



By Order of the Court, Judge Joseph N. Camacho

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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN MATTER OF JOHN JOSEPH JONES,)
)
A MISSING INDIVIDUAL.)
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Civil Action No. 19-0028

**ORDER OF PRESUMPTIVE
DEATH OF PERSON LOST-AT SEA
PURSUANT TO 8 CMC § 2106(c) AS
DECEDENT WAS EXPOSED TO A
SPECIFIC PERIL OF DEATH AND
AFTER A DILIGENT SEARCH
COULD NOT BE FOUND**

I. INTRODUCTION

THIS MATTER came before the Court on March 14, 2019 on the 10:00 a.m. calendar for a hearing on a Petition for Presumption of Death of Missing Individual Believed to Be Dead. John Joseph Jones embarked on a scuba diving tour of Saipan's Grotto on November 18, 2018, but did not return. His body was never found. The petition seeks an order directing the Registrar of Vital Statistics to issue a death certificate for John Joseph Jones including findings of fact required to complete the death certificate.

Petitioner, Madelyn Ann Jones, was represented by Rexford C. Kosack. There is no responding party.

The Court, having considered the evidence presented at the hearing and the arguments raised by the Petitioner, hereby enters this ORDER.

II. FINDINGS OF FACT

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2 After reviewing the evidence, including the Affidavit of Madelyn A. Jones that was
3 admitted as Exhibits “1.1” and “1.2” and considering the credibility of the witnesses, Harry
4 Blalock and Joey McDoulett, the Court FINDS the following facts were established by a
5 preponderance of the evidence.

6 1. John Joseph Jones (“Jones”) went scuba diving at the Grotto in the Marpi area of Saipan
7 during the morning of November 18, 2018 with three other divers: Harry Blalock (“Blalock”),
8 Joey McDoulett (“McDoulett”), and Dana Couto (“Couto”). Jones and Couto were being led on
9 a scuba diving tour as guests of Axe Murderer Tours – Saipan.

10 2. Axe Murderer Tours is a diving company that has been providing diving tours for over
11 fifteen years.¹

12 3. Blalock is the owner of Axe Murderer Tours and is a certified PADI Master Scuba Diver
13 Trainer instructor.

14 4. McDoulett, a certified PADI dive instructor, retired from the United States Federal
15 Bureau of Investigation and is a co-owner of Green Flash Dive Services – another dive tour
16 company.

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19 ¹ “The Birth of Axe Murderer Tours. More than fifteen years ago, two U.S. Navy Servicewomen visited a small
20 Pacific Island named Saipan. They wanted to scuba dive, however, no dive shop on Saipan would accommodate the
21 requests of two English-speaking divers. Harry Blalock, a local radio personality and avid diver, coincidentally
22 stopped by the same dive shop to get his tanks filled on his way home from work. He overheard the women talking
23 and offered to take them diving with him the next day. They accepted Harry's offer, but when he showed up at the
24 hotel in salt stained zorries, board shorts and a faded dive shirt, they hesitated and asked, “Are you the same man
25 from yesterday?” Harry chuckled knowing yesterday he was in a business suit and said, “Yup! Yesterday I was
working. Today I'm diving!” One of the women asked: “How do we know you're not an Axe Murderer?” Smiling,
Harry simply said “You don't. You can come diving with an Axe Murderer and have fun or you can sit in your
hotel all day. What's it going to be?” Needless to say, the two women had a wonderful time diving and touring the
island with Harry. When Harry dropped the women back off at their hotel at the end of the day, they said, “Axe
Murderer Tours is the best tour on Saipan!” Thus, Axe Murderer Tours was born! Word spread quickly throughout
the military that Harry Blalock and Axe Murderer Tours was the recommended place for an exceptional dive
experience on Saipan”. See *Our Company*, AXE MURDERER TOURS,
https://www.amtguamdiveshop.com/page/our_company (last visited Mar. 22, 2019).

1 5. Blalock briefed the group in the parking lot before the dive. Instead of assigning diving
2 buddies, Blalock explained that he would lead, Couto and Jones would follow, and McDoulett
3 would be at the tail of the group with the two guest divers “sandwiched” between the instructors.

4 6. The Grotto is a collapsed cavern that is missing part of its ceiling.² It is entered by
5 descending a concrete stairway. At the bottom is a pool of seawater. What remains of the ceiling
6 descends into the water on the far side of the pool. Below that location are three underwater
7 passages that lead outside the Grotto to the Pacific Ocean. The witnesses referred to the
8 passages by numbers with #1 being the passage to the right as one looks across the pool from the
9 stairway, #2 being the center passage, and #3 being the passage to the left.

10 7. At or about 9:00 a.m., the four divers entered the water at the Grotto, submerged, and
11 swam together through passage #1 outside the Grotto into the ocean.

12 8. The group went through a fan coral cave at a depth of over 100 feet with Blalock in the
13 lead, followed by Couto, Jones, and then McDoulett. They went into a serpentine tunnel in the
14 same order. They next had to ascend an underwater hill and go down the other side to approach
15 the entrance to passage #2 leading back into the Grotto. The entrance to the passage is about 30
16 feet wide. Blalock entered the passage first with Couto following. Blalock and Couto were at a
17 depth of about 60 feet. Jones and McDoulett, behind them, paused above the top of the
18 underwater hill at a depth of about 30 feet. At this point, McDoulett could see Couto at the
19 entrance to passage #2, as Couto was in filtered sunlight, but McDoulett could not see Blalock,
20 who was further in the passage and in the dark.

21 9. At that point, 27 minutes into the dive, Jones showed McDoulett his air pressure gauge.
22 The needle was just over 50 bars. At 50 bars and lower, a red zone is shown on the gauge to
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25 ² *Managaha, Grotto Voted As Top Diving Spots*, SAIPAN TRIBUNE (Mar. 28, 2005),
<https://www.saipantribune.com/index.php/a2e25307-1dfb-11e4-aedf-250bc8c9958e/>.

1 indicate low air. McDoulett signaled to Jones with an “OK” sign, a “thumbs up” sign, and the
2 blade of his hand pointing towards the passage. McDoulett intended to communicate to Jones
3 that they were OK, they would swim through the passage and then surface. He does not recall
4 whether Jones responded to his signs.

5 10. McDoulett left Jones at the underwater hill and swam down and into the passage to
6 Blalock to communicate with him. McDoulett gave a “low air” sign to Blalock (a fist against
7 his own chest) and pointed at Jones. Blalock gestured with an “OK” sign and the blade of his
8 hand pointing down the passage toward the Grotto. McDoulett returned the “OK” sign.

9 11. McDoulett could see Jones was still in the same location, at a depth of 30 feet. He
10 estimates the distance from him to Jones was about 15-20 feet. While alongside Blalock,
11 McDoulett gave a hand signal, intended for Jones, to go toward the Grotto. McDoulett did not
12 get any sign that Jones had seen McDoulett’s signal. McDoulett turned and swam down the
13 passage toward the Grotto, following Blalock and Couto, away from Jones.
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15 12. After going a distance which McDoulett describes as four kicks, McDoulett looked
16 back toward Jones. McDoulett could see the opening to seaward, but Jones was no longer there.
17 McDoulett swam to Blalock and gestured with both palms turned up, meaning “where is he?”
18 Blalock returned the same gesture of both palms turned up, indicating Blalock did not know.
19 Blalock gestured that McDoulett should go back and find Jones. McDoulett swam seaward
20 through the passage and began searching for Jones. McDoulett looked to the left of the opening
21 of the passage. There was no sign of Jones.³

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25 ³ There are slight differences between the testimony of Blalock and McDoulett as to the sequence and location of the search for John Joseph Jones. Overall, the Court finds that both Blalock and McDoulett’s testimonies credible and each made a diligent search.

1 13. McDoulett returned through passage #3 into the Grotto searching in case Jones had
2 taken a different route back into the Grotto. Meanwhile, Blalock had taken Couto to the surface
3 of the Grotto already, inflated Couto's buoyancy vest, and instructed Couto to wait there.
4 Blalock could see McDoulett returning to the Grotto. Blalock swam out passage #3 and passed
5 McDoulett without McDoulett seeing him. Blalock grabbed McDoulett's fins to get
6 McDoulett's attention.

7 14. They surfaced briefly and McDoulett indicated to Blalock that McDoulett did not know
8 where Jones was. Blalock and McDoulett then dove under the surface to continue searching for
9 Jones.

10 15. Blalock testified he went out passage #2, checking the bottom to see if there was any
11 dive gear. He checked the cracks between rocks on the bottom and the ceiling on top of the
12 passage using his flashlight. Outside the Grotto, he looked at the surface and then up and down
13 the cliff line. He checked the mooring buoy. Blalock testified that the visibility underwater was
14 excellent. He could see 150' horizontally. The sea surface was not choppy. Above the water, it
15 was a clear and sunny day. Blalock testified that there was no current in the water.
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17 16. McDoulett testified that when he returned to the Pacific Ocean side to continue
18 searching McDoulett left the Grotto through passage #3 and, when he was outside the Grotto, he
19 worked his way to the right toward passage #2.

20 17. Blalock testified that he saw McDoulett in the ocean outside the Grotto and he
21 motioned for him to surface. They surfaced about 8 to 10 feet from the sea edge. In the
22 direction of Bird Island there were several ledges at about water height, but no one was on them.
23 In the opposite direction, there were cliffs descending into the water. They called out Jones'
24 name, "John," many times. Blalock swam up and down the cliff line searching for Jones. There
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1 was nothing on the cliff line to allow a person to get out of the ocean. To exit, one would have to
2 swim south to Bird Island and exit there.

3 18. Blalock then descended to a depth of about 40 feet to survey the ocean floor. He could
4 see the entire area they had traversed on the tour from that depth. He swam down and checked
5 the serpentine tunnel and the fan coral cave. Blalock estimates he was searching outside the
6 Grotto for 15-20 minutes. He returned to the Grotto through passage #1 and checked several
7 places where a body could get stuck, such as an area known as the "Chimney." Blalock then
8 returned to Couto, who was floating on the surface in the Grotto. While Blalock was searching,
9 McDoulett returned through passage #2 and checked the crevices in the ceiling. McDoulett then
10 met up with Couto and Blalock.

11 19. The three climbed out of the water. The total time from the start of the dive was about
12 45 minutes. Harry told the lifeguard at the Grotto to call 911. The lifeguard ran up the stairs to
13 call from the parking lot. The three divers went back to the parking lot with their gear. Blalock
14 and McDoulett got fresh tanks and headed back down to the Grotto while Couto remained in the
15 parking lot.
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17 20. For the second dive⁴, Blalock went out passage #1 while McDoulett went out passage
18 #3. After ten minutes, the two divers met at the surface. They yelled "John" and looked up and
19 down the cliff line. They continued to look underwater outside the Grotto for 10-15 minutes.
20 McDoulett went north at depths between 30 and 60 feet, doing a survey of the ocean bottom.
21 McDoulett descended to the Bat Cave, which is about 60 feet north of passage #3 and at a depth
22 of 100 feet. McDoulett worked his way back to passage #3.
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24 ⁴ The Court distinguishes what is referred to as the First Dive and the Second Dive. The First Dive consisted of
25 several resurfacings of the divers on their first set of tanks in an effort to search for Jones. The Second Dive is when
the divers switched to a new set of tanks to continue their search, which also consisted of several resurfacings of the
divers.

1 21. Blalock entered the Grotto through passage #2. Blalock checked inside the Grotto,
2 particularly checking the ceiling area. Neither Blalock nor McDoulett ever saw Jones, or any
3 sign of Jones.

4 22. The two divers took a safety stop at a depth of 10 feet for three minutes at the buoy
5 inside the Grotto, then surfaced. First responders were already in the Grotto. The two divers
6 were told that the Navy had been notified and a helicopter was on its way. An hour or so later, a
7 helicopter showed up which searched the coastline and the sea for several hours. A small aircraft
8 showed up and flew low over the dive site. About 30 to 50 people came to search. There were
9 members of the Commonwealth Port Authority (CPA) Ports Police, the Department of Public
10 Safety (DPS), the Department of Lands and Natural Resources (“DLNR”), and the Fire
11 Department. The Ports Police and DLNR had divers search in the water. DPS and the Fire
12 Department had boats comb the dive area. Blalock saw personnel walking the ocean shoreline
13 searching for Jones.

14 23. The first day’s search lasted until 5:00 or 5:30 p.m. Blalock remained all day and for
15 the next three days. On the second and third days, Blalock was not permitted to dive; however,
16 he provided advice to divers from government agencies on where to search in the area.⁵ On the
17 fourth day, he was permitted to dive off the work boat called the Wheeler, a ship located in the
18 Saipan lagoon. Blalock dove the coastline with Wheeler divers from the Grotto to Bird Island in
19 one dive, then from Bird Island to the point south of Bird Island in a second dive. They were
20 searching crevices in the ocean floor on these dives.^{6,7}

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24 ⁵ Blalock was initially not allowed to participate by diving in the rescue and recovery effort pursuant to police
25 procedure as this early stage, anyone involve in a missing person case is a potential suspect to a crime.
Subsequently, any suspicion of foul play was dispelled.

⁶ Blalock also saw Department of Public Safety divers using snorkels searching from the surface while he was on
these dives.

1 24. Jones left a wife of 46 years, children, grandchildren, and his mother. None of these
2 family members have heard from him since November 18, 2018.

3 25. Jones left behind his passport, cellular phone, driver's license, wallet, credit cards,
4 return airline ticket to Seattle, and his personal effects.

5 26. Since November 18, 2018, there has been no activity on Jones' bank accounts or
6 credit card accounts, other than by his wife.

7 27. The following information is required in order to complete a death certificate:

8 a. John Joseph Jones was a male born on August 23, 1953 in the United States.

9 b. Jones' social security number was XXX-XX-1408.

10 c. Jones served for two years in the U.S. Armed Forces in the Marine Corps.

11 d. Jones was married and his highest level of education was an Associate degree.

12 e. Jones worked for the Federal Aviation Administration for 30 years. His last
13 position was in Operations Engineering for the NAVAID Support Center.

14 f. Jones usual residence was 2914 NE 8th Place, Renton, WA, and he had lived there
15 for sixteen years.

16 g. Jones surviving spouse is Madelyn Ann Jones.

17 h. Jones father's name was John Francis Jones and his birth state was Illinois.
18 Jones' father passed away several years ago.

19 i. Jones' mother's name is Connie Fink, having remarried after the death of John's
20 father, and her birth state is Illinois. She has survived the death of her son.
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25 ⁷ Other than a false report which turned out to be a swimmer near-by. The searchers never heard of anyone finding Jones. Jones' body has never been found.

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III. CONCLUSIONS OF LAW

This action is brought under the Commonwealth’s Vital Statistics Act of 2006, which is based on a Model Act, codified at 1 CMC § 26001, *et seq.* Section 26013(h) provides:

When a death is presumed to have occurred within the CNMI but the body cannot be located, a death certificate may be prepared by the Registrar only upon receipt of an order of the CNMI Superior Court which shall include the finding of facts required to complete the death certificate. Such a death certificate shall be marked “Presumptive” and shall show on its face the date of death as determined by the court and the date of registration, and shall identify the court and the date of the decree.

Thus, the task before this Court is to determine whether Jones is presumed to have died and the date on which Jones died. Once those findings have been made, the Court may order the Registrar to prepare a death certificate.

The Northern Marianas Probate Law provides presumptions that aid in the finding of whether a person is dead. There are two types of presumptions: The first type of presumption is based on the passage of time, and the second type of presumption is when a person is exposed to a specific peril of death. The first type of presumption is found at 8 CMC § 2106(d):

A person who is absent for a continuous period of five years, during which the person has not been heard from, whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. . . .

See In the Matter of the Estate of Deleon Guerrero, 3 NMI 253, 261 n. 6 (1992) (the usual common law presumption is seven years, but it was reduced to five years by § 2106(d)).

The second type presumption, is found at 8 CMC § 2106(c). The elements of the section 2106(c) are:

1. A person is absent for a continuous period during which the person has not been heard from,

1 2. The person's absence is not satisfactorily explained after diligent search or inquiry,
2 and

3 3. The person has been exposed to a specific peril of death.

4 The application of section 2016(c) is illustrated by *In re Benedek*, 2005 N.Y. Misc.
5 LEXIS 5916 (N.Y. Sur. Ct.). Benedek went on a scuba diving tour with four other divers. The
6 tour was a drift dive where a boat lets the divers out at point A and picks them up at point B
7 where the current delivers them. When the boat arrived at point B, Benedek was not present.
8 Benedek had drifted further away, but the boat captain could see him. After picking up the other
9 divers, the boat was driven to where Benedek had been seen, but Benedek had disappeared. The
10 boat captain searched for five minutes. The captain then called for assistance. The Cayman
11 Islands marine police searched for 24 hours before suspending the search. Benedek's body was
12 never found. His wife sought a declaration of his death. The New York statute provided for a
13 presumption after a three year absence, but provided that if a person had been exposed to a
14 specific peril of death his death could be determined in less than three years. The Court
15 concluded that Benedek appeared to have suffered a catastrophic physical event occurring in the
16 water during the dive. He was exposed to the peril of the sea, and this is sufficient to invoke the
17 presumption of death. *See also Skele v. Mutual Benefit Life Ins. Co.*, 485 N.E. 2d 770 (Ohio Ct.
18 App. 1984) (hiker's death presumed from specific peril of a freezing cold river in Alaska).

19
20 Jones has been absent for a continuous period from November 18, 2018 until the date of
21 the hearing (116 days). During this time, his wife has not heard from him. Jones was last seen
22 while scuba diving, low on air in his tank, at about 9:30 a.m. on November 18, 2018 in the open
23 ocean outside the Grotto. The sea, as found in *Benedek*, poses a specific peril of death. Despite
24 diligent search efforts by Blalock and McDoulett, immediately after Jones went missing, and by
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1 government personnel for the next four days, Jones' absence has not been satisfactorily
2 explained. No other explanation other than Jones' death is suggested to explain his
3 disappearance. Jones has not contacted his family or co-workers. Jones left behind his passport,
4 airline ticket, money, credit cards, and personal effects. There has been no activity on Jones'
5 bank accounts other than by Jones' wife. The Court concludes, as a matter of fact, that Jones
6 died on November 18, 2018.

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8 **IV. ORDER**

9 IT IS HEREBY ORDERED:

- 10 1. The Registrar of Vital Statistics shall prepare a death certificate marked
11 "Presumptive" for John Joseph Jones that shows that he died on November 18, 2018,
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13 2. The other facts required to complete the death certificate shall be based on the
14 Findings of Fact in this Order, and
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16 3. The identity of this Court – The Superior Court of the Commonwealth of the
17 Northern Mariana Islands – and the date of this decree shall be shown on the death
18 certificate.⁸

19 IT IS SO ORDERED this 22nd day, March 2019

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21 JOSEPH N. CAMACHO
22 Associate Judge

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24 ⁸ The Court takes this opportunity to extend its appreciation to John Joseph Jones who came to the Commonwealth
25 of the Northern Mariana Islands as part of the Super Typhoon Yutu recovery effort. On behalf of the People of the
Commonwealth – Thank you for your service. To the family of John Joseph Jones, the Court humbly extends
prayers and condolences.