The Court is concerned that objections to the Agreement may be based on personal opinions  
15. rather than concerns for due process. Although several attorneys over the past few decades have  
16. dabbled in the affairs of the Estate, only Mr. Atalig and Mr. Yana have achieved a meaningful  
17. settlement for the heirs. Insinuations that the services of Mr. Atalig and Mr. Yana are not worth the  
18. value agreed upon as part of the settlement imply a lack of respect for the judiciary and for fellow  
19. members of the Commonwealth Bar. The value of these services is a matter between the attorney  
20. and the client. Strangers to the attorney's fee agreement have no business speculating on this value.

21.           The Court observes that Mr. Nutting's own motion for compensation, applying a lodestar  
22. multiple of 6.0 for the services he delivered, seeks a total award of \$114,345.00. The 84.7 hours that  
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Mr. Nutting spent, late in the negotiations, are but a fraction of the hours Mr. Atalig has spent on this case in the past decade.

**D. Conclusion**

Movants' objection to the distribution of attorneys' fees is DENIED, as Movants have no standing to object and there is no inherent unfairness in the Agreement itself. At this point in the litigation, the Movants' only remedy is to seek recourse against the Administrator.

SO ORDERED this 2nd day of June 2006.

/s/ \_\_\_\_\_  
Juan T. Lizama  
Associate Judge, Superior Court