

**Norma MARFEGA  
vs.  
Lee Chang SOO, et al.**

**DCA No. 85-9023  
District Court NMI  
Appellate Division**

**Decided March 30, 1987**

**1. Sovereign Immunity -  
Commonwealth - Agencies**

The Commonwealth Ports Authority is a public corporation which can sue and be sued in its own name and therefore it is not immune from suit.

**2. Appeal & Error - Standard of  
Review - New Trial**

Where there was no abuse of discretion on the part of the trial court in conducting the jury selection and a failure of counsel to request additional voir dire, together with a failure to show prejudicial error, it was not error for the trial court to deny the grant of a new trial.

**3. Labor - Wage Claims -  
Attorneys Fees**

Trial court did not abuse its discretion in the award of attorney's fees for prosecution of minimum wage and hour case where suit also involved other claims, plaintiff's attorney did not segregate his hours, and the court took into consideration all the factors mentioned in Hensley v. Eckerhart, 461 U.S. 424 (1983).

**4. Civil Procedure - Costs**

In determining whether to tax as costs expenses for depositions that were not used at trial, the court must determine whether the deposition reasonably seemed necessary at the time it was taken.

FILED  
Clerk  
District Court

MAR 5 0 1987

For The Northern Mariana Islands

By *Martha P. Duenas*  
(Duenas Clerk)

IN THE DISTRICT COURT  
FOR THE  
NORTHERN MARIANA ISLANDS  
APPELLATE DIVISION

8 NORMA MARFEGA, )  
9 Plaintiff-Appellant, )  
10 and Appellee, )  
11 vs. )  
12 LEE CHANG SOO, et al., )  
13 Defendants-Appellees. )

DCA 85-9023

OPINION

17 BEFORE: DUENAS, LAURETA, and MARSHALL,\* District Judges  
18 DUENAS, District Judge

25 \* The Honorable Consuelo B. Marshall, Judge, United  
26 States District Court, Central District of California, sitting  
by designation.

1	COUNSEL OF RECORD:	
2	<u>For Plaintiff-Appellant/Appellee</u>	<u>For Defendant-Appellee Soc</u> <u>and Seoul Night Club</u>
3	LAW OFFICES OF	
4	RANDALL T. FENNELL	BORJA AND SALAS
5	P. O. Box 49	Attorneys at Law
6	Saipan, CM 96950	P. O. Box 1309
7	BY: RANDALL T. FENNELL, Esq.	Saipan, CM 96950
8		BY: JESUS C. BORJA, Esq.
9	<u>For Commonwealth Ports Auth:</u>	<u>For Rep. of Nauru Airlines</u>
10	White, Novo-Gradac and Thompson	KEOGH and BUTLER
11	A Professional Corporation	Attorneys at Law
12	Attorneys at Law	Suite 105
13	P. O Box 222, Capitol Hill	C & A Professional Bldg.
14	Saipan, Mariana Islands 96950	Agana, Guam 96910
15	BY: R. BREWSTER THOMPSON, Esq.	BY: KENNETH GOVENDO, Esq.
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1 IV, V, VI to recover unpaid minimum wages, unpaid overtime  
2 wages and liquidated damages.

3 The second cause of action is against Defendants Lee  
4 Chang Soo, John Does IV, V, VI, and Seoul Restaurant & Bar  
5 Corporation alleging involuntary servitude and seeking damages  
6 in the amount of \$1,000,000.

7 The third cause of action is against Defendants Lee  
8 Chang Soo, Seoul Restaurant & Bar Corporation, Republic of  
9 Nauru, John Does I-VI, and the Commonwealth Port Authority  
10 alleging false imprisonment and seeking general damages in the  
11 amount of \$500,000 and punitive damages in the amount of  
12 \$1,000,000.

13 The fourth cause of action is against Defendants Lee  
14 Chang Soo, John Does I-VI and Commonwealth Port Authority  
15 alleging assault and battery and seeking general damages from  
16 each Defendant in the amount of \$1,000,000 and punitive  
17 damages from each Defendant in the amount of \$500,000.

18 The fifth cause of action is against all Defendants and  
19 alleges civil rights violations and seeks general damages in  
20 the amount of \$500,000 from each Defendant and punitive  
21 damages in the amount of \$1,000,000 from each Defendant.

22 The sixth and final cause of action is against all  
23 Defendants and alleges negligent or intentional infliction of  
24 emotional distress in the amount of \$500,000 each.

25 On March 11, 1985, Defendant CPA filed a Motion for  
26 Summary Judgment alleging that CPA was protected from suit by

1 governmental immunity and requesting that judgment for CPA be  
2 entered for false imprisonment and assault and battery. This  
3 part of the Summary Judgment motion was denied.

4 The Commonwealth Port Authority requested a jury trial  
5 and it was held on July 12, 1985. The jury returned the  
6 following verdict on July 19, 1985:

7 1. Defendants Soo and Seoul Restaurant & Bar  
8 Corporation not liable for false imprisonment;

9 2. Defendants Soo and Seoul Restaurant & Bar  
10 Corporation liable for unpaid overtime wages in the  
11 amount of \$1,798.

12 3. Defendants Soo and Seoul Restaurant & Bar not  
13 liable for infliction of emotional distress;

14 4. Defendants Soo and Seoul Restaurant & Bar  
15 liable for violation of Plaintiff's privacy in the  
16 amount of \$500 compensatory damage, and \$250 each as  
17 punitive damages;

18 5. Defendants Commonwealth Ports Authority, Air  
19 Nauru, and Soo liable for the "airport incident" in the  
20 amount of \$3,000 compensatory damage.<sup>1</sup> Seoul Restaurant  
21 & Bar was found not liable for the "airport incident."  
22 No defendant was found to be liable for punitive  
23 damages for the "airport incident."  
24

25 Judgment was entered in accordance with the verdict on  
26 July 22, 1985, including liquidated damages in an equal amount

1 as the overtime wages--\$1,798. The Plaintiff was also  
2 "awarded costs of suit against all defendants and pursuant to  
3 4 CMC § 9244(b) reasonable attorney fees against defendants  
4 Lee Chang Soo and Seoul Restaurant & Bar for the judgment  
5 rendered" against them for overtime wages.

6 On July 30, 1985, Plaintiff moved for a new trial based  
7 on the following grounds:

8 1) that there was non-disclosure by at least one  
9 juror of certain prejudicial information;

10 2) that the verdict was contrary to the weight of  
11 the evidence; and

12 3) that the award for overtime hours and  
13 violation of privacy was grossly inadequate.  
14

15 On August 1, 1985, Plaintiff submitted her bill of costs  
16 and request for attorney's fees, seeking a total of \$3493.94  
17 as costs, and \$22,738 as attorney's fees. All defendants  
18 opposed and objected to Plaintiff's bill of costs and request  
19 for attorney's fees.

20 The court orally denied the motion for a new trial on  
21 September 25, 1985, and issued its order on September 26,  
22 1985.

23 A hearing was held on the issues of costs and attorney's  
24 fees, and the court issued its order on September 26, 1985,  
25 allowing the following:

26 1) the sum of \$281 as costs against Defendant

1 Commonwealth Port Authority;

2 2) the sum of \$284 as costs against Defendant  
3 Air Nauru;

4 3) the sum of \$1,314 as costs against Defendant  
5 Soo and Seoul Restaurant & Bar; this latter amount was  
6 calculated as follows:

7 \$ 20.00 - Filing fee

8 95.00 - Witness fees (depositions)

9 55.00 - Translation expense

10 301.00 - Deposition expense

11 142.75 - Deposition expense

12 74.75 - Deposition expense

13 403.00 - Deposition expense

14 15.00 - Translation expense

15 10.00 - Witness fee

16 10.00 - Witness fee

17 187.50 - Translation expense

18 \$1,314.00 - Total Expense

19 4) the sum of \$765 for travel to Philippines and  
20 return to Saipan and the sum of \$770.51 for hotel  
21 expenses for three days and three nights in the  
22 Philippines;

23 5) the sum of \$4,400 (40 hrs. at \$110 per hour)  
24 awarded to Plaintiff for attorney's fees against  
25 Defendants Soo and Seoul Restaurant & Bar for the wage  
26 claim issue.



1 attorney's fees when Plaintiff failed to provide the  
2 court with a breakdown of the reasonable number of hours  
3 worked on the overtime wage claim?  
4

5 Defendant CPA raises the following issue on appeal:

6 1) Did the trial court err by denying summary  
7 judgment on the grounds that CPA is not immune from  
8 suit?  
9

10 ANALYSIS

11 I. CPA does not enjoy governmental immunity.

12 Defendant-Appellant CPA argues that it is immune from  
13 suit on the following grounds:

14 1) that it is a part of the CNMI government with  
15 public functions (§ 2121);

16 2) that as a part of the government it is immune  
17 from suit pursuant to Sections 2204(a) and (b); and

18 3) that since the CPA does not have an insurance  
19 policy it is therefore immune from liability under  
20 Section 2133(c).  
21

22 Section 2121 of 2 CMC establishes the Commonwealth Port  
23 Authority and reads as follows:

24 "There is in the Commonwealth Government a  
25 public corporation called the Commonwealth Port  
26 Authority. Its functions are governmental and  
public and it may sue and be sued in its own  
name. The principal office of the authority is  
at Saipan, Mariana Islands."

1 Sections 2204(a) and (b) of 7 CMC limits the liability  
2 of the Commonwealth Government and states as follows:

3  
4 "Exceptions.

5 The Government is not liable for the  
6 following claims:

7 (a) Any claim based upon an act or  
8 omission of an employee of the Government,  
9 exercising due care, in the execution of a  
10 statute or regulation, whether or not the  
11 statute or regulation is valid, or based  
12 upon the exercise or performance or the  
13 failure to exercise or perform a  
14 discretionary function or duty on the part  
15 of a Commonwealth agency or an employee of  
16 the government, whether or not the  
17 discretion is abused;

18 (b) Any claim arising out of assault,  
19 battery, false imprisonment, false arrest,  
20 malicious prosecution, abuse of process,  
21 libel, slander, misrepresentation, deceit,  
22 or interference with contract rights."

23 Section 2133(c) of 2 CMC states as follows:

24 "Insurance Policies and Sovereign Immunity.

25 To the extent that any liability of the  
26 Commonwealth or of the Authority is  
covered by any policy of insurance, the  
government waives its limitation of liability.

(c) Each policy of insurance written  
covering the authority or its interest  
shall contain a clause waiving any defense  
of sovereign immunity which may be raised  
against the payment of the claim by the  
carrier up to the limits of the policy."

27 [ ] The issue raised by CPA can be disposed of summarily  
28 because the CNMI Legislature has made it clear that the  
29 Commonwealth Port Authority is a public corporation which can  
30 "sue and be sued in its own name." The inclusion by the  
31 legislature of the "sue or be sued" clause in a statute

1 creating a public corporation engaged in governmental  
2 activity is sufficient consent to suit or waiver of immunity  
3 from suit. Federal Land Bank of St. Louis v. Priddy, 295  
4 U.S. 229, 55 S. Ct. 705, 79 L.Ed. 1408 (1935) and Keifer &  
5 Keifer v. Reconstruction Finance Corp., 306 U.S. 381, 59  
6 S.Ct. 516, 83 L.Ed. 784 (1939).

7 Furthermore, the Defendant-Appellant CPA's argument  
8 that since CPA did not purchase an insurance policy it is  
9 therefore immune from suit is without merit. Why would the  
10 Commonwealth or the CPA ever purchase an insurance policy?  
11 Section 2133(c) does not support CPA's contention, it merely  
12 states that "[t]o the extent that any liability of the  
13 Commonwealth or of the authority is covered by any policy of  
14 insurance, the government waives its limitation of  
15 liability."

16 Defendant CPA has cited no Commonwealth statute that  
17 grants it immunity from suit, and the trial court is  
18 affirmed.

19  
20 II. The Trial Court Properly Denied Plaintiff's Motion  
21 for a new trial.

22 Plaintiff argues on appeal that the trial court abused  
23 its discretion by not questioning the jury as she had  
24 requested. Plaintiff alleges that her counsel gave the judge  
25 a list of voir dire questions to ask the veniremen and the  
26 following two questions were not asked:

1                   7. Have you or anyone in your family ever  
2 hired alien workers from the Philippines?

3                   8. Do you know anyone who has ever had any  
4 problems with their alien workers from the  
5 Philippines?  
6

7                   Plaintiff argues that if these two questions had been  
8 asked of Ms. Castro, the juror in question, she would have  
9 revealed that she is the sister of the club owners for other  
10 "bar girl" clubs, "Pink Panther" and "Foxfire". She would  
11 have revealed also that a complaint was filed by Filipina  
12 waitresses against "Foxfire Club" for minimum and overtime  
13 wages.

14                  Plaintiff concedes that it is within the trial court's  
15 discretion to conduct voir dire. Rosales-Lopez v.  
16 United States, 451 U.S. 182, 189, 101 S.Ct. 1629, 68 L.Ed. 2d  
17 22 (1981). However, Plaintiff argues that there are limits  
18 to such discretion and that it is an abuse of discretion for  
19 the district court to refuse to probe the jury adequately for  
20 bias or prejudice about material matters on request of  
21 counsel. United States v. Baldwin, 607 F.2d 1295, 1297 (9th  
22 Cir. 1979).

23                  As the Appellees correctly point out, the trial court  
24 neither approved nor rejected Plaintiff-Appellant's requested  
25 voir dire questions. The trial court conducted the following  
26 pertinent voir dire:

1 To all veniremen:

2 COURT: Have any of you ever been involved  
3 in any wage claims or dispute or in a contract  
4 with any alien workers, principally from the  
5 Philippines?

6 A. (inaudible).

7 COURT: Do any of you have any particular  
8 feelings about alien workers such as waitresses  
9 or maids, whatever, from the Philippines?"

10 (P.26 of transcript, Jury Selection, July 12,  
11 1985).

12 The court then requested that Plaintiff's counsel state  
13 any challenges for cause. In response, Mr. Fennell stated as  
14 follows:

15 ". . . Your Honor, I need a little more  
16 information about some of these people before I  
17 can give a very good judgment. I think the  
18 court -- I have no objection to the way the  
19 court's handled it so far. Some of them have  
20 not spoken at all and I know the problem local  
21 people are very afraid to speak and to say  
22 something. I would like to know especially, as  
23 to each person's educational level so that I can  
24 -- educational level, where they're employed and  
25 where their spouse, if any, is employed.

26 COURT: Okay.

MR. FENNELL: Do you think you can ask  
those individually?

COURT: Okay. . . . "

(P. 35 of transcript, Jury Selection,  
July 12, 1985).

The court then questioned Ms. Dolores Guevara Castro,  
the juror at issue, as follows:

"CLERK: 31, Castro Dolores Guevera.

///

1 CLERK: Ms. Castro, if you want to come up here  
2 please and take that No. 5 seat.

3 VENIREMAN DOLORES G. CASTRO  
4 EXAMINATION BY THE COURT

5 Q Ms. Castro, have you been able to hear everything  
6 we've been talking about?

7 A Yes, Your Honor.

8 Q Okay, do you know any of the lawyers, parties or  
9 witnesses that we've named here?

10 A Yes, Your Honor.

11 Q Who do you know?

12 A Mr. Fennell.

13 Q You know Mr. Fennell. How do you know him?

14 A He once represent us.

15 Q How long ago was that?

16 A Five years ago.

17 Q Five years ago, is that the last contact you had  
18 with him?

19 A Yes.

20 Q You understand he's got a duty in this courtroom  
21 to represent his client but if you serve as a  
22 juror, you've got a duty to render a fair and  
23 impartial decision. Now, if that could -- he  
24 represented you five years ago, do you feel that  
25 you can still render a fair and impartial  
26 decision in this case?

A Yes, Your Honor.

Q In other words, you can set aside that relation-  
ship you had with Mr. Fennell and still give  
everybody a fair break?

A Yes, Your Honor.

Q Do you know anybody else?

1 A I know some but we're not acquainted.

2 Q Okay. I guess the question is even though you  
3 may have heard these names or maybe went to school  
4 somewhere of this sort is whether you can sit in  
as an impartial juror and render a fair decision  
for all concern (sic). Can you do that?

5 A Yes, Your Honor.

6 Q Is your husband -- are you married?

7 A No, Your Honor.

8 Q Are you employed?

9 A Yes.

10 Q Where?

11 A Public Auditor's Office.

12 Q Public what?

13 A Public Auditor.

14 Q Public Auditor. Okay, what's the extend (sic) of  
15 your education?

16 A 12 grade.

17 Q Do you have an alien maid by any chance?  
A No.

18 Q Have you ever had a dispute with a maid or any of  
19 this sort?

20 A No.

21 Q Have you ever been to the Seoul Restaurant & Bar  
22 down there?

23 A No.

24 Q Maybe I shouldn't ask that question. Okay, what  
25 about my questions as to some of the testimony  
maybe in Tagalog or Korean, does that create any  
26 problem with you or anything of this sort?

A No, Your Honor.

1 Q Are you telling me in (sic) all the lawyers and  
2 parties here that you can sit and hear this case  
3 without any preconception, without any  
4 prejudgment and give all sides a fair hearing?

5 A Yes, Your Honor.

6 COURT: Okay. Any challenge for cause for juror  
7 No. 5?

8 MR. WHITE: Your Honor, I'd like a further  
9 opportunity to voir dire about the nature of the  
10 relationship with Mr. Fennell.

11 BY THE COURT:

12 Q All right, Ms. Castro, can you tell me just  
13 generally the type of case you had?

14 A When we had -- when the former governor cut off  
15 our budget.

16 Q Oh, you were in the public auditor's office then.  
17 Okay, I remember the case and you know, sometimes  
18 after the case is over the only person you're mad  
19 at is your lawyer, you weren't mad at  
20 Mr. Fennell, were you?

21 A No.

22 Q Okay, were you mad at any other, in other words,  
23 was the matter resolved to your satisfaction as  
24 best as could be done, I assume, right?

25 A Yes.

26 Q So that didn't involve any claim other than the  
27 problem with the governor and the public auditor,  
28 is that right?

29 A Yes.

30 COURT: Any other -- Mr. White, any other infor-  
31 mation you desire on that?

32 MR. WHITE: No, Your Honor.

33 COURT: Okay, any for cause on Juror No. 5? All  
34 right, Mr. White, peremptory?

35 MR. WHITE: No. 3.

36 COURT: All right, Mr. Muna, we're going to  
excuse you and if you'd go over to courtroom B.

1 (Transcript, Jury Selection, pp. 45-48)

2 The court continued with the jury selection and  
3 Plaintiff's counsel, Mr. Fennell, continually requested more  
4 voir dire for certain jurors.

5 "VENIREMAN LORENZO DLG MANALO

6 COURT: Okay, any for cause for juror No. 3?

7 MR. FENNEL: May I request just a little further  
8 voir dire, Your Honor.

9 COURT: On what subject?

10 MR. FENNEL: On how long he was at the Seoul  
11 Club, whether he talked to any of the people there,  
that kind of thing.

12 BY THE COURT:

13 Q Okay. How long ago was it you were at the Seoul  
14 Bar?"

(Transcript, Jury Selection, Id. at 51).

15 "COURT: . . . Is there anything further  
16 Mr. Fennell on that subject?

17 MR. FENNEL: Do you remember who you talk to and  
18 how long did he stay at the club. Part of this case,  
19 Your Honor, involves physical characteristics of the  
20 club, doors, windows, quarters, bathroom and so an  
observation of that, although I, you know, I believe  
Mr. Manalo would be fair but he has seen it and so, in  
that sense, he has an advantage over the other jurors.

21 BY THE COURT:

22 Q Mr. Manalo, how long were you in the bar?"

(Transcript, Id. at 52 and 53).

23 "MR. FENNEL: Your Honor, if I may and I apologize  
24 to the jury for any delay but I'm worried that his  
25 testimony per se may, in other words, there'll be  
testimony on these issues and . . .

26 COURT: Well, I thought that is what you wanted  
me to ask him.

1 MR. FENNEL: Well, if he remembers the inside, I  
2 think, that that's enough. I mean -- I would suggest  
3 that I'm sorry but that's cause to be recuse (sic)  
4 because part of it is the conditions of the club.

5 COURT: Well, I don't understand that yet,  
6 Mr. Fennell.

7 MR. FENNEL: If I may approach the sidebar.

8 COURT: The complaint is relative to the  
9 barracks.

10 MR. FENNEL: The complaint is also alleging  
11 false imprisonment, locking of the doors and knowledge  
12 of which doors there are and their conditions in the  
13 club may be.

14 BY THE COURT:

15 Q Do you remember much about the interior doors,  
16 Mr. Manalo?"

17 (Transcript, Id. at 54 and 55).

18 The transcript of the jury selection shows that the  
19 trial court asked questions concerning aliens from the  
20 Philippines. It is true that the court did not ask the exact  
21 questions allegedly proposed to the court in writing by the  
22 Plaintiff. However, it appears from the record that  
23 Plaintiff's counsel failed to object to the line of  
24 questioning conducted by the trial court on the Philippine  
25 alien issue and, in fact, stated that he had no objection to  
26 the way the court had handled the voir dire up to that point.  
At that juncture, the trial court had already questioned all  
veniremen regarding the Philippine alien issue. It is also  
clear from the record that the trial judge was thoroughly  
willing to ask the veniremen any further questions proposed by  
counsel. Plaintiff's counsel quite frequently requested more

1 voir dire. If Plaintiff's counsel felt that the trial court  
2 had inadequately covered the Philippine alien issue, he should  
3 have requested additional voir dire on the matter.  
4 Additionally, there has been no showing by Plaintiff that Ms.  
5 Castro had any knowledge about her siblings' clubs or that she  
6 was prejudiced in any way. Ms. Castro indicated many times  
7 during jury selection that she could sit as an impartial juror  
8 and render a fair decision for all concerned. Failure to  
9 request additional voir dire, together with a failure to show  
10 prejudicial error, clearly prevents the Plaintiff from being  
11 allowed a new trial. Jamestown Farmer Elevator, Inc. v.  
12 General Mills, Inc., 413 F. Supp. 764, 775 (D.N.D. 1976),  
13 aff'd in part and reversed on other grounds, 552 F.2d 1285,  
14 1294 (8th Cir. 1977).

15 [2] There was no abuse of discretion on the part of the  
16 trial court in conducting the jury selection. The denial of  
17 Plaintiff's motion for a new trial is AFFIRMED.

18  
19 III. The Trial Court Did Not Abuse Its Discretion By  
20 Awarding Attorney's Fees.

21 The U.S. Supreme Court in Hensley v. Eckerhart, 461 U.S.  
22 424, 103 S.Ct. 1933, 76 L.Ed. 2d 40 (1983) considered the issue  
23 of awarding attorney's fees to a partially prevailing plaintiff  
24 in a federal civil rights action under 42 U.S.C. § 1988.  
25 Section 1988 provides that in federal civil rights actions "the  
26 court, in its discretion, may allow the prevailing party, other

1 than the United States, a reasonable attorney's fee as part of  
2 the costs."

3 In determining a reasonable attorney's fee, the Supreme  
4 Court in Hensley provided the following guidance:

5 "The product of reasonable hours times a  
6 reasonable rate does not end the inquiry. There  
7 remain other considerations that may lead the  
8 district court to adjust the fee upward or  
9 downward, including the important factor of the  
10 'results obtained.' This factor is particularly  
11 crucial where a plaintiff is deemed 'prevailing'  
12 even though he succeeded on only some of his  
13 claims for relief. In this situation two  
14 questions must be addressed. First, did the  
15 plaintiff fail to prevail on claims that were  
16 unrelated to the claims on which he succeeded?  
17 Second, did the plaintiff achieve a level of  
18 success that makes the hours reasonably expended  
19 a satisfactory basis for making a fee award?

20 In some cases a plaintiff may present in one  
21 lawsuit distinctly different claims for relief  
22 that are based on different facts and legal  
23 theories. ... The congressional intent to limit  
24 awards to prevailing parties requires that these  
25 unrelated claims be treated as if they had been  
26 raised in separate lawsuits, and therefore no fee  
may be awarded for services on the unsuccessful  
claim.

27 In other cases the plaintiff's claims for relief  
28 will involve a common core of facts or will be  
29 based on related legal theories. ... Such a  
30 lawsuit cannot be viewed as a series of discrete  
31 claims. Instead the district court should focus  
32 on the significance of the overall relief  
33 obtained by the plaintiff in relation to the  
34 hours reasonably expended on the litigation.

35 There is no precise rule or formula for making  
36 these determinations. The district court may  
attempt to identify specific hours that should be  
eliminated, or it may simply reduce the award to  
account for the limited success. The court  
necessarily has discretion in making this  
equitable judgment. This discretion, however,  
must be exercised in light of the considerations  
we have identified." Hensley v. Eckerhart, 461  
U.S. at 434-435.

1 In the case at bar, Section 9244(b) of 4 CMC provides  
2 that a plaintiff who prevails in a suit to recover unpaid  
3 overtime compensation shall be allowed "a reasonable attorney  
4 fee to be paid by the defendant, and the cost of the action."

5 The court below awarded Plaintiff attorney's fees in the  
6 amount of \$4,400 and reasoned as follows:

7 "There is difficulty in arriving at a reasonable  
8 fee for plaintiff's attorney because the claim  
9 for overtime wages was prosecuted in conjunction  
10 with other claims of the plaintiff. Compounding  
11 this fact is that the trial was by a jury  
12 demanded by another party (Commonwealth Ports  
13 Authority) which necessarily involved the  
14 plaintiff in trial longer than if it were only a  
15 court trial.

16 Plaintiff's counsel did not segregate or  
17 attempt to segregate the time spent on the wage  
18 claim.

19 Admittedly, this was probably difficult to do but  
20 not an insurmountable task. The billing of  
21 plaintiff's counsel (attached to his claim) does  
22 not provide much guidance for the court because  
23 of the non-segregation. At argument, counsel  
24 could only estimate that 60 to 70% of his time  
25 was spent on the wage claim. This would  
26 represent a fee (based on \$110 per hour which  
apparently defendant's counsel concedes is a fair  
hourly fee in this case) of between \$12,700 to  
\$15,800.

In considering the award of a reasonable  
attorney fee the usual starting point is to  
determine the number of hours reasonably expended  
on the litigation multiplied by a reasonable  
hourly rate. This calculation provides an  
objective basis on which to make an initial  
estimate of the value of a lawyer's services.

The party seeking an award of fees should  
submit evidence supporting the hours worked and  
rates claimed.

26 ///

1 That the degree of success is a crucial factor in  
2 setting an award of fees is now settled."

3 Hensley v. Eckerhart, 461 U.S. 424, 103 S.Ct.  
4 1933, 76 L. Ed. 2d 40 (1983).

5 "Since the award of attorney fees must be  
6 determined on the facts of each case, the court  
7 now turns to the claim of the plaintiff for  
8 overtime wages, the prosecution of same and the  
9 result obtained.

10 Plaintiff's claim for overtime wages is set  
11 forth in the first cause of action of the  
12 complaint. There are five other causes of  
13 action. Plaintiff amended her complaint once  
14 because a party was added but this had no effect  
15 on her wage claim. Some of these other claims  
16 were disposed of in pre-trial motions. Indeed,  
17 much of the pre-trial maneuvering including  
18 motions, discovery and the like did not involve  
19 the first cause of action. Admittedly, plaintiff  
20 had to depose her fellow employees to  
21 substantiate her wage claim, but the motions such  
22 as for summary judgment(s), to add a party, to  
23 strike the amended complaint, and for separate  
24 trials were all concerned with the other causes  
25 of action.

26 The jury returned a verdict of \$1,798 for  
the unpaid overtime wages. The court, pursuant  
to 4 CMC §9243 doubled that for liquidated  
damages. Essentially, then the court is looking  
at a rather straightforward overtime wage claim  
which resulted in a moderate recovery.

One exception must be made to the observation  
that this was a "run of the mill" wage claim and  
that was the necessity of plaintiff's counsel to  
go to Manila to discover (from plaintiff's  
co-workers) the true story about the records of  
the employer, Lee Chang Soo and Seoul Restau-  
rant & Bar. The records were discredited and the  
Manila deposition clearly enabled the plaintiff  
to prevail on her wage claim. The defendants  
caused the expense and then forced plaintiff to  
trial to demonstrate that she was entitled to  
overtime wages.

The court finds that this is one of those  
unique and infrequent cases where counsel's

1 travel and hotel expenses are recoverable to  
2 prosecute this particular claim.

3 In light of all of the factors involved the  
4 court finds that a reasonable amount of hours  
5 spent on the wage claim of the plaintiff is 40  
6 hours and will allow an attorney fee of  
7 \$4,400.00."

8 Commonwealth Trial Court, Order Taxing Costs and  
9 Awarding Fees Against Defendants Lee Chang Soo  
10 and Seoul Restaurant & Bar, issued September 26,  
11 1985, pp. 3-5.

12 It is difficult to determine whether the court below  
13 viewed the wage claim as unrelated to the other claims raised  
14 by Plaintiff or as a related claim which involved a common core  
15 of facts. It appears from Plaintiff's counsel's billing of  
16 attorney fees, his oral argument, and his brief, that he viewed  
17 Plaintiff's claims as arising from a common nucleus of facts.  
18 The trial court, at the hearing, disagreed with Plaintiff's  
19 counsel that he could not segregate the time spent on the wage  
20 claim and even instructed him to segregate the hours.  
21 Plaintiff's counsel refused and failed to do so and the court  
22 made mention of this in its order awarding attorney fees.

23 [3] Thus, the trial court, without the assistance of  
24 Plaintiff's counsel, was left with the entire burden of  
25 determining a reasonable attorney's fee. Initially, it appears  
26 from the trial court's order that there was an attempt to  
segregate some of the hours which were not spent on the wage  
claim. Then it appears that the court treated the remainder of  
the hours as if they involved related claims and focused on the  
degree of success obtained by the plaintiff in relation to the

1 remaining hours reasonably expended on the related litigation.  
2 The trial court, under the circumstances, awarded reasonable  
3 attorney's fees and took into consideration all the factors  
4 mentioned in Hensley.

5 Additionally, the Hensley court at footnote 12, stated:

6 "We recognize that there is no certain  
7 method of determining when claims are 'related'  
8 or 'unrelated.' Plaintiff's counsel, of course,  
9 is not required to record in great detail how  
10 each minute of his time was expended. But at  
11 least counsel should identify the general subject  
12 matter of his time expenditures. See Nadeau v.  
13 Helgemoe, 581 F.2d 275, 279 (CAL. 1978) ('As for  
14 the future, we would not view with sympathy any  
15 claim that a district court abused its discretion  
16 in awarding unreasonably low attorney's fees in a  
17 suit in which plaintiffs were only partially  
18 successful if counsel's records do not provide a  
19 proper basis for determining how much time was  
20 spent on particular claims.')"

21 There was no abuse of discretion by the trial court. The  
22 award of attorney's fees is AFFIRMED.

23 IV. COSTS

24 Defendants Soo and Seoul Restaurant & Bar appeal the  
25 following costs awarded to Plaintiff:

26	1. Witness fees (deposition)	\$ 95.00
	2. Translation expense	55.00
	3. Deposition expense	301.00
	4. Deposition expense	142.75
	5. Deposition expense	403.00
	6. Travel	765.00
	7. Hotel	770.51

2 Defendants argue that the \$95 witness fees, the \$55  
3 translation expense, and the \$301 deposition expense allowed by  
4 the court were for depositions that were never used by the  
5 Plaintiff at trial. These depositions were taken shortly after  
6 the complaint was filed. The witnesses deposed, however, were  
7 called to testify at trial by the above Defendants.

8 The above Defendants further maintain that the \$403  
9 deposition expense must be reduced by one-third since only two  
10 of the three depositions were used by Plaintiff at trial.

11 [4] In determining whether to tax as costs expenses for  
12 depositions that were not used at trial, the court must  
13 determine whether the "deposition reasonably seemed necessary  
14 at the time it was taken." 10 Wright & Miller, Federal  
15 Practice and Proc. § 2676 at p.341; see 6 Moore's Federal  
16 Practice § 54.77[4].

17 The trial court at the hearing stated:

18 " . . . I'm going to accept the  
19 representation of Mr. Fennell that they were all  
20 waitresses and they took them shortly after the  
21 case was filed to find out what the lawsuit was  
22 about."

23 It cannot be said that the trial court abused its  
24 discretion and this court AFFIRMS the award of costs.

25 Defendants also argue that the sum of \$765 for  
26 Plaintiff's counsel's travel to the Philippines and the sum of  
\$770.51 for expenses at the hotel there should not have been  
allowed as taxable costs because (1) they are not proper  
taxable costs and (2) plaintiff's counsel failed to present an  
itemized billing.

1           Usually, these costs would not have been allowed.  
2 However, the trial court allowed these expenses as costs due to  
3 the unique circumstances of this case, i.e., that the Plaintiff  
4 had to go to Manila to discover the true story about the  
5 records of employer Soo and Seoul Restaurant & Bar.

6           As far as an itemized bill, it appears that the trial  
7 court had before it only an American Express bill for the hotel  
8 and an American Express bill for the flight, together with the  
9 credit card form used by Continental Air Lines showing a route  
10 of SAIPAN/GUAM/MANILA/GUAM/SAIPAN. Plaintiff's counsel,  
11 however, stated in an affidavit attached to his costs that  
12 these were his true and correct costs and that such costs were  
13 necessarily incurred in this matter. Defendants' counsel  
14 replies in his brief that he was on the same flight with  
15 Plaintiff's counsel to and from Manila and that his ticket cost  
16 only \$396. However, it does not appear on the record that  
17 Defendants' counsel advised the trial court of the difference  
18 in the price of his airline ticket.

19           This Court finds no abuse of discretion in this award of  
20 costs and AFFIRMS the trial court's determination.

21           Finally, Defendants Soo and Seoul Restaurant & Bar  
22 maintain that the deposition fee of \$142.75 should be reduced  
23 by \$49.50 since Francisco Babauta, one of the security guards  
24 at the airport, was not called as a witness at trial and his  
25 deposition was never used. In the alternative, Defendants Soo  
26 and Seoul Restaurant & Bar argue that this \$49.50 expense

1 should be apportioned among all Defendants since this  
2 deposition dealt only with the "airport incident."

3 This \$49.50 deposition expense is allowed as a cost of  
4 suit because it was reasonably necessary to Plaintiff's case;  
5 however, this amount is apportioned among all Defendants liable  
6 for the "airport incident": Air Nauru, CPA, and Soo.

7 The decision of the trial court is AFFIRMED in all  
8 respects save for remand to apportion the \$49.50 expense of  
9 deposition between defendants Air Nauru, Commonwealth Ports  
10 Authority and Soo.

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14 ALFRED LAURETA, District Judge

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17 KRISTORAL C. DUENAS, District Judge

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20 CONSUELO B. MARSHALL, District Judge

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F O O T N O T E

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1/The \$3000 was negated by Continental Airlines earlier  
settlement of \$7,500 (order of September 26, 1985).