

prior to October 3, 2012. In accordance with Rule 25(a), FSMDB now files and serves this Suggestion of Death on the Record that Defendant Claude Phillip passed away on September 30, 2012, as shown by the Certificate of Death attached as Exhibit "A".

Damarlane v. FSM, 1 FSM Intrm. 10, 12 (Pon. 1997)

II. PLAINTIFF'S MOTION TO SUBSTITUTE PARTY DEFENDANT PHILLIP.

FSMDB now moves pursuant to FSM Civil Rule 25(a) to substitute the "Estate of Claude Phillip" for party defendant Claude Phillip, deceased. This Motion is filed at this time in compliance with the time requirements of Rule 25(a). However, at this time, there has been no administrator appointed for the Estate of Claude Phillip. FSMDB has requested Claude Phillip's widow, Betty Phillip, through her counsel, to file a petition to open a probate proceeding with the Court, but until now, no filing has been completed by Mr Phillip's family members either at Kosrae State Court or FSM Supreme Court. Therefore, FSMDB has concurrently filed a Verified Petition for Appointment of Administrator of the Estate of Claude Phillip in this Court.

As there has been no administrator appointed yet for the Estate of Claude Phillip, FSMDB requests that the "Estate of Claude Phillip" be substituted for Defendant Claude Phillip on an interim basis, until an administrator is appointed by the Court. At that time, FSMDB will request substitution by the Court-appointed administrator.

1941. Kosrae State's decisional law also recognizes that claims may be made against a decedent's estate and the administrator of the estate is charged with the duty to assess and satisfy those claims. These statutes reflect policy of a creditor's right to open probate where the family of the deceased has failed to do so, and to seek payment of a deceased debtor's debts from his estate. The Kosrae State Court's standard form for appointment of administrator, which is attached here as Exhibit "B", requires the administrator to, *inter alia*, take all necessary steps to "assess and satisfy any claims brought against the Decedent's estate."

In addition to survival of FSMDB's cause of action based upon the guaranty executed by Claude Phillip, the lease agreement and other security documents establishing a lien or encumbrance on parcel no. 082-K-12, registered with Kosrae Land Court, also survive his passing. The lease agreement between Claude Phillip and TWKI, registered in 2004 and 2012, and the assignment of income/exclusive possession forms a basis for the Fifth Cause of Action of the Complaint. See Exhibits "G" and "H" to the Complaint.

As several causes of action of the Complaint survive the passing of party Claude Phillip, it is proper to substitute the "Estate of Claude Phillip" until an administrator is appointed

by the Court for his estate. Based upon the above good cause, FSMDB requests that an order be entered substituting the "Estate of Claude Phillip" for Defendant Claude Phillip.

III. PLAINTIFF'S MOTION FOR LEAVE TO SUPPLEMENT THE COMPLAINT.

FSMDB moves this Court for leave to supplement the complaint pursuant to FSM Civil Rule 15(d). Rule 15(d) provides that pursuant to permission granted by the Court, a party may "serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented." A supplemental pleading is designed to cover matters subsequently occurring but pertaining to the original cause. Herman v. Municipality of Patta, 16 FSM Intrm. 167, 170 (Chk. 2008). Supplemental pleadings bring an action "up to date" by setting forth new facts that have occurred since the filing of the original complaint and that affect the controversy and the relief sought. Cont'l Life Ins. Co. v. Shearson Lehman Hutton, Inc., No. 88-9279, 1990 U.S. Dist. LEXIS 14783, at *2 (E.D.Pa.1990) .

The Complaint in this matter was filed on March 22, 2012. Defendants' answer filed on October 17, 2012 stated that Defendant Phillip had passed away. The basis for supplementation of the Complaint is that Defendant Claude Phillip passed away on September 30, 2012, and FSMDB seeks to

Substitution of Defendant Claude Phillip by the Estate of Claude Phillip is appropriate and warranted as several causes of action of the complaint survive the death of Defendant Phillip.

The Second Cause of Action of the Complaint, collection of the guaranty executed by Defendant Claude Phillip survives his death. The Guaranty executed by Claude Phillip provides that the guaranty is absolute and continuing, and that the creditor FSMDB may have recourse against both his separate property and his proportion of joint marital property for his obligations of the Guaranty. Exhibit "C" to Complaint, Section 3.

Both Kosrae State and FSM law recognizes that debts of a deceased debtor may be asserted as claims against the estate of the deceased and satisfied from the assets of the estate of the deceased debtor. Kosrae State recognizes that claims may be brought against the "deceased's executor, administrator or representative for relief in favor of or against the deceased or his estate ..." Kosrae State Code, Section 6.2505. Likewise the FSM Code recognizes that claims may be brought against the decedent's estate. 6 FSMC Section 804.

Pohnpei and Chuuk State specifically provide creditors standing to file complaints for transfer of a decedent's personal property to the creditor under certain circumstances. 49 Pohnpei Code 3-101 and Chuuk State Code, Title 23, Section

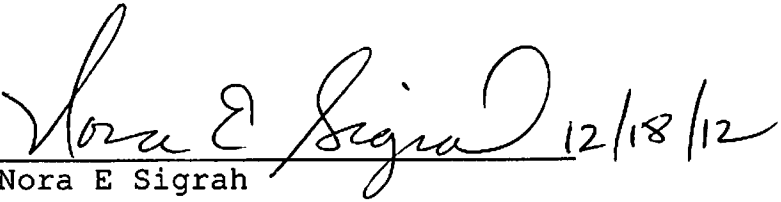
supplement the complaint to reflect his passing and the claims that are now to be made against his estate.

Leave to permit supplemental pleading is favored, to set forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Id. at 170-171 (Chk. 2008). Based upon good cause as set forth above, FSMDB moves for an order granting leave to supplement the complaint as set forth above.

IV. CONCLUSION.

FSMDB files this Suggestion of Death to allow the record to reflect Claude Phillip's passing on September 30, 2012, and to request substitution of Defendant Phillip with the Estate of Claude Phillip on an interim basis until an administrator is appointed for his estate. FSMDB also requests leave to be granted for FSMDB to supplement the complaint pursuant to Rule 15(d). On November 30, 2012, FSMDB requested consent from Defendants for these motions, no response was received.

Respectfully submitted,


Nora E Sigrah
Attorney for Plaintiff
FSM Development Bank

CERTIFICATE OF DEATH FEDERATED STATES OF MICRONESIA

1. DECEASED - Name		First	Middle	Last	REGISTRATION STATE & FILE NO.	
CLAUDE				PHILLIP	57-12	
Age (Last Birthday Year)		Under 1 Year	1 Year - 1 Day	Date of Birth (Month, Day, Year)		Sex
4a 64		Months	Days	5. NOVEMBER 21, 1947		2. MALE
3. All or Island Group of Death		4b		4c		4. Hospital, Dispensary or Village & Island Municipality
6b. KOSRAE STATE						DR. A.P. SIGORAH MEMORIAL HOSPITAL
7. KOSRAE STATE						8. FSM
11. 07-024416		12a. FSM CONGRESSMAN / RETIRED		9. MARRIED		10. BETTY OLKERIIL
13a. KOSRAE STATE		13b. KOSRAE ISLAND		13c. POT, LEJU		12. NONE
14. HILTON		14a. HILTON		14b. HILTON		14c. HILTON
15a. KOSRAE STATE		15b. KOSRAE STATE		15c. KOSRAE STATE		15d. KOSRAE STATE
16a. BETTY K. PHILLIP		16b. POT		16c. HEINE		16d. HEINE
17. Death was caused by:		18. LEJU		19. OCTOBER 2, 2012		20. OCTOBER 2, 2012
18. HYPVOLEMIA SHOCK		19. UPPER AND LOWER GI BLEEDING		20. LIVER CIRRHOSIS		21. LIVER CIRRHOSIS
19. HEPATIC ENCEPHALOPATHY		20. HEPATIC ENCEPHALOPATHY		21. HEPATIC ENCEPHALOPATHY		22. HEPATIC ENCEPHALOPATHY
23. Other significant conditions:		24. Other significant conditions:		25. Other significant conditions:		26. Other significant conditions:
HEPATIC ENCEPHALOPATHY		HEPATIC ENCEPHALOPATHY		HEPATIC ENCEPHALOPATHY		HEPATIC ENCEPHALOPATHY
27. I certify that I attended the deceased and that death occurred on the date and to the best of my knowledge from the cause shown.		28. Name of Physician		29. Signature		30. Date Signed (Month/Day/Year)
27. I attended the deceased and that death occurred on the date and to the best of my knowledge from the cause shown.		28. PAUL SKILLING, DCHMS		29. [Signature]		30. 10/24/12
31. Name of Informant		32. Date of Injury (Month/Day/Year)		33. How injury occurred (enter in Part II if 7b)		34. Location (Village, Hamlet, etc.)
31. SHIRUE C. LONNO		32. 10.5.12		33. Home Farm, Reud, Deud, etc.		34. Home Farm, Reud, Deud, etc.
35. I certify that I have reviewed this Certificate for accuracy.		36. Signature of Clerk of Courts		37. Date Signed (Month/Day/Year)		38. Date Signed (Month/Day/Year)
35. I have reviewed this Certificate for accuracy.		36. [Signature]		37. 10.5.12		38. 10.5.12

EXHIBIT "A"

KOSRAE STATE COURT
FEDERATED STATES OF MICRONESIA

IN THE MATTER OF _____)
)
Decedent,)
)
_____,)
Petitioner,)
_____)

PROBATE NO. _____

ORDER APPOINTING ADMINISTRATOR

Petitioner, _____, filed a Verified Petition on _____, 2004, seeking appointment as administrator for the estate of _____, Decedent. Respondents, _____, have executed a Written Consent to the appointment of the Petitioner. Respondents, _____, have been served notice of the Petitioner's Petition for Appointment as Administrator. A hearing on the Verified Petition was held on _____, 2004, when the following persons appeared before this Court: _____ names of persons who appeared at hearing _____.

FINDINGS

1. This Court has original jurisdiction in this matter pursuant to Section 6.101 of the Kosrae State Code.
2. Petitioner is a citizen of the Federated States of Micronesia and resident of Kosrae State (or state other citizenship and residency) and is qualified to serve as administrator.
3. Respondents are citizens of the Federated States of Micronesia and residents of Kosrae State. (or state other citizenship and residency)
4. The Decedent passed away on _____, 2004 in Kosrae State, FSM.
5. The appointment of the Petitioner as administrator of the Decedent's estate is in the best interests of the Decedent's estate, based upon prevailing Kosrae law, custom and tradition.
6. The heirs of the Decedent are listed as follows: (list heirs)

ORDERED, ADJUDGED AND DECREED

1. That the Petitioner, _____, is hereby appointed as the administrator of the estate of _____, Decedent.

EXHIBIT "B"

FORM for APPOINTMENT OF ADMINISTRATOR - 4/15/04

2. That the Administrator shall take all necessary steps to:
 - a. manage, settle and distribute Decedent's personal property in accordance with the Decedent's last will, state and national law, custom and tradition, or as in the best interests of the estate;
 - b. assess and satisfy any claims brought against the Decedent's estate; and
 - c. assess and bring any claims on behalf of the Decedent's estate.
3. That the Administrator shall proceed expeditiously with settlement and distribution of the Decedent's estate, without any further order from this Court. The Administrator may invoke the jurisdiction of this Court to resolve any issues concerning the Decedent's estate or its administration.
4. That the Administrator has the right to take possession and control of the Decedent's property, except as provided by Decedent's will, or state or national law, and except that the possession or use of real property shall continue without change as *status quo*, until a determination of inheritance is made pursuant to Kosrae State Code, Title 11, Chapter 6.

SO ORDERED this ____th Day of month, 2004.

Name of Justice
Chief/Associate Justice

ENTERED this ____th Day of month, 2004.

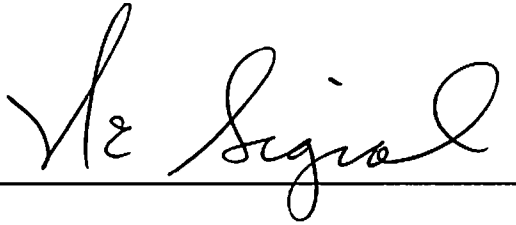
Shrue C. Lonno
Chief Clerk of Court

Service on: Petitioner
All heirs
Kosrae Land Court

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Suggestion of Death on the Record/Motion for Substitution and Motion for Leave to Supplement was served on the following by hand delivery and email on December 18, 2012:

Stephen Finnen, Esq.
Kolonia, Pohnpei, FM 96941
Email: finnen@mail.fm



A handwritten signature in cursive script, appearing to read "Stephen Finnen", is written over a horizontal line.