

I MINA'TRENTAI KU'ATTRO NA LIHESLATURAN GU'AHAN
RESOLUTION STATUS

Resolution No.	Sponsor	Title	Date Intro	Date of Presentation	Date Adopted	Date Referred	Referred to	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
62-34 (COR)	FRANK B. AGUON JR.	Relative to authorizing the legislative counsel, or other retained counsel, to apply for and file an Amicus Curiae brief before the Superior and Supreme Courts Of Guam affirming the Guam Legislature's position relative to sovereign immunity and the upholding of Guam Law.	03/20/17 8:27 a.m.			3/21/2017	The Author	3/29/17 10:00 a.m.	4/17/17 4:17 p.m.	



Senator
FRANK B. AGUON, JR.
Chairman

Senator
Thomas A. Morrison
Vice Chairman

Senator
Dennis G. Rodriguez, Jr.
Member

Senator
Joe S. San Agustin
Member

Senator
Règine Biscoe Lee
Member

Senator
Louisa Borja Muña
Member

Senator
Fernando B. Esteves
Member

Speaker
Benjamin J.F. Cruz
Ex-Officio

APR 17 2017

The Honorable Benjamin J.F. Cruz

Speaker

I Mina'Trentai Kuátro Na Liheslaturan Guáhan
155 Hesler Place, Suite 107
Hagåtña, Guam 96910






VIA: The Honorable Michael F. Q. San Nicolas 
Chairperson, Committee on Rules

RE: Committee Report on Resolution No. 62-34(COR)

Dear Speaker Cruz:

Transmitted herewith is the Committee Report on Resolution No. 62-34(COR). Relative to authorizing the legislative counsel, or other retained counsel, to apply for and file an Amicus Curiae brief before the Superior and Supreme Courts Of Guam affirming the Guam Legislature's position relative to sovereign immunity and the upholding of Guam Law.

Committee votes are as follows:

-  TO DO APPROVE
-  TO NOT APPROVE
-  TO REPORT OUT ONLY
-  TO ABSTAIN
-  TO PLACE IN INACTIVE FILE

Respectfully,

SENATOR FRANK B. AGUON, JR.

Committee Chairman on Guam U.S. Military Buildup | Infrastructure | Transportation
I Mina'Trentai Kuátro Na Liheslaturan Guáhan | 34th Guam Legislature

2017 APR 17 PM 4:17

received
4/10/17 11:58am
COR CTV



Senator
FRANK B. AGUON, JR.
Chairman

Senator
Thomas A. Morrison
Vice Chairman

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Senator
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Member

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COMMITTEE REPORT

ON

RESOLUTION NO. 62-34(COR)

Relative to authorizing the legislative counsel, or other retained counsel, to apply for and file an Amicus Curiae brief before the Superior and Supreme Courts Of Guam affirming the Guam Legislature's position relative to sovereign immunity and the upholding of Guam Law.



Office of
SENATOR FRANK B. AGUON, JR.

THIRTY-FOURTH GUAM LEGISLATURE · I MINA'TRENTAI KUÂTRO NA LIHESLATURAN GUÂHAN

APR 03 2017

MEMORANDUM

To: All Senators
I Mina' Trentai Kuâtro Na Liheslaturan Guahan | 34th Guam Legislature

From: SENATOR FRANK B. AGUON, JR. 

Subject: Committee Report on Resolution No. 62-34(COR)

Transmitted herewith for your consideration is the Committee Report on Resolution No. 62-34(COR). Relative to authorizing the legislative counsel, or other retained counsel, to apply for and file an *Amicus Curiae* brief before the Superior and Supreme Courts of Guam affirming the Guam Legislature's position relative to sovereign immunity and the upholding of Guam Law.

This report includes the following:

- Copy of COR Referral of Resolution No. 62-34 (COR)
- Copy of COR Pre-Referral Checklist on Resolution No. 62-34 (COR)
- Copy of Resolution No. 62-34 (COR)
- Notices of Public Hearing
- Public Hearing Sign-in Sheet
- Copy of the Public Hearing Agenda
- Copies of Submitted Testimony & Supporting Documents (**Note: if applicable*)
- Related News Reports (**Note: if applicable*)
- Committee Report Digest
- Committee Vote Sheet

Please take the appropriate action on the attached vote sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact me.

Committee Chairman: Guam-US Military Buildup · Infrastructure · Transportation

238 Archbishop Flores St. · Suite 503 · DNA Bldg. · Hagåtña, GU 96910 · 671 475.GUM1/2/3



COMMITTEE ON RULES

Senator Michael F.Q. San Nicolas, *Chairman*
I Mina'Trentai Kuåttro na Liheslaturan Guåhan • 34th Guam Legislature



MEMO

To: **Rennae Meno**
Clerk of the Legislature
Attorney Julian Aguon
Legislative Legal Counsel

From: **Senator Michael F.Q. San Nicolas**
Chairman of the Committee on Rules

Date: **March 21, 2017**

Re: **Referral of Resolution No. 62-34 (COR)**

Buenas yan Håfa adai.

As per my authority as Chairman of the Committee on Rules, I am forwarding the referral of **Resolution No. 62-34 (COR)**.

Please ensure that the subject resolution is referred, in my name, to **Senator Frank B. Aguon, Jr., author of Resolution No. 62-34 (COR)**.

If you have any questions or concerns, please feel free to contact Christian Valencia, Committee on Rules Director, at 472-6453.

Thank you for your attention to this important matter.

Respectfully,

Senator Michael F.Q. San Nicolas
Chairman of the Committee on Rules





Office of Senator Frank B. Aguon, Jr. <admin@frankaguonjr.com>

1ST Notice – Public Hearing on Wednesday, March 29, 2017 at 10:00 AM

1 message

Office of Senator Frank Aguon, Jr. Admin <admin@frankaguonjr.com>

Wed, Mar 22, 2017 at 8:35 AM

To: "Office of Senator Frank B. Aguon, Jr." <admin@frankaguonjr.com>

Cc: "Senator Frank B. Aguon, Jr." <aguon4guam@gmail.com>, Carleen Borja <communications@frankaguonjr.com>, Committee <committee@frankaguonjr.com>, Rosanna O'Mallan <staff@frankaguonjr.com>, Senator Aguon's Assistant <officeassistant@frankaguonjr.com>, Tricia Benavente <media@frankaguonjr.com>

Bcc: afduenas@portguam.com, chuck.ada@guamairport.net, eleanor.borja@dpw.guam.gov, felix.benavente@dpw.guam.gov, frankabenavente17@gmail.com, frpangelinan@portguam.com, gabriel.jugo@englekirk.com, ginger.porter47@gmail.com, Glenn Leon Guerrero <glenn.leonguerrero@dpw.guam.gov>, governor@guam.gov, maria.flores@revtax.guam.gov, maria.perez@clb.guam.gov, marie@guam-peals.org, mecristi@pacificsoilsguam.com, mruth@traguam.com, myra.abaya@grta.guam.gov, penelope.gates@grta.guam.gov, peterroy@guamairport.net, phnotice@guamlegislature.org, rally.pilipina@grta.guam.gov, ray@guam-peals.org, rosieb@guamairport.net, Amanda Blas <amanda.blas@guam.gov>, Andrew Tydingco <pokilabot@gmail.com>, Enrique Agustin <rick.agustin@grta.guam.gov>, Gerard Cruz <gerard.cruz71@gmail.com>, "Joanne M.S. Brown" <jbrown@portguam.com>, "John P. Camacho" <john.camacho@revtax.guam.gov>, "joseph. duenas" <joseph.duenas@guam.gov>, Joy Unpingco <joy.unpingco@guam.gov>, Marge Duenas <mduenas@portguam.com>, Maria Taitano <mdrtaitano@gmail.com>, "Marie M. Benito" <marie.benito@revtax.guam.gov>, Mark Calvo <mark.calvo@guam.gov>, Melanie Mendiola <melmendiola@gmail.com>, Ray Tenorio <ray.tenorio@guam.gov>, Rose Ramsey <rose.ramsey@guam.gov>, eloyhara1@yahoo.com, treyes@calvofisher.com, ecalvo@calvofisher.com, viviancruz.pb@gmail.com, kotla671@yahoo.com, cbabauta@guampdn.com, editor@pacificislandtimes.com, janela@k57.com, kmora@guam.gannett.com, parroyo@k57.com, Gaynor Daleno <editor@postguam.com>, Guam PDN <news@guampdn.com>, Janela Buhain Carrera <janela@spbguam.com>, Jason Salas <jason@kuam.com>, Jerick Sablan <jpsablan@guampdn.com>, John O'Connor <john@postguam.com>, Ken Quintanilla <kenq@kuam.com>, Krystal Paco <krystal@kuam.com>, Mar-Vic Cagurangan <publisher@pacificislandtimes.com>, Maria Louella Losinio <louella.losinio@gmail.com>, Neil Pang <neil@postguam.com>, Sabrina Salas Matanane <sabrina@kuam.com>, Shawn Raymundo <rraymundo@guampdn.com>, Steve Limtiaco <slimtiaco@guampdn.com>, Timothy Mchenry <tim@spbguam.com>

March 22, 2017

MEMORANDUM

To: All Members/All Senators

Fr: SENATOR FRANK B. AGUON, JR.

Chairman, Committee on Guam U.S. Military Buildup, Infrastructure, Transportation

Subject: 1ST Notice – Public Hearing on Wednesday, March 29, 2017 at 10:00 AM

Buenas yan Hafa Adai! In accordance with the *Open Government Law of Guam*, relative to notice for public meetings, please be advised that the *Committee on Guam U.S. Military Buildup, Infrastructure, and Transportation*, will convene a **Public Hearing on Wednesday, March 29, 2017 at 10:00 AM at the Guam Congress Building public hearing room.**

Included on the agenda are the following Resolution(s):

- **Resolution No. 62-34** – “Relative to authorizing the Legislative Counsel, or other retained counsel, to apply for and file an *amicus curiae* brief before the Superior and Supreme Courts of Guam affirming the Guam Legislature’s position relative to sovereign immunity and the upholding of Guam law,” (Sponsor: F.B. Aguon, Jr.)
- **34GL-17-0281** - Appointment of Nathan T. Taimanglo; Member, Guam Port Authority Board of Directors, for a term length of three (3) years.

The Hearing will broadcast on local television, *GTA Channel 21 and Docomo Channel 117* or streamed online at: www.guamlegislature.com. The Committee requests that, if written testimonies are to be presented at the Public Hearing, copies be submitted one day prior to the public hearing date, to the Office of Senator Frank B. Aguon, Jr. at Suite 503 DNA Bldg. 238 Archbishop Flores St. Hagåtña, Guam, or via fax to 475-GUM3(4863), or via email to: aguon4guam@gmail.com. Copies of the aforementioned Resolution(s) may be obtained at *I Liheslaturan Guahån* 's website at: www.guamlegislature.com. Individuals requiring special accommodations, auxiliary aids, or services should contact our office at 475-4861/62. Please feel free to contact my office should you have any questions or concerns.

Un Dangkolo Na Si Yu’os Ma’ase!

CC: Media/Stakeholders/Sgt-at-Arms/Protocol

–

Thanks!

Office of Senator Frank B. Aguon, Jr.

Committee on Guam US Military Build-Up, Infrastructure and Transportation
SUITE 503, DNA BLDG. 238 ARCHBISHOP FLORES STREET HAGÁTÑA, GUAM 96910
Tel: (671) 475-GUM1/2 (4861/2)
Fax: (671) GUM3 (4863)
aguon4guam@gmail.com | www.frankaguonjr.com

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3 attachments



1ST NOTICE for 3-29-17 PH.pdf
876K



Res. No. 62-34 (COR).pdf
263K



34GL-17-0281 APPOINTMENT OF NATHAN T TAIMANGLO.pdf
917K



March 22, 2017

MEMORANDUM

Senator
FRANK B. AGUON, JR.
Chairman

To: All Members/All Senators

Senator
Thomas A. Morrison
Vice Chairman

Fr: SENATOR FRANK B. AGUON, JR.
Chairman, Committee on Guam U.S. Military Buildup, Infrastructure, Transportation

Senator
Dennis G. Rodriguez, Jr.
Member

Subject: 1ST Notice – Public Hearing on Wednesday, March 29, 2017 at 10:00 AM

Senator
Joe S. San Agustin
Member

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Senator
Reginé Biscoe Lee
Member

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Senator
Louise Borja Muña
Member

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Senator
Fernando B. Esteves
Member

Speaker
Benjamin J.F. Cruz
Ex-Officio

Un Dangko Na Si Yuos Ma'ase!

SENATOR FRANK B. AGUON, JR.
Committee Chairman on Guam U.S. Military Relocation | Infrastructure | Transportation
I Mina' Trentai Kuátro Na Liheslaturan Guåhan | 34th Guam Legislature

CC: Media/Stakeholders/Sgt-at-Arms/Protocol



Senator Aguon's Assistant <officeassistant@frankaguonjr.com>

2ND Notice – Public Hearing on Wednesday, March 29, 2017 at 10:00 AM

1 message

Office of Senator Frank Aguon, Jr. Admin <admin@frankaguonjr.com> Mon, Mar 27, 2017 at 8:13 AM
 To: "Office of Senator Frank B. Aguon, Jr." <admin@frankaguonjr.com>
 Cc: "Senator Frank B. Aguon, Jr." <aguon4guam@gmail.com>, Carleen Borja <communications@frankaguonjr.com>, Committee <committee@frankaguonjr.com>, Rosanna O'Mallan <staff@frankaguonjr.com>, Senator Aguon's Assistant <officeassistant@frankaguonjr.com>, Tricia Benavente <media@frankaguonjr.com>

March 27, 2017

MEMORANDUM

To: All Members/All Senators

Fr: SENATOR FRANK B. AGUON, JR.

Chairman, Committee on Guam U.S. Military Buildup, Infrastructure, Transportation

Subject: 2ND Notice – Public Hearing on Wednesday, March 29, 2017 at 10:00 AM

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Un Dangkolo Na Si Yu 'os Ma 'ase!

CC: Media/Stakeholders/Sgt-at-Arms/Protocol

–

Thanks!

Office of Senator Frank B. Aguon, Jr.

Committee on Guam US Military Build-Up, Infrastructure and Transportation

SUITE 503, DNA BLDG. 238 ARCHBISHOP FLORES STREET HAGÁTÑA, GUAM 96910

Tel: (671) 475-GUM1/2 (4861/2)

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aguon4guam@gmail.com | www.frankaguonjr.com

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3 attachments



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Res. No. 62-34 (COR).pdf

263K



34GL-17-0281 APPOINTMENT OF NATHAN T TAIMANGLO.pdf

917K



March 27, 2017

MEMORANDUM

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To: All Members/All Senators

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Chairman, Committee on Guam U.S. Military Buildup, Infrastructure, Transportation

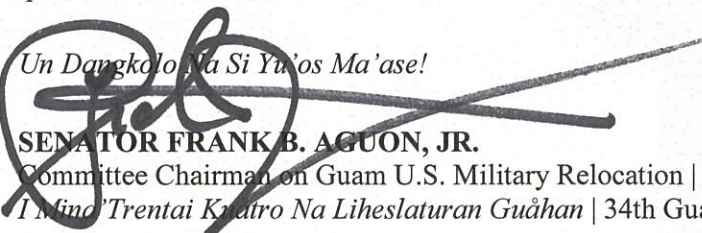
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Un Dangkol na Si Yuios Ma'ase!


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Committee Chairman on Guam U.S. Military Relocation | Infrastructure | Transportation
I Mina' Trentai Kuatiro Na Liheslaturan Guáhan | 34th Guam Legislature

CC: Media/Stakeholders/Sgt-at-Arms/Protocol



March 22, 2017

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Senator
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Member

Senator
Fernando B. Esteves
Member

Speaker
Benjamin J.F. Cruz
Ex-Officio

The Honorable Edward J. B. Calvo
Governor of Guam

513 West Marine Corps Drive

Ricardo J. Bordallo Complex

Hagåtña, Guam 96910

Sent via email to: governor@guam.gov

Subject: INVITATION – Public Hearing on Wednesday, March 29, 2017 at 10:00 AM

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SENATOR FRANK B. AGUON, JR.

Committee Chairman on Guam U.S. Military Relocation | Infrastructure | Transportation
I Mina' Trentai Kuatro Na Liheslaturan Guahan | 34th Guam Legislature



March 22, 2017

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Senator
Louise Borja Muña
Member

Senator
Fernando B. Esteves
Member

Speaker
Benjamin J.F. Cruz
Ex-Officio

The Honorable Ray Tenorio
Lieutenant Governor of Guam

513 West Marine Corps Drive

Ricardo J. Bordallo Complex

Hagåtña, Guam 96910

Sent via email to: ray.tenorio@guam.gov

Subject: INVITATION – Public Hearing on Wednesday, March 29, 2017 at 10:00 AM

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In Dangkolo Na Si Yu'os, Ma'ase!

SENATOR FRANK B. AGUON, JR.
Committee Chairman on Guam U.S. Military Relocation | Infrastructure | Transportation
I Mina' Trentai Kuátro Na Liheslaturan Guáhan | 34th Guam Legislature



March 22, 2017

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Senator
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Member

Senator
Fernando B. Esteves
Member

Speaker
Benjamin J.F. Cruz
Ex-Officio

The Honorable Elizabeth Barrett Anderson
Attorney General of Guam
Office of the Attorney General

590 S. Marine Corps Drive
ITC Bldg., Suite 706
Tamuning, Guam 96913
Sent via email to: ebanderson@guamag.org

Subject: INVITATION – Public Hearing on Wednesday, March 29, 2017 at 10:00 AM

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Un Dangkol Na Si Yu'os Ma'asel

SENATOR FRANK B. AGUON, JR.

Committee Chairman on Guam U.S. Military Relocation | Infrastructure | Transportation
I Mina' Trentai Kuátro Na Liheslaturan Guáhan | 34th Guam Legislature

SUITE 503, DNA BLDG. 238 ARCHBISHOP FLORES STREET HAGATNA, GUAM 96910
PHONE: (671) 475-GUM1/2 (4861/2) | FAX: (671) 475-GUM3 (4863) |
EMAIL: AGUON4GUAM@GMAIL.COM



Senator
FRANK B. AGUON, JR.
Chairman

Senator
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Vice Chairman

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Dennis G. Rodriguez, Jr.
Member

Senator
Joe S. San Agustin
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Fernando B. Esteves
Member

Speaker
Benjamin J.F. Cruz
Ex-Officio

March 22, 2017

Ms. Joanne M.S. Brown
General Manager
1026 Cabras Highway, STE 201
Piti, Guam 96915
Sent via email to: jbrown@portguam.com

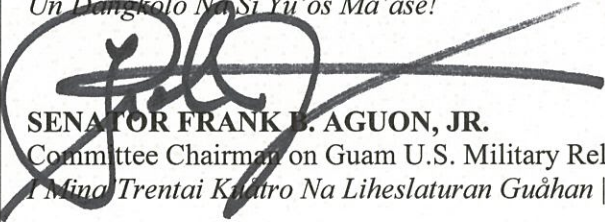
Subject: **INVITATION** – Public Hearing on Wednesday, March 29, 2017 at 10:00 AM

Buenas yan Hafa Adai! In accordance with the *Open Government Law of Guam*, relative to notice for public meetings, please be advised that the *Committee on Guam U.S. Military Buildup, Infrastructure and Transportation*, will convene a **Public Hearing on Wednesday, March 29, 2017 at 10:00 AM at the Guam Congress Building public hearing room.** Included on the agenda are the following Resolution(s):

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Committee Chairman on Guam U.S. Military Relocation | Infrastructure | Transportation
I Mina' Trentai Kuátro Na Liheslaturan Guáhan | 34th Guam Legislature



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Senator
Fernando B. Esteves
Member

Speaker
Benjamin J.F. Cruz
Ex-Officio

March 22, 2017

Board of Directors
Port Authority of Guam
1026 Cabras Highway, STE 201
Piti, Guam 96915
Sent via Hand Delivery

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Un Durgkol, Na Si Yapas Ma'ase!

SENATOR FRANK B. AGUON, JR.

Committee Chairman on Guam U.S. Military Relocation | Infrastructure | Transportation
I Mina' Trentai Kuátro Na Liheslaturan Guáhan | 34th Guam Legislature



March 22, 2017

Senator
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Member

Speaker
Benjamin J.F. Cruz
Ex-Officio

PHILLIPS & BORDALLO, P.C.

410 West O'Brien Drive

Hagåtña, GU 96910

Transmitted via email: viviancruz.pb@gmail.com, kotla671@yahoo.com**Subject: INVITATION – Public Hearing on Wednesday, March 29, 2017 at 10:00 AM**

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*In Dangko lo Na Si Yu as Ma'ase!***SENATOR FRANK B. AGUON, JR.**Committee Chairman on Guam U.S. Military Relocation | Infrastructure | Transportation
I Mina' Trentai Kuatro Na Liheslaturan Guåhan | 34th Guam Legislature



March 22, 2017

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Fernando B. Esteves
Member

Speaker
Benjamin J.F. Cruz
Ex-Officio

Guam YTK Corporation

P.O. Box 326419

Hagåtña, GU 96932

Transmitted via email: treyes@calvofisher.com, ecalvo@calvofisher.com

Subject: INVITATION – Public Hearing on Wednesday, March 29, 2017 at 10:00 AM

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Un Dangtolo Na Si Yu'os Ma'ase!

SENATOR FRANK B. AGUON, JR.

Committee Chairman on Guam U.S. Military Relocation | Infrastructure | Transportation
I Mina' Trentai Kuatro Na Liheslaturan Guåhan | 34th Guam Legislature



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Speaker
Benjamin J.F. Cruz
Ex-Officio

PUBLIC HEARING

Wednesday , March 29, 2017 at 10:00AM

AGENDA

- I. Call to Order at 10:00AM
- II. Opening remarks / Announcements
- III. Review of Resolution No. 62-34(COR)
- IV. Appointment Hearing of Nathan T. Taimanglo
- V. Closing Remarks
- VI. Adjournment

COMMITTEE ON GUAM U.S. MILITARY RELOCATION, INFRASTRUCTURE & TRANSPORTATION

I Mina' Trentai Kuãtro Na Liheslaturan Guahan | 34th Guam Legislature



SENATOR FRANK B. AGUON, JR.

CHAIRMAN



Oversight Hearing

Wednesday, March 29, 2017 at 10:00am

Resolution No. 62-34 (COR) - Relative to authorizing the legislative counsel, or other retained counsel, to apply for and file an Amicus Curiae brief before the Superior and Supreme Courts Of Guam affirming the Guam Legislature's position relative to sovereign immunity and the upholding of Guam Law.

Name (Please Print)	Agency/Organization	Contact Number	Oral Testimony	Written Testimony	In favor	Not In Favor
✓ JEB FLORES	PRIVATE	828-9955			✓	
✓ Dennis J. Perez	Port Authority of Guam	472-5931 +305				
✓ F.G. SANJOS	PAG	797-6471	✓		✓	
✓ C.A. Roberts	PAG	482-5415	✓		✓	
✓ DB ESPANA	PAG	689-1661			✓	
✗ NORMAN TARUC	GUAM DAILY POST	449 1924				
✓ Vinod [Signature]	PAG					

COMMITTEE ON GUAM U.S. MILITARY RELOCATION, INFRASTRUCTURE & TRANSPORTATION

I Mina' Trentai Kuatro Na Lihelaturan Guahan | 34th Guam Legislature



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Name (Please Print)	Agency/Organization	Contact Number	Oral Testimony	Written Testimony	In favor	Not In Favor
✓ Simon Pinal	PAG	477-2866				
✓ Ron Ayon	PAH	477-5933				
✓ ANNETTE WATKINS	PAG	477-5931				
✓ Junior D. Topasna	PAG	477-2866				
✓ FRANK SANDS JR	PAG	477-5931				
✓ Carmelita Nedeles	PAG	477-5931				
✓ Carol Jenkins	PAG	477-5931				

(2)

COMMITTEE ON GUAM U.S. MILITARY RELOCATION, INFRASTRUCTURE & TRANSPORTATION

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Name (Please Print)	Agency/Organization	Contact Number	Oral Testimony	Written Testimony	In favor	Not In Favor
✓ Sedfrey Lingsangan	Self	649-6957	—		—	
✓ Ken MVO	PAG	477-9802				—
✓ SPAIN CEPEDA	PAG	477-5931				
✓ JOE LEON QUERCERO	PAG	477 5931 x 497				—

COMMITTEE ON GUAM U.S. MILITARY RELOCATION, INFRASTRUCTURE & TRANSPORTATION

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Name (Please Print)	Agency/Organization	Contact Number	Oral Testimony	Written Testimony	In favor	Not In Favor
RAYMOND SANTA	PAG	898-1233			✓	
Kia Pagela	PAG	727 4233			✓	
Cebrian Jim	Lim					
✓ Nita Puello	PAG	477-2223	✓		✓	
✓ Perfecto Rito	"	"	"		✓	
Steven MUNA	PAG	888-7726			—	
Samuel Annerad	PAG	929-2757			—	

COMMITTEE ON GUAM U.S. MILITARY RELOCATION, INFRASTRUCTURE & TRANSPORTATION

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Name (Please Print)	Agency/Organization	Contact Number	Oral Testimony	Written Testimony	In favor	Not In Favor
Francis Ojeda	PAG	898-3557			✓	
JACQUELINE CRUZ	PAG	9884518				

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Name (Please Print)	Agency/Organization	Contact Number	Oral Testimony	Written Testimony	In favor	Not In Favor
William Hudson	PIAG	477-5931 EXT 230				
PIA CASTRO	PAG	477-5931 477-5931 x240				

COMMITTEE ON GUAM U.S. MILITARY RELOCATION, INFRASTRUCTURE & TRANSPORTATION

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Name (Please Print)	Agency/Organization	Contact Number	Oral Testimony	Written Testimony	In favor	Not In Favor
MEL MENDOZA	PORT	428 1823			✓	
Sim Delas Cruz Mont		6177-5931			✓	
JOE TULLANTO	PORT	988-1953			✓	

COMMITTEE ON GUAM U.S. MILITARY RELOCATION, INFRASTRUCTURE & TRANSPORTATION

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Name (Please Print)	Agency/Organization	Contact Number	Oral Testimony	Written Testimony	In favor	Not In Favor
<i>Raymond Mina</i>	<i>PAC</i>	<i>477-5931</i>	_____	_____	_____	_____

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Name (Please Print)	Agency/Organization	Contact Number	Oral Testimony	Written Testimony	In favor	Not In Favor
✓ Felix R. Pangelinan	PAG	477-5931	✓			
✓ Donna Acosta	PAG	477-5931				
✓ Juan A. Vill. ✓	PAG	477-2678				
✓ Joanne Braun	PAG	477-5931 ext 302	✓	✓	✓	
✓ Vince Bamby	PAG	688-2134				
✓ MARIA TAITANO	PAG BOD	687-5158			✓	
✓ Dot Harris	PAG	477-5931				



PORT OF GUAM

ATURIDATI PUEYTON GUAHAN

Jose D. Leon Guerrero Commercial Port

1026 Cabras Highway, Suite 201, Piti, Guam 96925

Telephone: 671-477-5931/35 Facsimile: 671-477-2689/4445

Website: www.portguam.com



Eddie Baza Calvo
Governor of Guam

Ray Tenorio
Lieutenant Governor

March 30, 2017

Honorable Frank Blas Aguon, Jr.
Chairman, Committee on Guam-U.S.-Military Buildup,
Infrastructure, and Transportation
34th Guam Legislature
Suite 503 DNA Bldg
238 Archbishop Flores St.
Hagatna, Guam 96910

RE: Testimony in Support of Resolution 62-34

Hafa Adai! Chairman Aguon,

Thank you for this opportunity to support Resolution No. 62-34. On behalf of myself and the Port Authority of Guam Board of Directors, I strongly encourage you and all other Senators to pass this Resolution directly supporting the Port, our Government, and the People of Guam before the Judiciary.

While the facts and circumstances surrounding the underlying YTK lawsuit and subsequent Superior Court of Guam Judgment remain remarkable to say the least, our previous testimony during your oversight hearing, and the Attorney General of Guam and Port counsel briefs are all public record. The YTK case facts are compelling though not necessary to debate in order to comprehend the magnitude and great importance of Resolution No. 62-34. In summary, there is a significant and eminent need for the Legislature to stand and defend duly passed laws and Organic Act authority providing the Legislature with exclusive authority over Government of Guam sovereign immunity.

Departments and agencies only have the powers authorized by the Guam Legislature. The Legislature included the "notwithstanding any other provision of law" clause in Public Law 26-28 to emphasize the Port's ability to lease property for a term not to exceed five years. Without existing authority or subsequent legislative approval, a previous Port Authority Board approved a forty-five (45) year lease in 2001 is clear violation of Public Law 26-28 codified as 12 GCA Section 10105(i). The Legislature also mandated in a separate law that all leases of government owned real property be pre-approved by the Guam Legislature. See, 21 GCA Section 60112. Although the lease mandated the parties submit the lease for legislative approval, it also provided a provision to purportedly allow the lease to go forward contrary to law and without legislative approval. The Port Authority submitted the lease to the legislature for their approval. The legislative term ended without the Guam Legislature taking action. The arbitration panel chose to ignore these laws and, so far, the courts have held that such mistakes are allowable in arbitration. Neither the courts nor arbitration panels should be allowed to disregard legislative mandates. No other segment of our community is above the law.

RECEIVED
OFFICE OF SENATOR FRANK B. AGUON, JR.

34th GL MAR 29 2017



STE 503, DNA BLDG.
238 ARCHBISHOP FLORES STREET HAGATNA, GU 96910

Letter to Senator Frank B. Aguon, Jr.
RE: Testimony in Support of Resolution 62-34
March 30, 2017
Page 2 of 2

In the YTK case presently before our local courts, the Attorney General of Guam and Port counsel presented a unified and consistent argument before the Superior Court of Guam urging the courts to uphold the Guam Legislature's exclusive authority to waive sovereign immunity. The Organic Act, Guam law, and all previous court cases have recognized the Legislature's undisputed discretion to determine when and to what extent it chooses to waive sovereign immunity. Up until recently, if the Legislature chose not to specifically waive sovereign immunity, all of Guam's courts unanimously found no waiver of sovereign immunity. Today, the courts appear to find that arbitration and this case in particular may proceed forward in Guam's courts without a specific and identifiable waiver of sovereign immunity. This urgent situation requires the Guam Legislature to act now or allow the compromise of this heavy and exclusive responsibility.

The Attorney General and Port counsel both agree the YTK lease is illegal and the Guam Legislature chose not to waive sovereign immunity to the extent contemplated by the courts of Guam.

The ability of anyone to ignore Guam law and legislative authority today allows everyone to do the same tomorrow. The courts of Guam are presently determining issues relating directly to the very essence of the Guam Legislature's powers without the presence or input of the Legislature. In order to uphold the Organic Act powers vested in the Guam Legislature and laws of Guam, the Guam Legislature must take favorable action on Resolution No. 62-34.

Si Yu'os Ma'ase',


JOANNE M.S. BROWN
General Manager

GUAM YTK CORPORATION

P.O. Box 326419, Hagåtña, GU 96932 ~ T671.475.6801

March 28, 2017

VIA HAND DELIVERY

Senator Frank B. Aguon, Jr., Chairperson
Senator Thomas A. Morrison, Vice Chairperson
Senator Dennis G. Rodriguez, Jr., Member
Senator Joe S. San Agustin, Member
Senator Regine Biscoe Lee, Member
Senator Fernando Barcinas Esteves, Member
Speaker Benjamin J.F. Cruz (*Ex-Officio* Member)
**COMMITTEE ON GUAM-U.S. MILITARY BUILDUP,
INFRASTRUCTURE, AND TRANSPORTATION**
I MINA'TRENTAI KUATTRO NA LIHESLATURAN GUAHAN
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

**RE: Guam YTK Corporation ("Guam YTK") vs. Port Authority of Guam
(the "Port")**

Dear Chairperson Aguon and Committee Members:

In addition to testimony previously submitted to the Committee on March 2, 2017 and March 8, 2017, Guam YTK respectfully submits its testimony in regard to proposed Resolution No. 62-34.

As you know, the Port has filed a motion for reconsideration of the Superior Court's Judgment in favor of Guam YTK. The Port's motion is the latest in a series of meritless court filings, and public and political positions taken by the Port unsupported by law or fact. Attached for your reference is Guam YTK's filed Opposition to the Port's motion for reconsideration.

We understand that the Port and the Government are unhappy with the outcome of Guam YTK's dispute with Port but that situation is not the result of the misinterpretation or misapplication of the law or even an infirm or defective law.

The Guam Supreme Court, the Arbitration Panel and the Superior Court all acted in accordance with well-established law and practice and the facts. They correctly considered, dealt with and ruled on the issues of sovereign immunity, the arbitration law, Public Law 26-28 (Bill No. 113 (COR)) and all other issues raised by the Port's legal counsel.

The predicament the Port finds itself in is a direct consequence of a series of bad decisions, based on bad advice, that were made by the Port Board, Port Management and Port legal counsel.



GUAM YTK CORPORATION

March 28, 2017

Page 2

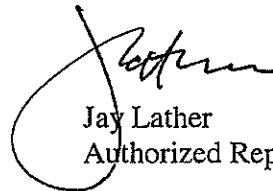
Guam YTK has always been willing to seek a reasonable resolution of its contract dispute with the Port but was summarily rebuked by the Port since 2010. Despite numerous offers of settlement by Guam YTK, the Port effectively forced Guam YTK to seek recourse through the courts and arbitration. It was the Port Board, Management and Counsel that exposed the Port to the millions of dollars of liability that it realizes today.

As one specific example of the Port's mismanagement I point to my written offer to avoid litigation and settle our dispute made in March of 2012. In that letter I agreed to settle the matter if the Port would simply give Guam YTK one five year lease on Hotel Wharf. The Port acknowledged receipt of the offer but did not respond. That lease would have terminated this month and the Port (and the people of Guam) would have no financial liability, the Port would have 5 five years to prepare its development plan for Hotel Wharf and they would have paid no additional legal expenses.

Guam YTK respectfully submits that while proposed Resolution No. 62-34 may be perceived by some as an astute political move, it would be an inappropriate infringement on the principles of separation of powers and disrespectful to the Judiciary and the Rule of Law. It would also be a waste of Government resources and funds.

Accordingly, we respectfully urge the Committee and the Legislature not to join the Port in compounding a problem of its own creation.

Sincerely,



Jay Lather
Authorized Representative

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Attorneys for Plaintiff
Guam YTK Corporation

FILED
SUPERIOR COURT
OF GUAM

2017 MAR 16 PM 2:52

CLERK OF COURT

IN THE SUPERIOR COURT OF GUAM

GUAM YTK CORPORATION,

Plaintiff,

vs.

PORT AUTHORITY OF GUAM,

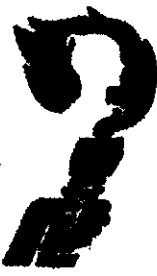
Defendant.

CIVIL CASE NO. CV1170-12

**PLAINTIFF GUAM YTK CORPORATION'S
OPPOSITION TO DEFENDANT'S MOTION
FOR RECONSIDERATION PURSUANT TO
GRCP RULE 59(e) AND RULE 60(b)**

The Law Offices of
PHILLIPS & BORDALLO

RECEIVED BY: *[Signature]*
DATE: 16 MAR 17
TIME: 3:10 pm



1 **INTRODUCTION**

2 By refusing to honor its obligations to Guam YTK Corporation (“Guam YTK”) under the
3 Development Agreement and Lease (“Lease” or “DAL”) or even entertain a settlement, the Port
4 Authority of Guam (“Port”) forced the parties into arbitration and wound up in a serious predicament.
5 Under the Judgment issued by this Court, the Port now owes Guam YTK more than \$15 million – a
6 figure that grows substantially every day. The Port is desperate to escape this difficulty and to place the
7 blame for its problems on someone else: on Guam YTK, on the Arbitration Panel (“Panel”), on this
8 Court, on the Guam Supreme Court – on anyone but itself. But the Port’s predicament was caused by
9 the decisions of its management and legal counsel, who have consistently refused to acknowledge the
10 controlling law that governs the Lease, the arbitration proceedings, and the enforcement of the
11 arbitration award. The Port’s motion for reconsideration is more of the same.

12 The Guam Supreme Court has carefully articulated the grounds for reconsideration. The Port
13 does not meet any of them. Instead, it does exactly what the Guam Supreme Court has forbidden: it
14 uses a motion for reconsideration to elaborate on old arguments that have already been squarely
15 rejected and to supplement the record with new arguments that it failed to make in its motion to vacate
16 the arbitration award. In other words, the Port’s motion is plainly frivolous.

17 The Port’s arguments are also substantively defective. Each argument asks the Court to ignore
18 the plain language of the controlling statute or the unambiguous holdings of the Supreme Court in this
19 very case. The Port cannot ask the Court in good faith to ignore the standard of review for arbitration
20 awards in favor of a de novo re-examination of the merits of the dispute – which the Supreme Court has
21 expressly forbidden. The Port’s motion (like its prior motion to vacate) is nothing more than an
22 invitation to commit clear error and should be firmly rejected.

23 **PROCEDURAL BACKGROUND**

24 On December 29, 2016, the Court issued its Decision and Order (“Order”) denying the Port’s
25 motion to vacate the Amended Arbitration Award (“Arbitration Award”) and granting Guam YTK’s
26 motion to confirm it. On January 11, 2017, Guam YTK sent a letter to the Port’s counsel, asking the
27 Port to approve and sign a proposed form of judgment that was attached. (Declaration of Genevieve P.
28 Rapadas, filed Jan. 25, 2017 (“Jan. 25, 2017 Rapadas Decl.”), Ex. 1.) On January 18, 2017, the Port’s

1 counsel responded with a form of judgment prepared by the Port and asked Guam YTK to consider
2 approving it as to form. (*Id.* ¶ 5, Ex. 4.) The following day, before Guam YTK had responded to the
3 Port's proposed judgment, the Port's counsel wrote that "[a]fter further discussions ... *we are not at*
4 *this time able to consent to the form or substance of a forthcoming judgment.*" (*Id.* ¶ 6, Ex. 5 (emphasis
5 added).) In other words, the Port refused to consent to *any* form of judgment.

6 Guam YTK thereafter submitted a proposed form of judgment, along with copies of all of the
7 letters that the Port had sent reflecting its concerns regarding the proposed judgment. (*Id.* Exs. 4, 5.)
8 The Court filed its Judgment on February 3, 2017 and entered it on the docket on February 6. Ten days
9 later, on February 16, 2017, the Port filed a motion for reconsideration pursuant to Guam Rules of Civil
10 Procedure, Rules 59 and 60.

11 On February 21, 2017, Guam YTK filed a writ of execution. In response, on February 23, 2017,
12 the Port filed an "Ex Parte Objection to Application for Writ of Execution and Motion for Stay Pending
13 Appeal." The Court granted the Port's motion for a stay pending resolution of the motion for
14 reconsideration and denied the Port's motion for a stay pending appeal.

15 ARGUMENT

16 **A. Legal Standard for Reconsideration**

17 The Guam Supreme Court "has construed GRCP 59(e) motions and GRCP 60(b) motions as
18 essentially equivalent." *Rong Chang Co., Ltd., Inc. v. M2P, Inc.*, 2012 Guam 1 ¶ 18. Such motions
19 allow "a court to reconsider and amend a previous order, but is an 'extraordinary remedy, to be used
20 sparingly in the interest of finality and conservation of judicial resources.'" *Guam Bar Ethics Comm. v.*
21 *Maquera*, 2001 Guam 20 ¶ 9 (citation omitted).

22 Such motions may be granted: "(1) if the movant demonstrates that it is necessary to prevent
23 manifest errors of law or fact upon which the judgment is based; (2) to allow the moving party to
24 present newly discovered or previously unavailable evidence; (3) to prevent manifest injustice; or (4) if
25 there is an intervening change in controlling law." *Lujan v. Estate of Rosario*, 2016 Guam 28 ¶ 14
26 (quoting *Guam Bar Ethics Comm.*, 2001 Guam 20 ¶ 9). "Motions made under Rule 59(e) are aimed at
27 reconsideration, not initial consideration, and thus cannot be used to present a new legal theory, raise
28 arguments for the first time, or present evidence for the first time when they could have reasonably

1 been raised earlier.” *Id.* (citation omitted). Moreover, such motions “are both ‘procedurally and
2 substantively deficient’ if they simply reiterate in greater detail arguments previously made before the
3 court.” *Id.* Accordingly, “[s]upplementing and further detailing previous arguments are not sufficient
4 bases for reconsideration...” *Id.*

5 None of the Port’s arguments come anywhere close to meeting the standards for
6 reconsideration.

7 **B. The Court Did Not Exceed Its Authority by Issuing the Judgment**

8 The Port states that it did not have an opportunity to oppose Guam YTK’s request for entry of
9 the Judgment. But the Court can (and often does) enter judgment without input from the parties. *See*
10 Guam R. Civ. Proc. 58. And the Port, in fact, had a chance to review Guam YTK’s proposed judgment
11 before it was filed and set forth its objections to it, which Guam YTK submitted to the Court with its
12 request for entry of judgment. (Decl. Genevieve P. Rapadas Supp. Pl.’s Mot. Entry J. (“Rapadas
13 Decl.”), filed on Jan. 25, 2017, Exs. 4, 5.) Accordingly, the Court considered the Port’s objections and
14 rejected them.

15 The problem for the Port is that the substantive bases for its objections are meritless. The Port’s
16 lead argument is that in issuing the Judgment the Court exceeded its authority. According to the Port,
17 (1) the Court has authority to confirm or vacate an award but lacks authority to do any more than that,
18 such as order payment of an arbitration award; and (2) the Court exceeded its authority by requiring
19 payment of the Judgment amount because there was no order for payment in the arbitration award
20 itself. Both arguments are frivolous.

21 **1. The Court Has Full Authority to Enforce the Judgment, as It Would Any Other**
22 **Judgment**

23 The Port contends that the Court does not have legal authority to order payment of the amount
24 in the Arbitration Award. Instead, the Port asserts, “claims for the payment of damages awarded should
25 be sought through the Legislature.” (Def.’s Mem. P. & A. Supp. Mot. Recons. (“Mot.”), filed on Feb.
26 16, 2017, at 5:13.) A couple of pages later, the Port contradicts itself, asserting that claims for payment
27 actually require “filing a separate civil suit to collect on the Judgment.” (Mot. at 7:10-11.) That is, the
28 Port is unsure what procedure applies, it just contends the correct procedure is *not this one*. The crux of

1 the Port's argument is that the Court cannot enforce the Judgment like an ordinary judgment because
2 arbitration "is distinct from 'civil actions' brought in suit" and "[t]he arbitration remedy is exhausted
3 upon the issuance of an arbitration award." (Mot. at 7-8 (citation omitted.) This is completely wrong
4 under both the plain language of the applicable statute and the very case that the Port relies on, *Guam*
5 *YTK Corporation v. Port Authority of Guam*, 2014 Guam 7.

6 The law is actually spelled out simply and clearly. First, the enforcement of arbitration awards
7 is indisputably governed by Guam law. *See Guam YTK Corp.*, 2014 Guam 7 n. 8 ("[I]f the agreement is
8 silent on certain arbitration procedures, the parties would then be required to follow the procedures set
9 forth in the GIAC, which is the local regime for the *enforcement* of arbitration agreements and
10 *arbitration awards.*") (emphasis added).¹ The Guam law addressing enforcement is found in the
11 arbitration statute under the heading of "Enforcement." *See* 7 GCA § 42111 (1993, *repealed* by P.L.
12 27-81:2); *see also* 7 GCA § 42A702.² The statute first states that after confirmation "[t]he judgment
13 shall be docketed as if it were rendered in an action." 7 GCA § 42111 (emphasis added); 7 GCA §
14 42A702(e) (same). The statute then provides:

15 The judgment so entered shall have the same force and effect, in all respects, as, and be
16 subject to all the provisions of law relating to, a judgment in an action; and it may be
17 enforced as if it had been rendered in an action in the court in which it is entered.

18 7 GCA § 42111 (emphasis added); 7 GCA § 42A702(f) (same). Accordingly, based on the plain
19 language of the statute, the Port's argument that the arbitration award must be treated as something
20 "distinct from a civil action" and that the Court does not have the full authority to enforce the award are
21 plainly wrong.

22
23 ¹ The Supreme Court noted in this case, "Because the Arbitration Agreement references the procedures under section 42107
24 of the Civil Arbitration Law for purposes of confirming an arbitration award, the parties would have to adhere to section
25 42107 when attempting to confirm in court any arbitration award entered in this case." *Guam YTK Corp.*, 2014 Guam 7 ¶ 50
(footnote omitted).

26 ² There is a strong public policy in favor of arbitration on Guam, as reflected in P.L. 27-81. (*See* Order at 3:23-26 (citing
27 *Asia Pac. Hotel Guam, Inc. v. Dongbu Ins. Co.* ("*Asia Pacific*"), 2015 Guam 3 ¶ 15); *see also Pacificare*, 2004 Guam 17 ¶
28 26; *Brown v. Dillingham Const. Pac. Basin Ltd.*, 2003 Guam 2 ¶ 16.) P.L. 27-81 was endorsed by all branches of
government and was *unanimously* approved by the Legislature. (*See* Request for Judicial Notice Supp. Guam YTK's Opp'n
to Def.'s Mot. Recons. Pursuant to GRCP Rule 59(e) and Rule 60(b), filed concurrently herewith, Ex. 1.) Indeed, while Port
General Manager Joanne Brown has recently stated in the press that arbitration may somehow not be a good thing on Guam,
she voted in favor of the arbitration statute when a Senator. (*See id.* at Ex. 2.)

1 The Port misleadingly cites to and quotes from *Guam YTK Corp. v. Port Auth. of Guam*, 2014
2 Guam 7 to support its argument that the Court’s powers of enforcement are limited here, and that Guam
3 YTK needs to invoke some type of special procedure to enforce the Judgment, but this is directly
4 contrary to what the Supreme Court actually said. Specifically, the Port asserts the following:

5 [T]he Supreme Court in *Guam YTK Corp. v. Port Auth. of Guam* stated that the
6 arbitration process is an alternative to resolving disputes and is distinct from ‘civil
7 actions’ brought in suit. Arbitrations proceedings are alternative methods to resolving
8 disputes and are not civil suits. ‘The arbitration remedy is exhausted upon the issuance of
9 an arbitration award.’ (*citations omitted*) (“Though the arbitration process is distinct from
10 a judicial proceeding, any award granted at the conclusion of arbitration may itself
11 become the subject of a suit, since at that point, an actual claim has come into existence.”)
12 *Guam YTK Corp. v. Port Auth. of Guam*, 2014 Guam 7, ¶ 55.

13 (Mot. at 7-8.) With all due respect, Guam YTK submits that the Port’s treatment of the Supreme
14 Court’s opinion is, not for the first time, dishonest and indefensible. By taking quotes from the
15 Supreme Court out of context and stripping them of their identifying source, the Port has tried to make
16 the opinion in *Guam YTK Corp.* mean the very opposite of what the Supreme Court actually said.

17 In the cited portion of *Guam YTK Corp.*, the Supreme Court addressed the Port’s argument that
18 the Government Claims Act was the exclusive remedy available to Guam YTK and that, as such, Guam
19 YTK could not compel arbitration. 2014 Guam 7 ¶ 44. The Supreme Court discussed two cases
20 reflecting competing approaches to arbitration and the enforcement of arbitration awards.

21 Under the first case, *Paramount Unified Sch. Dist. v. Teachers Ass’n of Paramount*, 32
22 Cal.Rptr.2d 311 (Ct. App. 1994) [*“Paramount”*], the parties were required to submit their disputes to
23 arbitration and then confirm their award as a judgment. The point of *Paramount* was that under this
24 approach “the parties would completely bypass the Government Claims Act claims filing process” both
25 before and after arbitration. *Guam YTK Corp.*, 2014 Guam 7 ¶ 51.

26 Under the second case, *State of Wash. v. P.G. Miron Construction Co.*, 512 N.W.2d 499 (Wis.
27 1994), the parties would also have to submit their claims to arbitration but, unlike in *Paramount*, the
28 “arbitration award entered would be subject to the Government Claims Act claims filing process when
it comes to confirming or vacating the arbitration award.” *Guam YTK Corp.*, 2014 Guam 7 ¶ 52.

1 The Supreme Court adopted the *Paramount* approach, holding: “[W]e find that the *Paramount*
2 approach is in line with our local and national policies favoring arbitration, and we herein adopt the
3 *Paramount* approach.” *Id.* at ¶ 57. That is, the Supreme Court found that the Government Claims Act
4 was not a bar to arbitration or to the confirmation of arbitration awards; rather, it was “completely
5 bypassed.” *Id.* ¶¶ 51, 57-59, 61.

6 As a result, the Supreme Court’s opinion supports Guam YTK’s position, and eviscerates the
7 Port’s. The whole point of the Supreme Court’s holding was to enable immediate enforcement of the
8 arbitration award *instead of sending the prevailing party into a labyrinth of Government Claims Act*
9 *procedures to enforce it.* *Id.* The Supreme Court recognized that requiring additional procedures would
10 undermine the whole purpose of arbitration. *See id.* at ¶ 59. Now the Port is arguing that to enforce an
11 award the prevailing party should be sent into a labyrinth anyway – although the Port is not even sure if
12 this should entail going to the Legislature or filing another lawsuit. Regardless, the Port is asking the
13 Court to ignore the Supreme Court’s holding.

14 In the portion of the Port’s brief excerpted above (from pages 7-8 of the Port’s Motion), the Port
15 quoted language from the Supreme Court’s opinion where it is describing the *Miron* approach and
16 quoting language from the *Miron* case – *which the Supreme Court rejected in favor of the Paramount*
17 *approach.* The Port not only failed to disclose that the quotations from the Supreme Court came from
18 its description of the rejected *Miron* approach but also affirmatively tried to conceal that fact from the
19 Court by inserting “(citations omitted)” where the *Miron* citation was. (Mot. at 7-8.) This reflects the
20 Port’s desperation and its understanding that the only way it can prevail in this case is by turning the
21 actual law and legal authorities on their head.³

22 //

23 //

24
25 _____
26 ³ This is not the first time the Port has deliberately misrepresented the opinion of the Guam Supreme Court in *Guam YTK*
27 *Corp. v. Port Auth. of Guam*, 2014 Guam 7. In its opposition to the motion to confirm the arbitration award, the Port
28 asserted that in *Guam YTK Corp.* the “Supreme Court did not disturb this Court’s finding or PAG’s contention that the lease
was void *ab initio* and for that reason unenforceable.” (Def.’ Opp’n Pl.’s Mot. Confirm Arb. Award (“Opp.”), filed on Jun.
20, 2016, at 5:11-12.) Guam YTK showed that this was simply false. (Pl.’s Reply Def.’s Opp’n Mot. Confirm Arb. Award,
filed on Jul. 5, 2017, at 5).

1 **2. The Court Was Authorized to Order that the Port “Shall Pay” the Judgment**

2 The Port also argues that the Court somehow exceeded its authority by ordering that the Port
3 “shall pay” the Judgment, and that this constitutes “specific performance” and relief over and above the
4 relief granted in the arbitration award. This is patently wrong.

5 First, the Port does not point to any authority to support its novel argument that ordering a party
6 to pay the amount owed is “specific performance.” This is because the Port’s argument reflects a basic
7 misunderstanding of what specific performance is. “Specific performance and injunction are
8 alternatives to the award of damages as means of enforcing contracts.” Restatement (Second) of
9 Contracts 16 3 Intro. Note (1981). Specific performance essentially “orders a party to render the
10 performance that he promised.” *Id.* § 357. The basic rule is that “[s]pecific performance or an
11 injunction will not be ordered if damages would be adequate to protect the expectation interest of the
12 injured party.” *Id.* § 359(1). In the Judgment, the Court did not order the Port to render a performance
13 that it promised – such as allowing Guam YTK to exercise its options to maintain possession of the
14 Wharf – but rather directed the Port to pay damages in the amount of the arbitration award, plus fees
15 and costs. By definition, this is not “specific performance.”

16 Second, the Court did not order anything over and above what the arbitrators did in the
17 Arbitration Award. The Arbitration Award found that under the Lease “PAG is to pay YTK the market
18 value of its leasehold interest” and that “the market value of that leasehold interest is \$12.7 Million
19 Dollars.” (*See* Decl. Genevieve P. Rapadas Supp. Pl. Mot. Confirm Arb. Award (“Rapadas Decl.”),
20 filed May 19, 2016, Ex. 3 [Arbitration Award at 3:15-17].) Based on these, the Panel ordered that it
21 “hereby awards the amount of Twelve Million Seven Hundred Thousand Dollars (\$12,700,000.00) to
22 Guam YTK Corporation.” (*Id.* at 3:13-17, 21-22 (emphasis added).) The Arbitration Panel also found
23 that Guam YTK was “entitled” to interest and attorney’s fees and costs. (*Id.* at 3:24-29; 4:2-3.) In the
24 Judgment the Court merely ordered that the Port “shall pay” those amounts.

25 There is no difference between the legal obligations set forth in the Arbitration Award and the
26 Judgment. Courts routinely use all of the language referenced above interchangeably: sometimes courts
27 order that parties “shall pay” judgment amounts, sometimes parties are “entitled” to judgment amounts,
28 and sometimes parties are “awarded” judgment amounts – but it all *means* the same thing. *E.g., Mallin*

1 v. *Nat'l City Mortg. Inc.*, No. 05-1499 SC, 2007 WL 4208336, at *6 (N.D. Cal. Nov. 27, 2007)
2 (enforcing judgment by ordering "Defendants *shall pay* Plaintiffs attorney's fees in the amount of
3 \$32,061.50.") (emph. added); *Bonilla v. KDH Backhoe Serv., Inc.*, No. C-05-3259 EMC, 2006 WL
4 3193238, at *2 (N.D. Cal. Nov. 3, 2006) (ordering "[t]he Trust Funds are *entitled* to judgment against
5 KDH Backhoe, in its own name and doing business as H & H in the amount of \$106,854.51....");
6 *Gordillo v. Ford Motor Co.*, No. 1:11-CV-01786 MJS, 2014 WL 2801243, at *8-9 (E.D. Cal. June 19,
7 2014) ("The Court *awards* Plaintiff \$44,189.75 in fees and \$8,171.11 in costs. IT IS SO ORDERED.").

8 The Port cannot show that the rights of the parties in any given action are affected by whether
9 the court uses the phrase "shall pay" or "entitled to" or "awards." This is because regardless of the
10 language used all prevailing parties must proceed with whatever tools are available to collect or execute
11 on the judgment in question. Since there is no substantive difference between the language in the
12 Arbitration Award and in the Judgment, the Port's argument that the Court ordered something over and
13 above what the Panel did is frivolous.

14 Third, even if the Court had ordered additional relief for enforcement purposes (which it did not
15 do), the Court would have been authorized to do so. As shown above, a Court decides what its own
16 judgments will say, *see* Guam R. Civ. P. 58(a), and here the Court was fully authorized to enforce the
17 Judgment as it would any other judgment, including by using the language "shall pay" or by expressly
18 retaining jurisdiction for enforcement purposes – just as it commonly does with other judgments. *See* 7
19 GCA § 42111 (the judgment "may be enforced as if it had been rendered in an action in the court in
20 which it is entered"); *see also* 7 GCA § 42A702(f) (same). The Port's arguments to the contrary cannot
21 be reconciled with either the plain language of the arbitration statute or the opinions of the Supreme
22 Court.

23 Based on the foregoing, the Port's argument that the Court exceeded its authority by issuing the
24 Judgment fails.

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1 **C. The Court Did Not Commit “Manifest Error” Resulting in “Manifest Injustice” by**
2 **Refusing to Vacate the Arbitration Award Based on the Port’s Interpretation of 12**
3 **GCA § 10105(i)**

4 The Port contends that the Court committed a “mistake of law” resulting in “manifest injustice”
5 by refusing to overturn the Arbitration Award on grounds that 12 GCA 10105(i) rendered the Lease
6 void *ab initio*. To be clear, under Guam law the applicable standard is somewhat different: A party
7 seeking reconsideration must show a “manifest error of law,” not merely a mistake of law. *Lujan*, 2016
8 Guam 28 ¶ 14 (citation omitted). A manifest error “is ‘an error that is plain and indisputable, and that
9 amounts to a complete disregard of the controlling law or the credible evidence in the record.’ ” *In re*
10 *Oak Park Calabasas Condo. Ass’n*, 302 B.R. 682, 683 (Bankr. C.D. Cal. 2003) (citation omitted).

11 The Port cannot show any error by this Court, much less manifest error or manifest injustice.
12 The gist of the Port’s argument is that the Court should ignore the standard of review prescribed by the
13 Guam Supreme Court and the arbitration statute and instead apply the standard of review for a decision
14 by an administrative agency. Under such review, the Port contends, the Court must provide its own
15 definitive interpretation of 12 GCA 10105(i) and apply it to the Lease – which according to the Port
16 would render the Lease void *ab initio*.

17 This is merely a re-packaging of the Port’s same old argument that the Arbitration Award
18 should be vacated in light of 12 GCA 10105(i). (*See* Port’s Mot. Vacate, filed July 5, 2016, at 4-9.)
19 Motions for reconsideration “are both ‘procedurally and substantively deficient’ if they simply reiterate
20 in greater detail arguments previously made before the court. ‘Supplementing and further detailing
21 previous arguments are not sufficient bases for reconsideration [under Rule 59(e)].” *Lujan*, 2016
22 Guam 28 ¶ 14. Because this argument is simply a re-framing of the same argument the Port made in its
23 motion to vacate, it is procedurally and substantively deficient on its face.

24 The latest iteration of this argument is even weaker than the last version that the Court rejected,
25 because now the Port is even more openly trying to get the Court to apply the wrong standard of review
26 for an arbitration award. Relying on *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S.
27 837 (1984), the Port contends that the Court was required to set forth its own independent interpretation
28 of 12 GCA 10105(i) and apply it to the Lease. But *Chevron* addressed review of an administrative

1 regulation, not an arbitration award. While courts reviewing an administrative decision may review the
2 merits of the underlying decision, courts reviewing an arbitration award may not. *Guam YTK Corp.*,
3 2014 Guam 7 ¶ 58. Further, while a court reviewing an administrative decision may, in certain
4 circumstances, give some deference to the administrative agency, this is entirely different from the
5 analysis that this Court was charged with.

6 The Guam Supreme Court in this case held that the Panel, not the Court, was responsible for
7 ruling on the validity of the Lease in the first instance. See *Guam YTK Corp.*, 2014 Guam 7 ¶ 26 (“the
8 validity and enforceability of the Lease Agreement is an issue that was clearly and unmistakably
9 reserved for arbitration....”). In reviewing the Arbitration Panel’s unanimous ruling that the Lease was
10 valid, the Court was not permitted to review the merits of the decision, as stated above, but rather the
11 Court could only review the decision to see if it should be vacated on narrow statutory grounds:

- 12 • “where the award was procured by corruption, fraud, or undue means”;
- 13 • “where there was evident partiality or corruption in the arbitrators, or either of them”;
- 14 • “where the arbitrators were guilty ... of any other misbehavior by which the rights of
any party have been prejudiced”; or
- 15 • “where the arbitrators exceeded their powers...”

16 7 GCA § 42108(a)-(d) (1993); 7 GCA § 42A701(b)(1)-(4). In its motion to vacate, the Port argued that
17 by finding the Lease valid the Panel showed a “manifest disregard of the law.” *Asia Pacific*, 2015
18 Guam 3 ¶¶ 19, 22.

19 The Guam Supreme Court has articulated exactly what is required to prove “manifest disregard
20 of the law” when reviewing an arbitral decision. “[M]anifest disregard of the law means something
21 more than just an error in the law or a failure on the part of the arbitrators to understand or apply the
22 law.” *Id.* ¶ 23 (quoting *Gov’t of Guam v. Pacificare Health Ins. Co. of Micronesia (“Pacificare”)*, 2004
23 Guam 17 ¶ 47). Rather, “a party seeking vacation must show[:] [1] that ‘the error [was] obvious and
24 capable of being readily and instantly perceived by the average person qualified to serve as an
25 arbitrator,’ [2] that the law disregarded was ‘well defined, explicit, and clearly applicable,’ and [3] that
26 the arbitrator chose to ignore this well-defined law.” *Id.* (quoting *Pacificare*, 2004 Guam 17 ¶ 46)
27 (numbering in brackets added). To show that the arbitrator ignored the law, the party must show “that
28

1 the arbitrator appreciates the existence of a clearly governing legal principle but decides to ignore or
2 pay no attention to it." *Sumitomo Constr. Co. v. Zhong Ye, Inc.*, 1997 Guam 8 ¶ 19.

3 The Port's real objection here is that the Court followed the law. Instead of ruling on the merits
4 of the dispute and deciding for itself in the first instance whether the Lease was valid, the Court
5 followed the steps set forth by the Supreme Court by first examining whether 12 GCA 10105(i) was
6 "well defined, explicit, and clearly applicable." The Court found that the plain language of the statute
7 was "subject to various interpretations" (Order at 7:27), and that "the Supreme Court of Guam has not
8 interpreted the meaning of the statute, and the Guam Legislature has not provided further clarity as to
9 the policy behind the statute." (*Id.* at 8:1-2.) Based on these findings, the Court determined that it could
10 not find 12 GCA 10105(i) "to be 'well-defined, explicit, and applicable' under the manifest disregard
11 of the law standard" and therefore "cannot find that the Arbitration Panel, in interpreting Section
12 10105(i) and finding the [Lease] valid, manifestly disregarded the law." (Order 8:3-7.) That is, the
13 Court correctly identified the standard of review, applied the facts to that standard, and then held that
14 the Port had failed to make even the first showing required to meet that standard. The Court was not
15 required or permitted to do more than this.

16 The Port tries to confuse the standard by arguing that if the Court believed that the statute was
17 ambiguous then it must dig deeper into the structure of the statute and the policy considerations to
18 reach a definitive interpretation. (Mot. at 10.) But as the Supreme Court explained that was the Panel's
19 job, not the Court's. And that is what the Panel did. As reflected in Guam YTK's opposition to the
20 Port's motion to vacate, during the arbitration Guam YTK conclusively demonstrated that the statutory
21 history of 12 GCA § 10105(i) was ambiguous and that the courts have not resolved the issue of how the
22 statute is to be applied. (Guam YTK's Opp. Mot. Vacate, filed on Aug. 2, 2016, at 10-12; Decl. Jay D.
23 Trickett Supp. Pl.'s Reply Def.'s Opp'n Mot. Confirm Arb. Award, filed on Jul. 5, 2016 ("Trickett
24 Decl."), Ex. 7 [YTK Post-Arb. Brief at 20-22], Ex. 6 [YTK Pre-Arb. Brief at 26-28]; Opp. Attach. C
25 [Port Closing Brief at 18-20].) The express purpose of Public Law No. 26-28 was to facilitate long-term
26 investments in the Port. Consistent with this, in Public Law No. 26-28 the Legislature stated that its
27 intent was to place a restriction on the "initial term" of lease agreements, but did not mention, much
28 less prohibit, options or renewals to extend the initial term. *See* 12 GCA § 10105(i). In fact, a fair

1 reading of Public Law No. 26-28 implies that extended terms were contemplated. Consistent with this
2 reading, the legality of the Lease was supported by the signatures and assurances of the Governor, the
3 Lieutenant Governor, the acting Attorney General, the Port Legal Counsel, the Chairperson of Port
4 Board of Directors, and the Port's General Manager, as well as explicit representations and warranties
5 in the Lease itself. (Trickett Decl., Ex. 7 [YTK Post-Arb. Brief] at 5-6, 20-21], Ex. 9.) Indeed, the Port
6 *itself* maintained that the Lease was valid until it changed legal counsel in 2012. (*Id.* Ex. 7 [YTK Post-
7 Arb. Brief] at 14, 20].) Further, several former high level Port officials (including Senator Mary Torres)
8 testified at the arbitration that they were extremely concerned when the Port's current legal counsel
9 reversed the Port's prior position and declared that the Lease was "void *ab initio*." (*Id.* at 2-3, 10, 11,
10 19.) The Panel's decision regarding the validity of the Lease was based on an enormous amount of
11 testimony, documentary evidence and briefing by Guam YTK – which the Port was completely unable
12 to refute.⁴

13 The Court's task was not to impose its own view of the merits by devising and applying its own
14 independent interpretation of 12 GCA 10105(i). Rather, the Court's duty was to review the Panel's
15 decision under the "manifest disregard" standard by determining if the Port had met its initial burden of
16 proving that 12 GCA 10105(i) was "well-defined, explicit, and applicable." The Court did this. Because
17 it determined that the Port did not meet its burden, that was the end of the inquiry. The Court acted
18 correctly.

19 In sum, the Port cannot show that the Court committed a manifest error of law resulting in
20 manifest injustice while reviewing the Arbitration Award and issuing the Judgment.

21 **D. The Court Did Not Commit a Manifest Error regarding the Port's "Jurisdictional**
22 **Timeliness Issue and Claim"**

23 The Port's third argument for reconsideration is entitled "This Court And The Arbitration Panel
24 Failed to Address PAG's Jurisdictional Timeliness Issue and Claim." (Mot. at 12.) Although the Port's
25

26 _____
27 ⁴ It is important to note that in addition to proving the validity of the Lease, Guam YTK also showed that the Port had
28 waived its argument regarding the "invalidity" of the Lease and that 12 GCA § 10105(i) was only the *beginning* of the
inquiry for the Panel because the Lease included provisions – including the Buy-Out Clause – that survived in the event the
DAL was later determined to be illegal. In short, the Port would have been found liable with or without a valid lease.

1 argument is not entirely clear, it appears to be stating that (1) the Panel and the Court both wrongly
2 failed to address the Port's argument that there was no arbitral jurisdiction because Guam YTK's
3 arbitration demand was untimely and (2) there is a "jurisdictional" defect because the Panel wrongfully
4 failed to indicate when Guam YTK's claims arose or the date on which the "damages" began to accrue.
5 As a threshold matter, the Port does not even attempt to meet its burden of showing how either of these
6 arguments satisfies the grounds for reconsideration. *Lujan*, 2016 Guam 28 ¶ 14. Because of this failure,
7 the Court should reject these arguments summarily. *Id.*

8 With respect to the Port's *first argument* – that the Court and Panel wrongfully failed to address
9 its claim that Guam YTK's arbitration demand was untimely – there is another threshold problem.
10 Since this argument was already made in the Port's motion to vacate (Mot. Vacate 1-4), the repetition
11 of this argument here is "procedurally and substantively deficient." *Lujan*, 2016 Guam 28 ¶ 14.

12 Moreover, the Port's assertion that the Court and Panel wrongfully failed to address its
13 timeliness argument is bewildering. This Court heard and rejected the Port's timeliness argument. In its
14 Order, the Court directly addressed the argument and explained that the Port had failed to even bother
15 "to specify which grounds for vacating an arbitration award, if any, apply." (Order 5:16-17.) The Court
16 also correctly held that it was the Panel that was tasked with determining whether the arbitration
17 demand was timely, not the Court, and that with respect to that issue "[t]his Court is not permitted to
18 review the merits of the controversy." (*Id.* at 6:5-6 (citing *Guam YTK Corp.*, 2014 Guam 7 ¶ 58).)⁵
19 Indeed, Guam YTK has shown that this dispute involved questions of fact and law that were
20 extensively briefed and argued before the Panel. (Opp. Mot. Vacate at 4.) In its motion to vacate, the
21 Port was asking the Court to reverse the Panel's decision by arguing that the Panel should have
22 accepted the Port's version of the facts and found waiver – but Guam YTK showed that courts cannot
23 make re-determinations of arbitrators' factual findings. (*Id.* (citing and discussing numerous cases).)
24 Accordingly, the Port's real complaint again is that the Court followed the law set forth by the Guam
25 Supreme Court, rather than simply doing what the Port wanted. Thus, this Court committed no error.

26
27
28 ⁵ Notably, Guam YTK also showed the Panel that based on the overwhelming evidence (1) the Port had waived its objection
to timeliness and (2) Guam YTK's demand was, in fact, timely. (*See* Opp. Mot. Vacate at 3-8.)

1 The Port's *second argument* on this topic is even more unclear, but appears to be that there is a
2 "jurisdictional" defect because the Panel wrongfully failed to make an express finding as to when
3 Guam YTK's claims arose and when the "damages" began to accrue. This argument is also
4 procedurally and substantively deficient on its face. While the Port argued in its motion to vacate that
5 the arbitration demand was untimely, it did not argue that the Arbitration Award was jurisdictionally
6 defective because it did not indicate when the claim arose or when "damages" began to accrue. (Mot.
7 Vacate 1-4.) "Motions made under Rule 59(e) are aimed at reconsideration, not initial consideration,
8 and thus cannot be used to present a new legal theory, raise arguments for the first time, or present
9 evidence for the first time when they could have reasonably been raised earlier." *Lujan*, 2016 Guam 28
10 ¶ 14. Because the Port did not raise this argument previously, it cannot raise it here.

11 Had the Port made this argument earlier, it would have failed. The Port cites no authority for its
12 proposition that the Arbitration Award must include a discussion of when the underlying claims arose.
13 Moreover, the Port misconstrues the nature of the award. The Arbitration Award determined that the
14 Lease was both valid and had never been legally terminated but "that the Lease is hereby terminated
15 effective as of the date of this Order." (*See Rapadas Decl.*, Ex. 4 [DAL § 16.1], Ex. 3 [Arbitration
16 Award at 3:12].) The Panel then determined that "Article 21.1 of the Lease provides that in the event
17 that the lease is terminated prior to 45 years from its effective commencement date, [the Port] is to pay
18 YTK the market value of its leasehold interest." (*Id.*, Ex. 3 [Arbitration Award at 3:13-14].) The Panel
19 received extensive testimony, documentary evidence, and argument regarding the market value of
20 Guam YTK's leasehold interest. (*See Trickett Decl.* Ex. 7 [YTK Post-Arb. Brief at 15-17].) The Port
21 had a fair opportunity to present evidence and argument to the Panel regarding how that evaluation
22 should be made. The Panel then issued its award "*[b]ased on the evidence presented at the hearing.*"
23 (*Rapadas Decl.* Ex. 3 [Arbitration Award at 3:15] (emphasis added).) That is, the amount of the award
24 was determined based on the resolution of the types of disputes of fact that the Port is complaining
25 about here. The Port appears to be arguing that these factual issues should have been resolved
26 differently, but that is an issue that goes to the merits that no court is permitted to review. *Guam YTK*
27 *Corp.*, 2014 Guam 7 ¶ 58.

1 Accordingly, the Port cannot show that the Court committed any error of law, much less a
2 manifest error, in reviewing the Arbitration Award regarding the timeliness of the arbitration demand.

3 **E. Reconsideration Is Not Warranted Based on Sovereign Immunity or the Government**
4 **Claims Act**

5 The Port has previously argued to this Court that the Arbitration Award should be vacated
6 because it violates principles of sovereign immunity and the Government Claims Act. (Mot. Vacate at
7 9-10.) Based on Supreme Court rulings, as well as the fact that the Port did “not even attempt to
8 determine which statutory or non-statutory grounds apply,” this Court rejected the Port’s motion for
9 vacatur on such grounds. (Order at 11:27-12:4.)

10 The Supreme Court rulings that this Court relied on were clear. The Supreme Court held in this
11 very case “that sovereign immunity is not implicated or threatened in cases such as this, where a valid
12 and enforceable arbitration agreement exists.” *Guam YTK Corp.*, 2014 Guam 7 ¶ 41 (citing *Pacificare*,
13 2004 Guam 17 ¶ 13 n.2). The Court further held, “[E]ven if sovereign immunity is implicated, it has
14 been waived.” *Id.* ¶ 43. The Supreme Court also held in this case that the Government Claims Act does
15 not apply. *Id.* ¶¶ 56-60, 61 (“Therefore, the trial court erred in finding that the Government Claims Act
16 is a jurisdictional bar to Guam YTK’s claims.”).

17 The Port now presents these same arguments again, apparently attempting to elaborate on them
18 by citing provisions of Guam law it has not referenced before. Insofar as the Port is merely elaborating
19 on prior arguments, its motion is “procedurally and substantively deficient,” as shown above. *Lujan*,
20 2016 Guam 28 ¶ 14. And insofar as the Port is trying to assert a substantively new argument, motions
21 for reconsideration “cannot be used to present a new legal theory, raise arguments for the first time, or
22 present evidence for the first time when they could have reasonably been raised earlier.” *Id.*

23 The Port’s citation to new provisions of Guam law does not change the fact that its arguments
24 regarding sovereign immunity and the Government Claims Act are meritless. The Port contends that in
25 the final version of the “arbitration bill” in 2003, “the Legislature added the limitation, ‘shall not waiver
26 the limits on liability of a public agency or public entity otherwise provided by law.’” (Mot. at 15:15-
27 17) (quoting “§ 42907”). Unfortunately, this appears to be another attempt to mislead the Court. The
28 Port should have clearly disclosed that the Bill provision quoted by the Port states that it only applies to

1 "Chapter 42-B," which addresses non-binding court-referred arbitration. The provision in question was
2 codified at 7 GCA § 42B107 and provides, in full (with emphasis added):

3 This Article shall apply to any civil action otherwise *within the scope of this Chapter*
4 *42B* in which a party to the action is a public agency or public entity but shall not waive
5 the limits on liability of a public agency or public entity otherwise provided by law.

6 This case involves *binding arbitration*, arising from the Guam Civil Arbitration Law and/or Chapter
7 42A of the GIAC. It has nothing to do with Chapter 42B.

8 Further, if anything, the provision cited by the Port undercuts its own position. The
9 Legislature's decision to include a limitation in Chapter 42B but exclude such limitation from Chapter
10 42A must be presumed to be deliberate and should be given effect by the courts, such that any limits on
11 liability of a public agency in the Government Claims Act or anywhere else would not apply in the
12 context of binding arbitration under Chapter 42A. And such a reading is consistent with the Supreme
13 Court's holding that a government agency that agrees to binding arbitration is "bound by the provisions
14 of such agreement as any other party would [be]" and that once they have agreed to binding arbitration
15 "the parties would completely bypass the Government Claims Act claims filing process." *Guam YTK*
16 *Corp.*, 2014 Guam 7 ¶¶ 51, 57 (quoting *Pacificare*, 2004 Guam 17 ¶ 13 n. 2; *Paramount*, 32 Cal. Rptr.
17 2d at 320).

18 CONCLUSION

19 Based on the foregoing, Guam YTK respectfully requests that the Court deny the Port's motion
20 for reconsideration.

21 Respectfully submitted this 16th day of March, 2017.

22 CALVO FISHER & JACOB LLP
23 Attorneys for Plaintiff
24 *Guam YTK Corporation*

25
26 By: 

27 GENEVIEVE P. RAPADAS
28

FILED
SUPERIOR COURT
OF GUAM

2017 MAR 16 PM 2:53

CLERK OF COURT

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11 **IN THE SUPERIOR COURT OF GUAM**

12 **GUAM YTK CORPORATION,**

13 Plaintiff,

14 vs.

15 **PORT AUTHORITY OF GUAM,**

16 Defendant.

CIVIL CASE NO. CV1170-12

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF PLAINTIFF GUAM YTK
CORPORATION'S OPPOSITION TO
DEFENDANT'S MOTION FOR
RECONSIDERATION PURSUANT TO
GRCP RULE 59(e) AND RULE 60(b)**

17
18
19
20
21
22
23 The Law Offices of
PHILLIPS & BORDALLO

24 RECEIVED BY: *Boya*

25 DATE: 16 MAR 17

26 TIME: 3:10pm

1 Plaintiff Guam YTK Corporation ("Guam YTK"), by and through its counsel of record, Calvo
2 Fisher & Jacob LLP, hereby requests that the Court take judicial notice of the attached document in
3 support of Guam YTK's opposition to defendant's motion for reconsideration pursuant to GRCP Rule
4 59(e) and 60(b).

5 Under the Federal Rules of Evidence upon which Guam Rules of Evidence 201 is based, "[a]
6 court may take judicial notice of "matters of public record" See *Taitano v. Calvo Finance Corp.*,
7 2008 Guam 12 ¶ 2, (citing *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001); *In re Zoran*
8 *Corp. Derivative Litigation*, 511 F.Supp.2d 986, 1001 (N.D.Cal. 2007) ("court may take judicial notice
9 of public filings"); see also *Cantu v. Resolution Trust Corp.*, 4 Cal. App. 4th 857, 877 (1992) (court
10 "may properly take judicial notice of a party's earlier pleadings and positions as well as established
11 facts from both the same and *other cases*") (emphasis in original). Moreover, under Guam Rules of
12 Evidence 201(b)(2), a judicially noticed fact is one "capable of accurate and ready determination by
13 resort to sources whose accuracy cannot reasonably be questioned." The basis for this request is that
14 these documents constitute a public record and thus are properly subject to judicial notice. Further,
15 under Guam Rules of Evidence 201(d), "[a] court shall take judicial notice if requested by a party and
16 supplied with the necessary information."

17 1. Attached hereto as **Exhibit 1** is a true and correct copy of Public Law 27-81
18 Memorandum to Judiciary and Transportation Committee Members from Judiciary and Transportation
19 Committee Chairman, with attachments.

20 2. Attached hereto as **Exhibit 2** is a true and correct copy of the voting sheet on April 23,
21 2004 for Public Law 27-81 (Bill No. 172(LS)).

22
23 Respectfully submitted this 16th day of March, 2017.

24 CALVO FISHER & JACOB LLP
25 Attorneys for Plaintiff
26 *Guam YTK Corporation*

27
28 By: 
GENEVIEVE P. RAPADAS

EXHIBIT 1



Committee on Judiciary & Transportation

I Mina' Bente Siete Na Liheslaturan Guahan

*Twenty-Seventh
Guam Legislature*

MEMORANDUM

CHAIRMAN:
Senator F Randall
Cunliffe

TO: JUDICIARY & TRANSPORTATION COMMITTEE MEMBERS

Vice Chairman:
Senator John M.
Quinata

FROM: JUDICIARY & TRANSPORTATION COMMITTEE CHAIRMAN

Members:
Senator Robert
Klitzkie

SUBJECT: BILL 172(LS)

Senator Lon A.
Leon Guerrero

Senator Jesse
Anderson Lujan

Senator Tina R.
Muña-Barnes

Senator Rory J.
Respicio

Senator Antoinette
(Toni) D. Sanford

Transmitted for your information and action is the committee report on **BILL 172(LS)** AN ACT TO REPEAL §§ 42101 THROUGH 42111 OF CHAPTER 42 AND TO ENACT A NEW CHAPTER 42-A RELATIVE TO INTERNATIONAL COMMERCIAL ARBITRATIONS AND TO ENACT A NEW CHAPTER 42-B RELATIVE TO COURT-REFERRED ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION, TO REPEAL §§ 43101 THROUGH 43108 OF CHAPTER 43 AND TO ENACT A NEW CHAPTER 43-A RELATIVE TO INTERNATIONAL COMMERCIAL MEDIATION AND TO ENACT A NEW CHAPTER 43-B RELATIVE TO COURT-REFERRED MEDIATION, ALL CHAPTERS IN TITLE 7, GUAM CODE ANNOTATED, AS SUBSTITUTED BY THE COMMITTEE ON JUDICIARY & TRANSPORTATION

This memorandum is accompanied by the following:

1. Committee Voting Sheet
2. Committee Report
3. Bill 172(LS)
4. Public Hearing Sign-in Sheet
5. Notice of Public Hearing

Office Address:
Ada's
Commercial &
Professional Center

138 E. Marine Dr.
Hagatna, Guam
(USA) 96910

Mailing Address:
155 Hessler St.
Hagatna, Guam 96910

Tel: 671.477.5310
Fax: 671.477.5300

Email: COJAT@email.com

Please take the appropriate action on the attached voting sheet. Should you have any questions regarding the report or the accompanying documents, please do not hesitate to contact me or my Committee Director, Mr. Joshua Tenorio.

Sincerely,


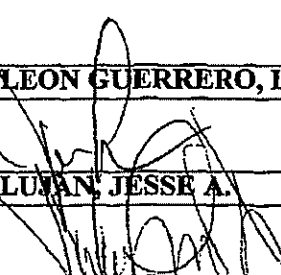



F. RANDALL CUNLIFFE

Attachments

COMMITTEE ON JUDICIARY & TRANSPORTATION

Voting Record Sheet

BILL NO. 172 (LS) - AN ACT TO REPEAL §§ 42101 THROUGH 42111 OF CHAPTER 42 AND TO ENACT A NEW CHAPTER 42-A RELATIVE TO INTERNATIONAL COMMERCIAL ARBITRATIONS AND TO ENACT A NEW CHAPTER 42-B RELATIVE TO COURT-REFERRED ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION, TO REPEAL §§ 43101 THROUGH 43108 OF CHAPTER 43 AND TO ENACT A NEW CHAPTER 43-A RELATIVE TO INTERNATIONAL COMMERCIAL MEDIATION AND TO ENACT A NEW CHAPTER 43-B RELATIVE TO COURT-REFERRED MEDIATION, ALL CHAPTERS IN TITLE 7, GUAM CODE ANNOTATED, AS SUBSTITUTED BY THE COMMITTEE ON JUDICIARY & TRANSPORTATION

COMMITTEE MEMBERS	TO PASS	NOT TO PASS	TO ABSTAIN
 CUNLIFFE, F RANDALL, Chairman	✓		
QUINATA, JOHN M., Vice Chairman			
KLITZKIE, ROBERT			
LEON GUERRERO, LOU A.			
 LUJAN, JESSE A.	✓		
MUNA-BARNES, TINA R.			
 RESPICIO, RORY J.	✓		
 SANFORD, ANTOINETTE D.	✓		

MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN
COMMITTEE ON JUDICIARY & TRANSPORTATION
SENATOR F. RANDALL CUNLIFFE - CHAIRMAN



COMMITTEE REPORT

ON

BILL 172(LS) AN ACT TO REPEAL §§ 42101 THROUGH 42111 OF CHAPTER 42 AND TO ENACT A NEW CHAPTER 42-A RELATIVE TO INTERNATIONAL COMMERCIAL ARBITRATIONS AND TO ENACT A NEW CHAPTER 42-B RELATIVE TO COURT-REFERRED ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION, TO REPEAL §§ 43101 THROUGH 43108 OF CHAPTER 43 AND TO ENACT A NEW CHAPTER 43-A RELATIVE TO INTERNATIONAL COMMERCIAL MEDIATION AND TO ENACT A NEW CHAPTER 43-B RELATIVE TO COURT-REFERRED MEDIATION, ALL CHAPTERS IN TITLE 7, GUAM CODE ANNOTATED, AS SUBSTITUTED BY THE COMMITTEE ON JUDICIARY & TRANSPORTATION

**Introduced by the Committee on Judiciary & Transportation
By Request of I Maga'láhen Guáhan, the Governor of Guam,
In Accordance with the Organic Act of Guam**

March 25, 2004

OVERVIEW

The Committee on Judiciary and Transportation held a public hearing at 9:00 a.m. on November 14, 2003 on the following measure:

BILL 172(LS) - AN ACT TO REPEAL AND REENACT §42101 THROUGH §42106, TO REPEAL §42107 THROUGH §42111, AND TO ADD NEW SECTIONS §42201 THROUGH §42909, ALL IN CHAPTER 42 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO INTERNATIONAL COMMERCIAL ARBITRATIONS AND DOMESTIC ARBITRATIONS

SENATORS PRESENT AT THE PUBLIC HEARING WERE:

Judiciary Chairman F. Randall Cunliffe
Vice Chairman John Quinata
Senator Robert Klitzkie
Senator Lou Leon Guerrero
Senator Rory J. Respicio

I. SYNOPSIS OF BILL

On August 1, 2003, Governor Felix P. Camacho transmitted proposed legislation to establish a comprehensive statutory framework for the arbitration and mediation of domestic and international disputes on Guam. Citing the movement of various states and the federal government to adopt laws providing mechanisms for Alternative Dispute Resolution (ADR) and the enactment of the Federal Arbitration Act (FAA), the Governor proposed that Guam follow suit and adopt two statutes to accomplish the following:

- (1) The establishment of the Guam International Mediation and Arbitration Center;
- (2) The repeal and reenactment of the local civil arbitration law found in Chapter 42 of Title 7 of the Guam Code Annotated, which would revise and establish an framework for arbitration; and
- (3) The repeal and reenactment of the local mediation statutes to establish a framework for the mediation of civil cases found in Chapter 43 of Title 7 of the Guam Code Annotated.

The first bill, introduced by the Committee on Judiciary and Transportation as Bill 172(LS) is relative to Arbitration while the second bill, also introduced by the Committee on Judiciary & Transportation as Bill 185(COR) AN ACT TO REPEAL AND REENACT SECTIONS §43101 THROUGH §43108, AND TO ADD NEW §43201 THROUGH §43604, ALL IN CHAPTER 43 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO THE EARLY RESOLUTION OF DISPUTES THROUGH MEDIATION, is relative to mediation.

II. SUMMARY OF TESTIMONY

The Committee on Judiciary & Transportation held a hearing for Bill 172(LS) and Bill 185(COR) on November 14, 2003. Although the bills were heard independently, it became clear that the legislation would have to be addressed together, as Bill 185(COR) made references to the Guam International Mediation and Arbitration Center proposed in Bill 172 (LS). Therefore, the Committee includes the transcripts of the hearings for both bills in this Committee Report. The substitute version of Bill 172 (LS) merges the intent and content of both Bill 172 and Bill 185.

The following individuals provided testimony to the Committee relative to Bill 172(LS):

- Mr. Gerald Perez, Administrator of the Guam Economic Development & Commerce Authority (GEDCA) provided written testimony IN FAVOR of the legislation
- Mr. Bruce Bradley, a Research Attorney employed with the Supreme Court of Guam provided oral testimony IN FAVOR of the legislation
- Attorney Richard A. Pipes provided written testimony IN OPPOSITION of the legislation

The following individuals provided testimony to the Committee relative to Bill 185(COR):

- Mr. Gerald Perez, Administrator of the Guam Economic Development & Commerce Authority (GEDCA) provided written testimony IN FAVOR of the legislation
- Mr. Bruce Bradley, a Research Attorney employed with the Supreme Court of Guam provided oral testimony IN FAVOR of the legislation
- Attorney Patrick Wolff of Inafa' Maolek, provided oral and written testimony IN OPPOSITION of the legislation as currently drafted, but IN SUPPORT of the intent
- Attorney Dan Sommerfleck, Director of Guam Legal Services, provided oral testimony IN FAVOR of the legislation

In Governor Camacho's correspondence, he expressed his position that passage of the proposed legislation would accomplish the following:

- Provide much-needed relief for congested court dockets
- Provide flexible alternatives for conflict resolution
- Facilitate the establishment and marketing of Guam as a center for the conduct of international commercial arbitration

The Governor emphasized that the establishment of the Guam International Mediation and Arbitration Center is one component of his economic recovery plan. The Governor believes that Guam is well positioned to operate the center due to its geographic location between the United States and Asia and will attract additional visitors to Guam. According to the Governor, the draft legislation is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, as well as California law. The Governor pointed to the review of the draft law by Justice Francis Tydingco-Gatewood and Judge Michael J. Bordallo, who are chairing the Supreme Court of Guam's Subcommittee on Alternative Dispute Resolution.

Bill 172(LS) Hearing

During the hearing, Attorney Bradley reported that there was an ongoing review of Bill 172 & Bill 185 by the Subcommittee on Alternative Dispute Resolution, which includes a dozen attorneys, judges and justices and Retired Chief Justice Benjamin J.F. Cruz. However, he indicated that the Unified Judiciary is in support of Bill 172(LS) and Bill 185(COR) subject to ongoing technical review by the Subcommittee.

Senator Klitzkie indicated his support for the legislation.

Senator Leon Guerrero indicated her position that the Committee suspend action on Bill 172 pending the position submitted by the Supreme Court of Guam.

Attorney Richard Pipes submitted written testimony opining that as drafted, Bill 172 would be unconstitutional and inorganic because it unreasonably restricts a person's right of access to the Superior Court of Guam. "Specifically, Section 42901 requires that all cases with amounts in controversy less than \$250,000 be referred for involuntary "arbitration or mediation" at the Guam International Mediation and Arbitration Center (GIMAC)." Attorney Pipes further stated that the decision by the Presiding Judge to refer a case to GIMAC is not appealable and noted that the proposed charges are in excess of the current fee structure of the Superior Court of Guam. Attorney Pipes questioned the sustainability of the GIMAC and requested that the bill be rejected in its current form.

GEDCA Administrator Gerald Perez provided written testimony in favor of the legislation citing the following:

- Guam as a stable US flag domicile would be a favored "neutral" location and a forum of choice for US and Asian contract disputes
- Industry trend shows decline in use of Asian based arbitration centers with a correlating increase in European center usage
- Asian centers are encountering credibility issues, for example Hong Kong is viewed as an extension of China and is thus not an acceptable dispute resolution center for US corporations
- Japanese attorneys prefer locations such as Guam as they are at a competitive disadvantage in Hong Kong and Singapore centers where they compete against large in-country law firms
- Japan's arbitration process is too slow, expensive and based on antiquated arbitration rules
- Rising cost of litigation in USA court system and time delays caused by court scheduling system
- US Court mandated arbitration for smaller (dollar value) cases

Mr. Perez reiterated his support for the passage of both Bill 172 and 185.

Bill 185(COR) Hearing

Attorney Patrick Wolff of Inafa' Maolek requested that §43105, §43501, §43202, §43601, §43602, §43603, §43604 be revisited. He emphasized and elaborated his position which is stated as follows:

1. §43105: Representative Participation in Mediation is not a good idea. Mediation in its pure form calls for active participation by the disputants (real parties to the conflict). Rare exceptions (e.g. incapacitation) to party participation are allowed on a case-by-case bases, but §43105 would dangerously reverse the presumptions of disputant empowerment in mediation.
2. §43501 is well intended, but fails to recognize that a MED-ARB process may indeed be the process desired by the disputant.
3. §43202: Mediators should not be prevented from routinely providing to the referral source a cover letter acknowledging that a mediation occurred and attaching any Agreement reached by the parties.
4. §43601: There should be no preference for referrals to GIMAC. Judges should not be burdened with the need to justify why cases are not referred to GIMAC for mediation.
5. §43602: Must be changed to allow for co-mediation (as practiced by Inafa' Maolek). Referral to Inafa' Maolek does not necessitate the selection of a particular mediator. Inafa' Maolek will screen the referral at the intake state and select mediators, from Inafa' Maolek's pool of mediators to match the dispute/disputants. Please do not get locked into a GIMA approach inconsistent with the above.
6. §43603: Inafa' Maolek's flat fee approach to each mediation session provides a less expensive alternative. This option must be included in any Bill 185 language.
7. §43604: Notion of "recommended settlement" is inconsistent with the definition of mediation and the role of the mediator. We philosophically object to this provision as the norm for mediation.

Attorney Dan Sommerfleck of Guam Legal Services expressed concern with §43601 (b) & (d). Attorney Sommerfleck spoke in length about government contracts and suits against the government and the potential for resolution of such cases to be delayed unnecessarily by the mediation process. Attorney Sommerfleck expressed his position that domestic cases would not be resolved under the GIMAC format.

Senator Lou Leon Guerrero raised questions relative to the role of GIMAC for medical malpractice arbitration. In response to her question, Attorney Sommerfleck responded that it is based on whether the parties are willing to reach an agreement.

Attorney Bradley stated his agreement with the statements made by Attorney Sommerfleck and pointed to Attorney Wolff's membership on the Unified Judiciary Subcommittee reviewing both bills. Attorney Bradley stated that the Supreme Court would incorporate there concerns in their official position.

Supreme Court Position

Chairman Cunliffe left the proceedings on Bill 172(LS) and Bill 185(COR) open in anticipation of the position of the Supreme Court of Guam. On February 16, 2004, Chief Justice F. Philip Carbullido submitted the Supreme Court's position on Bill 172 & Bill 185. Chief Justice Carbullido submitted a revised Substitute Bill No. 172 (LS) which would take the place of both Bill 172 and Bill 185. Chief Justice Carbullido emphasized the membership of the Governor's Legal Counsel on the subcommittee. Chief Justice Carbullido listed the membership of the Subcommittee as follows:

- Chief Justice F. Philip Carbullido
- Justice Frances Tydingco-Gatewood
- Justice Robert Torres
- Judge Michael J. Bordallo
- Retired Chief Justice Benjamin J.F. Cruz
- Sister Mary John Cristobal
- Attorney Patrick Wolff
- Attorney Eduardo Calvo
- Attorney Vicki Renacia
- Attorney Shannon Taitano
- Attorney Tricia Ada
- Attorney John Weisenberger
- Attorney Kristan Finney
- Attorney Ignacio Aguigui
- Attorney Thomas Roberts
- Attorney Thomas Tarpley
- Attorney Bruce Bradley
- Attorney Jennifer Calvo
- Attorney Raymond Souza

Chief Justice Carbullido submitted the following guide to the Subcommittee's proposed Substitute:

1. Chapter 42 of Title 7 relative to Arbitration is repealed and reenacted as Chapter 42-A and 42-B regarding arbitration and other forms of alternative dispute resolution
2. Chapter 43 relative to Mediation is repealed and reenacted as Chapter 43-A and 43-B regarding Mediation.
3. Chapter 42-A would address international arbitration
4. Chapter 43-A would address international mediation
5. Chapter 42-B would address local court-referred arbitration and alternative dispute resolution
6. Chapter 43-B would address local court-referred mediation
7. The Supreme Court of Guam is charged with establishing and promulgating rules and procedures to achieve the goals of the proposed Chapter 42-B and 43-B

Chief Justice Carbullido stated that it was the Subcommittee belief that the enactment of Chapters 42-B and 43-B would relieve congestion of cases currently within the Superior Court of Guam through the implementation of various alternative dispute resolution models. Chief Justice Carbullido reiterated his support for the legislature's passage of the proposed Substitute Bill 172(LS) as submitted by the Supreme Court of Guam.

- * The Governor's correspondence of August 1, 2003 transmitting the proposed legislation introduced as Bill 172(LS) and Bill 185(COR) is attached with this Committee Report.
- * Chief Justice Carbullido's letter of February 16, 2004 relative to Bill 172(LS) and Bill 185(COR) is attached with this Committee Report.
- * Transcripts and written testimony for Bill 172(LS) and Bill 185(COR) are included with this Committee Report.

III. FINDINGS AND RECOMMENDATION

The Committee on Judiciary and Transportation finds favor with the proposed Substitute Bill 172(LS) as offered by the Supreme Court of Guam Subcommittee and has made further amendments relative to technical corrections. Therefore, the Committee on Judiciary & Transportation makes a recommendation that Bill 172(LS), As Substituted by the Committee on Judiciary & Transportation DO PASS.

Committee on Judiciary & Transportation
November 14, 2003
Testimony on Bill No. 172

Bill No. 172 (LS) – AN ACT TO REPEAL AND REENACT §42101 THROUGH §42106, TO REPEAL §42107 THROUGH 42111, AND TO ADD NEW SECTIONS §42201 THROUGH §42909, ALL IN CHAPTER 42 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO INTERNATIONAL COMMERCIAL ARBITRATIONS AND DOMESTIC ARBITRATIONS. (At the request of I Maga' Lahen Guahan)

Chairman: Moving on to Bill No. 172, an act to repeal and reenact §42101 through 42106, to repeal 42107 through 42111, and to add new sections 42201 through 42909, all in Chapter 42 of Title 7, Guam Code Annotated, relative to international commercial arbitrations and domestic arbitrations. ... [End of Side B, Tape 1] ...please come up ... Mr. Jay Perez has submitted a written testimony in favor of Bill 172. Mr. Bradley you may proceed.

Bradley: Thank you. Good morning, Senators. Bruce Bradley, I'm a Research Attorney with the Supreme Court of Guam. Briefly, I would like to state that there is currently a subcommittee of the Supreme Court, of actually the Unified Judiciary on Alternative Dispute Resolution, and the co-chairs of that subcommittee are Justice Frances Tydingco-Gatewood and Judge Michael Bordallo from the Superior Court. I am on that committee as well, and it's comprised of about a dozen local practitioners and as well as the judge and justices, and the Retired Supreme Court Chief Justice Benjamin Cruz. Mr. Pat Wolff is also on the committee, whose here in the audience today. The Committee is spending a lot of time in its meetings, and will continue to meet regarding this proposed bill and 185, which addresses mediation. I also believe, Senator Tina Muna-Barnes, has submitted Bill 115, which addresses child custody and mediation in that context. The Committee is planning to prepare written comments and testimony at a later date regarding both 172 and 185. Justice Gatewood requested that I appear today, and let the Senators know that we continue to work closely with the Governor's Office on this bill as well as 185. We'll submit written testimony at a later date. Thank you.

Chairman: Thank you, Mr. Bradley. Senator Respicio. ...[Senator Respicio wants to wait for the written testimony?] ... Senator Klitzkie

Klitzkie: How much later?

Bradley: I believe a letter was sent yesterday by Chief Justice Carbullido requesting a 30-day extension.

Klitzkie: Mr. Acting Chairman, I think we probably ought to do something with this rather quickly and let the Governor win one once in awhile. ...[background laughing]... Thank you, Mr. Chairman.

Chairman: Senator Leon Guerrero.

Leon Guerrero: Are they have been requesting ... not reporting this out and putting it in the session until we get the testimonies and the comments from this subcommittee?

Bradley: Yes, your honor ... I believe so ... your honor ... that's my usual context ...

Leon Guerrero: I feel honored to call me your honor ... and in regards to Senator Klitzkie's comments, I want the Governor to win one, but I also want the Governor to win one that is a good win, we need to wait and get the comments of these experts here, because if there's something that maybe by chance were missing and they bring it up to our attention, it will strengthen and make this a better piece

of legislation. I agree with Senator Klitzkie, but we need to make sure it is close to the best arbitration legislation.

Bradley: Thank you, Senator. I believe that's accurate. The Subcommittee is in support of both this 172 and 185, and is taking a close look at the real nuts and bolts details, not just technical, and not just numbering and editorial matters, but making sure that it does comport with other jurisdictions and other places that it tackles the same sort of mediation and arbitration legislation. Thank you.

Quinata: Are you here for the Unified Judiciary or ...

Bradley: I'm just here today specifically on behalf of Justice Tydingco-Gatewood and the Subcommittee, which is a component of the Unified Judiciary, so technically, yes.

Quinata: Thank you, Mr. Bradley. Bill No. 172 has now been publicly heard. Moving on to Bill No. 173 ...

**Testimony of Mr. Gerald S. A. Perez,
Administrator, Guam Economic Development & Commerce Authority**

**on BILL No. 172(LS) AN ACT TO REPEAL AND REENACT §42101 THROUGH §42106, TO
REPEAL §42107 THROUGH 42111, AND TO ADD NEW SECTIONS §42201 THROUGH §42909,
ALL IN CHAPTER 42 OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO INTERNATIONAL
COMMERCIAL ARBITRATIONS AND DOMESTIC ARBITRATIONS**

And

**BILL 185(COR) AN ACT TO REPEAL AND REENACT SECTIONS § 43101 THROUGH § 43108,
AND TO ADD NEW § 43201 THROUGH § 43604, ALL IN CHAPTER 43 OF TITLE 7, GUAM CODE
ANNOTATED, RELATIVE TO THE EARLY RESOLUTION OF DISPUTES THROUGH MEDIATION**

Good morning, Mr. Chairman, members of the Committee on Judiciary and Transportation, ladies and gentlemen. I am unable to attend today's public hearing, but trust that my written testimony will be incorporated into the record.

My name is Gerald S. A. Perez, and I am the Administrator of the Guam Economic Development & Commerce Authority (GEDCA). I am submitting this written testimony in support of Bills 172 "the Guam Arbitration Act" and Bill 185 "the Guam Mediation Act". If enacted into law, these two bills provide the mechanism for Guam to develop into a regional arbitration and mediation center, potentially worth millions of dollars in new money for Guam and job security to many white collar employees.

As we all know, Guam's economy is struggling to manage the impact of an unprecedented combination of natural disasters and complex economic forces over which Guam has little or no direct control. Our 11% unemployment rate is nearly double the national average, and the need to revitalize our economy cannot be overemphasized.

I will not speak to the legal issues entailed in these two bills. These I leave to those in the legal community more qualified to do so. In terms of economic development, however, enacting Bills 172 and 185 into law significantly enhances the island's economic revitalization. We believe that a viable regional arbitration facility in Guam will expand the island's professional services employment, strengthen our tourism sector, and diversify our economic base in the process.

As a resort community, Guam is an attractive geographic venue for alternative dispute resolutions in Asia, a region where hundreds of cases are now handled largely in Hong Kong and Singapore. Capturing a share of this market offers significant potential for Guam in view of the following consideration:

- Guam as a stable US flag domicile would be a favored "neutral" location and a forum of choice for US and Asian contract disputes.
- Industry trend shows decline in use of Asian based arbitration centers with a correlating increase in European center usage.
- Asian centers are encountering credibility issues, for example Hong Kong is viewed as an extension of China and is thus not an acceptable dispute resolution center for US corporations
- Japanese attorneys prefer locations such as Guam as they are at a competitive disadvantage in Hong Kong and Singapore centers where they compete against large in-country law firms.
- Japan's arbitration process is too slow, expensive and based on antiquated arbitration rules
- Raising cost of litigation in USA court system and time delays caused by court scheduling system
- US Court mandated arbitration for smaller (dollar value) cases

The economic significance of a Guam based regional arbitration center in light of the following:

- Job creation – direct employment with the center (approximately 3-5 jobs) and indirect employment with the increased activity in the financial services sector, tourism sector and general services sector
- Increased tax revenues for the government from the centers activities as it will be generating registration, fee and rental income estimated at \$418,750 for the first year, and projected at \$1.5 million by the fifth year of operation. There are also indirect revenue opportunities for vendors providing administrative support services (for example copying, transcription, secretarial, etc. and financial services (for example banks, accounting, etc.)
- A Guam Arbitration & Mediation Center will draw more upscale visitors to Guam who will spend money at hotels, food and transportation, etc. and will generate taxable Guam sourced income. In addition, normal settlement of arbitration cases can take any where from 1-3 weeks thus necessitating a longer stay.
- Increased opportunity for Guam's local bar. First, under the proposed legislation, smaller domestic cases will be referred to the Center for mandatory arbitration or mediation. Those cases will not often justify the expense of using an off island arbitrator, thus members of the local bar will have the opportunity to earn fees acting as arbitrators. Second, with large international arbitrations, global firms will usually choose to associate with members of the local bar for their expertise in local court rules and customs.

The number of people involved in arbitration cases will vary according to the nature, duration, and magnitude of each particular case. However, it is constructive to review a hypothetical case involving 10-12 people over a week to 10-day period. Such a profile can potentially bring over \$40 million in new money to the island by the 5th year of operation and over \$11 million in tax revenues. Last year alone, for instance, there were more than 1,000 arbitration cases handled in Asian centers. Pursued aggressively, this opportunity can broaden and solidify aspirations for a more diversified economic base.

The legal community has already taken the first steps in moving this industry forward with the creation of a non-profit organization called "The Guam International Mediation and Arbitration Center". This entity is currently focused on the development of a modern, state of the art facility from which arbitration and mediation cases can be professionally facilitated. Once the facility is completed, the center will then focus its attention on the development of an international marketing campaign targeting US corporations who have a strong presence in Asia and Asian Corporations who have intricate contractual relationships with US companies.

In addition to facilitating the resolution of disputes, the center may also be positioned as a source of continuing legal education series and seminars. Now that Guam and other jurisdictions in the region have adopted mandatory continuing legal education requirements, the center will not only offer CLE seminars to members of the Guam Bar, but also to ex-patriot US attorneys practicing in countries in the Asia-Pacific region.

The two immediate challenges before us today are creating the legal framework and institutional capacity to attract and grow a meaningful share of this regional arbitration market. Passing Bills 172 and Bill 185 into law fulfills the first challenge, which can then spur the second into action.

HYPOTHETICAL ARBITRATION CASE

Taxable Expenses:	Unit Cost/Fee	single case	Year 1 5 cases	Year 2 10 cases	Year 3 25 cases	Year 4 50 cases	Year 5 100 cases
Travel Expense:							
Airfare - Business Class							
NY - GU (RT)	\$5,783/pax	\$23,132	\$115,660	\$231,320	\$578,300	\$1,156,600	\$2,313,200
LA - GU (RT)	\$4,595/pax	\$9,190	\$45,950	\$91,900	\$229,750	\$459,500	\$919,000
HK - GU (RT)	\$1,438/pax	\$8,628	\$43,140	\$86,280	\$215,700	\$431,400	\$862,800
Hotel (corporate rate)	10 rooms @ \$150	\$15,000	\$75,000	\$150,000	\$375,000	\$750,000	\$1,500,000
Rental Car - 4 cars	@ \$370 weekly	\$1,480	\$7,400	\$14,800	\$37,000	\$74,000	\$148,000
Per Diem (Gov't Rate)	@ \$150/day	\$15,000	\$75,000	\$150,000	\$375,000	\$750,000	\$1,500,000
Entertainment	@ \$600/day	\$72,000	\$360,000	\$720,000	\$1,800,000	\$3,600,000	\$7,200,000
Arbitration Expense:							
Legal Expense:							
Local Counsel Retainer	\$150/hr X 40 hrs	\$6,000	\$30,000	\$60,000	\$150,000	\$300,000	\$600,000
Arbitrator Fee	\$300/hr X 40 hrs	\$12,000	\$60,000	\$120,000	\$300,000	\$600,000	\$1,200,000
ADR Center Fees:							
Registration Fee	flat fee	\$1,000	\$5,000	\$10,000	\$25,000	\$50,000	\$100,000
Administrative Fee	case value @ \$100K	\$3,500	\$17,500	\$35,000	\$87,500	\$175,000	\$350,000
Electronic Filing (document storage)	\$0.01/pg @ 75,000 pgs X 9 months	\$3,375	\$16,875	\$33,750	\$84,375	\$168,750	\$337,500
War room rental	\$200/day X 3 days	\$600	\$3,000	\$6,000	\$15,000	\$30,000	\$60,000
Business Services expense	copying, binding, transcription, etc.	\$3,000	\$15,000	\$30,000	\$75,000	\$150,000	\$300,000
TOTAL Arbitration cost		\$173,905	\$869,525	\$1,739,050	\$4,347,625	\$8,695,250	\$17,390,500
Multiplier @ 1.75%		\$304,334	\$1,521,670	\$3,043,340	\$7,608,350	\$15,216,700	\$30,433,400
TOTAL		\$478,239	\$2,391,195	\$4,782,390	\$11,955,975	\$23,911,950	\$47,823,900
Tax Revenues:							
DT @ 11%		\$1,650	\$8,250	\$16,500	\$41,250	\$82,500	\$165,000
GRI @ 6%		\$28,694	\$143,472	\$286,943	\$717,359	\$1,434,717	\$2,869,434
Payroll tax @ 20%		\$48,400	\$264,000	\$528,000	\$1,315,600	\$2,631,200	\$5,262,400
Income tax @ 28%		\$29,814	\$149,072	\$298,144	\$745,360	\$1,490,720	\$2,981,440

- Assumptions:
1. case duration - 10 days
 2. Participants - 12
- Sources:
1. Travel Exp - vendor quotes
 2. Arbitration Exp - Industry Stats
 3. Tax - averages



SUPREME COURT OF GUAM

SUITE 300 GUAM JUDICIAL CENTER
120 WEST O'BRIEN DRIVE, HAGATÑA, GUAM 96910-5174
(671) 475-3413 (671) 475-3164 FAX

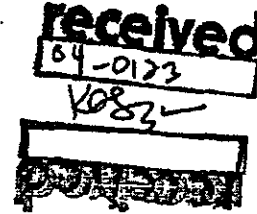


E. PHILIP CARBULLIDO
CHIEF JUSTICE

fpcarbullido@guamsupremecourt.com
www.guamsupremecourt.com

February 16, 2004

Honorable F. Randall Cunliffe
I Mina' Bente Siete Na Liheslaturan Guåhan
Chairman, Committee on Judiciary & Transportation
215 Chalan Santo Papa, Suite 106 & 107F
Hagåtña, Guam 96910



Re: Bills Numbered 172 and 185 Regarding Arbitration and Mediation

Dear Mr. Chairman:

As you know, the Supreme Court's Subcommittee on Alternative Dispute Resolution has focused its attention in recent months on review of current Bills 172 and 185 regarding international arbitration and mediation as well as domestic court-referred alternative dispute resolution. The Governor originally submitted his proposed legislation to the Legislature on August 1, 2003, which was then assigned to your Committee. The legislation will establish a comprehensive statutory framework for the arbitration and mediation of international and domestic disputes on Guam. The members of the subcommittee are in universal agreement that this legislation is very important and have dedicated significant time, thought and effort in their review and consideration of the proposed legislation.

Transmitted herewith is proposed substitute Bill 172 that the Supreme Court's subcommittee recommends take the place of both current Bills 172 and 185. As will be explained more fully below, the proposed substitute Bill 172 merges both current Bills 172 and 185. Thus, no further action on Bill 185 will be necessary if the enclosed proposed substitute Bill 172 is adopted. We have also enclosed a redline version of proposed substitute Bill 172 as compared to current Bill 172 for your ready reference.

As mentioned above, Governor Camacho originally submitted two pieces of proposed legislation to the Legislature on August 1, 2003, which became Bills 172 and 185. The Governor's legal counsel, Ms. Shannon Taitano, sits on our subcommittee and has been involved in the work we have done which has resulted in our recommended substitute Bill 172. We are informed that Ms. Taitano, on behalf of the Governor, fully supports the enclosed proposal as it will achieve the Governor's goals which were originally addressed by his initial submission in August, 2003.

The members of the subcommittee have taken their review of Bills 172 and 185 very

Honorable F. Randall Cunliffe

February 16, 2004

Page 2

seriously and have come to the enclosed recommended substitute Bill 172 after extensive work to this end. The subcommittee was originally chaired by Justice Frances Tydingco-Gatewood and co-chaired by Judge Michael J. Bordallo and included as members retired Chief Justice Benjamin J.F. Cruz, Sister Mary John Cristobal and attorneys Patrick Wolff, Eduardo Calvo, Vicki Renacia, Shannon Taitano, Tricia Ada, John Weisenberger, Kristan Finney, Ignacio Aguigui, Thomas Roberts and Thomas Tarpley. Subsequently attorneys Bruce Bradley, Jennifer Calvo and Raymond Souza joined the subcommittee.

After the subcommittee's initial review of Bills 172 and 185, the co-chairs decided to split the subcommittee into separate groups to fully consider each of the proposed bills. At that time, Chief Justice F. Philip Carbullido joined the subcommittee and took the lead regarding review of proposed Bill 172. Bill 172 focused primarily on international arbitration but also contemplated domestic court-referred arbitration. Attorneys Ed Calvo, Ray Souza, Ike Aguigui, Bruce Bradley, Tom Tarpley, Tim Roberts and Jennifer Calvo joined the Chief Justice. Upon his investiture, Justice Robert Torres also joined this component of the subcommittee as co-chair. The remaining members of the subcommittee were then able to focus on proposed Bill 185 regarding mediation.

As will be evident upon your review of the enclosed proposed substitute Bill 172, it now includes both of the Governor's originally proposed bills which are currently Bill 172, regarding arbitration, and Bill 185, regarding mediation. Proposed substitute Bill 172 will accomplish several goals simultaneously. Current Guam law regarding arbitration and mediation is found in Chapters 42 and 43 of Title 7, Guam Code Annotated. Proposed substitute Bill 172 will repeal both Chapters 42 and 43 and will enact language to be codified in its place. Thus, Guam law regarding arbitration and mediation will still be found in Chapters 42 and 43, respectively. Specifically, proposed substitute Bill 172 will create Chapters 42-A and 42-B regarding arbitration as well as other forms of alternative dispute resolution and Chapters 43-A and 43-B regarding mediation.

Proposed Chapter 42-A will address international arbitration and proposed Chapter 43-A will address international mediation. These two chapters will be instrumental in the creation of Guam's International Mediation and Arbitration Center," which will be known as "GIMAC." Proposed Chapter 42-B will specifically address local court-referred arbitration and alternative dispute resolution and proposed Chapter 43-B will specifically address local court-referred mediation. The Supreme Court of Guam will be charged with establishing and promulgating rules and procedures to achieve the goals of both proposed Chapters 42-B and 43-B. The subcommittee believes that there is great potential for relieving congestion within the Superior Court of Guam through implementation of various alternative dispute resolution models. Proposed Chapters 42-B and 43-B will provide the statutory basis for such achievements.

Honorable F. Randall Cunliffe

February 16, 2004

Page 3

As is evident from the above explanation as well as from review of the enclosed documents, the subcommittee has devoted considerable time and energy to its efforts regarding the proposed alternative dispute resolution legislation. The members have done so in hopes of assisting as much as possible in the process of updating Guam's laws in this area to better serve the needs of the parties availing themselves of the courts and to help alleviate the perennial problem of congestion in the courts. Guam has the potential to benefit greatly from this legislation in many ways and we respectfully request that your Committee and the Legislature as a whole act expeditiously in its consideration of our proposed substitute Bill 172 to replace current Bills 172 and 185.

We look forward to your support and the favorable consideration of your colleagues

Sincerely,



F. Philip Carballido
Chief Justice and Co-Chair,
Subcommittee On Alternative Dispute
Resolution (Arbitration)



Robert J. Torres
Justice and Co-Chair, Subcommittee on
Alternative Dispute Resolution (Arbitration)

Enclosure:

cc: Justice Frances Tydingco-Gatewood
Judge Michael J. Bordallo
All Committee Members

03-1142

Handwritten signature

Law Offices Of
Richard A. Pipes
BankPacific Building, Suite 201
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E-mail: pipeslaw@guam.net

received
11-20-03 11:50 PM

November 20, 2003

VIA FACSIMILE

Senator F. Randall Cunliffe
Twenty-Seventh Guam Legislature
215A Chalan Santo Papa Road, Suite 101F
Hagana, Guam 96910

Re: *Bill 172*

Dear Senator Cunliffe:

I understand that a public hearing was held on Bill 172 last week. Because of prior commitments, I was unable to attend and testify. Please accept this letter as my written testimony in opposition to Bill 172.

It is my opinion that, as drafted, Bill 172 would be unconstitutional and inorganic because it unreasonably restricts a person's right of access to the Superior Court of Guam. Specifically, Section 42901 requires that all cases with amounts in controversy less than \$250,000 be referred for involuntary "arbitration or mediation" at the Guam International Mediation and Arbitration Center ("GIMAC"), which is, as I understand it, a proposed private corporation to be established to conduct these proceedings. The decision of the Presiding Judge to refer a case to GIMAC is not appealable. Further, I understand that GIMAC will charge a minimum of \$2500 from each party to perform their "services", as opposed to the \$120 to be charged by the Superior Court for filing a case. Obviously, the scheme proposed by Bill 172 would substantially restrict a person's right to pursue a claim in court.

While Bill 172 allows dissatisfied claimants to request a *de novo* trial in the Superior Court, after paying exorbitant fees for arbitration, and attempts to pay lip service to the delay that would be experienced by the few litigants who could afford GIMAC by purporting to have the Court give such cases "civil priority", the whole scheme proposed in Sections 42901, *et seq.*, is fatally flawed and unconstitutional.

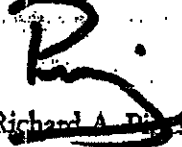
Letter to Senator F. Randall Cunliffe
Twenty-Seventh Guam Legislature
November 20, 2003
Page 2

I question the motivation behind this proposed legislation. If passed into law, it would take away more than 90% of the civil cases the Superior Court now handles and create a private, unregulated dispute resolution system that parties are required to submit themselves to at great cost. As I have been told, GIMAC would be formed at the instigation of a large, international law firm to handle a number of commercial disputes that are expected to arise out of the Olympics to be held in Beijing. Because non-Chinese companies are reluctant to agree to dispute resolution in China's courts, Guam has been identified as a possible alternative site that both China and the outside investors and vendors could agree upon for arbitration.

Conceptually, this is not a problem. However, because setting up and maintaining GIMAC would be expensive and no one knows how much international arbitration business Guam would actually get, GIMAC's proponents need a stable source of income to support the operations of GIMAC. Hence, the Judicial Arbitration provisions of Bill 172.

In my view, Bill 172 is ill-conceived, unconstitutional, unnecessary, and would require litigants to shoulder the cost of maintaining GIMAC when they have no interest in it. It should not be passed into law in its present form. If you have any questions, feel free to contact me.

Sincerely,



Richard A. Pines

cc: Senator Ben Pangalinan
Senator Mark Forbes
Senator Robert Kitzkie
Senator Lou Leon Guerrero
Senator Ray Tenorio
F. Philip Carbullido - Chief Justice, Supreme Court of Guam
Joaquin C. Arriola, Jr. - President, Guam Bar Association

R-AP/nsh/jara/cw

EXHIBIT 2

6

I MINA' BENTE SIETE NA LIHESLATURAN GUAHAN

2004 (SECOND) Regular Session

Date: 4/23/04

VOTING SHEET

SBill No. 172(LS)

Resolution No. _____

Question: _____

<u>NAME</u>	<u>YEAS</u>	<u>NAYS</u>	<u>NOT VOTING/ ABSTAINED</u>	<u>OUT DURING ROLL CALL</u>	<u>ABSENT</u>
AGUON, Frank B., Jr.	✓				
BROWN, Joanne M. S.	✓				
CUNLIFFE, F. Randall	✓				
FERNANDEZ, Dr. Carmen	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
KLITZKIE, Robert	✓				
LEON GUERRERO, Lourdes A.	✓				
LUJAN, Jesse A.	✓				
MUÑA-BARNES, Tina Rose	✓				
pangelinan, vicente "ben" C.	✓				
QUINATA, John "JQ" M.	✓				
RESPICIO, Rory J.	✓				
SANFORD, Antoinette "Toni" D.	✓				
TENORIO, Ray	✓				

TOTAL

15 0

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence

27-81



COMMITTEE ON

Guam U.S. Military Buildup | Infrastructure | Transportation

I MINA' TRENTAI KUÁTRO NA LIHESLATURAN GUÁHAN | 34th GUAM LEGISLATURE



COMMITTEE VOTING SHEET

Senator FRANK B. AGUON, JR. Chairman

Senator Thomas A. Morrison Vice Chairman

Senator Dennis G. Rodriguez, Jr. Member

Senator Joe S. San Agustin Member

Senator Règine Biscoe Lee Member

Senator Louisa Borja Muña Member

Senator Fernando B. Esteves Member

Speaker Benjamin J.F. Cruz Ex-Officio

RESOLUTION NO. 62.-34(COR): Relative to authorizing the legislative counsel, or other retained counsel, to apply for and file an Amicus Curiae brief before the Superior and Supreme Courts Of Guam affirming the Guam Legislature's position relative to sovereign immunity and the upholding of Guam Law.

Table with 7 columns: SENATORS, SIGNATURE, TO DO APPROVE, TO NOT APPROVE, TO REPORT OUT ONLY, TO ABSTAIN, TO PLACE IN INACTIVE FILE. Rows include AGUON, MORRISON, RODRIGUEZ, SAN AGUSTIN, LEE, MUÑA, ESTEVES, and SPEAKER CRUZ.



Senator Aguon's Assistant <officeassistant@frankaguonjr.com>

Fwd: Re: Message from KM_C364e

1 message

Frank Aguon, Jr. <aguon4guam@gmail.com>

Thu, Apr 6, 2017 at 9:53 AM

To: Office Assistant <officeassistant@frankaguonjr.com>

Cc: "Office of Senator Frank B. Aguon, Jr." <admin@frankaguonjr.com>

----- Forwarded message -----

From: "BJ Cruz" <matapangman@gmail.com>

Date: Apr 6, 2017 8:41 AM

Subject: Re: Message from KM_C364e

To: "Frank Aguon, Jr." <aguon4guam@gmail.com>

Cc:

Affirmative vote Bjcruz

Sent from my iPhone

On Apr 5, 2017, at 3:09 PM, Frank Aguon, Jr. <aguon4guam@gmail.com> wrote:

Hafa Adai Mr. Speaker:

I need your affirmative vote on the attached resolution. Please consider and vote.

Un Dangkolo' Na Si Yu'os Ma'ase'

Respectfully,

SENATOR FRANK B. AGUON, JR.

Chairman, Committee on Guam-U.S. Military Buildup, Infrastructure and Transportation

Suite 503, DNA Bldg, 238 Archbishop Flores Street,

Hagatna, Guam 96910

email: aguon4guam@gmail.com

Contact Nos. Office, 475-GUM1/2 (4861/2)

<SKM_C364e17040520010.pdf>



Senator
FRANK B. AGUON, JR.
Chairman

Senator
Thomas A. Morrison
Vice Chairman

Senator
Dennis G. Rodriguez, Jr.
Member

Senator
Joe S. San Agustin
Member

Senator
Règine Biscoe Lee
Member

Senator
Louisa Borja Muña
Member

Senator
Fernando B. Esteves
Member

Speaker
Benjamin J.F. Cruz
Ex-Officio

COMMITTEE VOTING SHEET

RESOLUTION NO. 62.-34(COR): Relative to authorizing the legislative counsel, or other retained counsel, to apply for and file an Amicus Curiae brief before the Superior and Supreme Courts Of Guam affirming the Guam Legislature's position relative to sovereign immunity and the upholding of Guam Law.

SENATORS	SIGNATURE	TO DO APPROVE	TO NOT APPROVE	TO REPORT OUT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
TERLAJE, THERESE M. Vice-Speaker		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ADA THOMAS C. Majority Leader		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NELSON,TELENA CRUZ Majority Whip		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SAN NICOLAS MICHAEL F.Q.		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ESPALDON JAMES V. Minority Leader		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TORRES, MARY CAMACHO Minority Whip		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CASTRO WILLIAM MENDIOLA		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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COMMITTEE VOTING SHEET

Senator FRANK B. AGUON, JR. Chairman

Senator Thomas A. Morrison Vice Chairman

Senator Dennis G. Rodriguez, Jr. Member

Senator Joe S. San Agustin Member

Senator Règine Biscoe Lee Member

Senator Louisa Borja Muña Member

Senator Fernando B. Esteves Member

Speaker Benjamin J.F. Cruz Ex-Officio

RESOLUTION NO. 62.-34(COR): Relative to authorizing the legislative counsel, or other retained counsel, to apply for and file an Amicus Curiae brief before the Superior and Supreme Courts Of Guam affirming the Guam Legislature's position relative to sovereign immunity and the upholding of Guam Law.

Table with 7 columns: SENATORS, SIGNATURE, TO DO APPROVE, TO NOT APPROVE, TO REPORT OUT ONLY, TO ABSTAIN, TO PLACE IN INACTIVE FILE. Includes rows for Terlaje, Ada Thomas C., Nelson, Teena Cruz, San Nicolas Michael F.Q., Espaldon James V., Torres, Mary Camacho, and Castro William Mendiola.



COMMITTEE REPORT DIGEST

Senator
FRANK B. AGUON, JR.
Chairman

Senator
Thomas A. Morrison
Vice Chairman

Senator
Dennis G. Rodriguez, Jr.
Member

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Joe S. San Agustin
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I. OVERVIEW

Resolution No. 62-34 (COR) was introduced on March 20, 2017 by Senator Frank B. Aguon, Jr.

The Committee on Guam US Military Buildup, Infrastructure, and Transportation convened a public hearing on Wednesday, March 29, 2017 at 10:00 AM on Resolution No. 62-34 (COR) in The Guam Congress Building's Public Hearing Room. Among the item(s) on the agenda is:

- Resolution No. 62-34 (COR)- Relative to authorizing the legislative counsel, or other retained counsel, to apply for and file an Amicus Curiae brief before the Superior and Supreme Courts of Guam affirming the Guam Legislature's position relative to sovereign immunity and the upholding of Guam Law.

Public Notice Requirements

Notices were disseminated via e-mail to all senators and all main media broadcasting outlets on Wednesday, March 22, 2017 (5-Day Notice), and again on Monday, March 27, 2017 (48-Hour Notice).

Senators Present

Senator Frank B. Aguon, Jr., Chairperson
Vice Speaker Therese M. Terlaje
Majority Whip Telenia C. Nelson
Minority Leader James V. Espaldon
Minority Whip Mary Camacho Torres

II. SUMMARY OF TESTIMONY & DISCUSSION

The public hearing was Called-to-Order at 10:00 AM.

Senator Frank B. Aguon, Jr

Good morning, good morning. This is a Public Hearing sponsored by the Committee on the Guam US Military Buildup, Infrastructure, and Transportation. There are two items on the agenda, the first item is Resolution Number 62-34 and that is in reference to relative to authorizing the legislative counsel or other retained counsel to apply for and file an Amicus Curiae brief before the Superior and Supreme Courts of Guam affirming the Guam Legislature's position relative to sovereign immunity and the upholding of Guam law. The second item on the agenda is the executive appointment of Mr. Nathan Taimanglo to the Board of Directors of the Port Authority of Guam.

Good Morning, again, everyone and *Håfa Adai!* I'd like to thank the good Senators, Senator Mary Torres. Thank you very much Senator for joining us this morning and I understand that there will be a few other senators that will be joining us as we proceed with the discussion on either of the two items. I do have a list of individuals who have signed in. Ladies and gentlemen as I am going according to the list, if by any chance your name is being called and one of the things that my team members request is that anyone that is entering the public hearing room. We all sign off on the attendance roster primarily so that in fact we can identify whether you are here as an observer, whether you're here to support or whether you're here to oppose any particular measure or any nominee before the Committee.

So, in this case I will call out your names in the order of signage. Senator Brown I hope you don't mind if I call you subsequent to most of the names and also inclusive of your legal counsel and your Board members. In this particular case, I will go down the list, if by any chance, you are not here to provide oral testimony, but you did sign in then just signify, let me know and we will continue to go down the list.

Okay thank you again and welcome to your Guam Legislature for those of you if this is your first occasion to visit your Guam Legislature I certainly hope that this is not going to be your last, because this is your building and this belongs to the People of Guam.

The first item that we have, like I mentioned a little earlier, is Resolution Number 62-34 and if many of you who are here with that particular item of interest if you read the Resolution then you would understand exactly what that intent is. It is to authorize the Guam Legislature to be able to register its position as it applies to two particular points, before the Superior and the Supreme Court and that is on sovereign immunity and also on the application of Public Law 26-28. So aside from that, I am going to go ahead and proceed and invite individuals who have signed up to be able to provide their testimony.

Mr. Joe Flores if I can invite you, are you going to be testifying orally?

Mr. Joe Flores

(Inaudible response)

Senator Frank B. Aguon Jr.

Ok, thank you Mr. Flores for visiting your Legislature.

Mr. Dennis Perez?

Mr. Dennis Perez

(Inaudible response)

Senator Frank B. Aguon Jr.

Likewise. Thank you, Mr. Perez

FG Santos. Is this the Jr. or this yourself? Mr. Chairman are you the Chairman now or-

Okay I'm sorry for jumping the gun in regards to that; to all the board members I apologize.

Mr. Santos if by any chance, I can invite the Board members prior to having the General Manager and the Legal Counsel come forward. Is that okay with you? I'll invite all the Board members, inclusive of yourself, just prior to inviting Senator Brown as well as the Legal Counsel.

Okay we have CA Roberto?

Mr. Chris A Roberto

(Inaudible response)

Senator Frank B. Aguon Jr.

Thank you for your presence this morning. EV Espana?

EV Espana:

Likewise.

Senator Frank B. Aguon Jr.

As I call your name, if by any chance, you are going to provide oral testimony, please you're more than welcome to grab a seat up front.

Norman you're here from the media, the Guam Daily Post.

I have a VJUDLOFU, sorry I don't want to mispronounce someone's name. Anyone with that name in the audience?

Simon Pinaula?

Mr. Simon Pinola

(Inaudible response)

Senator Frank B. Aguon Jr.

Likewise, present to attend the hearing. Okay Mr. Ron Ayuyu?

Mr. Ron Ayuyu

(Inaudible response)

Senator Frank B. Aguon Jr.

Thank you Mr. Ayuyu. Annette Mafnas?

Ms. Annette Mafnas

(Inaudible response)

Senator Frank B. Aguon Jr.

Thank you Ms. Mafnas. Junior Tapasna?

Mr. Juno Tapasna

(Inaudible response)

Senator Frank B. Aguon Jr.

Likewise. Thank you Mr. Topasna. Frank Santos Jr.?

Mr. Frank Santos Jr.

(Inaudible response)

Senator Frank B. Aguon Jr.

Thank you, Mr. Santos Jr., Carmelita Nededog?

Ms. Carmelita Nededog

(Inaudible response)

Senator Frank B. Aguon Jr.

Thank you Ms. Nededog. Carol Jenkins?

Ms. Carol Jenkins:

(Inaudible response)

Senator Frank B. Aguon Jr.

Thank you, Ms. Jenkins. Like I said folks, if by any chance you are here to provide oral testimony please join us up front. Mr. Cedfry Linsangan? Please grab a seat Mr. Linsangan. Thank you for joining us this morning. Ken Calvo?

Mr. Ken Calvo

Thank You Mr. Calvo. Shawn Cepeda?

Mr. Shawn Cepeda

(Inaudible Response)

Senator Frank B. Aguon Jr.

Thank You Mr. Cepeda for joining us. Joe Leon Guerrero?

Mr. Joe Leon Guerrero

Thank you again Mr. Leon Guerrero. Mr. Felix Pangelinan, I will hold you off please if you don't mind. I have Acosta?

Mr. Acosta

(Inaudible response)

Senator Frank B. Aguon Jr.

Thank you, Mr. Acosta for joining us this morning. Jose A. -

Mr. Jose A. Ulloa

Ulloa.

Senator Frank B. Aguon Jr.

Ulloa. I apologize even my hand writing, sometimes I don't understand my hand writing, so please bear with me. Vince Bamba? Mr. Vince Bamba in the audience?

Mr. Vince Bamba

(Inaudible response)

Senator Frank B. Aguon Jr.

Likewise. Thank you Mr. Bamba, for joining us. And Ms. Dot Harris?

Ms. Dot Harris

(Inaudible response)

Senator Frank B. Aguon Jr.

Okay that being the case if I can invite the following individuals. why don't we do this, we will invite all of them. All of you, the remaining individuals who have signed in and then we will begin with the Board members, providing their comment if they're going to provide comments, if not we will proceed down the line.

So Mrs. Taitano, Maria Taitano, if I can invite you to the front. Senator Joanne Brown, Mr. Felix Pangelinan, FG Santos. I just received some additional names, I will call them up or recognize them shortly after we're done with the presentation from the members in the panel.

Senator Brown, will proceed with Mr. Linsangan and then the Board members.

Mr. Linsangan you have the floor, please identify yourself for the record and proceed with your testimony.

Mr. Cedfry Linsangan

(Inaudible Response)

Senator Frank B. Aguon Jr.

Good Morning.

Mr. Cedfry Linsangan

Good morning Senator Aguon, Senator Torres. My name is Cedfry Linsangan. I'm 58 years old. A small business owner for the last 35 years and I service disabled Veterans owned small business. I'm in favor of this Resolution.

However, I have so many concerns. In my opinion, the Legislative body has no authority to execute or authorize anybody because of the duty of the legislature to just adopt laws and allocate budgets because this Bill is like you're executing something which belongs to the Executive body and to the Port. Yet, the reason why I'm supporting this regardless of my concerns because the interest of the People of Guam are at stake and you're effort is well appreciated.

Your honor, you have to do something. Even though submitting the brief or whatever will do any bedding to the ruling of the judge because a law is already law. You cannot change the ruling or the judgment of the judge because its open for interpretation and what you can do in my opinion is amend the law to provide the waiver of the sovereign immunity that pertains to our Guam arbitration laws so that in the future there won't be any loopholes. Because you know Resolutions sometimes are just a piece of paper, there's no muscle, there's no execution.

A Resolution by a government institution is especially the Legislative body is just like glorifying a cause. You're satisfying the people's anger, the people's will, but you're subject to the mercy of the other party, whether they will appeal it or not.

Even though you say, "Oh, you need to appeal this because there's \$15 million at stake." But how about if they will not do it? That's my point and of course that's the reason why I'm supporting this because you might influence the Port Board members to continue to appeal because we don't know what will happen. It's worth trying, there's no harm in trying and that's just my opinion Senator.

Thank you.

Senator Frank B. Aguon Jr.

Thank you very much Mr. Linsagan. Let me just quickly respond before we to entertain some of the Board members as well as the management of the Port Authority of Guam.

First of all, you are absolutely right in terms of forcing action on any matter. What the Legislative Resolution will provide is the authorization for the Legislature to register its position when the law was enacted so that in fact there's clarity before the interpretive branch of government, which is the Judiciary of Guam. What the Resolution would also provide is clarity as it applies to sovereign immunity from the Legislature's prospective. That's why when the Legislative Resolution was introduced initially, it was authorizing this Body and I still need to convince and acquire the support of seven (7), a minimal of seven (7) other members of this Body, to be able to proceed forward and to file and to register the position of the Legislature on behalf of the People of Guam when that law was passed and how sovereign immunity is applied government wide. So that's where this Resolution should it pass this Body, and be presented as part of any court case. Then it will provide clarity of why these particular laws or sovereign immunity, of that particular provision would apply. So that's what we're doing. You're right, we are not executing any action other than providing a legal perspective from the Legislature when these items were enacted, one is within the Organic Act of Guam, which provides this Body with sovereign immunity and the only time that I'm aware of, based on legal discussions, is that sovereign immunity only by legislation and in most cases specific legislation is extended by this Body in any case. So that's where this particular Resolution would carry through, so you're absolute right. I support your contention about taking any action, but this would authorize this Body on behalf of the People of Guam to provide clarity before the interpretive branch of government, the judiciary of Guam as it applies to those two particular issues. Mr. Linsagan thank you very much for providing your testimony this morning.

I take it you're still Chair? Mr. Calvo if you can begin with discussion, just identify yourself for the record and then proceed.

Mr. Oscar Calvo, Port Authority of Guam

Good morning Senators. My name is Oscar Calvo and I'm the acting Chairman right now for the Board. Senator, I do support this Resolution for good strong reasons. We need this Resolution to continue on what we've been fighting for and at the end of the day we just need to get this Resolution passed and I hope full heartedly that all the senators find it in their heart because \$15 Million is a lot of money to give away and that's something I cannot see good for a company that didn't do nothing so I just wanted to bring that and I appreciate and thank you for the Resolution Senator.

Senator Frank B. Aguon Jr.

Thank you very much Mr. Calvo, Mr. Chairman. Any other members of the Board would like to provide comment to testimony on the Resolution. Mrs. Taitano you are recognized.

Ms. Maria Taitano, Port Authority of Guam

Good Morning, Maria Taitano member of the Board of Directors and I just wanted for the record to show that I am in favor of this Resolution. Thank you.

Senator Frank B. Aguon Jr.

Thank you very much Mrs. Taitano for joining us this morning. Thank you for your statement. Mr. Santos?

Mr. Francisco G. Santos, Port Authority of Guam

Good Morning Mr. Chairman. My name is Francisco Santos. I am totally one hundred percent in favor with this Resolution. Why, because this is instead of the money that really belongs to the People of Guam and the People of Guam must understand that we are here to support that and safe guard their money and we don't want to just hand it out for any reason.

So my concern on this Resolution, Mr. Chairman, I'm totally in favor because we are really protecting the money that the People of Guam hold, so we don't want this money to just be handed out and that's the reason why I totally support this Resolution. Thank you.

Senator Frank B. Aguon Jr.

Thank you very much Mr. Santos for providing testimony this morning. If there are no other testimonies from Board members I will proceed by recognizing General Manager Senator Joanne Brown.

Ms. Joanne Brown, General Manager, Port Authority of Guam

Thank you very much Mr. Chairman and certainly rare for me but for the record I'm going to official read the testimony on behalf of the Port.

(Submitted written testimony)

Thank you very much Mr. Chairman for allowing me to provide the official position of the Port on this Resolution.

Senator Frank B. Aguon Jr.

Thank you very much Senator Brown for your statement this morning. Anyone else in your management team or your Legal Counsel who would like to provide comments

Mr. Felix Pangelinan, Deputy General Manager of Operations, Port Authority of Guam

My name is Felix Pangelinan. I am the Deputy General Manager to Operations and I just wanted to go on record that I am in support of the Resolution.

Senator Frank B. Aguon Jr.

Thank you very much Mr. Pangelinan. Did you want to recognize your Legal Counsel, Senator Brown?

Ms. Joanne Brown, General Manager, Port Authority of Guam:

He almost doesn't need any introduction but of course I certainly differ to our Legal Counsel Mike Phillips.

Attorney Mike Phillips, Port Authority of Guam Legal Counsel

Thank you, Mr. Chair and members of the committee. Senators I just want to add a few comments maybe and some additions in law to what has been stated by some of the individuals testifying.

First of all, Cedfry Linsangan I want to start by thanking him for his continuous contribution to the community, most of it if not all of it goes unnoticed, but I know because some of the work that I do that he is one of the most generous owners of business on Guam and again its always something that he never receives credit for, but I want to publicly thank him because I know he's always there and like I said he never attaches his name to his contributions but Cedfry's always there for those that need help.

I agree with a lot of what he said but what I do want to make sure that the record is clear and it's not necessarily very public because what is public ladies and gentlemen is the arbitration panel's decision and what is not public is the consequence of both the arbitration's decision and the court's decision to uphold it.

The arbitration's decision did not fall within the scope of sovereign immunity, there's many arguments that can be presented that will argue that this should not have gone forward in the first place. You can't bring a law suit ten (10) or eleven (11) years later. In most situations, well that's been done, but what you face now ladies and gentlemen is not choosing right or wrong. You don't have to delve into the facts, I think both sides believe that they're correct. What you do have to deal with is that the one issue that remains before the court, squarely before the Court today involves the Legislature and the Legislature is either going to be there or not be there.

When this Legislative Body passed an EITC provision, and I believe it was Senator Felix Camacho at that time, I believe it was also Senator Ben Pangelinan who introduced a Resolution, but the Body went to court to say, "Hey, we passed a law that's not being followed and you need to follow it." So, at that point in time there were mechanisms that allowed the Legislature to go directly to the Supreme Court and the Legislature did. In essence, the Legislature was acting as a plaintiff to defend a law that it had passed.

Now obviously, the Legislature's not going to do that in every single case where you may believe the Executive Branch is ignoring a law, but at the same time I think when you make the decision to not go forward, it probably involves your interpretation or someone's interpretation that the magnitude of that failure is very small. In this case though, it's not.

What you're talking about here is not Public Law 102-102 that maybe mandated DPW to change the speed limit in one of the village roads. While that's important, it's probably not something that I've seen at least, this Legislature go to Court to enforce, but when it comes to EITC, life-altering and changing program for the People of Guam, the Legislature found that that was compelling enough to go to the Courts because it was very clear you have the power to do that. Justice, and then judge, Janet Healy weeks in the COLA case said it best, when the government argued that's not a good law and she said well the senators, in their infinite wisdom, make that decision, not the judges and so here you have two sources of power. You have an inherent source because you control the government and so inherently you should be able to have, and it has been upheld in Courts earlier, the inherent control over sovereignty, that's just the way it goes. Like you do your house, you may not have any control of your neighbors' house, but you do have control in your house. That's number one, but in addition to that and what's stronger often times interpreted than the Federal sovereign immunity is yours also comes by virtue of statute, as much as we don't like it, the Organic Act does serve as our Constitution. The Constitution does not reach Guam, but the Organic Act does. In the the Organic Act, it invests the decision exclusively with you. The reason why I say you don't have to really delve much into the facts, just the decision and the decision of the lower court is because they've upheld a verdict that didn't go to where you waived sovereign immunity, you've waived sovereign immunity in contracts as people are saying. It's kind of the lame man's phrase that they are very accustomed now to using, well they waived in contracts, that's not true. What you did is you have a limited waiver in contracts and there are two limitations.

One is the limited waiver in contracts is only from money spent in reliance upon a contract with the government. Spent is past-tense, not will spend, not will earn, but spent. You basically make that person whole for the money that's been spent. There's one exception to that and that of the person has substantially completed their project. So, if you're looking at you know, a building that is completely finished and then you say, "Haha, we're the government, we're going to come in and condemn it," or, "Haha, we're the government and we've decided not to go forward with that contract anymore."

Well, they cannot only receive damages for all the money they spent but they can also receive damages for all the money they were going to make because they've done their part completely. In this case without any exaggeration, they're at best a few bricks laid but there is no major money expended.

Most importantly ladies and gentleman, that was all placed before the Arbitration Panel. We presented evidence, they presented evidence but even if you take their evidence at face-value without any commentary by P.A.G. personnel they have a small amount of money they spent, a small amount if you believe that. In addition to that, the Panel did not find a breach, did not find a breach. That's clear if you read the opinion, there's no breach.

What it does say, is that clearly, they were not paying rent. What's not clear according to the Panel is whether there may have been some entitlement to offsets, but that's not where the Panel went.

They didn't weigh it and say, "Well, we have to find breach in order to go forward." That's the standard rule, generally in law. They decided instead, is we have incredible powers here and we have the power to decide this and solve it anyway we want so we're going to terminate the lease. They said that the attempts which were two very formal attempts and I think complete by P.A.G. to terminate their release was a nullity. It didn't happen.

So, they have a lease 10 or 12 years later that nobody has done anything on and they're saying we're going to cancel it. They said one of the reasons that they were going to cancel it, of course because the parties were not getting along, was because by law P.A.G. might not be able to perform. They're recognizing that law – the 5-year law that they were saying earlier really played no role in this case. In their decision, one of the things they list is by law, P.A.G. may not be able to perform.

So obviously, you can't go forward with the contract so they decided, we're going to end the contract. That would have been sufficient if they said we're going to now entertain P.A.G. would it be able to show that they spent thousands of dollars on improvements if you call it that. There is a little bit of a boarder. I'm sure you've all seen the pictures and our testimony was all done incorrectly.

So, it is kind of like the old National Guard building down in Sumay. It like, oh you built it but it's sinking with those of you who remember. I'm from the south so every day we saw it sinking. You built it wrong and that's kind of what they did with regard to their minor infrastructure to allow some boats to tie-up. The whole place went to waste and I'm sure you've heard by now the millions and millions and millions of dollars that have to be put in to rejuvenate it. But that's not where the Panel went. They chose instead to go to a separate provision of the contract, forgetting about sovereign immunity and understanding that while you are not understanding maybe, that while you can award against the government of Guam money spent in reliance of a contract you can't give expectation damages, there's no penalty clauses or anything like that. The damages that they selected, and I can't say I'm sure because of the opinion, who knows what they were thinking, but they selected a clause way outside any of the allowances that the Legislature's granted.

So instead of granting damages for monies spent, I think between hundreds of thousands of dollars but the Panel did not grant that. Instead what the Panel granted, and it didn't grant a breach, so the Panel is finding no breach and not approving the money under the Organic Act, and I think, could have proved money spent even though it in dispute but they could have approved that but instead what they approved is a future market value of the lease. Of course the argument is, well, what's a lease's worth if it expired 10 years ago because you can't go more than five (5) years? They're saying, "Ah, we don't believe that." They went ahead and did that anyway. You don't have to get into that because the only issue you have to resolve is, when it comes to sovereign immunity, we're not dealing with who's right or wrong here, in fact both parties are kind of out of that competition. It's just the Panel that decided to go in that direction and they found what I would recall a penalty clause. It said if this contract ends by no fault of the lessee, meaning no fault of YTK, then you owe them all this money for the rest of the lease, the market value, we had some people testify it was worth 14 or 15 million, but that's not allowed under the Organic Act.

We've watched one of the most horrendous cases involving the government of Guam, is also one of the most famous, the Nerangous case. Now that we celebrate that the government of Guam didn't have to pay one penny, honestly there has to be some embarrassment because it appears that that whole group of Micronesians were severely beat but they didn't have any claim because that was an intentional tort and you have yet to waive sovereign immunity for intentional torts it has to be negligence. So, if we're sliding down the road and I accidentally bump into you and it's your fault and you're doing something for the government, I can actually recover \$500 dollars for that but if police officers intentionally beat an innocent individual or for whatever a government employees does something intentional, you have not waived sovereign immunity for intentional torts but that's your decision – that your decision. I'm sure there's a lot of careful thought and wisdom that went into the fact that since we've had this limited self-government you've chosen not to waive for intentional torts but you have chosen to waive for negligence but that limited. We all know that the way you precede with a case that enjoys that waiver it's through the Government Claims Act. You won't find, senators, the waiver anywhere, you won't find a breach in the Arbitration Panel's decision and you won't find such a waiver anywhere.

I've asked in Court, "Where's the waiver?" and it's just silence because there is no waiver – there's no waiver an example of a couple minor waivers are you have waived an employee's ability to obtain attorney's fees but you haven't waived that in every case, only personnel cases that involve the Civil Service Commission, that's it.

You've also waived sovereign immunity, I believe, that allows employees to go straight to Court to recover overtime. There may be a couple cases like that, but that's it. The Legislature's been understandably very, very conservative with regards to when and where you've waived sovereign immunity

So in this case, it may sound like an oversimplification, this strictly comes down to an issue of your powers. The parties I believe and I'm not speaking for the Attorney General although I think if you read the brief you're see that they're lock-step in line with where we are. The real issue that remains because the Courts have decided that the Arbitration Panel can pretty much do everything but with the case of illegal contracts not going to fly, the fact that you dismissed this case and your timelines is really questionable, you're coming back over 10 years later and you're trying to revive a case, none of that appears to be at the forefront. What is at the forefront is the sovereign immunity, it's one thing for a Panel to look past that clause over and say we're just going to give money.

But what they did rather than doing it in the realm that you've allowed they did it in an area that clearly they should've prohibited. Remember that it's important that you understand and remember, I apologize for using that word because I think you all do understand that this Legislature, the People of Guam the Government of Guam enjoyed sovereign immunity before the United States granted it in 1959. The government in the United States, the States, they enjoyed sovereign immunity before it was formalized, that's just inherent because you've built the system you decide who can go.

The judges don't decide that – you decide who can go to Court. Don't get me wrong I'm sure there's input from the Judiciary and we've worked out a pretty good system. What has also worked in that system is the two areas you've not allowed, you've not allowed intentional torts and you're decision. You noticed you have not prohibited that in the private sector and we see massive lawsuits today, individual torts. Those are not negligent torts. Anyway we kind of did that by accident, oh no they did that willfully and the argument is not he going to pay for it many, many years later you have the authority to do that but you haven't done that with the government of Guam. I think people understand that, but at the same time you haven't allowed speculative damages to go forward against the government of Guam. It's one of the understandings and many of the Federal cases say it best because they've had so many.

When you deal with the United States, when you deal with the Government of Guam you understand the situation. It's not the private sector where I can sue you for everything. It's the government of Guam where you've only waived contractual liability and it's true that they waived their sovereign immunity in contract. Read the rest of the Organic Act and read the rest of your law, interpreting it. It's very clear, from monies spent, it's a past-tense, you have to have spent the money in reliance on a contract with the government of Guam.

So for those people who have built big buildings they're entitled to their money back. For those people that have done very little, they're entitled to a little if they can find liability. In this case though, there was no liability. Look through the arbitration decision and you'll see if anything, but they didn't make this conclusion, they say clearly, they didn't pay rent. What is not as clear maybe you guys owe them money and it should've been offset. That's the finding of the behavior of both parties. Nothing arose to a breach, but then what they said is, "We need to end this contract. You didn't end it Port of Guam, even though you did this twice. We're going to end it and we have the power to do that, and now that we're going to end it. Rather than confining their damages to an area that you've allowed, monies spent in reliance upon a contract." They didn't do that because they did file that claim but the Panel didn't give that.

Instead what the Panel gave were damages not allowed by the Organic Act unless you say so, attorney's fees, prejudgment interests, post judgement interests, cost, all that not allowed. You don't allow it. So, if were in a personal suit I can get attorney's fees and costs from you if it's contractual but against the government of Guam, you can't do that. The question is, is this just a law that maybe you have a disagreement of executive with regard to the interpretation or does this deal directly and almost exclusively with your powers?

I think in the beginning of this case, it had a number of issues, but we're down right now and I think you can ask the A.G. and I would be surprised if they denied it because their brief really focused on what we are focusing on now – your powers, sovereign immunity and the only one missing at the table are you guys and it is as I have testified before quite

awkward because we're presenting your case. We're not presenting an interpretation of law, we're presenting an interpretation of your power. It is really awkward for the Legislature not to be there.

Historically, and I think it's appropriate we're back in this building. Historically, this Legislature has stood-up and led the fight, not just for the powers of the Legislature but for the powers of the People of Guam for self-governments. It's not been the Executive branch. We didn't have an executive branch. It has not been the Judiciary, we really didn't have a Judiciary. They were very limited to what they could do. It was this branch of government and prior to the creation of a Legislature it was a gentleman and ladies that when they asked for representative government and self-government they asked first for a legislature because they knew this is, this really is the most important branch of government for representation of people.

You know, there are a lot to be said about the Judiciary and Executive branch but for representation for the People of Guam this always comes first and we're not limited to that. I mean most peoples that are looking for self-government move first for the legislature. The record of Guam of the People of Guam is very, very clear. Now at that time, the question is did they understand the magnitude of their involvement of their effort? I think they did. You know, it appears that they did. In 1949, with the different incidents that led-up to that Stand by Legislature said, "Hey, we either have authority or we're out of here." They did that for a reason because without that authority there's really no meaning to anything you do. You may think, "Oh, I think I'll let this go but the next one's no." Well everybody knows, there's nothing there. They don't even defend their sovereign immunity.

You have to really believe its compelling and I'm sure to some extent there's no words to express that in this point in history through no fault of your own, but you have a law that is absolutely completely ignored and then you have a restriction because the sovereign immunity grant that you had inherently and then by the United States Congress reaffirming that it is just blatantly ignored and you're not at the table.

I believe that this Resolution will go a long way at lease towards providing that representation and showing that when yet another historic landmark case and fight and struggle and effort came and by no fault of your own this body stood up and was counted and you will make a difference. This is not symbolic, you will make a difference. The arguments now are focused on this I think, even though I don't agree, we will raise certain arguments.

The Court right now is going to limit its serious consideration of where we go based on your powers. That includes your powers to legislate, which means the Executive branch needs to follow and your exclusive power over sovereign immunity. If there's anything that's there its tantamount to Secretaries and Cabinet Members exercising their right to veto. I think we know enough to say, "What are you doing?" Well, here you have sovereign immunity which is exclusively given to the Legislature and others are saying, "Ah, nah they waived it." It doesn't call into question sovereign immunity.

If you don't think arbitration does, well then that Panel made it very clear when they issued an opinion that flies right in the face of your authority, right in the face. Ladies and gentlemen I'll end with this, when you're given the power to decide all that authority is with you and you've decided to give limited, limited waivers of sovereign immunity that commands respect that's tantamount to saying, "I don't agree with that." You have not yet allowed suits against the government for intentional torts you can say that or you can say they prohibit lawsuits against the government of Guam for intentional torts. It's the same thing.

You have the exclusive power and you have not given it. It really demands respect and the branches of government work when these rules are followed. And I would submit to you they don't work when you don't follow them. If this were a \$50 case and it were symbolic I don't really know if they'll be a need for this effort but it's not it's probably right now a \$15 million case with incredible results that are going to quite frankly put the Port in a very, very serious almost emergency situation which of course would funnel down very quickly to the People of Guam. Whether it's your power or assisting the Port, in this case in regards to these areas there's no question. I think all those reasons are more than enough for everybody to support this Resolution. Thank you.

Senator Frank B. Aguon Jr.

Thank very much Attorney Phillips for your comment.

Senator Brown any final comments before the Panel is dismissed?

Senator Joanne Brown, Port Authority of Guam General Manager

Thank you very much Mr. Chairman. I certainly appreciate our legal counsel outlining what these issues are. As you know Senator Aguon, you and I and Senator Ada at the time, were members of the Body when this Bill was passed to grant the Port of Guam the authority to enter into a five (5) year lease agreement. I did not vote for the legislation at the time. Primarily for my own sense of the climate and sometimes when certain pieces of legislation pop up on the Guam Legislature I just always kind of wondered why and for who it's intended.

Out of everyone who was that there that voted, I didn't vote for this Bill. It's kind of ironic all these years later, not knowing at the time, I would end up at the Port Authority of Guam dealing with an issue that originated back in 2001. In the summer of 2001 when the legislation was passed and was signed by the Governor, later that year, for those of you that didn't attend your Oversight Hearing you previously had over this matter, later that year the Port entered in this contract. Obviously, if you look at 2.2 of that contract there in my view is an obvious attempt to go around the limitations placed by the Guam Legislature.

This most recent case that we had back with Judge Sukola where she kind of eluded to that fact that law wasn't clear. It's a very short piece of Legislation it's not 50 pages long and we've all seen bills like that, it's barely a page and a half and it specifies very clearly, "For a term." Not "terms" it says for "a term of five (5) years." And so, anything beyond that would require legislative approval.

As you know the Legislature in most cases almost all cases we had to address approving the lease of government of Guam property even though it was under different department and agencies of the government. If they needed to do a lease they had to come to the Guam Legislature and request, "We would like to lease out this property for whatever purpose it may be." If you look at the contract itself it was a very obvious attempt and the legal counsel at the time, Mr. Ching, who I don't know, but I know actually previously like 8 or 9 years prior had served as legal counsel to the Port, he was legal counsel for YTK. He actually did send a letter to the Governor requesting that legislation be introduced, at the time I believe Felix Camacho was the Oversight Chair back then of the Transportation Committee, the Legislature never acted on that request to approve the lease beyond five (5) years.

We provided the example of the most recent lease entered by the Port that did get legislative approval that did follow that process, and that was Cementon. The lease for Cementon and the Cementon facility that we have there. In that case the Port did enter into a lease agreement with Cementon and Cementon came before the Legislature I believe at the time they were requesting a twenty (20) year lease agreement. The Legislature I believe under Rory Respicio was the one who increased the twenty (20) years to a thirty (30) year agreement. That was passed by the Body, the Body approved it, the Governor of Guam signed it and it became law.

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In this particular case and this is something that is even though whatever you're sentiments in regards to the Port or thinking this only effects the Port of Guam, the Board and the men and women that work at the Port of Guam every day, the consequences to this and what it does come down to and what our legal counsel elaborated it's the authority of the government to be sued and to what extent it chooses to be sued within the Courts it has created.

In this particular case, we have a situation where we have Public Officials, perhaps they can claim they were not well-informed or there was an intention to do this, entered in and signed this contract. Again, the contract did not come to the Legislature to be approved, it was provided, it was forwarded but no action was taken. For all intents and purposes looking at the history, it was certainly prior my time, there was very little activity in regards with work or investment by YTK on Hotel Wharf. No need to take my word for it, if you ever got time just take a drive down there. Drive down Route 11 and look at Hotel Wharf and the condition that it's in. It's going to probably require 20 plus million dollars to refurbish to make it reusable. There is very little investment. I understand a new owner had taken over and I understand that once that happened then, Oh my goodness now of a sudden look where we're at with regards to this particular case.

The fact that this company for a number of years did not properly pay their lease, the fact that we the Port was paying their water and power bill, the fact that this company for a number of years didn't even have an active business license with Department of Revenue and Tax, and now all of a sudden through the actions of course we were ordered by the Supreme Court to enter into arbitration we have yet to see the Supreme Court rule on the actual legality of the contract but that to us is very fundamental. If the Port did have the authority to enter into a lease agreement beyond "a term of five (5) years" how is it possible for the Port of Guam to be asked to pay what they believe is the value of that least at now \$15 million dollars. Let me tell what the consequences are, at least from what we've seen has been filed by this company in terms of their *Writ* that they filed with Judge Sukola that she has not signed yet and what we only have at advance before the Court again, they want to be able to access any and all accounts of the Port.

They have the notice ready for the Marshall to go to every single bank that exists on Guam that could possibly have an account even though they FOIAed the Port to death with regards to where our assets are and what monies and what accounts and banks our funds are stored in. If that doesn't satisfy the judgment they want to be able to access the Port property.

As you know Mr. Chairman, you know that everything we do, we are right now and have been in preparation for probably (3) going on four (4) years, next week there will be public hearing held by the PUC with regards to the Port's five (5) year tariff so that we can actually raise additional revenue to address infrastructure repairs and upgrades to the Port. I mean we have to go borrow money. Our most recent acquisition of equipment 5.5 Million, and 4 Million of that had to be acquired through loans, 2 Million through the Bank of Guam and 2 Million through USDA loans. If you look at the Legislative record, interestingly enough, do you know the most recent piece of legislation the Legislature has ever done to address the Port of Guam in recent history? Probably not, there's a lot of bills you entertain. The last time we went before the Legislature was like what? Three or four years ago for a waiver of what? Sovereign immunity because we were undertaking a 10 Million Dollar loan with the Bank of Guam to address our service life extension projects. Aside from confirmation of Board Members, that is the last action legislatively that this body took. Specifically, so we can enter into the loan so we can borrow the money we needed to address the extension life we need for the Wharf that our ships come in and operate on. So, the consequences of this action is going to be considerably significant. We were not parties to the signing of this particular contract or entering into this particular contract we are unfortunately as we all are suffering the consequences of where we are but at the same time the bigger issue is the authority of the government. Now, there's no doubt of what the interests of party is of YTK, they are looking at a \$15 Million paycheck. That's what they're looking at. The consequences, "Ah, we tried to work with the Port, they don't want to work with us." To have the People of Guam ultimately pay this, because ultimately as you know Mr. Chair and Members of the Body it will be the People of Guam who will pay this bill. The most immediate impact will be to the employees, to our operations, to our carriers because this is a very big price tag.

Now, if we actually had investments made, if there was a facility there that we could look at and tangible investment where I can understand good to share us of it, we are obligated because we did enter into this contract in good faith, the other party did provide the facilities and the things they said they were going to do. Then understandable Mr. Chair, fair is fair but in this particular case under these circumstances can you imagine the door this would open up to the Government of Guam of any government agency? We have more than enough, we probably have more attorneys on Guam than we've ever had. There was a time growing up we can identify, especially our local attorneys, we knew who they were, now I can't. My goodness. I can't say dime a dozen I shouldn't offend anybody, maybe two dimes a dozen, I don't know.

The interest of litigating is the future as it is now. Imagine what this can open up to the government if the Legislature, which there were many a day which I was here in this body, we had to intercede and outline and pass through Resolution our position to intercede on Court cases to clarify what action we took in regards to Legislation. At the end of the day, if you really go through the process of passing legislation, it's signed by the Governor of Guam and becomes Law or whatever the case may be if he doesn't it becomes law without his signature and it's not upheld. In an arbitration panel or a group, or some public officials can get together and enter into a contract and appropriate public resources, even if it is against the law but appropriate public resources through contract which should be subordinate to the Law, there is something to really worry about and that boundary extends way beyond the Port of Guam – way beyond the Port of Guam

So it's really the opportunity I wish the Legislature had come sooner. I appreciate you Senator Aguon for taking the initiative to introduce this legislation. To be silent on this issue that has such tremendous impact to our People, I don't have a problem when addressing our obligations when they're legitimate obligations of the Port but in this particular case, this is not the case at all. To be asked to pay this and not address the protections of the government that have been put in place to protect the government that ultimately protect the assets of our People, that would be absolutely wrong for you to take no action and not pass this Resolution. There are many people that have an interest in public assets we've seen that ugly face come up time and time, especially the years you've been here Senator the years I was here, there's always an interest. Trust me, there are people who'd love to carve our real estate at the Port of Guam and think they can control that and monopolize and get the money and revenue from it but that was not the intention of why the Port was created. While we've given us the ability to short-term to lease property, the intent was not allow the situation that we see here.

I'm sure, as you, as Senator Ada, I assume as other members of the Body that were here when that Legislation was passed, I don't think that they ever envisioned this type of consequence. There are people that have no shame when it comes to money. They will do whatever they have to do, legally otherwise whatever to get their hands on what they believe is theirs. Well, I think we need to be as aggressive with regards to protecting public assets and what's not owned by me individually, it's not \$15 Million coming out of my pocket, I wouldn't even have 15 Million, I don't even have a million, I'm lucky if I have thousands maybe, but I got to pay my taxes soon.

The consequence to the Port, to our community Mr. Chair and to the members of the Body, I don't think we can emphasize enough what those consequences are should this be allowed to stand and should this action as YTK desires to proceed to the outcome they desire. The impacts including the very authorities you have would be in question because otherwise you're just going through the motions. If the laws aren't recognized that are passed by this Body, imagine what the consequences are. I think you are very clear on where we are coming from on this issue on our position and we really are requesting the support of the Legislature to support this Resolution. I don't agree on this particular case, not that Judge Sukola asking my opinion but I don't agree that the law is not clear. It's very simple, like I said it's a page and a half. I don't know how you interpret; it didn't say "terms" it said "a term."

For someone now, to want to take that, and because they entered a contract specifically knowing that prohibition was there and say that the Renewal Clause are automatic, that will not require approval of the Port Board, will not require the approval of the Guam Legislature, will not require the approval of the Governor of Guam, will not require the approval of the Attorney General of Guam, will not require the approval of any local or government entity. They just didn't include God or their version of God.

Now, if you're going to tell me that's not trying to go around the law and the limitation, and they put that in the contract and say "oh that's what gave me the 45-year lease agreement"? That's frightening. There are always going to be parties out there that are going to want to sham the government and get assets if they can get them. There's no doubt. That's why those protections are in place to protect the people from those types of actions.

I don't think we can allow this to stand at the end of the day, Mr. Chair, this would just be unacceptable. As people become more aware, and even the people at the Port, "What's YTK?" That's why many of them are here. To understand themselves what's going on and what the consequences are.

Once you really realize what's going on here, it's frightening. The fact that it's even come this far, and got to where it's at in the court is frightening. So, I definitely Mr. Chair, appreciate your support but have to ask members of the body, you seriously need to look at the bigger issues of your authority and to protect the interests of the people.

Thank you.

Senator Frank B. Aguon Jr.

Thank you very much senator.

Mr. Linsangan

Mr. Chairman –

Senator Frank B. Aguon Jr.

Before I recognize you Mr. Linsangan, I'd like to thank the following Senators; Senator Nelson, Senator Espaldon and Vice Speaker Terlaje for joining us this morning.

Mr. Linsangan

The big question Mr. Chairman is how are we going to win this case? Because Judge Sukola had indicated that Section 2 of Public Law 26-28 is not clearly defined or explicitly stipulated, and the Superior Court had made the ruling that the arbitration award is valid and enforceable. To win this case maybe, it just popped into my head, let's make the

arbitration award invalid. But how are we going to do it? Is there any conflict of interest on part of the arbitrator that will make the award invalid? Then, yet you can win the case.

If we exhaust everything and still lose the case, pay them. So that it will create economic activity. Even though we throw 15 Million Dollars, because these people will invest anyway in the Island of Guam. Of course, we don't want that to happen, but that is the reality. Sometimes you pay big money but you never realize it will come back to the island because these people will build, develop, but our intention is to win the case. I'm just trying to state my opinion, Mr. Chairman.

Senator Frank B. Aguon Jr.

Thank you very much, Mr. Linsangan, and thank you very much to the Board Members, Senators and the Attorney.

Mr. Oscar Calvo

I just want to put my, for the record, also at the same time, what Joanne and the legal counsel have stated. It's been out there, even as I walked out in the streets, even a couple weeks ago it was in the newspaper survey. 91% of the people of Guam said don't pay them. As the chairman of the Port, I made that clear to the Director and even to the Judge, I will not pay that because it's something that they never worked on. Like what Mike said, okay, go down to the Port where that area is Senator, and look at it.

They have done nothing in there and we're just going to cash them, give them a 15 Million dollar check and they say they worked on it? No way, I'm not going to go with that. I'm not, I'm going to totally disagree with that. Because this is an issue that was back then and it's just been played around. I mean if you guys want to put out 15 million dollars, that's fine. If you want to appropriate 15 million dollars, okay. We'll give it to them. But it's not going to come out of the Port, I'll tell you this much, I'm not going to agree with that. But if you guys want to appropriate 15 million dollars to pay these guys off, that's fine with me. It's not going to be out of the pockets of the Port. Because at the end of the day, the Port is going to be the one suffering the consequences.

It's something that we could have been done, what senator said, and the other board members feel because this is not really fair to the people of Guam. Just think, 91% of the People of Guam said no, don't pay it. Why should you pay when they have done nothing? They didn't show nothing? Go down for yourself and see where the sight is and see where they even built up a small bridge or something there. They never spent a penny.

Then they are claiming that they work hard? No Senator. I don't think so, and I applaud you Senator for doing this Resolution today and I hope that each and every one of you Senators really take a look at this because to me, I can't. I couldn't see the daylight of this, paid off 15 million dollars just because they say.

We're going to win this case as far as I'm concerned because as long as I'm here, and I am on the Board, I will fight for the people. I'm for the Port. That's who I'm fighting for. Not someone to just hand out the 15 million dollars because they circumvenewent around the law? No. I'm not going to go that route. It's at the end of the day like I said, I just want this for the record. It's really been pumping in my heart, so much, I wanted to hear this out to you guys so much because it's been bothering me. I see people walk out there, everywhere.

"Oscar are you going to pay that? No, don't pay it." I go to a restaurant and people say, "Are you really going to pay that 15 million dollars?". No, I'm not going to pay for it. But if the Legislature wants to appropriate 15 million dollars today, by God, go ahead. But it's not going to come out here in this Port, because I think you guys are the law body making okay? And you send the laws to us. You give us what to follow through So if you're going to pay a law, what's the sense of passing a law every day and not be followed.

You go to court, oh I don't have to do that because I can break the law anytime. I don't agree with that.

So, that is all I have to say, Senator. Thank you, have a good day.

Senator Frank B. Aguon Jr.

Thank you Mr. Calvo, for giving your statement. I am going to open the floor for any of the Senators who would like to ask questions. Senator Torres, any questions for the members of the panel?

Senator Mary Camacho Torres

I just want to ask, Attorney Phillips, in your point of view, looking at the proposed Resolution specifically on page four. It states that the Legislature finds that it specifically provided a limited waiver of the Governments Sovereign Immunity through the Government Claims Act, pursuant to 5GCA, Section 16, 101. However, this same waiver of sovereign immunity is not provided in Guam's arbitrary laws.

How would you reconcile that? Or what are your thoughts though, if you were to compare and contrast that with the actual order that came down from the Supreme Court that addressed sovereign immunity specifically. I am referring to the area beginning on page 16 and it ends, discusses it more or less on page 18, about paragraph 41, 42.

Attorney Mike Phillips, Port Legal Counsel

Yeah –

Senator Mary Camacho Torres

Where the Supreme Court basically, in its order, or in its opinion said that I agree to arbitrate all disputes and controversies of every kind and nature are rising out of or in connection with the lease agreement, the Port affirmably agreed to arbitration and may not use sovereign immunity as a shield to on that rennin on that agreement. Then it further goes on to discuss how, for us to allow the Port to invoke sovereign immunity under these circumstances will permit the Port to selectively hide behind the cloak of sovereign immunity when doing so would serve its litigation objectives.

I'm just thinking from the perspective of the Legislative body, now entering into a Resolution which I am also wondering if it is our place to do it or if we should defer instead to the AG as we had, you had used them in the past in the same manner.

I'm just trying to reconcile the two because I'm looking at all the different pieces as its referenced in the thing and that part doesn't quite jive–

Attorney Mike Phillips, Port Legal Counsel

Right, if I may Senators, there's really three parts there. First of all, when the AG reviewed the Supreme Court's opinion, I think the reaction was very similar to ours. Sovereign Immunity does prevent this but when you read the Supreme Court opinion over and over again, and they have in a subsequent case summarize their YTK finding and their YTK finding was arbitration, and the Government of Claims Act does not bar arbitration proceedings, and that's fine. That fight, while I don't think that it's over, I think it's not necessary that the Legislature to some extent and even the parties involved themselves in it during this discussion and I can explain why.

Number one, that's not what the panel did. The panel didn't take the waiver as the Supreme Court referred to in passing, the Supreme Court sent them different parts. Two things, one thing the Supreme Court said was you've waived sovereign immunity, but they didn't quote the entire waiver as they have in other cases. When you look at the waiver, when they say "you" they are really talking about the Legislature. If you read the Legislative waiver, the waiver of sovereign immunity is for money expended upon on a contract with the Government of Guam. That is it. That is really limited because I could have had all the great ideas in the world and the Legislature frustrated me, but I didn't get anywhere. There's no substantial completion and so even though I think I have a great case for prospective damages and the only thing that got in the way was you know, you guys weren't connecting the power or something, it's only the money expended. So, it's not expectation or future profits, nothing.

So when we entered into that contract, theoretically, and with the current finding of the Supreme Court, it doesn't bar arbitration but the sovereign immunity, although we had argued that sovereign immunity would bar all that it doesn't bar it because there's a waiver of sovereign immunity. But when you read – and it wasn't printed in that case, it was printed in all the other cases Sumitomo and many others.

When you read, or you can read in the Organic Act, and the laws of Guam, the waiver of sovereign immunity is very, very, limited. Did the Supreme Court have, or could they fathom that an arbitration panel was going to ignore that and instead come up with the ruling that maybe decided that the Chair was going to be governor or that in this case, the measure of damages would not be as sovereign immunity has waived in contract for money expended by instead they would reach for a clause that said we'll give you the value of the lease forever and we'll just ignore the 5 year law which courts have found out they don't really have to comply with the law but not comply with sovereign immunity when the Supreme Court has said you've waived sovereign immunity.

Now that's a short version for "you've waived sovereign immunity" and when you read that. Right? It's like saying Miranda gives you the right to hear your rights – well Miranda gives you a lot more, that's kind of like the cliché. I have my Miranda rights, but when you read through Miranda and the cases that interpret Miranda, you get a more realistic, more accurate view of what those rights are. It's like the same here. When whether the Supreme Court or myself say well the government has waived Sovereign Immunity when it comes to contracts. That's not all that's said. It's a limited waiver which the Supreme Court has recognized and it's a limited waiver really that's contained in the Government Claims Act. So, what they decided was that it would be impractical to precede through the Government Claims Act but it never said that the waiver of sovereign immunity was greater than what the Legislature had done. Up until now Senator, nobody has found a clause greater than what the Legislature has done.

The second issue is the mention by the Supreme Court. Again, it is incomplete. I think it's the responsibility of attorneys when the Supreme Court sights the provision to again read the whole area. So, they cited to one provision and its said that the legislature itself in essence waived sovereign immunity by allowing the Court when you have two parties before it to refer to arbitration, but the part not quoted is the part that says but the liability, there was a decision by the legislature to not increase the liability passed the liability caps that are already in existence. It is very clear by the Legislature. I don't think the Legislature needed to say that but to make our point very clear the Legislature did say that.

Now nobody has said that is the provision that mandated this arbitration. We were not before the Court for that. In fact, the court sent us out to do our own arbitration. So, we were not before the Port, I mean before the Court on any issue, we were before the Court because there was a motion to compel, a petition to compel arbitration.

So that provision didn't apply but I think the Supreme Court saying look, you know the Legislature isn't against arbitration. Again, for purposes of this Resolution that is still fine. That is not inconsistent. What we are talking about here is a case where up until recently, the arbitration panel consistent with the Supreme Court's decision had many remedies in front of it. The one with regards to monetary damages is that it had, to reimburse the plaintiff for all monies spent in reliance on the contract with the Government of Guam. That is what this Legislature has allowed. I don't think there is any way that the Supreme Court could have fathomed that they're going to go out and they're going to pick some other remedy that the Legislature has not waived sovereign immunity for.

So really, when you look at that, when you read the texts of the laws cited by the Supreme Court, and you look at all their other decisions where they've really upheld sovereign immunity, I think the clear reading is they don't object to arbitration but an arbitration panel, like I said, it can't on its own as a compromise, make the Chair the Governor and have them say, well you know, we don't really find it in the law review of decisions from arbitration panels is very limited.

They can't do that because the Courts don't have the ability to enforce that. The Legislature's never allowed that and the Legislature's never allowed the remedy that this arbitration panel came up with. There's no finding of liability, there's no finding of breach but there is a termination of the contract by the panel. Again, if the awarded both parties or even one party, the money that they spent in reliance on the contract then I think that area of arbitration – I mean, excuse me,

sovereign immunity, could not be argued. But there might be other issues like the illegal contract. But that is not what we are talking about here.

Senator Mary Camacho Torres

Yeah I –

Attorney Mike Phillips, Port Legal Counsel

Just strictly sovereign immunity.

Senator Mary Camacho Torres

And I just cited to, I read off of paragraph 41 of the order but then 43, again, clarifies that –the very last line of 43, therefore even if sovereign immunity is implicated, it has been waived. I’m just going back to the point that in this order, it was addressed and it was clearly determined. So, I have some concerns about that paragraph and how to reconcile –

Attorney Mike Phillips, Port Legal Counsel

Right, the arbitrators’ decision was not before them. The only question was, do we have to go to arbitration. We didn’t think we did. So that was one of the arguments.

Senator Mary Camacho Torres

Then three’s also the -

Attorney Mike Phillips, Port Legal Counsel

The argument though that succeeded though Senator, was just whether arbitration needs to take place. It’s not different from any other civil law suit, really, where, you could sue and if a Judge were to come up with a remedy that is inconsistent with the laws of Guam and is inconsistent with the Legislature is allowed. That now is a very different question than before the Supreme Court.

Senator Mary Camacho Torres

I think with going back to the order with the lower court, the Superior Court, I think whether the issue of if the arbitration panel exceeded its powers was also addressed and they determined that there was no evidence that was presented to the Superior Court finding that the arbitration panel rendered its decision as a mean of opposing a public policy view. In other words, they didn’t exceed their authority in their duty to interpret and enforce a contract.

So, I am trying to understand what you are saying actually, but I do appreciate your comments and I will try to look at that section specifically. If I can reserve more questions for later.

Thank you.

Senator Frank B. Aguon Jr.

Thank you very much, Senator Torres. Senator Nelson, any questions? Senator Espaldon?

Senator Jim Espaldon

Not right now.

Senator Frank B. Aguon Jr.

Vice Speaker Terlaje?

Vice Speaker Therese M. Terlaje

Is the AG still involved in this case?

Attorney Mike Phillips, Port Legal Counsel

They have not entered. What we are doing Senator is we're asking for reconsideration of an issue that the AG was – I wouldn't say intimately involved with, but lockstep. I reread the brief of the AG yesterday, just to make sure before I testify today to understand their opinion. While brief in certain points, the AG covered basically every single point that we did. They asked, I believe rhetorically, how can you move in an illegal contract? They were as puzzled as we were. But, I believe that at the same time respecting that decisions will be made that we don't agree with, the big picture is really sovereign immunity.

From the very beginning, Mr. Orcutt, writing the brief for the AG of Guam. But of course, we had spoken many times, and the AG had expressed her solidarity with us. When Mr. Orcutt wrote his brief, he wrote it in the manner that I just described, that whether or not – and it was arguable if there was sovereign immunity to even move forward, the point is when the arbitration panel chose to act, it didn't act within the possible remedies.

I don't know what the board or the GM would have decided if they case were – I think they claimed around \$500,000 in actual expenses. It's very questionable, but if they gave them everything they asked for, at least, arguably, its within sovereign immunity. As you've allowed that. You've allowed the people to be compensated for money that they've spent. So that would be the debate. Did you really spend \$500,000? But sovereign immunity, I don't think would be implicated there because it comes right in line of what you've allowed.

You've not allowed, speculative damages, you've not allowed perspective damages, unless of course there's substantial completion. They never argued that there's substantial completion, in fact, they've argued that we've not allowed them to substantial complete. So there's no dispute there, there's no substantial completion.

But what we have here is an award after the Supreme Court admittedly said, "No, no, no. Arbitration is okay" and there's a lot of times when a higher authority says okay, you can do this and the lower authority takes that as a grant to do everything. Admittedly, in their opinion, this clause allows us to do anything. So, they went ahead and decided that the measure of damages won't be what's spent, which you allowed. But instead of the Clause, it would be the measure of the value of the lease for the rest of the term of the lease. They didn't determine that to be 5 years, not 10 years old, but to be the balance of the 45.

You've just not allowed that. Like I said, some people might say that one sounds fair to me. Well until sovereign immunity is amended and waived to that extent it's just not a question. We, I would hope, and the people of Guam find themselves in the same position that they found themselves when the harangues decision was announced. I remember hearing that thinking, well, that's bitter sweet because on one hand you have individuals that appeared to be severely beaten but on the other hand, the Government of Guam has not waived sovereign immunity for that. So, there won't be any payout by the Government of Guam. I remember that, in fact, it was at that time AG Barrett-Anderson who successfully, under her leadership – they successfully argued her case at the Supreme Court. It's your typical sovereign immunity case.

It's really unfortunate for those individuals, but again, that was not her decision. Nor was it her decision of the Courts. It was the decision of the Guam Legislature. There was some real dissent there, and if I could, the reason I bring it up is because the dissent is: Could that be handled in Federal Court? Do we really enjoy the same level of sovereign immunity in Federal Court? I think the answer is no. But you still enjoy it like foreign countries still enjoy a lot of protection. But this is different. You have inherent sovereign immunity in your own Court system.

You built it. So, by its very design, even without a grant, by the Organic Act which did not come until 1959, the Gov. of Guam had been operating for almost a decade with sovereign immunity and with court cases saying, that even without a grant from the U.S government, of course it's inherent that you have sovereign immunity. That's really all this is about now.

At the beginning it involved many, many issues. Anything from rent to – you name it. But right now, really, it just comes down to the award by the panel, that was not before the Court’s earlier. The award by the panel completely obliterates any confines that you put after with sovereign immunity and the manner in which people can sue the government of Guam. It’s a limited waiver, it’s not a complete blanket waiver. That’s really what’s before you right now.

Vice Speaker Therese M. Terlaje

The reason I am asking you about the AG’s involvement is because the order by Judge Sukola, notes the amicus curiae filed by the AG in support of defendant’s motion to vacate arbitration award. You’re asking for a reconsideration of this?

So, I know in her order that she says that the AG raised a number of specific issues that were never raised by either party. Some of these are the issues that we are being asked to raise.

One, whether the panel exceeded its powers by making a damage award in violation of sovereign immunity and public policy; Whether the panels failure to offset the award with the amount of back-rent owed requires the award to be vacated; Whether the panels failure in justifying awarding to a higher amount than what is claimed in the original government claims requires the award to be vacated; Whether the award should be set aside because the arbitrators were partial. But particularly, number one whether the panel exceeded its powers by making a damage award in violation of sovereign immunity and public policy. Do I understand correctly? That’s the same argument that this Resolution is asking that the Legislature assert by Amicus Curiae Brief in this case in the reconsideration motion?

Attorney Mike Phillips, Port Legal Counsel

In the reconsideration motion and the reason Senator, we chose that, because obviously, it would have been easier to, for some I guess, to just move up on appeal. But we wanted to make sure that the issues are clear because the state of the law if you will, in the present situation: there’s lots of difference given to arbitration panels. I think there’s four, five, major issues. Honestly, right now, judges don’t appear to be concerned about an illegal contract. That concerns the heck out of me, but, you know I’m not a judge. They’re saying, they’re allowed to make mistakes. They’re not saying the contracts legal, nobody has said that. But they’re saying there’s great difference given to the arbitration panel.

I would be misleading when I say that when I read those cases, that’s what they say. So even if you’re right, that doesn’t mean that you’re going to prevail. That’s the state of the law, but not with sovereign immunity and I don’t believe the Court understood the significance of that.

First of all, we raised that at every juncture. There’s massive pleadings here Senator so I don’t fault the Court for not seeing it. Or maybe it was not clearly and plainly plead by us. But at every juncture of course we pleaded that. In fact, in our last pleading at the urging of the AG, we went ahead and on one paragraph and asserted all that. And Judge Sukola made reference to all that and said hey, you guys put that all in. What am I going to do about it? Just to arise it at every level. Just to make sure that when this goes up, that we didn’t raise these issues.

Now that we are down to issues that I think even our courts are allowed to decide. I think that when it comes down to sovereign immunity, that is not the case. That’s why it’s simplified. It will forever bother me that the Courts and the arbitration panel are allowing an illegal contract to go forward. But I’ll tell you, that the Sovereign immunity and your control over that is very different from ours.

I mean, the way they see it with us is that people are just violating the law. The panel is allowed to find otherwise, and the review, and the standard review is very different from that of another Court. We are accepting that you may be right, and they decided against you. So, the review and the standard really don’t go in your favor. But not with sovereign immunity and really, Senator. This body taking a position that would allow for this type of magnitude that went from 0-30 days up to 5 years for the Courts to say that doesn’t matter and they’ve chosen a payout for the rest of the lease is as far as you can go against this law as possible.

I mean there couldn't be anything worse.

Vice Speaker Therese M. Terlaje

Well –

Attorney Mike Phillips, Port Legal Counsel

If I may just end with this, if the body were to read the letters from Atty. Ching to Chairman, Senator at that time, Felix Camacho. I even asked him, is that how you write to a Senator? Because it was shire panic. It was rude and to put it this way, if I was speaking to you like that I don't think the mic would stay on very long. I mean they were desperate, and admittedly so.

I asked him that question in arbitration. Is that how you write to a Senator? Because you don't, you just don't. You could tell that they were frustrated. He said, if we didn't get the 40-45 year lease there is no way we could go forth. Well they went forward anyway, that's coming from their attorney and he resigned shortly after that.

Many understood the significance, it's not like this group didn't try to get it passed and said oh my god, do we have to do that? No, they tried very, very hard to a point where if you read that letter you'll see that frustration expressed because, although they understood what goes through the lease, go to the legislature. Go to the legislature.

One of the claims they have against us, is we didn't do enough to convince the legislature. They obviously recognize that, but it's that one section in the back that says, you know, just in case they don't you have x-number of days to go forward anyway.

Where that came from, why it's upheld and here we are today because of that one clause. You know while it remains a mystery, it is where we are.

Vice Speaker Therese M. Terlaje

Okay, the reason I'm asking is because the court specifically says in their order, that the court cannot consider the arguments presented in determining whether to grant the motion or to vacate.

So, they did not consider whether the panel exceeded its powers by making a damage award in violation of sovereign immunity and public policy. Just let me know if I understand correctly, that the reconsideration motion is asking them to consider that argument?

Attorney Mike Phillips, Port Legal Counsel

Right, absolutely. The Level of the Supreme Court, the cases recognized that, sometimes they've done it on their own. Sovereign immunity can be raised at any time.

Vice Speaker Therese M. Terlaje

Yes -

Attorney Mike Phillips, Port Legal Counsel

Jurisdiction can be raised at any time. Sovereign immunity is just really, really significant.

Vice Speaker Therese M. Terlaje

Okay, and in your reconsideration, the motions have been filed already? Because you're asking us to file an amicus now.

Attorney Mike Phillips, Port Legal Counsel

Right, we have a reply due, I believe tomorrow.

Vice Speaker Therese M. Terlaje

When would the amicus be due?

Attorney Mike Phillips, Port Legal Counsel

I believe that the amicus, although there may be an attempt to have a position taken in and before Judge Sukola. It's likely it would end up just before the Supreme Court.

Vice Speaker Therese M. Terlaje

Yep, I noticed that the Resolution says in the Superior and the Supreme Courts.

Attorney Mike Phillips, Port Legal Counsel

Yes.

Vice Speaker Therese M. Terlaje

But the position that this Resolution – you've reviewed this Resolution. Correct? This Resolution, the position that it asserts that the legislature's going to assert, is consistent with the position that was asserted by the Attorney General in her Amicus Briefs?

Attorney Mike Phillips, Port Legal Counsel

Yeah, Absolutely.

Senator Frank B. Aguon Jr.

I think one thing to note, Madame Vice Speaker Terlaje, is to take a look at the judgement rendered on the 29th of December. Part of the language that it noted on page 11 out of 15, it highlights also as previously noted the language for in 12GCA Subsection 10105(i), which is the Public Law 26-28: "is ambiguous and neither the Supreme Court of Guam nor the Guam Legislature has provided clarification on how the statutes should be interpreted".

To me, I consider that a call-out and a request for clarity whether from the Guam Legislature in conjunction, with whatever the Attorney General, on behalf of the Government of Guam, and on behalf of the people of Guam could provide to the Judge and to the entire case. I just wanted to provide the clarity.

Thank You.

Vice Speaker Therese M. Terlaje

So, is it your opinion Mr. Phillips, that this, filing an amicus is going to provide that further clarity as to the policy behind the Statute?

Attorney Mike Phillips, Port Legal Counsel

Yes, and Senators, it's probably not for the reasons that most think. Although I think counsel for the Legislature were presented accurately.

That is, there is no further need. You can look under Sutherland, you can look under any of the standard ways of interpreting. When you have clear language, you don't go any further. Sometimes it helps you, and sometimes it doesn't. In this case, our General Manager is right it was very, very, clear. It's for "a term, not to exceed 5 years".

Now what they've done, is when you got to the codified section, you look under Guam Law, you won't find anything else. It's clear. What they've done, is they've gone to the history of the Public Law and the intent. I believe that was an error but even without it, it talks about an initial term. So, I guess you read that with the actual law and say well now it's vague.

That's not how laws are interpreted. You go to Legislative history, if there's vagueness. But I don't believe there is vagueness. But let's go ahead for arguments sake and I guess pretend or just precede as if there is something vague.

Well if you went to Legislative history, you would see you couldn't lease property of the Port and they raised it to 5 years with great concern. So there's no Legislative history that indicates that this Legislature wanted to give the Port the authority to lease for 10, 15, 20 to 30, 45 years. There's just none.

You can't stop there when you do a legal analysis. If you're going to look for Legislative history then you got to look for Legislative history. A complete review of the Legislative history would, I think, would produce a fair reading for anybody, that the Legislature wanted nothing more than 5 years. Nothing more.

Vice Speaker Therese M. Terlaje

Do you expect the A.G to have involvement in the reconsideration?

Attorney Mike Phillips, Port Legal Counsel

Well they didn't file the initial motion so I can't say. But I can say this, their brief, although this portion was a small portion it was their first portion. It's the first thing that Mr. Orchid and the A.G mentioned to me. That was their major argument, sovereign immunity.

Of course, nothing was presented, I guess if I may add Senator, when you go through all the Supreme Court cases, I don't think, and I'm not going to commit to this, but I don't think I would need to cite any case outside of our Supreme Court cases. I don't think I will. If I do, it might just be to show that other Courts agree with our Courts. But this all comes from our Supreme Court.

Vice Speaker Therese M. Terlaje

I guess that's what I'm trying to get at. Is when the legislature files an amicus, what are you going to assert that has not been asserted yet by either the A.G or yourselves or already recognized by the supreme court?

Attorney Mike Phillips, Port Legal Counsel

You know, I'm not going to second guess your council. He's greatly qualified and very well aware of these issues. But assume for purposes of this discussion that there was nothing more. It is awkward, for the G.M and myself to be there arguing that the Legislature has this power and feels this way and what they did, was not confusing.

I've been there before. I've been there with Senator Pangelinan. I'm sure that many times – I've been there with Tom Ada, the Senator Ada. The Legislature – I mean the Justices don't say it, but one time they couldn't help themselves because I was there with Senator Pangelinan and it was Justice Siguenza that said, "Mr. Phillips, you and Senator Pangelinan are here to argue the rights of Governor Guterrez." We said yes. He just looked at me, and just smirked. Because you know, that's the point. Where was the Governor? That involved the hiring freeze and the assertions by Adelup that they couldn't hire anybody. So we went in there to clarify that. To give the Governor the power. Again, its awkward, that branch of Government is not involved.

I would also add that the Legislature has the history. Although I haven't been involved in other cases, I know in two or three cases, the Legislature has involved itself. Camacho-Moylan, Moylan - Camacho, EITC, obviously and probably some others I can't remember. The Legislature has filed amicus, or has lead the fight. It is not unusual to have the Legislature part of the discussion.

Vice Speaker Therese M. Terlaje

Thank you very much. Yes, I am in favor of Legislative involvement in cases I personally seen it to be very effective and to preserve the rights of the Legislature as the third branch of Government. I think it's important that it be done. I agree with the sovereign immunity and the law interpretation that is proposed in this Resolution that be asserted by the Legislature.

So, I thank you all for your testimony today and your help in considering this.

Thank you.

Senator Frank B. Aguon Jr.

Thank you very much, Vice Speaker Terlaje. I certainly appreciate your legal perspective and the nature of the discussion this morning.

Any other questions from Senators?

Senator Mary Camacho Torres

I have a question.

Senator Frank B. Aguon Jr.

Senator Torres, a follow-up question?

Senator Mary Camacho Torres

As a follow-up to the points brought up by the Vice Speaker, I just wonder though, if anybody experienced or is aware of any precedence where a current Legislature to provide thoughts on what a Legislative body a decade ago, meant when they passed a certain Legislation because we do know when looking at the committee report on that bill that there is a Legislative Intent in there and the point that I want to make is whether, after the fact, we can provide additional comments on what the intent of the body was and whether that in fact would be given serious consideration by the Courts. So, that's my question to the panel.

Because we are now we are looking at hiring an attorney and we have to ascertain in what fashion that would be, whether our own or through contract. What the extent is, in turns of their expertise, the financial impact to the Legislature, the fiscal note that would have to come with that. So, there is a lot of considerations but more so, what is the precedent? Is it appropriate or even wise for the latter body to ascertain the intent of a prior body and add additional intent to a measure that was passed way back? So that's my question to the body.

Attorney Mike Phillips, Port Legal Counsel

Mr. Chair may I respond to that briefly?

Senator Frank B. Aguon Jr.

Thank you so much Senator Torres. Senator Brown first and then, (Gestures to Attorney Mike Phillips).

Senator Joanne Brown, General Manager of Port Authority of Guam

Thank you very much Mr. Chairman.

I understand the question, but I do have to say, the authorities of the legislature, no matter what body because you know, terms come and go every two years. This comes to a fundamental authority to the Government of Guam that needs to be looked at and I can understand and appreciate the interests of what it may be involved for the Legislature; getting a legal council. I'm sure your current council is probably just as competent to represent this issue before the court. Certainly, our Vice Speaker here at the time, she was council for the Democratic Senators has also gone before the court.

To me that is a minor issue compared to the bigger issue of protecting the authorities of the Government, protecting the authorities of the Legislature and ultimately through all that protecting the interest of the people of Guam. Those concerns to me will be minor in comparison to that.

I was a member of that body. I'm only one member of the body, the only member of the body that didn't vote for this bill.

That's the irony of it all. But nevertheless, if you look at the language I don't see how you can interpret it otherwise. To what extent I understand *i fino* English. But I can't interpret it any other way. I don't see any opening that you know, can combine all this and make a 50-year lease. I don't see it.

At the end of the day, this is about your fundamental authorities. Because if you open this floodgate, trust me, each of you will be reminded everyday about this action because the consequences to the Port are dire. The bigger consequence considering the essential, absolute essential service we provide to this community. For almost everything that you touch every day, at this moment, was all brought in to the Port of Guam.

It's ultimately the impact of the people that are going to pay for this. The consequence of any future contract, any future arbitrator, you will never know what any government official is going to do now and in the future. Your hope is that every government official would ensure their proper responsibility to protect the interest in the department of agency in which they work. That is your hope, and that isn't always the case. We can go back and look at the history and no doubt in the future, there will be circumstances that come up that we're going to wonder what the heck were they doing.

There is always be interests out there. When are you going to give up? Port, what are you going to give up? You're going to give up Port 1,2,3,4, and 5 and 6? Is somebody going to come out there and put a boundary around that property in the Port of Guam and say we own this property?

Understand the consequences, this stuff is all minor that can be argued. What you need to do is insert the authority of the Legislature and that, as our legal council has elaborated repeatedly, the most critical part of the this.

We can't argue your position, and this for you, is not that big of an effort for the Guam Legislature to stand up and protect its authorities and the sovereign immunity of this government. Considering what we're up against, this is the least you can do for us.

I'm not just talking about "us" the Port, like I said, I'm not walking out, you know, losing money out of my direct pocket to go into the pockets of others, who yes, intend to receive direct impact to their pocket. This money is going to go into their pocket at the expense of who and what. That is the bigger issue. So, by all means Mr. Chair, I would hope that as you deliberate with your fellow Legislatures about this issue you understand the bigger issue, and the bigger picture goes far beyond the Port. If anything, you need to protect the interests of the people.

Senator Frank B. Aguon Jr.

Thank you, Senator Brown. Attorney Phillips? Your response to the-

Attorney Mike Phillips, Port Legal Counsel

Thank you. Mr. Chair, regarding in response to Senator Torres' concerns I would submit that I think every, each time that the Legislature has participated in or before the Courts of Guam its always been over something that has occurred in the past with regard to providing new Legislative Intent, that is not going to go very far. Though I did participate in a case where one Senator, Senator Kasperbauer, was actually allowed to testify to Legislative Intent and Judge Unpingco just wanted to hear. I don't think that is very persuasive, I don't know if that was very persuasive because Judge Umpinco didn't comment that much on it.

I would admit that's kind of awkward. But that's not what you have here. What you have here is tantamount to when Ted Kennedy sued Richard Nixon, Paul Bordallo, Frank Santos, Gene Ramsey, I guess Gene was not a senator at the time but they challenged the failure of the administration to enact laws. Now we have a body of case law that will not exist but for that challenge, they didn't win every case.

One of the findings that came out, it was either Bordallo V. Camacho or Santos V. Calvo I believe, or some mix thereof that we now understand you cannot force the executive to spend. Up until that point it's different from what I understand in the United States. You can appropriate that money but you can't force the governor to spend.

We just didn't know that. That came from one of those two cases and that time, they felt hey, we've appropriated and that's choice to set priorities and you execute. But that's not the way the Organic Act reads.

Again, somebody step forward to defend the Legislature's authority. But it's always going to be for something that's already happened. It's always going to be over a law that has already passed. I think the concern is well taken with regard to intent and intent that's not revealed. You can't say "well, this is what we intended". It needs to be focused on the clarity of the law.

In this case, you're talking about a 5-year cap, you're talking about sovereign immunity where nobody will find a waiver, Mr. Chair. You're going to find one exception there.

There are different categories of arbitration and one category, not this, one category before the Courts were you end up there is when a Judge can go ahead and place you there. It has a very severe restriction that makes it very clear, there's no lifting of the caps.

So, how this could be read into another area where this is no waiver of sovereign immunity and there's no mention of arbitration, you won't find government mentioned anywhere in the arbitration rules. Except, for that one section that nobody has argued applies here.

So, if you do follow that exception, for example, and it hasn't happened yet, then there's a cap. There's nothing to worry about. If you go to the Government Claims Act and then you say well there's the waiver. Well, the waiver is what we call a limited waiver. You got to go through the Government Claims Act. That's how we prevailed in this case in the first place, we prevailed because of sovereign immunity, the Government Claims Act, the contract being illegal.

All the issues we talked about in the Trial Court I believe agreed with us. The Supreme Court reversed on the issue of can it go to arbitration, but did not reverse on the issue of Judge Sukola finding the contract to be illegal. They just said, let the arbitrators decide that. That was it.

So, even though I think that's fundamental to your involvement, I think the much larger issue, although I'm not putting that issue down, I just think that the idea that you have not allowed this to even go forward, and that not being respected and people not understanding how critical it is really fundamental to everything. Sometimes in order to say hey, you know you have to take sides with regard to if you like the Governor or not, I think we all agree he decides whether to veto or not. It's just the way he is, that's his power.

But you guys decide whether to waive sovereign immunity or not, and that's your decision. Everybody can walk around with views on whether you should expand or contract but everybody should understand that's your decision.

That's really what this case is about. It's about your powers. Now, of course, it's as I said, it's always going to be about actions that took place earlier. That's just the way it takes place. In fact, that's the nature of the Court system except for a very few exceptions with declaratory judgments. 99, maybe 199 cases out of 1000 are always going to be involving issues that have happened in the past. That's the nature of how things operate in Court.

Here, with this body sometimes you're dealing with, most of the time you're dealing with the future. But lots of times it has a lot to do with what's happened in the past. You have that prerogative of kind of setting policy for the future.

Court's rarely have those issues before them. So it's always going to be dealing with facts that have already occurred obviously.

Senator Frank B. Aguon Jr

Thank you, Attorney Phillips. Senator Torres, you still have the mic.

Senator Mary Camacho Torres

(Inaudible Response)

Senator Frank B. Aguon Jr

Thank you again to all the panel members, board members as well. Attorney Phillips, Senator Brown, thank you for your testimony.

Just one final question in regards to the timing because I believe Vice Speaker Terlaje eluded to that. Now, the Port is now presenting it's counterargument.

Attorney Mike Phillips, Port Legal Counsel

Yeah, that's right. We're waiting for a reply.

Senator Frank B. Aguon Jr

Because I'm trying to understand the timing-

Attorney Mike Phillips, Port Legal Counsel

I believe that the hearing, Mr. Chair is in early April. April 4th or something. That would be the hearing. Of course, if you pass the Resolution, the Court will take Judicial notice of that. No question about it. Even if you didn't file a brief. I don't think I'm out of line when I say that either side is likely to take it to the Supreme Court. Notwithstanding or regarding –

Senator Frank B. Aguon Jr

I guess then, my direct question would be what is the latest, if in fact the Legislature does approve the Resolution to be able file?

Attorney Mike Phillips, Port Legal Counsel

Before April 4th.

Senator Frank B. Aguon Jr

Before April 4th?

Attorney Mike Phillips, Port Legal Counsel

Yes.

Senator Frank B. Aguon Jr

It's a good thing the Acting Speaker is present at this hearing. Thank you very much again, folks.

Ladies and gentlemen, we're going to proceed with the other individuals who have signed up for Resolution 62-34. If by any chance, you're not providing oral testimony – Or what about if I just do this? Provide an open call for anyone who will be submitting oral testimony on Resolution No. 62-34 COR. An open call for anybody providing oral testimony.

If not, this will conclude the discussion on this particular Resolution. The chair reserves the right to close the committee report within 24 hours or within 48 hours so that in fact, if the acting speaker sees it necessary and with the concurrence of the members of the body that this Legislative body will entertain this particular Resolution.

So once again, the Chair reserves the right to close the committee report and to accept any additional documents or testimony, written testimony within the next 48 hours, 12 noon. Let me just say by 12 noon on Friday. Any additional written testimony for Resolution No. 62-34 will be required and the committee report will be closed by the conclusion of that business day.

So that being the case I want to thank everyone for providing oral testimony and senators for joining us.

The public hearing was adjourned at 12:25 PM.

III. WRITTEN TESTIMONY

The following individuals submitted written testimonies to the Committee on Guam U.S. Military Buildup, Infrastructure, and Transportation *before, during, or after* the scheduled Public Hearing on Wednesday, March 29, 2017 at 10:00 AM

1. Joanne M.S. Brown, General Manager of Port Authority of Guam
2. Guam YTK Corporation, Jay Lather, Authorized Representative

IV. FINDINGS & RECOMMENDATIONS

The Committee on Guam U.S. Military Buildup, Infrastructure, and Transportation hereby reports on Resolution No. 62-34 (COR) with the recommendation

TO DO PASS

I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN
2017 (FIRST) Regular Session

Resolution No. 62-34(002)

Introduced by:

FRANK B. AGUON, JR.



RELATIVE TO AUTHORIZING THE LEGISLATIVE COUNSEL, OR OTHER RETAINED COUNSEL, TO APPLY FOR AND FILE AN *AMICUS CURIAE* BRIEF BEFORE THE SUPERIOR AND SUPREME COURTS OF GUAM AFFIRMING THE GUAM LEGISLATURE'S POSITION RELATIVE TO SOVEREIGN IMMUNITY AND THE UPHOLDING OF GUAM LAW.

2017 MAR 20 AM 9:27
KIN

1 **BE IT RESOLVED BY *I MINA'TRENTAI KUÁTTRO NA***
2 ***LIHESLATURAN GUÁHAN:***

3 **WHEREAS, *I Liheslatura* affirmed and asserted in Section 2 of Public 26-28**
4 **that the Port Authority of Guam be given the authority “to enter into a commercial lease,**
5 **or issue a permit or license for the use of its real property and other related facilities for**
6 **a term not to exceed five (5) years;” and**

7 **WHEREAS, on December 14, 2001, Guam YTK Corporation (“YTK”) and the**
8 **Port Authority of Guam (“Port”) signed a Development Agreement and Lease (“Lease**
9 **Agreement”) to develop and manage a state of the art fisheries facility at Hotel Wharf;**
10 **and**

11 **WHEREAS, the term of the Lease Agreement was for an initial term of five (5)**
12 **years with automatic options to renew for eight (8) consecutive five-year terms for a**
13 **total lease term of forty-five (45) years;**

14 **WHEREAS, the Lease Agreement with the Port exceeded the five-year**
15 **maximum the Legislature set in Public Law 26-28; and**

1 **WHEREAS**, Port counsel, in 2011, advised the Port that the Lease Agreement
2 was expired and terminated as a matter of law and was void; and

3 **WHEREAS**, on October 16, 2012, YTK Filed a Complaint to Compel
4 Arbitration in the Superior Court of Guam bearing Superior Court of Guam Civil Case
5 No. CV 1170-12; and

6 **WHEREAS**, on December 12, 2012, the Superior Court of Guam heard oral
7 arguments on YTK's Motion to Compel Arbitration; and

8 **WHEREAS**, on March 12, 2013, Honorable Anita A. Sukola, Judge of the
9 Superior Court of Guam issued a Decision and Order in CV 1170-12, denying YTK's
10 Motion to Compel Arbitration. The Superior Court found that the Government Claims
11 Act was a jurisdictional bar to YTK's claims against the Port; that the Lease Agreement
12 with the Port was in violation of law because the lease term exceeded the five-year
13 maximum permitted by law; that because the Lease Agreement was in violation of law,
14 it was unenforceable; and that the Government Claims Act was YTK's exclusive
15 remedy; and

16 **WHEREAS**, following the Superior Court's March 12, 2013 Decision and
17 Order, YTK filed an appeal to the Guam Supreme Court seeking to compel the Port into
18 arbitration; and

19 **WHEREAS**, on April 17, 2014, the Guam Supreme Court reversed the Superior
20 Court's denial of YTK's Motion to Compel Arbitration, finding that the trial court
21 should have focused on the issue of whether the arbitration agreement itself—instead
22 of the Lease Agreement as a whole—was valid and enforceable. The Supreme Court
23 remanded the matter to the Superior Court to compel arbitration; and

24 **WHEREAS**, in its April 17, 2014 Opinion, the Supreme Court also found that
25 sovereign immunity is not implicated or threatened in cases where a valid and

1 enforceable arbitration agreement exists, and further found that YTK's claims were not
2 barred by sovereign immunity or the Government Claims Act; and

3 **WHEREAS**, on April 4, 2016, the arbitration panel issued its Arbitration Award,
4 concluding that PAG's notice to terminate the Lease Agreement on July 30, 2008 was
5 invalid. The panel terminated YTK's Lease Agreement with the Port, effective April 4,
6 2016, awarding \$12.7 Million to YTK plus ten percent (10%) interest per annum on the
7 unpaid balance of the Award; \$1,257,852 million in attorney fees; and \$137,788.28 in
8 costs; and

9 **WHEREAS**, on December 29, 2016, the Superior Court confirmed YTK's \$12.7
10 million arbitration award and announced that the Court will adhere to the Supreme
11 Court's mandate that "courts may not review the merits of the controversy, the validity
12 of the arbitrator's reasoning, or the correctness of the arbitration award"; and

13 **WHEREAS**, on December 29, 2016, the Court did not find Section 2 of Guam
14 Public Law 26-28 to be "well defined, explicit, and clearly applicable" under the
15 manifest disregard of the law standard for vacating an arbitration award, concluding
16 that "the Guam Legislature has not provided further clarity as to the policy behind the
17 statute"; and

18 **WHEREAS**, *Li heslatura* finds that it necessary to register its position regarding
19 Public Law 26-28 through an *amicus curiae* brief to provide its position and policy
20 behind the statute; and

21 **WHEREAS**, in the same case the Supreme Court highlighted that the Organic
22 Act provides that there is no question that the Government of Guam possesses inherent
23 sovereign immunity from suit without its consent pursuant to the Organic Act; and that
24 the Organic Act is not subservient to the laws made by the Legislature but it grants the
25 Legislature the power to waive sovereign immunity as it sees fit; and

1 **WHEREAS**, *I Liheslatura* finds that it has specifically provided a limited waiver
2 of the Government of Guam’s sovereign immunity through the Government Claims Act
3 (“Claims Act”) pursuant to 5 GCA § 6101 *et. seq.*; however, the same waiver of
4 sovereign immunity is not provided in Guam’s arbitration laws; and

5 **WHEREAS**, *I Liheslatura* finds that it must assert its position regarding its
6 limited waiver of sovereign immunity; and

7 **WHEREAS**, *I Liheslatura* finds the need to protect a vital and intrinsic power
8 retained by the legislative branch of government, specifically its exclusive authority to
9 waive the Government of Guam’s sovereign immunity; and

10 **WHEREAS**, by applying for and filing an *amicus curiae* brief before the
11 Superior and Supreme Courts of Guam regarding the specific rulings on Public Law 26-
12 28 and the Courts’ findings that the Guam Legislature waived sovereign immunity to
13 an extent greater than is contained in the Government Claims Act, it is the intent of *I*
14 *Mina'Trentai Kuattro Na Liheslaturan Guåhan* that the Courts of Guam and all
15 applicable government agencies interpret the relevant statutes in line with *I*
16 *Liheslaturan Guåhan*’s clear mandates contained therein; now, therefore, be it

17 **RESOLVED**, that *I Mina'Trentai Kuattro Na Liheslaturan Guåhan* does hereby,
18 on behalf of *I Liheslaturan Guåhan* and the people of Guam, authorize the Legislative
19 Legal Counsel, or other retained counsel, to apply for and file an *amicus curiae* brief
20 before the Superior and Supreme Courts of Guam affirming the Guam Legislature’s
21 position relative to sovereign immunity and the upholding of Guam law; and be it
22 further

23 **RESOLVED**, that the Speaker and the Legislative Secretary attest to the
24 adoption hereof, and that copies of the same be thereafter transmitted to the Honorable
25 Elizabeth Barrett-Anderson, Attorney General of Guam; and to the Honorable Edward
26 J.B. Calvo, *I Maga'lahren Guåhan*.

DULY AND REGULARLY ADOPTED BY *I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN* ON THE _____TH DAY OF _____.

Port legal fees break budget ceiling

By John O'Connor
john@postguam.com

The Port Authority of Guam has exceeded its budget ceiling on legal fees for the month of February by more than \$26,000. Monthly spending on legal services is normally limited to \$70,000, but several ongoing legal battles - including the \$15 million dispute with Guam YTK - has led to a surge in costs, according to port officials.

"As you know these ongoing court cases has increased our legal activity this year ... obviously we have to address and protect the interest of the port," said PAG General Manager Joanne Brown.

In anticipation of even more legal proceedings moving forward, the PAG board voted to transfer \$60,000

from its G4S maintenance account to cover legal fees over the next few months. Port officials said the transfer would not jeopardize operations for this fiscal year. They added that they believed there was enough funding for the port authority to get through the year as well.

The port authority's legal counsel, Michael Phillips, joined board members and the general manager earlier in the day to speak on Resolution 62, which would authorize the legislature to enter as amicus curiae, or friend of the court, in the case between Guam YTK and the port authority. The resolution was proffered by Sen. Frank Aguon, who now oversees the port.

Oral testimony was entirely in support of the resolution and largely revolved around prior input given

during an informational hearing on the matter, which touched on Guam's sovereign immunity. Sovereign immunity is a government's immunity from suit within the courts it has established. Phillips said there was a limited waiver of this legal shield through Guam's Government Claims Act. However, this is only in reference to actual damages, Phillips said.

An arbitration panel awarded YTK \$15 million while taking into consideration a 45-year lease agreement with the port authority to develop a fisheries facility. There had been little development on the facility, Phillips stated, and the current port management has always held that the lease was illegal to begin with.

YTK, in its own written testimony, stated that the arbitration panel - the Supreme Court of Guam, which

upheld the arbitration clause in the lease, and the Superior Court of Guam, which upheld the arbitration award - acted in accordance with established law and facts, correctly considering and dealing with issues of sovereign immunity, arbitration law and local law.

"The predicament the port finds itself in is a direct consequence of a series of bad decisions, based on bad advice, that were made by the port board, port management and port legal counsel," the company's representative, Jay Lather, stated in written testimony.

The port authority and Guam YTK are expected to appear at Superior Court again on April 6 to argue a motion that asks the court to reconsider its prior judgement upholding the arbitration award.

Third judge mulls motion in DFS-GIAA dispute

By Neil Pang
neil@postguam.com

As the dispute between DFS Guam and the A.B. Won Pat Guam International Airport Authority (GIAA) continues to unfold in court, a third judge is now considering a motion that would order the airport authority to hand over documents the agency is arguing are exempt from the Sunshine Reform Act and Open Government Law.

As the parties in the ongoing case wait for the case to go to trial before Superior Court of Guam Judge Arthur Barcinas in May, DFS legal counsel Patrick Civile has filed a motion for summary judgment asking Judge Anita Sukola to order the airport authority to hand over transcripts from certain executive meetings between airport board directors and the airport's legal counsel that occurred in 2013.

Civile argued his client is entitled to summary judgment because airport officials "violated the Sunshine Reform Act and the Open Government Law" when they denied DFS's request for certain documents.

According to Civile, DFS is aware that certain airport board members met with the airport authority's legal counsel following a meeting on March 28, 2013, to discuss issues that, under Guam Law, would normally require a quorum. Civile argued that because those discussions had to do with major policy decisions that would later need a quorum, the Open Government Law required the airport authority to



RETAIL CONCESSION: The dispute between DFS Guam and the A.B. Won Pat Guam International Airport Authority over a contract awarded for the duty free retail concession continues to unfold in court. Post file photo

"This is what the Sunshine Reform Act and the Open Government Law are designed, I think, to guard against," Civile said. "These kind of back door meetings, or off-the-record meetings, where decisions get made on important issues that require a quorum, board discussion and (public participation) - that didn't happen."

Motion to seal documents

He went on to add that when DFS requested those transcripts from the airport authority, GIAA denied the request and proceeded to file a motion with Superior Court of Guam Judge Michael Bordallo to seal those documents, some of which were already public domain. Civile said his clients had interpreted this action to be an acknowledgement that the

summary judgment, GIAA legal counsel Genevieve Rapadas fired back, saying DFS has ulterior motives for pursuing a judgment in Sukola's courtroom.

"We recognize that DFS, as a member of the public, is entitled to certain rights under the Sunshine Reform Act and Open Government Law - we take those rights very seriously," she said. "The bottom line is DFS is trying to get evidence for its procurement actions that it cannot otherwise get before Judge Barcinas."

According to Post files, the DFS lawsuit against the airport authority currently before Barcinas stems from a specialty retail concessionaire contract that was awarded to Lotte Duty Free Guam. DFS lost that contract and is alleged

turned consultant for Lotte, while the airport authority alleges that expanded discovery efforts by DFS were part of an ongoing practice of corporate espionage.

Rapadas told the court the airport authority has had more than 60 Sunshine Reform Act requests served on it and that, through those requests, they have produced "tens of thousands of documents."

"The problem here, for DFS, is that it is trying to obtain specific information," Rapadas said. "And the information that they are trying to obtain are the attorney-client communications between the airport and its legal counsel. That's a huge problem because those communications are strategy-related discussions about this specific procurement."

She went on to add the airport authority was not in violation of either the Sunshine Reform Act or the Open Government Law when it denied DFS's request for certain documents and instead turned the attack around, arguing DFS is pursuing a speedy judgment from Sukola in this case in order to gain leverage against the airport authority in its case before Barcinas.

"That's not the intention of the Sunshine Reform Act (or) the Open Government Law," Rapadas argued. "Yes, the intention is free access to information, but it's not for an over-zealous litigant to be able to get confidential communication from a party they are litigating against."

As the parties in the case before Barcinas continue to work through the more than 100,000 documents that now make up the discovery trial

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Testimony submitted for and against Resolution 62



Posted: Mar 29, 2017 5:25 PM

Updated: Mar 29, 2017 5:25 PM

By Ken Quintanilla [CONNECT](#)

Port management and board members appeared before the legislature to testify on Resolution 62 introduced by Senator Frank Aguon, Jr. The measure shows support to the Port as it continues its legal battle between YTK Corporation.

Port General Manager Joanne Brown says the resolution holds magnitude and great importance adding there is a "significant and eminent need for the Legislature to stand and defend duly passed laws and Organic Act authority providing the Legislature with exclusive authority over GovGuam sovereign immunity."

Senator Aguon says the resolution is providing clarity on the matter.

Meanwhile, YTK representative Jay Lather submitted testimony against the resolution pointing out that the supreme court, the superior court, and an arbitration panel have all dealt with and ruled on the issues being raised by the port's legal counsel, such as sovereign immunity, and the arbitration law.

YTK says the Port is in this predicament not because of a misinterpretation or misapplication of law, but because of its own bad advice and decisions. The company calls the Aguon resolution "an inappropriate infringement on the separation of powers, and disrespectful to the judiciary and rule of law."

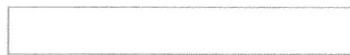
YTK says it has been seeking to resolve the contract dispute since 2010, but the port has rebuked all attempts. Ironically, the company says its lease would have ended this month -with no liability to the port - if the port had agreed to the company's five-year lease request for Hotel Wharf in March 2012.



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GUAM DAILY POST • THURSDAY, MARCH 23, 2017

ONLINE READER POLL

Should Guam taxpayers' money fund a legal fight against a federal court ruling that ruled Guam's "race-based" plebiscite law unconstitutional?

- A. Yes, this is an important issue. GovGuam should use public funds for this
- B. No, not all taxpayers support a plebiscite based on ancestry



POSTINGS

Responses from our readers. What do you have to say?

Re: AG proposes taking Chamorro lands case straight to Congress 03.22.2017

John Salas Calvo:
Al Adal. Here is some "Food for Thought."

If this is the strategy to take the case to Congress, then Guam made another mistake during the last Congressional election.

We are doomed to fail if Bordallo, who has been in office since 2003, is tasked to be our champion.

Bordallo was very clever to have Section 30 money (which are taxes of federal employees stationed on Guam which is already ear-tagged for Guam) pay for the War Reparations due from the U.S. government (when they forgave Japan of the obligation). Essentially, Guam takes the money from one pocket and puts it in the other. Debt paid?? SUCKERS!!!

Bordallo never even read ObamaCare before supporting it and she also supported the Military Buildup and Firing Range before we even had a public hearing for the community to express their thoughts.

She must be representing her home state of Minnesota, because her actions don't show any love for Guam and her people.

She should have retired decades ago and allow for more energetic people who have Guam's existence (& well being) in their heart to rise. But... Power is an addiction.

After 13 years in Congress, Congressional members of her own party still are unaware of Guam and our issues.



EDITORIAL

Japan arrivals' steep drop should prompt deeper assessment on how GVB can shake things up

Guam's tourism landscaped has been shifting, and the release yesterday of the Guam Visitors Bureau's latest statistics — showing that Japan arrivals dropped an astounding 24 percent last month compared to the same period last year — should provoke a lot of public discussions.

GVB lawmakers in the tourism committee and tourism industry stakeholders should openly discuss what this means to the island in the near and long term.

The latest GVB numbers show Japan is still the largest tourist market for Guam, but it has now shrunk to 41 percent of the overall visitor arrivals. More than a decade ago, Japan arrivals made up more than 80 percent of all tourists who visited the island.

Tourism industry long-timers will tell you that the Japan market is a good fit for Guam, because its visitors are primarily well-mannered, family oriented and spend well. And the

industry's infrastructure — from the tour buses to the hotels and the optional tours — was built with the Japanese tourist in mind.

Now that South Korean arrivals are closing in at 38 percent of the overall market, and could topple Japan's top spot, industry leaders really need to take a well-thought-out look at what marketing and promotional events will work to save the Japan market from further slipping.

We've heard GVB representatives say Japan arrivals slid, in part, because of the reduced availability of airline seats.

But if more tourists from Japan book Guam-bound flights, wouldn't the

airlines instinctively add more flights to meet increased demand if it's there?

“A few years ago, and even as recently as last year, the weakening of the yen against the U.S. dollar was also pointed out as a reason for the decline in arrivals from Japan.

A few years ago, and even as recently as last year, the weakening of the yen against the U.S. dollar was also pointed out as a reason for the decline in arrivals from Japan.

There has got to be more specific details that GVB can share with the public about what it's doing, and what it plans to do, to adjust to shifting markets and preferences by international travelers.

GVB spends millions of dollars in hotel tax money marketing to the

ARRIVALS continued on page 19

LETTER TO THE EDITOR

Investigate \$15M 'blunder'

I'm very disappointed that Sen. Frank Aguon Jr. has brought (the Port Authority of Guam's liability, owed to Guam YTK Corp.) before the legislature. First of all, this matter is an executive branch matter — separation of powers. Secondly, it has been determined by the courts, through the application of Section 171 "Arbitration" clause of the lease agreement that PAG must pay YTK a sum of about \$14 million (now \$15 million because of interest). Furthermore, I have personally briefed him and staff members, pointing out all the relevant issues such as:

Article 2: Section 2.1 Term and Effective Commencement Date. ... This Lease shall be binding upon parties upon its execution by the parties and upon the approval of the governor of Guam, the attorney general, the legal counsel of the lessor and by any other applicable government agency or authority ... As stated above, this lease was duly signed by Port general manager and PAG board of directors chairperson on Dec. 11, 2001; also by Guam YTK president and legal on Dec. 14 2001 as well a port legal counsel; and lastly, duly signed by acting Attor-

ney General Robert H. Kono, Gov. Carl T.C. Gutierrez on Dec. 15, 2001. Therefore, the lease is legal and binding for five years from Feb. 26, 2002 as per PAG general manager letter dated Feb. 26, 2002.

The lease was forwarded to the legislature and received by the legislative secretary, then Sen. Joanne Brown. However, the legislature did not act on it, so after six months, the Port and YTK decided to move forward with the first five years!

Article 17: Arbitration, Section 17.1. ... All disputes and controversies of every kind and nature between the parties to this lease arising out of, or in connection with lease, including but not limited to disputes concerning the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation, breach, continuance, or termination of the Lease, shall be submitted to final, binding arbitration.

Article 18: Immediately after the governor of Guam has approved this lease, lessor shall submit this lease to Guam Legislature and shall use its best efforts and good faith to obtain confirmation and approval of

the Lease as promptly as reasonably possible. ... However, if the legislature fails to approve this lease within six months after the date the governor of Guam has approved this Lease (hereafter referred to as the "legislative approval period") then the lessee shall have the option to terminate this Lease within 60 days after the legislative approval period. If lessee fails to exercise the option to terminate due to lack of the legislative approval, then this lease shall be binding and lessee shall be obligated to develop the leased premises as originally planned and shall honor all terms and conditions of the lease.

I highly recommend that Sen. Frank Aguon Jr. (and all other senators) allow the PAG board of directors and legal counsel and YTK exhaust their administrative and legal processes toward a settlement. I further urge Sen. Frank Aguon Jr. to have an investigation to determine the individual(s) responsible for this \$15 million "blunder" that us "Joe Public" will have to pay!

Eloy P. Hara, Sinafana

Resolution No. 62-34 (COR)

Sponsor: Senator FRANK B. AGUON, JR.

Committee Chair: FRANK B. AGUON, JR.

Short Title: Authorizing Legislative Counsel or other Counsel to file an Amicus Brief in Supreme and Superior Courts

Committee Report Components

a	Front Page Transmittal to Speaker	<input checked="" type="checkbox"/>
a1	COR Chair Signature Line	YES
b	Cmte Report Title Page	<input checked="" type="checkbox"/>
c	Cmte Chair Memo to All Cmte Members	<input checked="" type="checkbox"/>
d	COR Referral Memorandum	<input checked="" type="checkbox"/>
e	Notice of PH & Other Correspondence	<input checked="" type="checkbox"/>
	Date of PH	3/29/2017
	Date 5 Working Days Prior	3/22/2017
	All Sens	3/22/2017
	All Media	3/22/2017
	Date 48-Hours Prior	3/27/2017
	All Sens	3/27/2017
	All Media	3/27/2017
f	Public Hearing Agenda	<input checked="" type="checkbox"/>
g	Public Hearing Sign-In Sheet	<input checked="" type="checkbox"/>
h	Written Testimony(ies) & Add'l Docs	<input checked="" type="checkbox"/>
i	Committee Vote Sheet(s)	<input checked="" type="checkbox"/>
j	Committee Report Digest(s)	<input checked="" type="checkbox"/>
k	Bill History	<input checked="" type="checkbox"/>
k1	Copy of Bill (as introduced)	<input checked="" type="checkbox"/>
k2	COR Pre-Referral Checklist	<input checked="" type="checkbox"/>
k3	Copy of Bill as corrected by Prime Sponsor (if applicable)	N/A
k4	Copy of Bill as amended/substituted by Committee (if applicable)	N/A
l	Fiscal Note/Waiver and Funding Availability Note (OFB)	N/A
m	Two (2) Property Appraisals (if applicable)	N/A
n	Related News Reports (optional)	<input checked="" type="checkbox"/>
o	Miscellaneous (optional)	N/A
p	Committee Report Checklist(s)	<input checked="" type="checkbox"/>
	Originals	<input checked="" type="checkbox"/>
	Single-Sided	<input checked="" type="checkbox"/>
	Letter Size	<input checked="" type="checkbox"/>
	No Staples/Paper Clips	<input checked="" type="checkbox"/>

Committee Contact	
Name:	Tracy Aguon
Signature:	<i>[Signature]</i>
Date:	4/10/17

COR ACTION	
<input type="checkbox"/> CMTE Report duly filed; Available for Placement on Session Agenda	<input type="checkbox"/> CMTE Report non-conforming for acceptance; Return to Committee
_____ COR Chairman Signature	_____ Date and Time



COMMITTEE ON RULES

Senator Michael F.Q. San Nicolas, *Chairman*

I Mina'Trentai Kuåtto na Liheslaturan Guåhan • 34th Guam Legislature



COMMITTEE REPORT CHECKLIST

Part 1 / 1

RESOLUTION NO. 62-34 (COR)

Relative to authorizing the legislative counsel, or other retained counsel, to apply for and file an Amicus Curiae brief before the Superior and Supreme Courts Of Guam affirming the Guam Legislature's position relative to sovereign immunity and the upholding of Guam Law.

Referred to:

Senator Frank B. Aguon, Jr., *Sponsor*

(A) PUBLIC HEARING	(1) HEARING NOTICES SR §§ 6.04(a)(1) and 6.04(a)(2), Open Government Law (5 GCA, Ch. 8)	
	<input checked="" type="checkbox"/> (a) Five (5) working days prior (ALL Senators & ALL Media)	Date and Time of Notice: <i>3/22/17 8:35am</i>
	<input checked="" type="checkbox"/> (b) Forty-eight (48) hours prior (ALL Senators & ALL Media)	Date and Time of Notice: <i>3/27/17 8:13am</i>
	(2) Date and Time of Hearing: <i>3/29/17 10:00am</i>	<i>or</i> (4) HEARING WAIVED by Speaker in case of emergency SR § 6.04(a)(1) <input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A <i>If YES:</i> Attach memo indicating WAIVER
	(3) Location: <i>Public Hearing Room, Guam Congress Bldg.</i>	



Committee Report Checklist on Resolution No. 62-34 (COR)

Part 1/1

	<p>(1) Committee Report filed with COR? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p> <p><i>If YES:</i> Date & Time: <u>4/10/17 11:58am</u></p>	Notes:	<p><i>If NO:</i> UNABLE TO PLACE ON SESSION AGENDA SR § 6.04(d)(1)</p>
	<p>(1)(a) Secondary CMTE Report filed with COR? <input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> N/A</p> <p><i>If YES:</i> Date & Time:</p>		
(B) COMMITTEE REPORT	(2) COMMITTEE REPORT COMPONENTS		
	(a) Front Page Transmittal to Speaker		<input checked="" type="checkbox"/>
	(a)(1) COR Chair Signature Line		<input checked="" type="checkbox"/>
	(b) Title Page		<input checked="" type="checkbox"/>
	(c) Committee Chair Memo to All Committee Members		<input checked="" type="checkbox"/>
	(d) COR Referral Memorandum		<input checked="" type="checkbox"/>
	(e) Notice of Public Hearing & Other Correspondence		<input checked="" type="checkbox"/>
	(f) Public Hearing Agenda		<input checked="" type="checkbox"/>
	(g) Public Hearing Sign-in Sheet		<input checked="" type="checkbox"/>
	(h) Written Testimonies & Additional Documents		<input checked="" type="checkbox"/>
	(i) Committee Vote Sheet(s)		<input checked="" type="checkbox"/>
	(j) Committee Report Digest(s)		<input checked="" type="checkbox"/>
	(k) Resolution History		<input checked="" type="checkbox"/>
	(k)(1) Copy of Resolution as introduced		<input checked="" type="checkbox"/>
	(k)(2) Copy of Bill as amended/substituted by Committee (if applicable)	n/a	<input type="checkbox"/>
	(n) Related News Reports (optional)		<input checked="" type="checkbox"/>
(o) Miscellaneous (optional)	n/a	<input type="checkbox"/>	
(p) Committee Report Checklist(s)		<input checked="" type="checkbox"/>	
(C) COR Action	<input checked="" type="checkbox"/> CMTE Report duly filed; Available for Placement on Session Agenda <input type="checkbox"/> CMTE Report non-conforming for acceptance; Return to Committee	<p style="text-align: center;">COR CHAIR (Signature, Date & Time)</p> <p style="text-align: center;"><u>M. M. / 4/17/17 11:27</u></p>	

