



Office of the Attorney General of Guam



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July 12, 2016

Honorable Judith T. Won Pat
Speaker, *I Mina Trente tres Na Liheslaturan Guahan*
33rd Guam Legislature
155 Hesler Place
Hagatna, Guam 96910

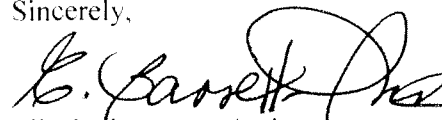
Re: Guam YTK Corp. vs Port Authority of
Guam Civil Case #1170-12

Hafa Adai Madam Speaker:

Pursuant to your request of June 17th to be provided copies of all pleadings in the above captioned case, attached please find a copy of our Motion to Intervene filed on behalf of the government of Guam.

Should you have any questions please do not hesitate to contact me.

Sincerely,


Elizabeth Barrett-Anderson
Attorney General

2016 Jul - 1 11:10:48

Cc: Vice Speaker B.F.J. Cruz
Senator Tom Ada
Atty. Michael Phillips, Counsel PAG

1858

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Office of the Speaker
Judith T. Won Pat, Ed.D

Date: 07-12-16
Time: 2:09 pm
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Date: 7/7/16
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By: WAV

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Attorneys for the Government of Guam

The Law Offices of
Cera
Date: 07/07/16
Time: 4:53pm

IN THE SUPERIOR COURT OF GUAM
HAGÁTÑA, GUAM

GUAM YTK CORPORATION

Plaintiff,

Case No. CV1170-12

vs.

PORT AUTHORITY OF GUAM,

Defendant.

CVR 7.1 FORM 1

NOTICE OF MOTION and MOTION

Please take notice that **Attorney General of Guam** Movant(s)

hereby move(s) the court for an Order granting the following relief:

Motion to Intervene

Intervention as matter of Right; in Alternative, Amicus Curiae Relief sought

Oral Argument is requested: Yes No Unknown at this time

BRIEFING SCHEDULE


Pursuant to CVR 7.1(b) and (d)(1)-(3), or order of this court, or stipulation filed with the court, the respective briefs of the parties on the motion must be filed and served as follows:

Opening brief due:	July 7, 2016	Normally the date of filing of this Notice
Opposition brief due:	August 4, 2016	Normally 28 days after above date
Reply brief (if any) due:	August 18, 2016	Normally 42 days from the filing of the motion

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he or she has caused, or within one business day of filing, shall cause this notice, together with any and all accompanying documents and supporting memoranda relative to the subject motion, to be served upon all parties who have appeared herein, through counsel of record, pursuant to Guam Rule Civil Procedure Rule 5.

RESPECTFULLY SUBMITTED this 7th day of July, 2016.

Attorney General of Guam	Movant(s)	
Elizabeth Barrett-Anderson	Attorney General of Guam	

07-09-16
CB

PCF/AG #: 12.0552

DEADLINE: 7-Jul-16

CASE #: CV1170-12

CASE NAME: GUAM YTK CORPORATION vs. PORT AUTHORITY OF GUAM

TYPE OF DOCUMENT: 1) MOTION TO INTERVENE; 2) DECLARATION OF KO in SUPPORT OF THE ATTORNEY GENERAL OF GUAM'S MOTION TO INTERVENE; 3) CVR 7.1 FORM 1

FILE: SUPERIOR COURT

OTHER _____

DISTRICT COURT

SERVE: CALVO FISHER & JACOB LLP

PHILLIPS & BORDALLO

07-27-16

SPECIAL INSTRUCTIONS:

RETURN FILE COPY W/ACKNOWLEDGEMENT OF RECEIPT & SCAN

PREPARE DECLARATION OF SERVICE

RETURN FILE TO ATTORNEY

ATTORNEY: DAG KO / Gabi

DATE: 7/7/16 3:56 PM

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07/07/16
4:53pm



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Attorneys for the Government of Guam

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Time: 4:41

By: [Signature]

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2016 JUL -7 PM 4:36

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**IN THE SUPERIOR COURT OF GUAM
HAGÁTÑA, GUAM**

GUAM YTK CORPORATION,

Plaintiff-Appellant,

v.

PORT AUTHORITY OF GUAM,

Defendant-Appellee.

) CIVIL CASE NO. CV1170-12
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**ATTORNEY GENERAL OF GUAM'S
MOTION TO INTERVENE OR
APPEAR AS AMICUS CURIAE**

Comes Now, the Attorney General of Guam, **Elizabeth Barrett-Anderson** and moves to intervene pursuant to Guam Rule of Civil Rule 24(a)(1), or in the alternative, to appear as *amicus curiae*.

I. INTRODUCTION

This case stems from an illegal forty-five (45) year lease agreement entered on December 21, 2001, between the Port Authority of Guam ("PAG") and Guam YTK Corporation ("YTK"). YTK claims PAG breached the lease, and in 2012, YTK filed an action for Declaratory and Injunctive Relief asking this Court, the Superior Court of Guam ("Court"), to determine:

(1) whether the Arbitration Agreement contained in the Lease Agreement was valid and enforceable; and (2) if it was, whether arbitration should be compelled to resolve the alleged breaches.

This Court determined that the Government Claims Act barred YTK's claims, the forty-five (45) year lease did not comport with Guam Law and violated 12 GCA § 10105(i), and the Court refused to order arbitration. YTK then filed an appeal before the Supreme Court of Guam ("Supreme Court"), which reversed and remanded the matter to this Court to compel arbitration.

The matter then went to arbitration, where on April 4, 2016, the arbitration panel issued a three-and-a-half (3½) page arbitration award containing minimal legal analysis, but nonetheless awarding YTK \$12.7 million.

As reported by the Pacific Daily News, YTK originally sought \$618,000 to resolve the dispute in 2010. (*See Exhibit A, attached to Declaration of Kenneth Orcutt*). By 2012, this amount had mushroomed to \$7,730,603 in the government claim filed by YTK with the Attorney General's Office. (*See Exhibit B, attached to Declaration of Kenneth Orcutt*.)

With the 2016 arbitration award, the claim has now skyrocketed to its current \$12.7 million amount. The arbitration panel also awarded YTK an additional \$1.2 million in attorney's fees and imposed a ten (10) percent per annum interest rate on the amounts awarded. *See Amended Arbitration Award of May 17, 2016*. The total arbitration award is now approximately \$14 million, and the award was made even though YTK had stopped paying rent on the lease in 2008. In arbitration, PAG sought \$1.8 million in back rent and insurance liability co-payments, yet the arbitration panel failed to offset YTK's award. *See Amended Arbitration Award of May 17, 2016*.

YTK now moves this Court to confirm the award amount and PAG has filed a motion to set it aside. Given this factual background, it is not surprising this matter has become a matter of

intense public interest since the arbitration award was announced. (See Exhibits A, C and D, attached to Declaration of Kenneth Orcutt.) The public interest exists, not only because of the large amount of the award and the challenges of being able to pay it, but because of the unfairness of the process which seems to have circumvented many Guam laws meant to prevent such a catastrophic result.

Through arbitration, YTK seeks to avoid application of the Government of Guam's ("Government of Guam") broad sovereign immunity. YTK, more specifically, seeks to avoid the application of Guam statutes which limit the damages that can be awarded in contract actions against the Government and which prohibit long term leases, such as YTK's forty-five (45) year lease with PAG.

As the Chief Legal Officer of the Government of Guam, the Attorney General of Guam ("Attorney General") has broad statutory and common law authority to act on behalf of the public interest. Pursuant to this authority, the Attorney General now moves to intervene in this action in order to challenge the validity of the arbitration award.¹

II. ISSUES

- A. **WHETHER THE ATTORNEY GENERAL SHOULD BE ALLOWED TO INTERVENE AS A MATTER OF RIGHT PURSUANT TO HER STATUTORY AND COMMON LAW AUTHORITY?**
- B. **WHETHER THE ATTORNEY GENERAL'S MOTION TO INTERVENE IS TIMELY?**
- C. **IN THE ALTERNATIVE, WHETHER THE ATTORNEY GENERAL SHOULD BE ALLOWED TO APPEAR AS *AMICUS CURIAE* AND SUBMIT BRIEFING AND ORAL ARGUMENT TO THE COURT IN SUPPORT OF VACATING THE ARBITRATION AWARD?**

¹The Attorney General's proposed Answer to YTK's Complaint is attached as Exhibit E to Declaration of Kenneth Orcutt.

III. DISCUSSION

Guam Rule of Civil Procedure (“GRCP”) 24(a)(1) provides that “[u]pon timely application anyone shall be permitted to intervene in an action . . . when a statute confers an unconditional right to intervene. . . .” In the case at bar, the Attorney General is entitled to intervene as a matter of right.

A. THE ATTORNEY GENERAL SHOULD BE ALLOWED TO INTERVENE AS A MATTER OF RIGHT PURSUANT TO HER STATUTORY AND COMMON LAW AUTHORITY

The Attorney General has an unconditional right to intervene based on statute and common law. In 1998, Congress amended the Organic Act to provide, among other things, that “[t]he Attorney General of Guam shall be the Chief Legal Officer of the Government of Guam.” 48 U.S.C. § 1421g(d)(1). The 1998 Amendments bestowed common law powers and duties upon the Attorney General. *See A.B. Won Pat Guam Int’l. Airport Authority v. Moylan*, 2005 Guam 5 ¶ 3.

The Guam Legislature, with the enactment Title 5 Chapter 30, has not only conferred the Attorney General with express powers but also common law powers. *See* 5 GCA § 30103 (2005) (“The Attorney General shall have, in addition to the powers expressly conferred upon him by this Chapter, *those common law powers which include, but are not limited to*, the right to bring suit to challenge laws which he believes to be unconstitutional and to bring action on behalf of the Territory representing the citizens as a whole for redress of grievances which the citizens individually cannot achieve, unless expressly limited by any law of Guam to the contrary.”) (emphasis added); *See Moylan v. Camacho*, Special Proceeding Case No. 230-03, pp. 43-44, (Nov. 10, 2003) (“The Guam legislature has also bestowed common law powers to the

Attorney General—powers which are broad but undefined, emerging and not limited to—unless expressly limited by any law of Guam to the contrary.”)

Among the common law powers of the Attorney General is the power “to intervene in all actions which [are] of concern to the general public.” *State v. Warren*, 180 So.2d 293, 299 (Miss. 1965); *See also State v. Robertson*, 886 P.2d 85, 89-90 (Utah App. 1994) (recognizing the Attorney General’s common law authority to intervene in the public interest); *State ex rel. Olsen v. Public Service Commission*, 129 Mont. 106, 283 P.2d 594, 599-600 (Mont. 1955) (recognizing the Attorney General’s common law power to intervene in all suits or proceedings which are of concern to the general public); and *State ex rel. Allain v. Mississippi Pub. Service Comm’n*, 418 So.2d 779, 783-84 (Miss. 1982) (characterizing “the prevailing rule” as being where the Attorney General has common law powers, he has the inherent right to intervene in all suits affecting the public interest when he has no personal interest therein.)

Similarly, the Attorney General’s common law authority includes the right to bring suit or initiate actions when the public interest is affected, unless otherwise limited by statute. In *Moylan v. Camacho*, *supra* p. 45, Attorney General Douglas Moylan petitioned for an alternative writ of mandamus directing Governor Felix Camacho to appoint remaining and alternate members of the Procurement Appeals Board. The Superior Court granted mandamus in favor of Attorney General Moylan, and Governor Camacho filed a writ of prohibition before the Supreme Court. The Supreme Court determined the trial court should have addressed the issue of jurisdiction on whether the Attorney General had standing to sue the Governor prior to reaching the issue of mandamus.

In its forty-five (45) page decision or discussion exclusively on jurisdiction, the trial court recognized that the Attorney General is the “protector and [] guardian of the public interest (a generally accorded common law power). The public interest arises when there is a need to bring

an action for the enforcement of the laws of Guam, the preservation of the order, and the protection of public rights.” *Id.* at 44. Finally, the Superior Court held that Attorney General Moylan, based on statutory and common law authority and acting in the public interest, had standing to bring an action against Governor Camacho. *Id.*

In the case at bar, the Attorney General seeks to intervene in an ongoing litigation involving the public interest. This litigation involves a total arbitration award of nearly \$14 million against a Government agency. Such an exorbitant amount—alone—establishes a public interest. In addition, Guam public officials have publically commented on how such an arbitration award will impact PAG’s rates, and in turn, affect the price of goods and commodities for all residents of Guam. (*See* Exhibit A, attached to Declaration of Kenneth Orcutt.) Public officials have expressed concern that such an economic impact resulting from the arbitration award is more than speculative, as PAG has limited resources and alternatives to satisfy such an exorbitant arbitration award. (*See* Exhibits C & D, attached to Declaration of Kenneth Orcutt.)

Upon review of the relevant statutes, cases, and present facts, it is evident the Attorney General possesses common law powers which are not limited to those enumerated in 5 GCA § 30103. Given the special role contemplated for the Attorney General as provided by federal, local, and common law, the Attorney General is entitled to intervene as a matter of right pursuant to GRCP 24(a)(1).

B. THE ATTORNEY GENERAL’S MOTION IS TIMELY

The Attorney General’s Motion is timely. Timeliness is to be determined from all the circumstances and it is to be determined by a court in the exercise of its sound discretion. *Limtiaco v. Camacho (Guam Music Inc., 2009 Guam 7 ¶ 11.* In *Limtiaco v. Camacho*, the Guam Supreme Court applied factors used by the Ninth Circuit in analyzing whether a motion to intervene is timely: “(1) the stage of the proceedings at the time the applicant seeks to intervene;

(2) the prejudice to the other parties if the motion is granted; and (3) the reason for and length of the delay.” *Limtiaco v. Camacho*, *supra* at ¶ 12 (citing *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir.1997)). In the present case, all factors weigh in favor of timeliness.

1. THE CURRENT STAGE OF THE PROCEEDINGS FAVORS INTERVENTION BY THE ATTORNEY GENERAL

The current stage of the proceedings favors intervention by the Attorney General. Here, the litigation is still ongoing. YTK has recently moved this Court to confirm the award to which PAG filed an opposition on June 20, 2016. On July 5, 2016, PAG filed a motion to set aside the award. The Attorney General should be allowed to intervene prior the Court’s ruling on these motions.

The arbitration award was first made in April of 2016 and amended on May 17, 2016. Under 7 G.C.A. Section 42A701(d), a notice to vacate an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. As a result, if allowed to intervene, the Attorney General has until mid-August to file her motion to vacate the award.²

The Attorney General’s motion is timely. Even post-judgment motions to intervene have been found to be timely. *See e.g. Sablan v. Guam Land Use Comm’n.*, 2011 Guam 12 ¶ 5, 14. In *Sablan*, the Guam Supreme Court reversed the Superior Court’s denial of a motion to intervene where the intervenor waited until after the trial court granted Sablan a writ of judicial review and declared null and void the decision of the Guam Land Use Commission approving the intervenor’s application for zone variance. *Id.* The Guam Supreme Court found the motion to

² The Amended Arbitration Award of May 17, 2016, purports to be “*nunc pro tunc*” to the original arbitration date of April 4, 2016, which arguably would make July 4, 2016, the deadline for filing a motion to vacate the award. This is another example of how the arbitration panel exceeded its powers. The arbitration panel lacked authority to shorten the statutorily mandated three-month deadline to less than two months through this action.

intervene was timely and that the Superior Court abused its discretion by failing to grant the intervenor's motion to intervene as a matter of right. *Id.* at ¶ 37. The current stage of the proceedings favors intervention by the Attorney General.

2. THERE IS NO PREJUDICE TO YTK IF THE ATTORNEY GENERAL'S MOTION IS GRANTED

There is no prejudice to YTK if the Attorney General's motion is granted. Little or no delay will occur as a result of allowing the intervention. It was only a few days ago that PAG filed its motion to set aside the arbitration award. This Court has scheduled a September 2016 hearing date on these pending motions. The Attorney General intends to file its own motion to set aside the arbitration award well before the September hearing date so that the court can consider the Attorney General's motion at the same time. Additionally, granting the motion would not disturb the final adjudication of the parties' rights since there has not yet been such adjudication. YTK can show no prejudice.

In *Sablan v. Guam Land Use Comm'n.*, *supra* at ¶ 37, the Guam Supreme Court held, "The trial court abused its discretion in ruling that [the intervenor's] motion was untimely, *particularly after it found that there was no prejudice*" to the parties. *Id.* (emphasis added). Similarly, it would be an abuse of discretion for this Court not to grant the Attorney General's motion to intervene.

3. THE ATTORNEY GENERAL IS INTERVENING WITHOUT DELAY

There is has been no delay in moving to intervene. *See Sablan*, 2011 Guam 12 ¶ 25 ("The timeliness clock runs either from the time the applicant knew or reasonably should have known of his interest . . . or from the time he became aware that his interest would no longer be protected by the existing parties to the lawsuit.") (citation omitted). Here, the excessive arbitration award was issued in April and amended in May of 2016. The passage of these few

months since the award is insignificant, especially when compared to cases where intervention has been denied. *See e.g., Assoc. Builders & Contractors, Inc. v. Herman*, 166 F.3d 1248, 1253–54, 1256 (D.C.Cir.1999) (intervention sought eleven months after filing and several weeks after decision); *Atl. Mut. Ins. Co. v. Nw. Airlines, Inc.*, 24 F.3d 958, 961 (7th Cir.1994) (intervention sought fifteen months after filing and three months after decision); and *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1304 (9th Cir.1997) (intervention sought twenty-seven months after filing).

C. IN THE ALTERNATIVE, THE ATTORNEY GENERAL SHOULD BE ALLOWED TO APPEAR AS AMICUS CURIAE AND SUBMIT BRIEFING AND ORAL ARGUMENT TO THE COURT IN SUPPORT OF VACATING THE ARBITRATION AWARD

If the Attorney General is not permitted to intervene, in the alternative, the Court should allow the Attorney General to appear as *amicus curiae*. A Court has broad discretion to permit a non-party to participate in an action *amicus curiae*. *See, e.g., Gerritsen v. de la Madrid Hurtado*, 819 F.2d 1511, 1514 n.3 (9th Cir. 1987); *Nat. Res. Def. Council v. Evans*, 243 F. Supp.2d 1046, 1047 (N.D. Cal. 2003) (*amici* “may file briefs and may possibly participate in oral argument” in district court actions). “District courts frequently welcome *amicus* briefs from non-parties concerning legal issues that have potential ramifications beyond the parties directly involved or if the amicus has ‘unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.’” *Sonoma Falls Dev., LLC v. Nevada Gold & Casinos, Inc.*, 272 F. Supp.2d 919, 925 (N.D. Cal. 2003) (quoting *Cobell v. Norton*, 246 F. Supp.2d 59, 62 (D.D.C. 2003) (citation omitted). A person “seeking to appear as *amicus* must merely make a showing that his participation is useful to or otherwise desirable to the court.” *In re Roxford Foods Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991) (emphasis added).

In this action, the Attorney General represents the interests of the public, and represents

the entire Government. *See Liberty Res., Inc. v. Philadelphia Hous. Auth.*, 395 F. Supp.2d 206, 209 (E.D. Pa. 2005) (Courts have found the participation of an amicus especially proper where an issue of general public interest is at stake.) The primary role of an *amicus* is “to assist the Court in reaching the right decision in a case affected with the interest of the general public.” *Russell v. Bd. of Plumbing Examiners of the County of Westchester*, 74 F. Supp.2d 349, 351 (S.D.N.Y. 1999). Accordingly, this Court should allow the Attorney General to appear as *amicus curiae*.

IV. CONCLUSION

For the foregoing reasons, the Attorney General respectfully requests that this Court grant her Motion to Intervene as a matter of right under GRCP 24(a)(1); or in the alternative, permit the Attorney General to appear as *amicus curiae*.

Dated this 7th day of July, 2016.



ELIZABETH BARRETT-ANDERSON
Attorney General of Guam

07-09-16
CB

PCF/AG #: 12.0552

DEADLINE: 7-Jul-16

CASE #: CV1170-12 CASE NAME: GUAM YTK CORPORATION vs. PORT AUTHORITY OF GUAM

TYPE OF DOCUMENT: 1) MOTION TO INTERVENE; 2) DECLARATION OF KO in SUPPORT OF THE ATTORNEY GENERAL OF GUAM'S MOTION TO INTERVENE; 3) CVR 7.1 FORM 1

FILE: SUPERIOR COURT. OTHER _____

DISTRICT COURT

SERVE: CALVO FISHER & JACOB LLP

PHILLIPS & BORDALLO

07-27-16

SPECIAL INSTRUCTIONS: _____

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ATTORNEY: DAG KO / Gabi

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Attorneys for the Government of Guam

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TIME: 4:53 pm

IN THE SUPERIOR COURT OF GUAM
HAGATNA, GUAM

GUAM YTK CORPORATION,
Plaintiff,

vs.

PORT AUTHORITY OF GUAM,
Defendant.

) Civil Case No. CV1170-12
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DECLARATION OF KENNETH ORCUTT IN SUPPORT OF THE ATTORNEY GENERAL OF GUAM'S MOTION TO INTERVENE

I, **KENNETH ORCUTT**, hereby certify and declare as follows:

1. I am over 18 years of age, under no civil disability, and competent to testify to the matters stated herein.

2. I am the Deputy Assistant Attorney General representing the Attorney General of Guam in this matter. This Declaration is being submitted in support of the Attorney General's Motion to Intervene.

3. Attached hereto as Exhibit "A" is a true and correct copy of an article from the Pacific Daily News: *\$13.9M Arbitration Award Could 'Cripple' Port Finances*, Pacific Daily

News, (April 23, 2016), at <http://www.guampdn.com/story/news/2016/04/22/139m-arbitration-award-could-cripple-port-finances/83325450/>.

4. Attached hereto as Exhibit "B" is a true and correct copy of part of the Government Claim submitted by Guam YTK Corporation to the Office of the Attorney General of Guam in September of 2012. The exhibits attached to the claim are omitted.

5. Attached hereto as Exhibit "C" is a true and correct copy of an article from the Pacific Daily News: Gaynor Dumat-ol Daleno, *Court Order Sought for Port to Pay \$14M*, Pacific Daily News, (May 20, 2016), at <http://www.guampdn.com/story/news/2016/05/20/court-order-sought-port-pay-14m/84636786/>.

6. Attached hereto as Exhibit "D" is a true and correct copy of an article from the Guam Daily Post: John O'Connor, *Port Board Chairman Confirmation Hearing Today*, The Guam Daily Post, (June 14, 2016), at http://www.postguam.com/news/local/port-board-chairman-confirmation-hearing-today/article_bc9fadf4-311f-11e6-9fd2-9ba87a6f0510.html.

7. Attached hereto as Exhibit "E" is a true and correct copy of the Proposed Answer of the Attorney General of Guam.

8. If allowed to intervene, the Attorney General intends to file a motion to vacate the amended arbitration award and to file briefing in support of PAG that the arbitration award should be vacated.

Executed this 7 day of July, 2016.

OFFICE OF THE ATTORNEY GENERAL
Elizabeth Barrett-Anderson, Attorney General

By:


KENNETH ORCUTT
Deputy Attorney General

Exhibit A

\$13.9M arbitration award could 'cripple' Port finances

Gaynor Dumat-ol Daleno, gdumat-ol@guampdn.com 1:53 a.m. ChST April 23, 2016



(Photo: Rick Cruz/Pacific Daily News)

The \$13.9 million that an arbitration panel recently awarded in favor of a Calvo family-related business costs 22 times more than what that same business' previous owners sought from the Port Authority of Guam several years ago, documents show.

In 2001, Guam YTK Corp. entered into an agreement with the Port Authority to develop Hotel Wharf, but the business neither paid rent for several years, nor developed the wharf as a fisheries facility as agreed, court documents show.

In November 2010, a closed-door meeting of the Port Authority of Guam board discussed that Guam YTK wanted to get paid \$618,000 to resolve the issue, minutes of the meeting, which are now public, show. In 2010,

Guam YTK had a different set of owners.

The new owners and officers of Guam YTK, who include Gov. Eddie Calvo's relatives, according to Department of Revenue and Taxation documents, now stand to receive a \$12.7 million award for damages, and a \$1.25 million payment for their law firm, according to an April 4, 2016, arbitration panel's award.

Former Port Authority General Manager Mary Torres, now a senator in Guam's Legislature, said the reported amount of damages "could cripple" the finances of Port Authority.

Port Authority's vessel and cargo services revenues in fiscal 2015 increased by \$2.9 million, primarily due to its first full year implementation of a 5-percent rate increase, and cargo volume increase, according to an audit report released in February.

Port Authority ended with \$62 million in net income in fiscal 2015, but \$51.6 million was in federal grants, mostly from the Department of Defense, that were to be used primarily for the Port's infrastructure upgrades, the audit shows.

The \$13.9 million arbitration award's cost would be the equivalent of almost five years of revenue from the rate increase that went into full effect in fiscal 2015.



PACIFIC DAILY NEWS

[Calvo affiliate YTK Corp. awarded \\$12.7M for failed Port deal](http://www.guampdn.com/story/news/2016/04/18/calvo-affiliate-ytk-corp-awarded-127m-failed-port-deal/83175876/)

(<http://www.guampdn.com/story/news/2016/04/18/calvo-affiliate-ytk-corp-awarded-127m-failed-port-deal/83175876/>)

Not disclosed in audit

An audit report of Port Authority finances for fiscal 2015 doesn't list a potential liability from the Guam YTK claim. Without YTK's award, Port Authority's liabilities amounted to \$6 million that year.

Public Auditor Doris Flores Brooks said an oversight during the writing of the audit report led to the lack of mention of the Guam YTK claim.

During the fiscal 2015 audit process, a Port Authority attorney did mention that arbitration was to begin with Guam YTK, the public auditor stated.

However, the auditors didn't ask further questions on it "by oversight," the public auditor said.

Port Authority canceled the lease in 2008, but Guam YTK claimed the Port needed to pay a certain amount of damages.

It's unclear how Guam YTK's position changed from asking for \$618,000 in damages in 2010, to getting awarded \$13.9 million, including attorney fees, recently.

In a more recent document, before the arbitration process began, Guam YTK asked for \$7 million, documents show.

Exhibit B

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September 21, 2012

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PHILLIPS & BORDALLO, P.C.
410 West O'Brien Drive
Suite 102
Hagatna, Guam 96910

VIA HAND DELIVERY

Leonardo M. Rapadas
OFFICE OF THE ATTORNEY GENERAL
OF GUAM
287 West O'Brien Drive
Hagatna, Guam 96910

Re: GOVERNMENT CLAIM BY GUAM YTK CORPORATION

SEP 21 2012 J12
4:29 pm C.C.

Dear Gentlemen:

Enclosed herewith is a copy of the Government Claim for damages owed by the Port Authority of Guam ("PAG") pursuant to a Development and Lease Agreement ("Lease Agreement") in which PAG agreed to lease certain land at Hotel Wharf (the "Premises") to Guam YTK Corporation ("Guam YTK") and to provide various services and take certain actions, so that Guam YTK could construct, operate and maintain a fisheries facility. Duplicates of the Government Claim were served on Mary Torres, the General Manager, and Thaila Chaco, the Claims Officer, of PAG today.

Pursuant to Article 17, Section 17.1 of the Lease Agreement, the parties agreed to submit to binding arbitration,

All disputes and controversies of every kind and nature between the parties to this Lease arising out of or in connection with this Lease, including but not limited to disputes concerning the existence, construction, validity, interpretation or meaning, performance, nonperformance, enforcement, operation, breach, continuance, or termination of the Lease

(emphasis added).

On June 15, 2012, Guam YTK made a Demand for Arbitration as required by the Lease Agreement. On July 26, 2012, PAG's attorney requested that Guam YTK provide legal authority which would permit it to file contract or tort-related claims against PAG in light of the Government Claims Act. On July 31, 2012, Guam YTK responded to Attorney Phillips' letter

12-0552

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Not in duplicate.

CALVO FISHER & JACOB LLP

GOVERNMENT CLAIM BY GUAM YTK CORPORATION

September 21, 2012

Page 2

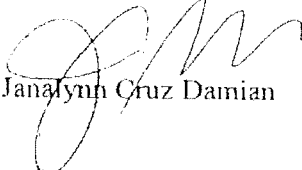
and requested that PAG provide a response to the Demand for Arbitration and name an arbitrator by August 31, 2012. PAG did not respond and appears to be taking the position that it is not required to submit to arbitration.

PAG's refusal to arbitrate has forced Guam YTK to submit this Government Claim, out of an abundance of caution, to preserve its legal rights against PAG under the Government Claims Act. To be clear, however, Guam YTK believes that arbitration is the appropriate forum to resolve the parties' disputes and will be filing a Complaint to Compel Arbitration in the Superior Court of Guam. If the Superior Court compels arbitration, as Guam YTK will be requesting, Guam YTK will prosecute its claims against PAG and recover its damages in the arbitration context and will withdraw its Government Claim. If and only if the court denies the complaint to compel arbitration, Guam YTK will proceed with its Government Claim. Based on the foregoing, we request that Guam YTK's Government Claim be stayed until the complaint to compel arbitration has been resolved by the Superior Court.

Please let me know if you have any questions or concerns.

Sincerely,

CALVO FISHER & JACOB LLP


Janalynn Cruz Damian

**CLAIM AGAINST THE GOVERNMENT OF GUAM
(PORT AUTHORITY OF GUAM)**

Claimant:	Guam YTK Corporation ("Guam YTK")
Address:	P.O. Box 326419 Hagatna, Guam 96932
Telephone:	(671) 475-6801
Claim Amount:	\$7,730,603 plus prejudgment interest and attorneys' fees and collection costs as may be permitted.
Nature of Claim:	Guam YTK is seeking damages as a result of Port Authority of Guam's ("PAG") multiple breaches of the Development Agreement and Lease entered into between the parties and its refusal to correct or recompense Guam YTK for those breaches.

Factual
Background and
Basis of Claim:

On December 14, 2001, Guam YTK and PAG entered into a Development Agreement and Lease (the "Lease Agreement") in which PAG leased property at the Hotel Wharf (the "Premises") to Guam YTK and Guam YTK agreed to construct, operate and maintain a fisheries facility on the Premises. (Ex. 1). The Lease Agreement was for a term of five years from the effective commencement date with eight consecutive options to renew, with each option to be for a term of five years each. The effective commencement date of the Lease Agreement was May 31, 2003. In the event that the Lease Agreement was terminated before the end of the 45 years after the effective commencement date, PAG agreed to buy out or pay for Lessee's leasehold interest and improvements thereon.

Guam YTK strove diligently to begin construction and operation of the fisheries facility. However, significant delays and obstacles caused by PAG delayed the commencement of construction. Despite the extraordinary obstacles that PAG had raised, on January 11, 2006 Guam YTK commenced construction of the project by removing and replacing wooden constructs for tying vessels with concrete ones.

On November 19, 2009, PAG sent Guam YTK a Notice of Termination and Surrender. (Ex. 2.)

On November 25, 2009, pursuant to Article 17 of the Lease Agreement, Guam YTK demanded arbitration of the parties' claims. (Ex. 3). Guam YTK's claims against PAG for breach of contract include PAG's (1) failure to deliver quiet enjoyment of the use and possession of the Premises to Guam YTK; (2) failure to provide a reconciliation and statement of accounting for the revenues obtained from other tenants and users of the property; (3) failure to credit Guam YTK with the revenues received by PAG from the other tenants and users; (4) failure to provide utilities, including water and electrical power; (5) failure to timely provide approval of a Master Plan and Notice to Proceed; (6) failure to buy out Guam YTK's interest; and (7) failure to make good-faith efforts to obtain legislative approval of the Lease Agreement. In failing to deliver on its obligations, PAG further breached the Lease Agreement's implied covenant of good faith and fair dealing. PAG also tortiously interfered with Guam YTK's prospective economic advantage. Moreover, PAG has taken the position that the Lease Agreement is terminated, yet has wrongfully failed and refused to comply with the provisions of the Lease Agreement requiring it to buy out or pay for Guam YTK's leasehold interest and the improvements thereon. (Exs. 4-5; 10.)

The parties subsequently engaged in preliminary arbitral procedures, at all times acting in what Guam YTK reasonably believed to be good-faith. (Ex. 6.)

On April 12, 2011, PAG and Guam YTK agreed to dismiss without prejudice the arbitration proceedings in order for the parties to resolve their dispute outside the scope of arbitration. (Ex. 7.) The parties agreed that the parties could reinstitute the arbitration proceedings in the event that they were unable to resolve the dispute without having waived any rights or causes of action relating to the dismissal without prejudice.

The parties thereafter continued to engage in what Guam YTK reasonably believed to be good-faith settlement negotiations. In order to facilitate negotiations, on March 30, 2012, Guam YTK provided PAG with a valuation of the leasehold interest. (Ex. 8.)

On May 18, 2012, PAG informed Guam YTK that it rejected Guam YTK's settlement offer without any further counteroffer. (Ex. 9.) PAG further informed Guam YTK that it did not recognize the existing Lease Agreement between the parties.

On June 15, 2012, as a result of the parties' failure to negotiate and settle the dispute, Guam YTK demanded that PAG submit the dispute to arbitration ("Demand for Arbitration"). Pursuant to the Demand for Arbitration, PAG was to respond on July 5, 2012. (Ex. 10.)

When PAG failed to respond on July 5, 2012, Guam YTK sent a follow-up letter to PAG on July 18, 2012, demanding that PAG respond to the Demand for Arbitration. (Ex. 11.)

However, despite the arbitration provision in the Lease Agreement, the prior attempts to arbitrate the dispute, the parties' agreement to reinstitute arbitration in the event the parties were unable to resolve their disputes and years of negotiation related to the arbitration, PAG now refuses to submit itself to arbitration.

Plaintiff's position is that all existing disputes between the parties fall within the scope of the arbitration provision in the Lease Agreement and that the entire controversy between the parties should be subject to arbitration. However, since PAG is refusing to submit to arbitration and has taken the position that there is no binding, enforceable agreement to arbitrate, Guam YTK must, out of an abundance of caution, take steps to preserve its claims against any statute of limitations that may apply by submitting this claim under the Government Claims Act. To be clear, at every point during the dispute between the parties, Guam YTK's position has been, as it is now, that the entire case and controversy is subject to binding arbitration – a position that Guam YTK has repeatedly and unambiguously notified PAG of. Consistent with this, Guam YTK will file a Complaint to compel arbitration against PAG in the Superior Court of Guam. Guam YTK is also requesting that the claims stated herein under the Government Claims Act be stayed pending resolution of the action in the Superior Court to compel arbitration. Plaintiff intends to pursue its claim under the Government Claims Act only if the Superior Court for any reason will not compel arbitration.

Supporting Documents:	<p>Exhibit 1: December 14, 2001 Development Agreement and Lease Between the Port Authority of Guam and Guam YTK Corporation.</p> <p>Exhibit 2: November 19, 2009 letter to Phillip Torres and Guam YTK Corporation from Rebecca Perez Santo Tomas Re: Guam YTK Corporation -- Final Notice of Termination and Final Demand for Surrender.</p> <p>Exhibit 3: November 25, 2009 letter to Glenn Leon Guerrero from Phillip Torres (Demand for Arbitration).</p> <p>Exhibit 4: May 30, 2008 letter to Tom Kaniyama from Carlos H. Salas Re: Written Notice of Default of Development Agreement and Lease between the Port Authority of Guam and Guam YTK Corporation.</p> <p>Exhibit 5: July 3, 3008 letter to Joaquin Cruz from Anita P. Arriola re: PAG's Written Notice of Default of Development Agreement and Lease between the Port Authority of Guam and Guam YTK Corporation; Guam YTK Corporation's Written Notice of Default of Development Agreement and Lease</p> <p>Exhibit 6: October 2010 Arbitration Stipulation signed by Phillip Torres and Rebecca Perez Santo Tomas Re: Deadlines of Pre-Hearing Briefs</p> <p>Exhibit 7: April 12, 2011 letter to Eduardo A. Calvo from Anthony C. Perez Re: Dismissal without Prejudice of Arbitration Proceedings regarding the Port Authority of Guam and Guam YTK Corporation.</p> <p>Exhibit 8: March 30, 2012 letter to Michael F. Phillips from Jay Lather Re: Guam YTK Corporation; H Wharf Lease.</p> <p>Exhibit 9: May 18, 2012 email to Eduardo A. Calvo from Michael F. Phillips.</p> <p>Exhibit 10: June 15, 2012 letter to Mary C. Torres from Jay Lather Re: Development Agreement and Lease between the Port Authority of Guam and Guam YTK Corporation - Demand for Arbitration.</p> <p>Exhibit 11: July 18, 2012 letter to Mary C. Torres from Jay Lather Re: Development Agreement and Lease between the Port Authority of Guam and Guam YTK Corporation - Demand for Arbitration.</p>
Status of Claim:	Guam YTK is owed \$7,730,603. Guam YTK has no insurance to cover this claim.
Attorney Representing Claimant:	<p>Calvo Fisher & Jacob, LLP 259 Martyr Street, Suite 100 Hagåtña, Guam 96913 Telephone (671) 646-9386</p>

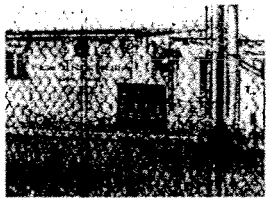
I, **Jay Lather**, the duly authorized representative of Guam YTK Corporation, declare under penalty of perjury under the laws of Guam (6 G.C.A. § 4308) that the foregoing is true and correct, except as to the matters which are therein stated upon information and belief; and as to those matters, I believe them to be true.

Executed this 21st day of September, 2012, in Hagatna, Guam.


JAY LATHER

Court order sought for Port to pay \$14M

Gaynor Dumat-ol Daleno, gdumat-ol@guampdn.com 10:56 p.m. ChST May 20, 2016



(Photo: PDN file)

A failed tuna fisheries business that didn't pay years of rent on government-owned Hotel Wharf has taken a legal step to collect a \$14 million award that could come out of Guam consumers' and businesses' pockets.

Guam YTK Corp., which is owned by some of the governor's relatives, filed a petition with the Superior Court of Guam on May 19 for an order confirming an arbitration award in its favor and against Port Authority of Guam. The company convinced a panel of arbitrators to award it the \$14 million, including attorney's fees.

It's unclear if the company's former landlord, the Port Authority of Guam, will file a motion challenging the arbitration award. Port Authority legal counsel Mike Phillips wasn't available for comment as of press time.

The Port Authority doesn't have \$14 million to spare, and if it does have to pay that amount, tariffs on most goods coming into the island could go up, Sen. Tom Ada has said.



PACIFIC DAILY NEWS

[Questions remain on former Port tenant's \\$13.9M arbitration award](http://www.guampdn.com/story/news/2016/04/26/questions-remain-former-port-tenants-139m-arbitration-award/83532660/)

(<http://www.guampdn.com/story/news/2016/04/26/questions-remain-former-port-tenants-139m-arbitration-award/83532660/>)

The Port Authority terminated Guam YTK's lease on Hotel Wharf in 2008 because by that time, the company hadn't developed a \$13 million tuna transshipment facility as agreed, and had been years behind on rent. The lease was signed during Gov. Carl Gutierrez's administration in 2001.

Superior Court Judge Anita Sukola ruled in 2013 that Guam YTK no longer had a valid lease because any lease of Port Authority property beyond five years requires legislative approval, which wasn't obtained in Guam YTK's case, documents show.

Guam YTK appealed Sukola's decision, and the local Supreme Court ordered both sides to go into arbitration.

In January, arbitration hearings were held. The hearings resulted in the arbitrators' finding that, because the Port Authority terminated the lease agreement before the 45-year term in the agreement, the Port was required to pay Guam YTK the market value of its remaining leasehold interest.

"Based on the evidence presented at the hearing, the panel finds that the market value of that leasehold interest is \$12.7 million," the arbitration panel stated. The rest of the \$1.3 million in the \$14 million arbitration award is for Guam YTK's legal expenses.



PACIFIC DAILY NEWS

[\\$13.9M arbitration award could 'cripple' Port finances](http://www.guampdn.com/story/news/2016/04/22/139m-arbitration-award-could-cripple-port-finances/83325450/)

(<http://www.guampdn.com/story/news/2016/04/22/139m-arbitration-award-could-cripple-port-finances/83325450/>)

The arbitration panel — made up of attorneys Cesar Cabot, Cynthia Ecube and Mitchell Thompson — also decided to impose a 10-percent interest rate on the \$12.7 million for each year that amount is owed.

The arbitration award didn't address the Port Authority's assessment that Guam YTK owes the port more than \$1.8 million for unpaid rent and insurance liability co-payments.

Yoshie and Tom Kamiyama's family owned Guam YTK at the beginning of the development and lease agreement in 2001. However, Department of Revenue and Taxation records show their ownership ended in 2010. The new owners of Guam YTK are two companies owned by Gov. Eddie Calvo's first cousins and uncle, including Eduardo "Champ" Calvo, whose law firm also represents the new Guam YTK.

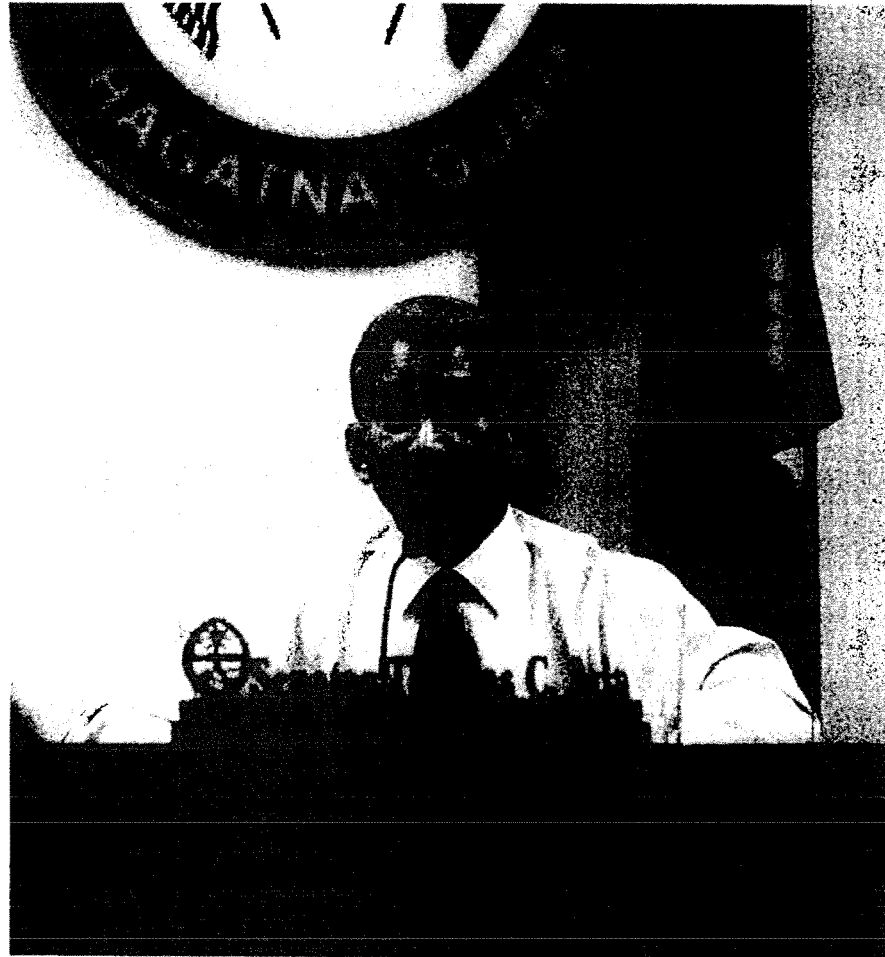
Champ Calvo said the governor has kept a hands-off approach on Guam YTK, and wouldn't even discuss anything about the company. He said from his real estate development business' standpoint, it's tougher to deal with the Calvo administration than it was with the former governors, with whom his family isn't related.

http://www.postguam.com/news/local/port-board-chairman-confirmation-hearing-today/article_bc9fadf4-311f-11e6-9fd2-9ba87a6f0510.html

Port board chairman confirmation hearing today

YTK arbitration award plan to be raised

John O'Connor | Post News Staff Jun 14, 2016



DISAPPOINTED: Sen. Tom Ada, chairman of the legislative committee overseeing the port, says he would be disappointed if the Authority of Guam board chairman Francisco Santos or any other nominee could not provide him with at least a general plan that could move forward with addressing the arbitration award. Post file photo

While the Port Authority of Guam and the Office of the Attorney General attempt to challenge a \$14 million arbitration award to Guam YTK Corp., Sen. Tom Ada, chairman of the legislative committee overseeing the port, said he would like to know how PAG leadership plans to address the award.

"Based on the information that I have received, it appears that because this matter went into arbitration ... the findings of the panel will very likely stand," Ada said.

The Guam Supreme Court cites the Federal Arbitration Act in determining grounds for vacating an award. An arbitration panel's decision can be set aside if it is found that the award was granted through corruption or undue means, if there was partiality or corruption in the arbitrators, if the arbitrators were guilty of misconduct or if the arbitrators exceeded their powers.

Ada said he appreciates the efforts of PAG and the attorney general, but when facing the narrow path for appealing an arbitration award, his goal as committee chairman is more focused on understanding how the port will move forward with the assumption that the award is upheld.

A confirmation hearing is to be held today for the reappointment of Francisco Santos to his current position as PAG board chairman. His fellow nominee, Melanie Mendiola, underwent a hearing on June 8, during which Ada asked how she would help generate the funding to pay off the award. Mendiola responded by stating the port's potential liability presented an "income shock" to the government's finances.

Options

Mendiola said she would take into consideration options that would least affect the port's operations, as well as ensure proper controls were in place to minimize the chances of falling into another situation similar to the one with Guam YTK.

Generally speaking, Mendiola said the port could generate revenue by increasing prices, disposing of assets, removing expenses (such as payroll) or exploring financing avenues. All of which, she said, would have implications for stakeholders.

A day later, Maria Taitano, a former PAG deputy general manager, faced a similar question during her confirmation hearing for her nomination to the port board. Taitano stated that she needed more details to understand the situation and initially could not answer Ada.

The senator said a reasonable time frame the port could have to pay off the award is 10 years but with interest being tacked onto the payments, Ada's calculations showed that the port would have to pay off an additional \$8 million, totaling to \$22 million over the course of a decade.

Later, during the hearing, and after Ada explained that he was looking for a more general response, Taitano said the port would need to look at its expenses and make cuts where possible. Ada said he hoped Taitano, if she becomes a member of the board, would give serious thought into how the port could address the award.

In addition to the arbitration, Ada asked Taitano if she was aware of two long-term lease agreements at the port, one since 2010 and another since 2012, through her prior experience working at the agency. The senator said the issue with YTK seemed to stem from the lease agreement. The lease with YTK was for 45 years and was signed in 2001. The port terminated the lease in 2008 for non-payment, and Joanne Brown, the PAG general manager, said the port's legal counsel opined in 2011 that Guam law required legislative approval for any lease agreement in excess of five years.

Taitano was asked if she was aware of this legal requirement during her time at the port. She said she was not.

"Now that we have the chairman being renominated, certainly his responses are going to weigh pretty heavily because if he's the chairman, then supposedly he's the one that's going to lead the charge on 'How are we going to address this liability?'" Ada said. "I would hope that by now he would have given it a lot of thought."

Ada said he would be disappointed if Santos, or any other nominee, could not provide him with at least a general plan on how the port could move forward with addressing the arbitration award. He would also like to know more about the port's long-term leases.

According to the legislative calendar, Santos' hearing is scheduled for 6 p.m. Meanwhile, the port has until Thursday to file its opposition to the YTK award and to request the award be set aside.

Exhibit E



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Office of the Attorney General
Elizabeth Barrett-Anderson
Attorney General of Guam
Litigation Division
590 S. Marine Corps Drive
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(671) 475-3324 • (671) 472-2493 (Fax)
www.guamag.org

Attorneys for the Government of Guam

IN THE SUPERIOR COURT OF GUAM
HAGÁTÑA, GUAM

GUAM YTK CORPORATION)	CIVIL CASE NO.: 1170-12
)	
Plaintiff,)	PROPOSED ANSWER OF THE
)	ATTORNEY GENERAL OF GUAM
vs.)	
)	
PORT AUTHORITY OF GUAM,)	
)	
Defendant.)	

COMES NOW, the Intervenor ATTORNEY GENERAL OF GUAM and answers Plaintiff's ("YTK") Complaint to Compel Arbitration filed on October 16, 2012, as follows:

1. Intervenor lacks sufficient knowledge to form a belief regarding the truth and veracity of YTK's allegations in paragraphs 2, 3, 4, 6, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, & 32.
2. Intervenor admits paragraphs 5, 7, 9, & 10.
3. Intervenor denies 1, 26, 29, 31, 33, 34, 35, & 36

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By: _____
KENNETH D. ORCUTT
Deputy Attorney General

07-08-16
CB

PCF/AG #: 12.0552

DEADLINE: 7-Jul-16

CASE #: CV1170-12 CASE NAME: GUAM YTK CORPORATION vs. PORT AUTHORITY OF GUAM

TYPE OF DOCUMENT: 1) MOTION TO INTERVENE; 2) DECLARATION OF KO in SUPPORT OF THE ATTORNEY GENERAL OF GUAM'S MOTION TO INTERVENE; 3) CYR 7.1 FORM 1

FILE: SUPERIOR COURT OTHER _____
 DISTRICT COURT

SERVE: CALVO FISHER & JACOB LLP
PHILLIPS & BORDALLO
07-27-16

SPECIAL INSTRUCTIONS:

RETURN FILE COPY W/ACKNOWLEDGEMENT OF RECEIPT & SCAN PREPARE DECLARATION OF SERVICE
 RETURN FILE TO ATTORNEY

ATTORNEY: DAG KO / Gabi DATE: 7/7/16 3:56 PM

Cera
07/07/16
4:53pm

07-816116



Office of the Attorney General
Elizabeth Barrett-Anderson
Attorney General of Guam
Litigation Division
590 S. Marine Corps Drive
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Tamuning, Guam 96913 • USA
(671) 475-3324 • (671) 472-2493 (Fax)
www.guamag.org

Attorneys for the Government of Guam

RECEIVED
CALVO FISHER & JACOB LLP

Date: 7/8/16
Time: 3:00
By: WAB

FILED
SUPERIOR COURT

2016 JUL -8 AM 2:51

CLERK OF COURT

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Momi Q.
7/8/16
3:17 P

IN THE SUPERIOR COURT OF GUAM
HAGÁTÑA, GUAM

GUAM YTK CORPORATION,) CIVIL CASE NO. CV1170-12
)
Plaintiff,)
)
v.)
)
PORT AUTHORITY OF GUAM,)
)
Defendant.)

INTERVENOR ATTORNEY GENERAL
OF GUAM'S MOTION TO SHORTEN
TIME TO HEAR MOTION TO
INTERVENE OR
APPEAR AS *AMICUS CURIAE*

MOTION

Comes Now, the Attorney General of Guam, **Elizabeth Barrett-Anderson**, by and through Deputy Attorney General Kenneth Orcutt, and moves, pursuant to Guam Rule of Civil Procedure 6(c) and Local Rule 7.1(j), for an Order Shortening Time for Hearing on the Attorney General of Guam's Motion to Intervene or Appear as Amicus Curiae.

////

MEMORANDUM OF POINTS AND AUTHORITIES

This pending litigation involves a \$12.7 million arbitration award against the Port Authority of Guam (PAG). On July 7, 2016, the Attorney General filed her motion to intervene under her statutory and common law powers. Plaintiff YTK has moved this Court to confirm the award amount and PAG has filed a motion to set it aside. If allowed to intervene, the Attorney General intends to file her own notice and motion to vacate the arbitration award and to oppose YTK's motion to confirm the award. In the alternative, if intervention is not allowed, the Attorney General seeks to appear as Amicus Curiae.

Under 7 G.C.A. Section 42A701(d), a notice to vacate an arbitration award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. As a result, if allowed to intervene, the Attorney General has until August 19, 2016 to file her motion to vacate the award.¹ (Declaration of Kenneth Orcutt in Support of Motion to Intervene). The Court is scheduled to hear the pending motions to confirm and vacate the award on September 8, 2016. *Id.* ¶ 5.

Under the governing motion practice rules, YTK's opposition to the Attorney General's motion to intervene is due August 4th, and the reply brief is due August 18th.² If the motion to shorten time is not granted, there would only be one day for the court to grant the Attorney General's Motion to Intervene, and the Attorney General would be required by 7 G.C.A. Section 42A701(d) to file her motion to set aside the arbitration award that same day. Not only

¹ The Amended Arbitration Award of May 17, 2016, purports to be "*nunc pro tunc*" to the original arbitration date of April 4, 2016, which arguably would make July 4, 2016, the deadline for filing a motion to vacate the award. This is another example of how the arbitration panel exceeded its powers. The arbitration panel lacked authority to shorten the statutorily mandated three-month deadline to less than two months through this action.

² Local Rule CVR 7.1(j) provides the authority for shortening time permitted or required by the Guam Civil Rules of Court. CVR 7.1 requires that motions be served and filed not later than forty-two (42) days prior to the day on which oral argument is scheduled, unless the Court orders a shorter time. GRCP 6(c) permits the Court to shorten time to hear a motion when it is necessary.

is this time insufficient, but it would result in either a continuance of the scheduled September 8th hearing in order to allow the court to hear all pending motions at the same time, or issuance of an order shortening the briefing schedule for the Attorney General's motion to Intervene so that the September 8th hearing date can be preserved.

CONCLUSION

For the foregoing reasons, the Attorney General of Guam respectfully requests the Court to enter an Order Shortening Time for hearing on the Attorney General's Motion to Intervene as soon as possible, but no later than July 15, 2016.

Dated this 8 day of July, 2016.

OFFICE OF THE ATTORNEY GENERAL
Elizabeth Barrett-Anderson, Attorney General

By: _____

KENNETH ORCUTT
Deputy Attorney General
Litigation Division

PCF/AG #: 12.0552

DEADLINE: 8-Jul-16

CASE #: CV1170-12

CASE NAME: GUAM YTK CORPORATION vs. PORT AUTHORITY OF GUAM

TYPE OF DOCUMENT: 1) INTERVENOR AG of Guam's MOTION TO SHORTEN TIME TO HEAR MOTION TO INTERVENE OR APPEAR AS AMICUS CURIAE: (*)

FILE: SUPERIOR COURT

OTHER _____

DISTRICT COURT

SERVE: CALVO FISHER & JACOB LLP

PHILLIPS & BORDALLO

MA 7-8-16

SPECIAL INSTRUCTIONS: CONT. *2) DECLARATION OF KO in SUPPORT of the AG of Guam's MOTION TO SHORTEN TIME; and
3) ORDER SHORTENING TIME for HEARING on the AG of Guam's MOTION TO INTERVENE
OR APPEAR AS AMICUS CURIAE [PROPOSED] *NOTE: (will be lodged only)*

RETURN FILE COPY W/ACKNOWLEDGEMENT OF RECEIPT & SCAN

PREPARE DECLARATION OF SERVICE

RETURN FILE TO ATTORNEY

ATTORNEY: DAG KO / Gabi

DATE: 7/8/16 2:11 PM

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CALVO FISHER & JACOB LLP



JUL 08 2016

CLERK'S OFFICE
SUPERIOR COURT OF GUAM

Date: 7/8/16
Time: 3:00
By: VJK

Office of the Attorney General
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Tamuning, Guam 96913 • USA
(671) 475-3324 • (671) 472-2493 (Fax)
www.guamag.org

Attorneys for the Government of Guam

The Honorable
NAME: None
DATE: 07/08/16
TIME: 3:17 P

**IN THE SUPERIOR COURT OF GUAM
HAGÁTÑA, GUAM**

GUAM YTK CORPORATION,) CIVIL CASE NO. CV1170-12

Plaintiff,)

v.)

PORT AUTHORITY OF GUAM,)

Defendant.)

**ORDER SHORTENING TIME FOR
HEARING ON THE ATTORNEY
GENERAL OF GUAM'S MOTION TO
INTERVENE OR APPEAR AS *AMICUS*
CURIAE
[Proposed]**

This matter came before this Court pursuant to the filing of the Attorney General of Guam's Motion for an order shortening time to hear her Motion to Intervene or Appear as *Amicus Curiae*. The Court having reviewed the documents on file in this case and being further familiar with the parties and pleadings herein, DOES HEREBY:

ORDER, ADJUDGE AND DECREE that the hearing on the Attorney General of Guam's Motion to Intervene or Appear as *Amicus Curiae* shall be held on _____, 2016 at _____ m. Plaintiff and Defendant shall have until _____, 2016

Page 1 of 2
Order Shortening Time
Guam YTK Corporation vs. Port Authority of Guam
Superior Court Case No. CV1170-12

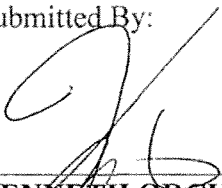
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to file a written opposition to the Attorney General of Guam's Motion to Intervene or Appear as *Amicus Curiae*, and the Attorney General of Guam shall have until _____, 2016 to file a reply memorandum addressing Plaintiff's written opposition.

DATED: _____

HONORABLE ANITA A. SUKOLA
Judge, Superior Court of Guam

Submitted By:



KENNETH ORCUTT
Deputy Attorney General
Litigation Division

PCF/AG #: 12.0552

DEADLINE: 8-Jul-16

CASE #: CV1170-12

CASE NAME: GUAM YTK CORPORATION vs. PORT AUTHORITY OF GUAM

TYPE OF DOCUMENT: 1) INTERVENOR AG of Guam's MOTION TO SHORTEN TIME TO HEAR MOTION TO INTERVENE OR APPEAR AS AMICUS CURIAE: (*)

FILE: SUPERIOR COURT

OTHER _____

DISTRICT COURT

SERVE: CALVO FISHER & JACOB LLP

PHILLIPS & BORDALLO

MA 7-8-16

SPECIAL INSTRUCTIONS: CONT. *2) DECLARATION OF KO in SUPPORT of the AG of Guam's MOTION TO SHORTEN TIME; and
3) ORDER SHORTENING TIME for HEARING on the AG of Guam's MOTION TO INTERVENE
OR APPEAR AS AMICUS CURIAE [PROPOSED] *NOTE: (will be lodged only)*

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PREPARE DECLARATION OF SERVICE

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ATTORNEY: DAG KO / Gabi

DATE: 7/8/16 2:11 PM

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Attorneys for the Government of Guam

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TIME: 3:17 P
Momi

IN THE SUPERIOR COURT OF GUAM
HAGÁTÑA, GUAM

GUAM YTK CORPORATION,

Plaintiff,

v.

PORT AUTHORITY OF GUAM,

Defendant.

) CIVIL CASE NO. CV1170-12

)
)
) **DECLARATION OF KENNETH ORCUTT**
) **IN SUPPORT OF THE ATTORNEY**
) **GENERAL OF GUAM'S MOTION TO**
) **SHORTEN TIME**

KENNETH ORCUTT, hereby certifies and declares as follows:

1. I am a Deputy Attorney General with the Office of the Attorney General of Guam. I am over 18 years of age, competent to testify to the matters stated herein. The information set forth herein is based upon my own knowledge unless otherwise indicated as being based on information and belief.

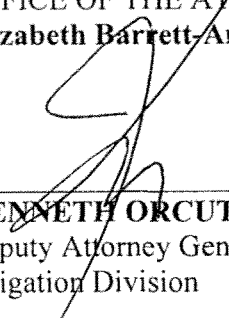
2. The deadline to file objections to the Amended Arbitration Award is August 19, 2016. The Court is scheduled to hear the pending motions to confirm and vacate the

award on September 8, 2016. The Attorney General of Guam filed a Motion to Intervene on July 7, 2016.

Dated this 8 day of July, 2016.

OFFICE OF THE ATTORNEY GENERAL
Elizabeth Barrett Anderson, Attorney General

By:



KENNETH ORCUTT
Deputy Attorney General
Litigation Division

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