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

IN THE MATTER OF THE ESTATE OF LARRY LEE HILLBLOM, Deceased.) Civil Action No. 95-626P) **SUPPLEMENTAL ORDER ON STANDING AND PARTICIPATION OF CLAIMANTS**

This matter came before the Court on October 10, 1995, following the issuance of this Court's *Order re: Standing of Claimants* on September 28, 1995 ("September 28 Order"). That Order requested further briefing on the issue of whether claimants to the Estate of Decedent Larry L. Hillblom might be organized into groups which would make for more efficient proceedings concerning the Executor's management of the Estate. In the supplemental briefings received on October 10, 1995, the parties objected to the use of such mechanisms. Moreover, both the Executor and certain claimants have pointed out a clearly erroneous assumption made in the September 28 Order, relating to the potential imposition of Federal estate **tax**. Having considered these submissions, the Court now renders its decision.

FOR PUBLICATION

1 **I. STANDING OF CLAIMANTS RECONSIDERED**

2 The September 28 Order held that "a claimant is 'interested' under 8 CMC § 2107(p), and
3 therefore entitled to notice and an opportunity to participate in proceedings on the management of the
4 estate, if there is some chance that estate assets will be insufficient to pay the full amount of that
5 claimant's claim." Order at 3. None of the supplemental submissions disputed this rule, which was
6 itself based on earlier positions taken by the parties.

7 However, the Court's application of the rule to the facts of this case has been subject to
8 challenge. In the September 28 Order, the Court based its finding of a potential insufficiency of
9 Estate assets upon the premise that the total value of the gross Estate would be subject to a fifty-five
10 percent Federal estate tax if Junior Hillbroom were to prevail on his paternity claim. Both the
11 Executor (Memorandum at 2) and the claimants represented by Eason & Halsell (Memorandum at 2-
12 4, Declaration of Charles Stepkin) have provided authority demonstrating that this premise is false.
13 Under the terms of 26 U.S.C. § 2053, claims against the estate are deducted from the gross estate
14 prior to the determination of the taxable estate. Thus, if estate ~~tax~~ were to be levied here, it would
15 be assessed as a percentage of the remaining assets after amounts representing valid claims have been
16 deducted.

17 The Court therefore agrees with the Executor that the proper calculation is as follows: the total
18 Estate, estimated at \$421,539,435, minus the total asserted claims, estimated at \$190,217,564,
19 resulting in a balance of \$231,321,871. Given the magnitude of this balance, the likelihood that the
20 **Estate** will be so mismanaged as to result in an insufficiency of assets to pay all valid claims recedes
21 into the twilight of remote speculation and cannot serve as the basis for this Court's procedures.

22 Counsel to Adonis Gotas submitted the only memorandum which argued the viewpoint that
23 the Executor and all parties should give notice and allow all parties to participate in all proceedings
24 involving the administration of the estate. Counsel asserted that where an estate is insolvent,
25 "creditors have the right to be heard in opposition to all claims against the estate." Supplemental
26 Memorandum at 2 (Oct. 10, 1995). However, the authorities cited do not support this proposition
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1 and are not on point with the facts of this case.' Moreover, as shown above, the risk of insolvency
2 here -- defined as a situation where an individual's entire property and assets are insufficient to pay
3 one's debts (In Re Boggs' Estate, 121 P.2d 678, 681 (Ca. 1942)) -- is extremely remote. Counsel
4 also argued that "in probate proceedings involving other types of issues, the courts in other
5 jurisdictions have held that notice and opportunity to be heard are required." Memorandum at 2.
6 Once again, the authorities cited either do not stand for this proposition or do not concern situations
7 analogous to the facts here.'

8 In light of the submissions received and its own research, the Court now reconsiders its
9 September 28 Order and sets forth the following test to determine whether a given party is
10 "interested" in a given proceeding. Under the terms of 8 CMC § 2107(p), a party is interested in a
11 given hearing or proceeding if the party is: (1) the Executor of the Estate; (2) a general or residuary
12 devisee under a will; (3) an intestate heir or a person who claims to be an omitted heir under the terms
13 of the Commonwealth Probate Code; (4) the holder of a specific property interest (such as a security
14 interest, mortgage, lienhold or other in rem interest) in certain Estate property which may be disposed
15 of or diminished in value as a result of the proceeding; or (5) a claimant whose claim will be
16 adjudicated or considered at the hearing, or whose claim is so related in nature to the claim being
17 adjudicated or considered that the proceeding is likely to affect materially the adjudication of the
18 claimant's claim. Thus, under this test, claimants for generalized money damages against the Estate

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20 ¹ Counsel cited two cases for this proposition. First, in *In re Murphy's Estate*, 95
21 N.E.2d 590 (Oh.Ct. App. 1950), the insolvency of the estate was not at issue. The issue was whether
22 the trial court had erred by not providing the claimant with notice with its determination of the
23 validity of the claim after the executor had previously allowed her claim. In *re Estate of Mellon*, 314
24 A.2d 500, 502 (Pa. 1974), involved a Court's refusal to suspend the distribution of an estate pending
the determination of a claim in another jurisdiction. The claimant in the case did have an opportunity
to be heard and did have the opportunity to request the delay of distribution. Clearly, neither case
supports counsel's proposition that creditors have the right to be heard in opposition to all claims
against the estate.

25 ² In *re Estate of Chaney*, 439 N.W.2d 764, (Neb. 1989) held that a full, fair hearing on all
26 the issues was required because it was an adversary proceeding and not a claim against the estate.
27 *Brigham v. Southern Trust Co.*, 300 S.W.2d 880 (Tenn. 1957), held that by state statute the personal
representative, or any other party interested in the estate as creditor, distributee, heir or otherwise
may file written exceptions to a claim.

1 or for unsecured debts are not "interested" in any proceedings beyond those described in clause (5).

3 II. PROCEDURES FOR NOTICE AND PARTICIPATION

4 A. Notice

5 The Court's finding that claimants may not be "interested persons" under 8 CMC §2107(p)
6 in proceedings beyond their individual claims does not mean that they are not entitled to notice of
7 proceedings. As discussed above, individual claimants may have specific interests in specific
8 proceedings before the Court. If claimants are not given an opportunity to keep abreast of these
9 proceedings, they cannot effectively assert whatever interest they may have. Therefore, the Court
10 will require that all parties who elect to receive notice of all pleadings filed before the Court in this
11 case³ are entitled to it, subject to the applicable Rules of Court.

12 At the same time, the Court is aware that serving all counsel in this case with copies of all
13 filings drastically increases administrative costs, above all for the Executor. Moreover, the substantial
14 number of off-island claimants, some acting pro se, others apparently not, requires the Court to issue
15 special instructions for the distribution of notices and pleadings. Finally, the extremely fast time
16 schedule governing the proceedings before the Special Master, and the fact that the Special Master
17 is not empowered in the Order of Reference either to dispose of Estate assets or to adjudicate claims,
18 dictates that different notice guidelines should govern the Special Master proceedings.

19 **1. Election to Receive or Waive Notice.** A finding that all parties are *entitled* to receive
20 notice does not equal a finding that all parties are *required* to receive it. Therefore, the Court will
21 require that every claimant file with the Court and with the Executor, within five working days, a
22 Notice of Election either to receive service of pleadings filed before the Court or to waive such
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27 ³ This includes proceedings relating to the management of the Estate and proceedings on the
28 adjudication of individual claims.

1 service.⁴ This Notice of Election shall contain the name of the claimant (unless the name is under seal
2 by order of this Court), the name of the Claimant's attorney, and an address, telephone and fax
3 number to which notices may be directed. For claimants represented by counsel, this address must
4 be within the Commonwealth. Obviously, counsel for all claimants must be admitted to the
5 Commonwealth Bar, either directly or by pro hac vice association with local counsel. In the latter
6 case, local counsel shall be the designated recipient of service. The Executor will, within an
7 additional five working days, revise the official service list to indicate which claimants have elected
8 to receive service and to provide corrected address information. Other claimants should remain on
9 the service list, but with a designation indicating their decision to waive service. The Executor shall
10 distribute this revised service list to all parties, regardless of whether they have elected to receive
11 service.

12 **2. Service of Pleadings: Court Proceedings.** The Court's suggestion that a liaison
13 counsel be appointed to handle notice to parties function has been met with general disfavor. The
14 Court will therefore adopt the following procedures.

15 **a. Represented Claimants.** Service on all represented parties who have elected to receive
16 notice shall be provided by placing copies of all pleadings in the boxes located at the offices of the
17 Clerk of the Superior Court in Susupe, Saipan. Those attorneys who do not currently maintain boxes
18 at those offices shall contact the Clerk of Court **as soon as** possible to arrange for the creation and
19 placement of temporary boxes. It shall be the responsibility of the party filing the pleading to place
20 a copy in the box of each attorney on the service list.

21 **b. Pro Se Claimants.** Pro se claimants who are local attorneys shall receive distribution
22 of pleadings in the same manner as represented claimants. Other claimants who elect to be placed
23 on the service list shall receive service of pleadings to their designated address pursuant to
24 Com.R.Civ.P. 5. Claimants are advised that, under this rule, neither personal service nor service via
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26 ⁴ To ensure the accuracy and currency of address information **as** required herein, the Court
27 orders even those parties that have already filed a demand to receive service to file a Notice of
28 Election pursuant to the terms of this Order.

1 facsimile are required, and service via U.S. Mail is sufficient. Any claimant desiring a more
2 expeditious method for receiving service of pleadings is encouraged to designate a local attorney as
3 agent for receipt of service pursuant to part II(A)(2)(a) of this Order. If such a designation is made,
4 the Notice of Election to Receive Service of Pleadings shall clearly indicate that the attorney is not
5 representing the Claimant in this matter and that the Claimant is continuing to act pro se.

6 **3. Service of Pleadings: Special Master Proceedings.** As noted above, the Special
7 Master has not been empowered either to approve the disposition of Estate assets or to adjudicate any
8 claims against the Estate. Therefore, the Court finds that only those parties claiming to be omitted
9 heirs and the Executor are "interested" in these proceedings. Accordingly, pleadings filed in
10 proceedings before the Special Master shall be filed and distributed in a more limited manner than
11 those relating to proceedings before the Court.

12 *a. Service on the Court and Special Master.* For every pleading filed by any party, an
13 original shall be filed with the Court and with the Special Master at his law office. Service via
14 facsimile to either location is limited to those instances authorized by Com.R.Civ.P. 5(f).

15 *b. Service on Parties.* The Special Master shall serve all parties electing to receive service
16 on the master service list of the following: (i) notice of the date, time and location of the initial
17 hearing; (ii) all standing orders setting forth procedures governing the hearings before him; and (iii)
18 his final Report to the Court. Other pleadings, orders and other papers filed in the course of the
19 proceedings before the Master shall be served only on persons entitled to participate in the hearings
20 themselves, as defined in part II(B)(2), below. The Special Master shall create a service list of those
21 participants in the proceedings before him. This list shall govern the service of pleadings by the
22 participants. Distribution to participants may be accomplished by any means dictated by the Special
23 Master.

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25 **B. Participation**

26 The parties were unanimous in opposing the creation of claimants' committees. Moreover,
27 the Court's revised decision here regarding the standing of claimants to participate will limit the

1 number of parties seeking to be heard on any given question. Nevertheless, individual claimants may
2 still have valid grounds for participating in particular proceedings, in addition to litigating the merits
3 of their individual claims. Therefore, the Court hereby orders the following procedures.

4 **1. Monthly Hearings on Estate Administration.** The Court shall hold a hearing on the
5 first Friday of each month, at 9:00 a.m., beginning on December 1, 1995, concerning the
6 administration of the Estate. Any request by the Executor for Letters of Instruction, and any other
7 matter concerning Estate administration requiring the Court's attention, shall be addressed at this
8 hearing. Requests for extraordinary hearings will be granted only upon a showing of exceptional
9 need.

10 *a. Pre-Hearing Submissions.* The Executor shall file, at least two weeks in advance of
11 the hearing, (1) a report on all expenses and activities of the previous thirty days, and (2) a
12 memorandum setting forth all requests for authorization from the Court for the next thirty days
13 together with points and authorities and other pertinent documentation justifying each request. Junior
14 Hillbroom and Josephine Nocasa may file any responsive memorandum by the close of business of
15 the Friday before the hearing. The Executor may file a reply memorandum by the close of business
16 on the Wednesday prior to the hearing.

17 *b. Claimants Asserting an Interest.* Any claimant asserting an entitlement to participate
18 in any monthly hearing shall file a proposed memorandum by the close of business on the Friday prior
19 to the hearing, together with a separate pleading which describes with particularity the reasons the
20 claimant should be allowed to participate in the hearing, pursuant to the test set forth in part I of this
21 Order. The Executor may object to the claimant's assertion in the reply memorandum. The Court
22 will rule on the claimant's assertion, after brief oral argument, at the beginning of the hearing.

23 *c. Conduct of Hearings.* The Court will conduct the hearings so that they may be
24 concluded in a maximum of two hours. Depending on the number of parties participating, the Court
25 may impose time limits on oral argument or other restrictions as necessary. Any presentation of
26 testimonial evidence will be strictly controlled for relevance, and counsel should be prepared to give
27 clearly-defined offers of proof.

1 **2. Proceedings Before the Special Master.** As noted above, the Special Master
2 proceedings are strictly limited to an inquiry into the overall administration of the Estate and will not
3 involve disposal of Estate assets or adjudication of claims. Given the Court's finding that the
4 likelihood of a general insufficiency of assets to pay all valid claims is too remote to confer standing
5 on claimants, the only parties now entitled to participate by this rule are the Executor, Junior
6 Hillbroom and Josephine Nocasa.

7 Nevertheless, the rule enunciated by the Court in part I of this Order is new, and the parties
8 have not had an opportunity to demonstrate why they may qualify by its terms for participation in the
9 proceedings before the Master. Therefore, if any other claimant wishes to assert such entitlement to
10 participate, that Claimant should file a memorandum with the Court identifying the reasons the
11 claimant is entitled to participate under the terms of the test in part I of this Order, by the close of
12 business on October 20, 1995. The Executor may object to the assertion by close of business on
13 October 25, 1995. The Court will hold a hearing on all assertions by claimants at 9:00 a.m. on
14 Friday, October 27, 1995. Those parties deemed entitled to participate shall likewise be entitled to
15 receive service of all pleadings, notices and other papers relating to the Special Master proceedings.
16 Other claimants shall not receive such service, other than notice of the initial hearing, copies of
17 standing procedural orders by the Master, and copies of the Master's Report.

18 **3. Proceedings on Individual Claims.** Hearings on individual claims shall be governed
19 by separate scheduling orders relating to those particular claims. Standing of claimants to participate
20 in the adjudication of other claimants' claims will be handled on a case-by-case basis consistent with
21 the test set forth in part I of this Order.

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m. CONCLUSION

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For the foregoing reasons, the Court ORDERS:

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1. All parties shall file a Notice of Election to receive or waive service of pleadings by
the close of business on October 20, 1995.

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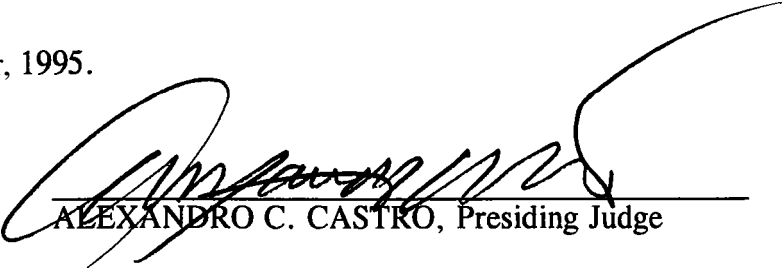
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2. The Executor shall file a revised service list by the close of business on October 27, 1995.

3. The first monthly hearing before the Court on the administration of the Estate will take place on December 1, 1995, at 9:00 a.m. The parties shall file submissions in advance of this hearing in accordance with part II(B)(1) of this Order.

4. Any party, other than those listed in part II(B)(2) of this Order as entitled to participate in the proceedings before the Special Master, wishing to assert entitlement to participate in those proceedings shall file a Memorandum describing such entitlement by close of business on October 20, 1995. The Court will hold a hearing on all such assertions on October 27, 1995 at 9:00 a.m.

So ORDERED this 13 day of October, 1995.



ALEXANDRO C. CASTRO, Presiding Judge