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

ANGELITA P. MENDIOLA	)	Civil Action No. 93-775
Plaintiff,	)	
v.	)	<b>ORDER</b>
MARIANAS AGUPA ENTERPRISES, INC.,	)	
MARK PINSKER, HARUO NAMIHIRA,	)	
and TOMOYA "TOM" OKUYAMA,	)	
Defendant.	)	

On April 25, 1996, this Court ordered both parties to submit briefs on the issue of whether the July 29, 1996 trial in this matter should be a partial new trial solely on the issue of damages, or a new trial on all issues. On June 5, 1996, the Court heard oral arguments in this matter from Paul Lawlor Esq., appearing on behalf of the Plaintiff, Angelita Mendiola, and David Wiseman Esq., representing Defendant Marianas Agupa et. al. The Court has considered all arguments presented and now renders its decision.

**I. FACTS**

On February 27, 1996, this Court found the jury's award of \$500,000.00 for compensatory damages and \$1,000,000.00 for punitive damages to be excessive. The Court offered the Plaintiff the following remittitur: \$25,000.00 for compensatory damages, \$150,000.00 for punitive damages,

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1 post judgment interest, and Plaintiff's costs and attorneys fees. The Court allowed the Plaintiff fifteen  
2 days within which to accept the remittitur amount, and that failure to do so would result in a grant  
3 of the Defendant's motion for a new trial. When the Plaintiff chose to reject the remittitur,  
4 Defendant's motion for new trial was granted, and the parties met for a status conference on April  
5 25, 1996. At the conference, the parties expressed disagreement over whether the new trial should  
6 be limited to the issue of damages, or whether the circumstances of this case merit a new trial of all  
7 issues including liability and damages.

## 8 9 II. ISSUES

10 Whether the new trial for intentional infliction of emotional distress should be limited to the  
11 issue of damages, or should address liability and damages issues.

## 12 13 III. ANALYSIS

### 14 Partial New Trial Improper Where legal Issues Inextricably Interwoven

15 Federal courts have generally ruled that "remittitur is inappropriate where the issues of damages  
16 and liability are inextricably interwoven."<sup>1/</sup> 25 Fed.Proc., L. Ed. § 58:33 (1995). With respect to the  
17 grant of partial new trials, federal case law indicates that when "issues of liability and damages are so  
18 interwoven as to be inseparable, the grant of a partial new trial would amount to the denial of a fair trial."  
19 25 Fed. Proc., L. Ed. § 58:35; *Gasoline Products Co. V. Champlin Refining Co.*, 51 S.Ct. 513 (1931).  
20 Where the practice permits a partial new trial, it may not properly be resorted to unless it clearly appears  
21 that the issue to be retried is so distinct and separable from the others that a trial of it alone may be had  
22 without injustice. *See Norfolk Southern R. Co. v. Ferebee*, 35 S.Ct. 781 (1915)..

23 The Plaintiff claims intentional infliction of emotional distress. According to the Ninth Circuit  
24 Court of Appeals, the torts of intentional and negligent infliction of emotional distress concern issues of

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26 <sup>1/</sup> The Court has sua sponte reconsidered its offer of remittitur in this matter and finds that it is  
27 improper. However, given the fact that the Plaintiff has rejected the remittitur, the court finds that the  
28 Defendant has not been prejudiced by the remittitur.

1 liability and damages which are intertwined because the trier of fact can find liability only if it first finds  
2 that the Plaintiff suffered severe emotional distress (i.e. incurred damages). *Miller v. Fairchild Industries,*  
3 *Inc.*, 885 F.2d 498, 511 (9th Cir. 1989). “An attempt to separate the trial of the liability and damages  
4 issues in this case would therefore tend to create ‘confusion and uncertainty’.” *Id.* The *Miller* case  
5 concerned the issue of bifurcation of an emotional distress claim in an *original trial*. The Court finds the  
6 concern over the isolation of inseparable issues of liability and damages equally relevant at the *new trial*  
7 *stage* of an emotional distress case. *Richardson v. Communications Workers of America*, 530 F.2d 126  
8 (8th Cir. 1976). Like the case at bar, the *Richardson* case concerned an award of excessive damages as  
9 the basis for a new trial in an emotional distress case with more than one defendant. The Eighth Circuit  
10 Court of Appeals upheld the trial court’s order for new trial on both issues of liability and damages:

11 In summary we will not disturb a trial court’s grant of a new trial for an excessive verdict  
12 absent a clear abuse of discretion. Here, the trial court properly recognized that plaintiff’s  
13 damages arising from invidious discrimination were to be measured in terms of the mental  
14 distress, anguish and humiliation caused him, but not as a means of punishing defendants.  
15 The court concluded “that the verdict was excessive and intended to punish the  
16 defendants or resulted from some other improper reason” and ordered that a new trial be  
17 granted. . . . Neither was there an abuse of discretion for failing to limit the new trial to  
18 damages only. The nature of the case was such that the liability and damages issues were  
19 interwoven to such an extent that a trial on damages alone would have been  
20 inappropriate. Plaintiff’s claim for mental anguish and humiliation involved conduct by  
21 a large number of individuals over a seven month period. In determining damages to be  
22 awarded against the local union, the international union, or neither or both, it was  
23 necessary for the jury to determine who committed what acts and the responsibility of the  
24 parties under applicable principles of agency. Thus the issues of damages and liability  
25 were so intertwined as to be inseparable. Under these circumstances, a partial trial on  
26 damages alone would have been improper.

27 *Richardson* at 131. Although the intricacies of the case at bar may not quite rival those in the *Richardson*  
28 case, the jury here had to find that the Plaintiff suffered “severe emotional distress” (damage) in order  
for it to have found liability, and had to employ principles of agency to determine who was responsible  
for the alleged tort.

Whether the issue of liability and damages are sufficiently separable to warrant a partial new trial  
depends on the facts and circumstances of each case. *State v. Mun. Of Anchorage*, 805 P.2d 971 (Alaska  
1991). Issues interwoven and not reasonably divisible require a new trial for both issues. *Caterpillar*  
*Tractor Co. v. Beck*, 624 P.2d 790, 795 (Alaska 1981). In this case, the jury considered interwoven

1 issues of liability and damages, and simultaneously assigned liability among several defendants. Under  
2 these circumstances, the Court finds that the issues of liability and damages are inextricably intertwined.

3 Further, the Court doubts the reasonableness of the amount of damages awarded by the jury in  
4 this case. Given the fact that the *seriousness* of the emotional distress is both a prerequisite for liability  
5 and the measurement by which damages are calculated, the Court doubts the liability portion of the jury's  
6 verdict as well.

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**IV. CONCLUSION**

9 For the foregoing reasons, the Court **Orders** that the new trial currently set for July 29, 1996 shall  
10 encompass all issues including the issue of liability and the issue of damages.

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12 So ORDERED this 6 day of June, 1996.

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EDWARD MANIBUSAN, Associate Judge

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