

**IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

BANK OF SAIPAN, as Executor of the Estate of LARRY LEE HILLBLOM)	ORIGINAL ACTION NO. 2000-003
)	CIVIL ACTION NO. 98-0973
)	
Petitioner,)	
)	
v.)	
)	
SUPERIOR COURT OF THE)	
COMMONWEALTH OF THE NORTHERN)	
MARIANA ISLANDS,)	
)	OPINION AND ORDER
Respondent,)	
)	
v.)	
)	
MARY JANE CONNELL,)	
)	
Real Party in Interest.)	
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Submitted on Briefs October 5, 2000

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[p. 2]

BEFORE: DEMAPAN, Chief Justice, MANGLONA, Associate Justice, and LAMORENA, Special Judge¹

DEMAPAN, Chief Justice:

By this Petition for Writ of Mandamus, the Special Administrator of the Estate of Larry Lee Hillblom asks us to direct the Commonwealth Superior Court to vacate its order granting defendant Mary Jane Connell's ("Connell") motion to dismiss, and instead exercise personal jurisdiction over Connell. Our authority over extraordinary writs stems from our general supervisory powers. N.M.I. Const. art. IV, § 3; 1 CMC § 3102(b). Because we find jurisdiction, we **GRANT** the petition.

FACTUAL AND PROCEDURAL BACKGROUND

Unless otherwise noted, the following facts are from the order which is the subject of this original proceeding:²

A. Procedural Background

Diego Mendiola is the Special Administrator for the Estate of Larry Lee Hillblom ("Hillblom"). The Bank of Saipan is the Executor of the Hillblom Estate. On December 3, 1999 the Special Administrator filed a First Amended Complaint in a legal malpractice action against the law firm of Carlsmith Ball Wichman Case & Ichiki ("Carlsmith") for claims allegedly arising out of its representation of the Hillblom Estate in 1995 and 1996.³

¹ Honorable Alberto C. Lamorena III, Presiding Judge of the Guam Superior Court, sitting by designation.

² See *Bank of Saipan v. Carlsmith Ball Wichman Case & Ichiki*, Civ. No. 98-0973 (N.M.I. Super. Ct. July 6, 2000) (Order Granting Mary Jane Connell's Motion to Dismiss for Lack of Personal Jurisdiction).

³ See *Bank of Saipan v. Carlsmith*, Civ. No. 98-0973 (N.M.I. Super. Ct. Dec. 3, 1999) (First Amended Complaint for Malpractice, Breach of Fiduciary Duty, Fraud, Constructive Fraud, Abuse of Process, Disgorgement, Direct Action Against Insurers, and Declaratory Judgment).

The complaint named the Carlsmith firm, as well as Defendants Does, Roes and Moes. On February 22, 2000 the Special Administrator successfully moved to substitute the true names of Does 1-4, which included Real Party in Interest Mary Jane Connell. On April 24, 2000, Connell filed a [p. 3] motion to dismiss pursuant to Com. R. Civ. P. 12(b)(2) asserting a lack of minimum contacts and, consequently, a lack of personal jurisdiction. On July 6, 2000 the Superior Court granted Connell's motion to dismiss.

There is no indication in the record that the parties conducted discovery regarding Connell in the two months between the First Amended Complaint and Connell's motion to dismiss.

B. The Carlsmith Firm and its Partners

Carlsmith initially served as attorneys for the Executor. Carlsmith is a general legal partnership organized under Hawaiian state law with offices in Hawaii, Guam, Saipan, Washington, D.C., California, and Mexico City. *Bank of Saipan v. Carlsmith*, Civ. No. 98-0973 (N.M.I. Super. Ct. Apr. 20, 2000) (Affidavit of Mary Jane Connell in Support of Motion to Dismiss for Lack of Personal Jurisdiction (“Connell Affidavit”) at 2).

Connell is a partner of the Carlsmith firm. She filed an affidavit supporting the motion to dismiss, attempting to demonstrate a lack of contacts with the Commonwealth (“CNMI”). In her affidavit, Connell testified that her involvement with the Hillblom estate consisted of general, procedural advice to David R. Nevitt and other partners at the Saipan office of the Carlsmith firm. Connell Affidavit at 4. Connell provided Nevitt with schedules and advice regarding payment of an estate executor. *Id.* She explained to Nevitt the role of a personal representative and sent him materials on that topic. *Id.* She arranged with another Honolulu associate to obtain DNA samples from a hospital in Hawaii. *Id.* She communicated with other Carlsmith partners regarding the probate of a large estate. *Id.*

Connell admits she has had 12 clients in the CNMI over the past 10 years, and has represented one non-resident client in CNMI-related matters. Connell Affidavit at 3. Her representation consisted of general advice and initial drafting of documents that were sent to the billing partner in Saipan. *Id.* [p. 4] Connell admits she was involved in the probate of the Hillblom estate from June 1995 to January 1996. Connell Affidavit at 4. She spent a total of approximately 50 hours of work on the Hillblom estate. *Id.*

In opposing Connell's motion to dismiss, the Special Administrator submitted a printout of one page of the Carlsmith website indicating the Carlsmith firm has offices in Saipan, Guam, several locations in Hawaii, Los Angeles, Washington, D.C. and Mexico City. Excerpts of Record ("E.R.") at 71. The website states: "A client who walks into any Carlsmith Ball office is walking into ten different offices around the Pacific and Northern America. Whatever area of expertise a client needs, we can either meet that need on the spot or quickly involve specialists in one of our other offices." E.R. at 78. Another page of the website indicates that the attorneys in Carlsmith's Tax, Trusts, and Compensation Planning Section "continually deal with companies doing business in the Pacific Region, including the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, California and Mexico." E.R. at 73. Another website page indicates Connell's clients "have included residents of various jurisdictions including the U.S., Guam, Saipan, American Samoa, and Japan." E.R. at 75. Although Connell is only licensed to practice in Hawaii, the website indicates her work:

includes helping to obtain values for estate assets, advising clients on estate tax issues, and handling ancillary probates for decedents who are not residents of Hawaii. Practice emphasizes the resolution of complex issues that arise when non-resident aliens own property in America, clarifying multi-jurisdictional issues arising when descendants own property in more than one state or country.

E.R. at 76.

The Special Administrator also submitted a report indicating the Carlsmith firm has been licensed

to do business within the CNMI since 1986 (E.R. at 84), and a Westlaw-generated list of 17 cases from the CNMI for which the Carlsmith firm was the attorney of record (E.R. at 86).

The Special Administrator timely brought this writ petition. [p. 5]

ISSUES PRESENTED AND STANDARDS OF REVIEW

The issues before the Court are:

1. Whether sufficient grounds exist to issue a writ of mandamus against the Superior Court, and if so,
2. Whether the Commonwealth courts may exercise jurisdiction over Connell due to her partners' or her own contacts with the CNMI.

We discuss the standard for granting a writ petition below. Jurisdiction is a question of law subject to *de novo* review. *Montecillo v. Di-All Chem. Co.*, App. No. 97-020 (N.M.I. Sup. Ct. Nov. 23, 1998) (Opinion at 1-2); *Office of the Attorney Gen. v. Rivera*, 3 N.M.I. 436, 441 (1993).

The plaintiff has the burden of establishing jurisdiction. *Data Disc, Inc. v. Systems Tech. Assoc., Inc.*, 557 F. 2d 1280, 1285 (9th Cir. 1977). In the absence of an evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdictional facts. Issues of credibility or disputed issues of fact may require an evidentiary hearing, in which case plaintiff must prove jurisdiction by a preponderance of the evidence. *Data Disc* at 1285.

Given the absence of an evidentiary hearing here, we will construe Petitioner's exhibits opposing the motion to dismiss in a light most favorable to Petitioner, and resolve all doubts in his favor. *CutCo Indus., Inc. v. Naughton*, 806 F. 2d 361, 365 (2d Cir. 1986).

ANALYSIS

A. Writ Relief Is Appropriate

This Court has jurisdiction over extraordinary writs pursuant to its general supervisory powers.

Taimanao v. Superior Court, 4 N.M.I. 94, 96 (1994); *Tenorio v. Superior Court*, 1 N.M.I. 1, 7 (1989). In reviewing the request for a petition of mandamus, this Court considers the five factors set forth in *Tenorio*:

- (1) The party seeking the writ has no other adequate means, such as direct appeal, to attain the relief desired.
- (2) The petitioner will be damaged or prejudiced in a way not correctable on appeal.
- (3) The lower court's order is clearly erroneous as a matter of law. [p. 6]
- (4) The lower court's order is an oft-repeated error, or manifests a persistent disregard of applicable rules.
- (5) The lower court's order raises new and important problems, or issues of law of first impression.

Tenorio at 9-10.

In applying the guidelines to a particular case, there will not always be a bright-line distinction, and the guidelines themselves often raise questions as to degree. *Id.* at 10. Rarely if ever will a case arise where all guidelines point in the same direction or even where each guideline is applicable.⁴ The decision whether to issue a writ calls for a cumulative consideration and balancing of these factors. *Villacrusis v. Superior Court*, 3 N.M.I. 546, 550 (1993).

The first two factors are similar and may be considered together. *Office of the Attorney Gen. v. Superior Court (Fabricante)*, Orig. No. 99-001 (N.M.I. Sup. Ct. June 28, 1999) (Opinion at 8). Here,

⁴ The final two factors, by definition do not coexist: “[T]he fourth contemplates a case presenting an oft-repeated error, and the fifth a case presenting a novel question. Where one of the two is present, the absence of the other is of little or no significance.” *Nakatsukasa v. Superior Court*, Orig. No. 99-006 (N.M.I. Sup. Ct. Dec. 27, 1999) (Opinion at 3 n.2) (internal citation omitted).

while Petitioner will undoubtedly incur further expense in proceeding to trial before appealing the jurisdictional issue, unnecessary cost or delay alone are not sufficient grounds for writ review:

Undoubtedly, the cost and delay occasioned by such erroneous rulings, in the aggregate, are quite significant and can be quite burdensome to the individual litigant. If such harm could support mandamus, however, then mandamus would no longer be an extraordinary remedy and we will have effectively abandoned our tradition against piecemeal appeals.

Id. at 9 (internal citation omitted).

However, in reviewing a writ petition pursuant to our supervisory mandamus authority, we are concerned with more than the injury to the Petitioner; we are concerned with the effect of the challenged order on the operation of the courts. *In re Cement Antitrust Litig*, 688 F.2d 1297, 1303 (9th Cir. 1982). In this case, resolving the jurisdictional question will foster the efficient operation and administration of the courts, because it will be more efficient to settle the jurisdictional question now instead of forcing the courts to expend their precious resources on a full trial, appeal, and subsequent remand. [p. 7]

As for the third factor, a ruling is clearly erroneous as a matter of law where the Court is firmly convinced that the lower court has erred in deciding a legal question. *Id.* 1306. However, a lower court's order need not be "clearly" erroneous in supervisory mandamus cases where the writ petition raises an important question of law of first impression, the answer to which would have a substantial impact on the administration of the lower courts. *Nakatsukasa v. Superior Court*, Orig. No. 99-006 (N.M.I. Sup. Ct. Dec. 27, 1999) (Opinion at 3) (internal citation omitted). In cases in which the U.S. Supreme Court has reviewed an appellate court's exercise of supervisory authority, it has not required that the district court's order be "clearly erroneous" before granting mandamus relief. *In re Cement Antitrust Litig* at 1307. In supervisory mandamus cases involving questions of law of major importance to the administration of the courts, the purpose of our review and the reason for our correcting an error made by a trial judge is to

provide necessary guidance to the courts and to assist them in their efforts to ensure that the judicial system operates in an orderly and efficient manner. *Id.* Thus the Court will exercise its mandamus authority even though the lower court's order cannot be said to be "clearly erroneous."

As for the fifth *Tenorio* factor, this petition raises an issue of first impression. This Court must decide under what circumstances an attorney from a remote off-island office who provides work product for an action prosecuted in the CNMI courts has sufficient personal contacts with the CNMI to satisfy due process requirements and, alternatively, whether the partnership's contacts will confer jurisdiction over the non-resident partner. These are questions of public policy and general importance to the Commonwealth. *See Sekisui House, Ltd. v. Superior Court*, Orig. No. 99-008 (N.M.I. Sup. Ct. Nov. 23, 1999) (Opinion at 4).

B. The CNMI Courts May Exercise Personal Jurisdiction over Connell⁵

We apply a two-prong test to determine whether the CNMI courts may exercise personal jurisdiction over a non-resident defendant. First, we must find an applicable rule or statute [p. 8] conferring jurisdiction. Second, we must find that exercise of such jurisdiction accords with the constitutional principles of due process. *Data Disc* at 1286.

1. There Is a statutory Basis for Jurisdiction

The CNMI's long-arm statute extends the courts' jurisdiction to the extent permitted by the federal Constitution, regardless of citizenship or residency, when a cause of action arises from, among other things:

- (1) The transaction of any business within the Commonwealth;

* * *

⁵ Carlsmith does not deny that it is subject to the Court's jurisdiction.

- (5) Causing tortious injury or damage within the Commonwealth by an act or omission done outside the Commonwealth by a person engaged in business or other acts having impact within the Commonwealth, or who derives income or revenue from supplying goods or services within the Commonwealth;

* * *

- (7) Any act done outside the Commonwealth which causes or results in any harmful impact, injury or damages, including pollution of air, land or water within the Commonwealth; or
- (8) Any other act done within or outside the Commonwealth from which a cause of action arises and for which it would not be unreasonable, unfair or unjust to hold the person doing the act legally responsible in a court of the Commonwealth.

7 CMC § 1102(a); *Montecillo* at 2-3. Section 1102 specifies that an individual may be liable for her own conduct, or the conduct of an agent:

Any person, whether or not a citizen or resident of the Commonwealth, **who in person or through an agent** does any of the acts enumerated in this section, thereby submits such person, and, if not an individual, its personal representative, to the jurisdiction of the courts of the Commonwealth as to any cause of action arising from the doing of any of the following acts

7 CMC § 1102(a) (emphasis added). In enacting section 1102, the Commonwealth Legislature intended that jurisdiction be coextensive with the minimum standards of due process as determined in the United States federal courts. 7 CMC § 1102(e). *Montecillo* at 3. [p. 9]

Here, Petitioner alleges Connell's conduct in Hawaii had an impact in the CNMI, and that she derived income or revenue for her services to a CNMI resident. Connell's conduct is therefore sufficient to submit her to the jurisdiction of the CNMI courts under the Commonwealth's long-arm statute.

2. Exercising Jurisdiction Does Not Offend Due Process

Having found a statutory basis for jurisdiction over Connell, we next apply the basic rule that a defendant must have certain minimum contacts with the Commonwealth, such that maintenance of a lawsuit

within the Commonwealth will not “offend traditional notions of fair play and substantial justice.” *Montecillo* at 2.

The due process requirement is met if a defendant has “fair warning that a particular activity may subject a person to the jurisdiction of a sovereign,” *Shaffer v. Heitner*, 433 U.S. 186, 218, 97 S. Ct. 2569, 2587, 53 L. Ed. 2d 683 (1977) (Stephens, J., concurring). “Fair warning” in turn means the defendant has “purposefully directed” her activities at residents of the forum and the litigation results from alleged injuries that “arise out of or relate to” those activities. *Montecillo* at 2; *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 2182, 85 L. Ed. 2d 528 (1985). “[T]he foreseeability that is critical to the due process analysis . . . is that the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.” *Burger King* at 474, 105 S. Ct. at 2183 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 567, 62 L. Ed. 2d 490 (1980)). The relationship between the defendant and the forum must be such that it is reasonable to require the corporation to defend the particular suit which is brought there. *World-Wide Volkswagen* at 292, 100 S. Ct. at 564 (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 317, 66 S. Ct. 154, 158, 90 L. Ed. 95 (1945)).

We therefore apply the test set forth in *Data Disc*: A court may exercise jurisdiction over a nonresident defendant if her activities within a state are “substantial” or “continuous and systematic,” and there is a sufficient relationship between the defendant and the state to support jurisdiction even if the cause of action is unrelated to the defendant's forum activities. If, however, the defendant's [p. 10] activities are not so pervasive as to subject her to general jurisdiction, the court must then determine whether (1) the defendant has purposefully availed herself of the privilege of conducting activities within the forum, thereby invoking the benefits and protections of its laws, (2) plaintiff’s claim arises out of or results from the

defendant's forum-related activities, and (3) exercise of jurisdiction is reasonable. *Data Disc* at 1287. The “purposeful availment” requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of “random,” “fortuitous,” or “attenuated” contacts. *Burger King* at 475, 105 S. Ct. at 2183. Thus, for example, where the defendant “deliberately” engages in significant activities within a State, or has created “continuing obligations” between herself and residents of the forum, she manifestly has availed herself of the privilege of conducting business there, and because her activities are shielded by the “benefits and protections” of the forum’s laws it is presumptively reasonable to require her to submit to the burdens of litigation in that forum as well. *Id.* at 475-76, 105 S. Ct. at 2184.

In this jurisdictional analysis, the Court may consider various conflicting interests: the defendant’s burden in defending herself within the jurisdiction, the Commonwealth’s interest in adjudicating the dispute, the plaintiff’s interest in obtaining convenient and effective relief, the interstate judicial system’s interest in obtaining the most efficient resolution of controversies, and the shared interest of the several states in furthering fundamental substantive social policies. *Id.* at 477, 105 S. Ct. at 2184. The Commonwealth generally has a “manifest interest” in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors. *See id.* at 473, 105 S. Ct. at 2182. Moreover, where an individual purposefully derives benefit from her interstate activities, it may well be unfair to allow her to escape having to account in other states for consequences that arise proximately from such activities; the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed. *Id.* at 474, 105 S. Ct. at 2183. And because “modern transportation and communication have made it much less burdensome for a party sued to defend herself in a State where [she] engages in economic activity,” it usually will not be unfair to subject her to the burdens of litigating in another forum for disputes relating to such activity. *Id.* at 474, 105 S. Ct. at 2183. [p. 11]

3. Application

There is not enough convincing evidence to establish general jurisdiction. Connell resides and works in Hawaii. Connell has represented or worked on cases for twelve clients in the CNMI within the past ten years. She is not licensed to practice law in the CNMI, and has not been admitted *pro hac vice* before any CNMI court. Connell's activities do not appear to be "continuous and systematic" so as to submit her to the jurisdiction of the CNMI courts for all purposes.

Nevertheless, Connell may be subject to jurisdiction in the CNMI based on her connection to the CNMI with respect to her representation of the Hillblom estate.

a. Purposeful Availment

The evidence suggests Connell may have reached out to the CNMI for clients. The lower court found the fifty hours of work Connell billed to the Hillblom estate was not sufficient to establish that Connell purposefully availed herself of the privilege of conducting business in the CNMI, because it was too insubstantial a connection to the CNMI. The court apparently disregarded as insubstantial the Special Administrator's evidence that the Carlsmith firm, of which Connell is a partner, actively marketed Connell as an attorney in their Tax, Trusts, and Compensation Planning Section who was available to assist clients who do business in the Pacific Region, including Saipan, and whose previous clients included residents of Saipan. Most telling is the promise on Carlsmith's website that "A client who walks into any Carlsmith Ball office is walking into ten different offices around the Pacific and Northern America. Whatever area of expertise a client needs, we can either meet that need on the spot or quickly involve specialists in one of our other offices." While Connell may deny any part in her firm's website development and marketing strategy, a simple affidavit to this effect cannot satisfy her burden of rebutting Petitioner's prima facie case;

before dismissing the case against Connell, the trial court should have permitted Petitioner to depose Connell on her activities in marketing herself and her firm to clients in the CNMI. [p. 12]

The evidence further suggests Connell envisioned continuing and wide-reaching contacts with the CNMI, in connection with existing and potential clients. *See Burger King* at 480, 2186. There is no evidence, other than a conclusory affidavit, as to the nature of Connell's contacts with the CNMI for each of the CNMI clients she represented. There is just as little evidence regarding Connell's contacts with the CNMI in connection with her work for the Hillblom Estate. However, it appears Connell did provide some advice to the Estate, sent work product to the CNMI, and communicated with CNMI residents regarding the Estate. Connell directed these activities to the CNMI, for use in representation of a CNMI resident in the prosecution of a case in the CNMI courts. Again, the trial court should have permitted Petitioner to depose Connell or seek other discovery as to the nature and extent of Connell's representation of the Hillblom Estate.

b. Arising Out Of

Petitioner's First Amended Complaint alleges malpractice claims against several Carlsmith partners. Petitioner has submitted evidence that Connell's area of expertise includes probate administration, the exact activity which led to the Estate's malpractice claim against Carlsmith. Petitioner has further demonstrated that Connell's fifty hours of work for the Hillblom Estate included giving instructions on handling an estate, the mishandling of which gave rise to the Estate's malpractice claim against Carlsmith. Thus, the Estate's malpractice claims may have arisen out of Connell's conduct. There is insufficient evidence on the record for the trial court to have found that Connell rebutted Petitioner's prima facie case in favor of jurisdiction.

c. Reasonableness

Once a plaintiff has established its prima facie case in favor of jurisdiction, the defendant "must

present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.” *Cartaret Savings Bank, FA v. Shushan*, 954 F.2d 141, 150 (3d Cir. 1992). The Ninth Circuit has identified seven relevant factors to be considered in assessing the reasonableness of asserting jurisdiction over a non-resident defendant: (1) the extent of purposeful [p. 13] interjection into the forum state; (2) the burden on the defendant in defending in the forum; (3) the extent of conflict with the sovereignty of the defendant’s state or country; (4) the forum state’s interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to plaintiff’s interest in convenient and effective relief; and (7) the existence of an alternative forum. *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 840 (9th Cir. 1986). These seven factors together determine whether “under the totality of the circumstances the defendant could reasonably anticipate being called upon to present a defense in a distant forum . . . To determine reasonableness, we consider the relative significance of each factor and balance them all.” *Id.* (internal citations omitted).

Here, it appears that Connell did purposefully interject herself into the CNMI by soliciting clients and providing her services in the Hillblom probate matter. As the Carlsmith partner most capable of assisting in the Hillblom probate, and as one who sent work product in a large probate case into the CNMI, Connell cannot seriously contend she had no warning her conduct might subject her to jurisdiction in the CNMI, in a case involving allegations of malpractice with respect to Connell’s area of expertise.

Connell claims a greater burden than Petitioner in litigating in the CNMI, as Petitioner is a CNMI resident and is well funded. Any inconvenience to Connell is not so great as to constitute a deprivation of due process. For example, Connell’s burden is lessened in that Carlsmith maintains offices and attorneys in this forum. Additionally, the Carlsmith firm is already relying on mainland counsel and local counsel to handle appearances. Connell’s presence at pre-trial proceedings is highly unlikely given that she is

represented. Her presence at trial need not be continuous, and air travel between Hawaii and the Northern Marianas is frequent. While Connell's presence in the court room might disrupt her schedule, it could hardly "severely hinder [her] ability to maintain [her] law practice in Hawaii," as she asserts. Technological advances have made the burden of defending in a foreign forum far less onerous. Modern communications and transportation have made it much less burdensome for a party sued to defend herself in a state where she engages in economic activity. *McGee v. International Life Ins. Co.*, 355 U.S. 220, 222-223, 78 S. Ct. 199, 201, 2 L. Ed. 2d 223 [p. 14] (1957). Moreover, the hardship on transferring this on-going litigation to another jurisdiction would be a foreseeably greater burden on the parties. Suits based on alleged losses here can more conveniently be tried in the CNMI where the witnesses would most likely be located and where claims for losses would presumably be investigated.

States have an important interest in providing a forum in which their residents can seek redress for injuries caused by out-of-state actors. *Burger King* at 483, 105 S. Ct. at 2187. The CNMI courts and the Executor have put significant effort into litigating the probate of the Hillblom Estate. Several parties and witnesses are residents and citizens of this jurisdiction. The CNMI has a substantial interest in protecting its citizens against potentially hard-to-reach foreign actors whose acts give rise to claims within the jurisdiction.

Given the long history of litigation involving the Hillblom Estate, the CNMI is the location for the most efficient judicial resolution of the litigation. Witnesses are located predominately in the CNMI and not Hawaii. The effects of the alleged malpractice were felt in the CNMI. The governing substantive law is that of the CNMI. The exercise of jurisdiction in the CNMI is necessary to prevent piecemeal litigation.

For the same reason, Petitioner also has an interest in completing the litigation in a single forum where it has already commenced its action and where many of the key witnesses are located. However,

we acknowledge this case encompasses an international scope where witnesses will potentially be drawn from around the world and especially throughout the Pacific.

Petitioner's interest in receiving convenient and effective relief is best met by litigating in this forum. Petitioner's chances of recovery will be diminished by forcing it to litigate in another forum such as Hawaii, because of that forum's conflicting laws, such as the Revised Uniform Partnership Act, as well as the practical burden of putting on a case with which the CNMI courts are aware but which would have to be re-presented to another state court.

No other jurisdiction is as involved, or as convenient, or has a greater interest in this litigation than the CNMI. Judicial economy favors completing all of the proceedings in one location. The answerability of lawyers in local jurisdictions is furthered by continuing with the proceedings in the [p. 15] CNMI. We therefore find that jurisdiction over the Carlsmith partners, including those non-CNMI residents who represented the Hillblom Estate, is reasonable and does not offend traditional notions of fair play and substantial justice. Carlsmith's partners hoped to profit by the firm's activities in conjunction with the Hillblom case in the CNMI; they must also bear the burden of defending themselves in a jurisdiction, in a case which arises out of their conduct here.

4. The CNMI Courts May Impute Personal Jurisdiction

Petitioner contends that because the Court has jurisdiction over the Carlsmith law firm, the Court may exercise jurisdiction over Carlsmith's individual partners because partners are agents for each other. Neither Commonwealth statutory nor case law addresses this issue. As the trial court noted, the Restatement provides no guidance on the issue of imputed jurisdiction over a partner.⁶ We must therefore

⁶ It is well established that the Commonwealth may look to the law of other United States jurisdictions where the Commonwealth's written law, local customary law, and the Restatements lack guidance. 7 CMC § 3401; *Ada v. Sablan*, 1 N.M.I. 415, 423 (1990).

look to the common law of partnerships in other jurisdictions, especially where it developed prior to the statutory adoption of the Uniform Partnership Act (“UPA”).⁷

Connell and the Superior Court relied on *Sher v. Johnson*, 911 F.2d 1357 (9th Cir. 1990) to support Connell’s dismissal for lack of personal jurisdiction. In *Sher*, a California resident brought a legal malpractice lawsuit in a California district court against a Florida law firm and its partners in connection with representation by the Florida firm in Florida. Sher solicited the law firm’s business in its home state of Florida. While representing Sher, the firm and two of its partners engaged in telephone communications with the client, received checks drawn on California banks, and one partner traveled to California to meet with Sher. *Id.* at 1360. Plaintiff also issued a deed of trust encumbering real estate in California, as security for his legal expenses. **[p. 16]**

The court first concluded that the phone calls, visits and payments did not establish jurisdiction over the partnership, because these contacts were only made to accommodate the client in connection with litigation in Florida. *Id.* at 1362. These contacts were incident to the firm’s representation of Sher in Florida, and could therefore not be seen as activities intended to promote business in California. *Id.* However, by obtaining the deed of trust encumbering California property, the law firm was purposefully availing itself of the protections of California to secure its right of payment. *Id.* at 1363. The deed contemplated significant future consequences in California – filing the deed there, and obtaining and enforcing a judgment under California law. *Id.*

⁷ Cases predicated upon state or any other statutory scheme are of minimal assistance. Under the common law prior to the adoption of the UPA, partnerships were viewed under the aggregate theory, an assemblage of individuals, each the agent of the other, rather than under the entity theory where the partnership is viewed as an entity separate from the partners. See *People v. Farsight*, 75 Cal. Rptr. 2d 858, 861 (Cal. App. 1998) (noting “recent trend of case law” leaning toward recognition of partnership as separate legal entity, rather than as aggregate of individuals with each partner acting as agent for other partners).

Having found jurisdiction over the partnership, the *Sher* court declined to impute jurisdiction over the individual partners. The court explained:

Liability and jurisdiction are independent. Liability depends on the relationship between the plaintiff and the defendants and between the individual defendants; jurisdiction depends only upon each defendant's relationship with the forum. Regardless of their joint liability, jurisdiction over each defendant must be established individually.

Id. at 1365 (internal citations omitted).

[W]hile each partner is generally an agent of the partnership for the purposes of its business, he is not ordinarily an agent of his partners. Thus, a partner's actions may be imputed to the partnership for the purpose of establishing minimum contacts, but ordinarily may not be imputed to the other partners.

Id. at 1366.

Sher is distinguishable from this case because in *Sher*, the court relied on law specific to California and the UPA. That law does not apply in the CNMI. *See Miller v. McMann*, 89 F. Supp. 564, 568 (D.N.J. 2000) (citing New York, Wisconsin, 10th Circuit and district court cases which permit imputed jurisdiction over one partner due to another partner's conduct as his agent); *id.* at 569 (distinguishing *Sher v. Johnson* as based on California law that partners are not ordinarily agents for each other); *Durkin v. Shea*, 957 F. Supp. 1360, 1367 (S.D.N.Y. 1997) (explaining, "[A]lthough 'liability and jurisdiction are independent,' general principles of agency law can appropriately inform the jurisdictional inquiry" and concluding New York court would not adopt *Sher* rule against imputing jurisdiction). [p. 17]

In finding jurisdiction over each individual partner for the actions of only a few, the court in *Miller v. McMann* distinguished *Sher*:

The [*Sher*] ruling, however, rested on California law to the effect that a partner is not ordinarily an agent of the other partners. The instant matter can therefore be distinguished from *Sher* because under both New Jersey and Maryland law, a partner is an agent of the other partners.

Miller at 569 (internal citations omitted). The court in *Durkin v. Shea* distinguished *Sher* on similar grounds, finding that under New York law a partner is an agent of his fellow partners, as well as of the partnership. *Durkin* at 1366-67; *see also CutCo Industries* at 366 (recognizing traditional agency law principle that partner acts as both principal and agent); *Intercontinental Leasing, Inc. v. Anderson*, 410 F. 2d 303, 305 (10th Cir. 1969) (holding “Through the instrumentality of the partnership, the individual partners purposefully availed themselves of the privilege of conducting business activities in Kansas and invoked the benefits and protections of its laws to satisfy their personal economic desires. That is enough to invoke the long-arm statute and to subject them to personal jurisdiction”).

We are persuaded by the reasoning of the above cases which apply traditional principles of partnership and agency law. We also note that here, Connell actually performed work for the Hillblom Estate, and therefore participated in the conduct giving rise to the malpractice claims. We therefore hold that, under the facts of this case, the Carlsmith partners in Saipan acted as agents of their off-island partner Connell. As such, jurisdiction over the Carlsmith partners in Saipan confers jurisdiction over Connell.

Moreover, where the Court is called upon to formulate a common law rule based on public policy, the policy must be implicated in either local law or a recognized need to safeguard the welfare of the general public. *Castro v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268, 275 (1995). We find such a need here. Carlsmith and its partners solicited business in the CNMI. The firm and its partners, including Connell, marketed their abilities to several jurisdictions, claiming a client in one jurisdiction who hired the firm was essentially hiring a multi-jurisdictional range of attorneys. We cannot permit Carlsmith and its partners, including Connell, to avoid trial in the CNMI simply [p. 18] because some of those partners representing the CNMI client remained outside the boundaries of this jurisdiction while deriving benefits from the jurisdiction.

CONCLUSION

For the foregoing reasons, we **GRANT** the petition for writ of mandamus. We therefore **ORDER** the Superior Court to vacate its order dismissing Mary Jane Connell and instead issue an order denying Connell's motion to dismiss, because the Commonwealth courts may properly exercise jurisdiction over her.

Dated this 21 day of February 2001.

/s/ _____
MIGUEL S. DEMAPAN, Chief Justice

/s/ _____
JOHN A. MANGLONA, Associate Justice

/s/ _____
ALBERTO C. LAMORENA III, Special Judge