

SEP 17 2003

For The Northern Mariana Islands
By _____
(Deputy Clerk) *[Signature]*

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

JAMES H. GRIZZARD,)	Civil Action No. 99-0055
)	
Plaintiff)	
)	ORDER DENYING
v.)	DEFENDANTS' MOTION TO
)	DISMISS BASED UPON THE
KIYOSHIGE TERADA, MINORU))	DEATH OF PLAINTIFF
IMAI, and KABUSHIKI KAISHA))	
HYAKUMATA CO., LTD.,))	
)	
Defendants)	
_____)	

THIS MATTER came before the court on motion of defendants to dismiss the lawsuit based upon the post-filing death of plaintiff. The parties submitted the motion on their respective memoranda. Plaintiff was represented by his attorney, William M. Fitzgerald; defendants Terada and Hyakumata (a Japanese corporation) were represented by their attorneys, Eric S. Smith

1 and Mark K. Williams.

2 THE COURT, having considered the written arguments of counsel,
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4 denies defendants' motion to dismiss for the following reasons.

5 As even defendants properly acknowledge in their motion, the modern
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7 trend appears to unmistakably disfavor the complete abatement of lawsuits
8 based simply on the death of a plaintiff. Defendants' Memorandum, at 1 (Mar.
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10 20, 2003), *quoting*, 10 Federal Litigator 284 (Oct. 1997). Further, the court
11 agrees that the relief sought is primarily remedial in nature, and not punitive,
12 which also counsels in favor of allowing the lawsuit to continue. *See e.g.*
13 Shearson/ American Express, Inc. v. McMahon, 482 U.S. 220, 240, 107 S.Ct.
14 2332, 2345 (1987) (holding that even treble-damages provision of RICO law was
15 intended to be remedial in nature). And, finally, this is an issue of local law, *see*
16 *e.g. Robertson v. Wegmann*, 436 U.S. 584, 98 S.Ct. 1991 (1978) (federal court
17 adopts state law unless inconsistent with Constitution or laws of the United
18 States), and a local court has addressed this issue. Although a decision of the
19 Commonwealth Superior Court is not binding on this court, it does provide a
20 reliable indicator of the position of the Commonwealth on the question of
21 abatement of a civil lawsuit upon the post-filing death of a plaintiff. In an order
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1 in Whitlatch v. Commonwealth, Superior Court Civil Action No. 90-926 (Aug.
2 27, 1992), the Superior Court addressed the survivability of plaintiff's civil
3 lawsuit after his post-filing death in an unrelated automobile accident. The
4 court concluded, after an examination of the current state of the law in the
5 United States, that plaintiff's cause of action did survive his death. Although
6 Whitlatch is not directly on point, the court concludes that it, taken with the
7 other principles acknowledged above, counsels that this court should conclude,
8 and it does so conclude, that the instant lawsuit should not be dismissed solely
9 due to the death of plaintiff.
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14 Accordingly, defendants' motion to dismiss based on the death of plaintiff
15 is denied.
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17 IT IS SO ORDERED.

18 DATED this 17th day of September, 2003.
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23 ALEX R. MUNSON
24 Judge
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