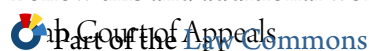


1986

In the Matter of the Estate of Edward Miller Grim,  
Deceased. Maxine Tate Grimm, individually and as  
Supervised Personal Representative of the Estate of  
Edward Miller Grimm; Linda Grimm; Edward  
Miller Grimm II; and E. Lavar Tate, as Supervised  
Personal Representative of the Estate of Edward  
Miller Grimm v. Ethel Grimm Roberts, Rex  
Roberts, Juanita Grim Morris and Juanita Kegley  
Grimm : Brief of Respondent

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M. David Eckersley; Houpt & Eckersley; attorneys for respondents; Harold G. Christensen, R. Brent Stephens; Snow, Christensen & Martineau; Craig S. Cook; Attorney for Defendants.

Daniel L. Berman, Peggy A. Tomsic; Berman & O'Rourke; attorneys for appellants.

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**BRIEF**

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DC. ET NO. 860262-CA - - - - -

IN THE SUPREME COURT OF THE STATE OF UTAH

In the Matter of the Estate of  
EDWARD MILLER GRIMM,

Deceased.

MAXINE TATE GRIMM, individually  
and as Supervised Personal  
Representative of the Estate of  
Edward Miller Grimm; LINDA  
GRIMM; EDWARD MILLER GRIMM II;  
and E. LAVAR TATE, as Supervised  
Personal Representative of the  
Estate of Edward Miller Grimm,

Case No. 860262

Plaintiffs-Appellants,

vs.

ETHEL GRIMM ROBERTS, REX ROBERTS,  
JUANITA GRIMM MORRIS and  
JUANITA KEGLEY GRIMM,

Defendants-Respondents.

88-0706-34

BRIEF OF RESPONDENTS

Appeal from Judgment of the Third Judicial  
District Court of Tooele County, State of Utah  
Honorable John A. Rokich

FILED  
MAR 17 1987

Clerk, Supreme Court, Utah

DANIEL L. BERMAN  
PEGGY A. TOMSIC  
BERMAN & O'RORKE  
50 South Main, Suite 1250  
Salt Lake City, Utah 84111

Attorneys for Plaintiffs-  
Appellants

M. DAVID ECKERSLEY  
HOUPPT & ECKERSLEY  
419 Boston Building  
Salt Lake City, Utah 84111

Attorneys for Defendant-  
Respondent Juanita Kegley Grimm

HAROLD G. CHRISTENSEN  
R. BRENT STEPHENS  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, 11th Floor  
Salt Lake City, Utah 84110

CRAIG S. COOK  
3645 East 3100 South  
Salt Lake City, Utah 84109

Attorneys for Defendants-  
Respondents Ethel Grimm  
Roberts, Rex Roberts and  
Juanita Grimm Morris

IN THE SUPREME COURT OF THE STATE OF UTAH

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In the Matter of the Estate of  
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- - - - -

DANIEL L. BERMAN  
PEGGY A. TOMSIC  
BERMAN & O'RORKE  
50 South Main, Suite 1250  
Salt Lake City, Utah 84111

Attorneys for Plaintiffs-  
Appellants

M. DAVID ECKERSLEY  
HOUP & ECKERSLEY  
419 Boston Building  
Salt Lake City, Utah 84111

Attorneys for Defendant-  
Respondent Juanita Kegley Grimm

HAROLD G. CHRISTENSEN  
R. BRENT STEPHENS  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, 11th Floor  
Salt Lake City, Utah 84110

CRAIG S. COOK  
3645 East 3100 South  
Salt Lake City, Utah 84109

Attorneys for Defendants-  
Respondents Ethel Grimm  
Roberts, Rex Roberts and  
Juanita Grimm Morris

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In the Matter of the Estate of  
EDWARD MILLER GRIMM,

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MAXINE TATE GRIM, individually  
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Edward Miller Grimm; LINDA  
GRIMM; EDWARD MILLER GRIMM II;  
and E. LAVAR TATE, as Supervised  
Personal Representative of the  
Estate of Edward Miller Grimm,

Case No. 860262

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vs.

ETHEL GRIMM ROBERTS, REX ROBERTS,  
JUANITA GRIMM MORRIS, and  
JUANITA KEGLEY GRIMM,

Defendants-Respondents.

-----  
BRIEF OF RESPONDENTS  
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QUESTIONS PRESENTED

1. Whether the terms of the Family Settlement Agreement were  
binding upon the Plaintiffs.

A. Whether the Family Settlement Agreement was a legal  
contract which did not require court approval to bind the signing  
parties.

B. Whether the Plaintiffs are equitably prevented from  
repudiating the terms of the Family Settlement Agreement.

2. Whether the lower court was correct in concluding that the alleged spendthrift trust did not affect the validity of the Family Settlement Agreement or the ability of the court to approve it.

A. Whether the inter vivos trust is merely illusory and contains no assets.

B. Whether Plaintiffs have renounced any interest in it and are estopped from claiming under it.

C. Whether Section 75-3-1101 U.C.A. makes a family settlement agreement binding upon the parties even if it affects a trust or inalienable interest.

D. Whether it can be said that the termination of the trust is in the best interests of the beneficiaries.

3. Whether proper notice was given to necessary parties to Section 75-3-1102(c) therefore making approval of the Family Settlement Agreement proper.

4. Whether the Plaintiffs were entitled to a jury trial on the intentional infliction of severe emotional distress, duress, and failure of consideration.

A. Whether under Philippine law there is a cause of action for intentional infliction of emotional harm.

B. Whether, as a matter of law, Plaintiffs produced sufficient evidence to state claim.

C. Whether Plaintiffs were entitled as a matter of right to have a jury decide these issues and whether the lower court correctly ruled in favor of the Defendants based upon all of the evidence.

D. Whether Plaintiffs waived any right they had to a jury by their conduct.

5. Whether the lower court correctly applied the evidence in this case in concluding that there was adequate consideration exchanged between the parties.

A. Whether this Court should adopt a "good faith" standard in evaluating the adequacy of considerations in family settlement agreements.

B. Whether the evidence in this case supports a finding of good faith as well as bona fide claims.

6. Whether the Findings of the lower court comply with Rule 52 U.R.C.P. and provide an adequate basis for appellate review.

#### CROSS APPEAL

Whether the lower court erred in failing to award Defendants reasonable attorneys' fees incurred to enforce the Family Settlement Agreement.

#### STATUTORY PROVISIONS

Three sections of the Uniform Probate Code are pertinent to this appeal--Section 75-3-912, 75-3-1101 and 75-3-1102. These sections are set forth in the Addendum to this Brief.

#### NATURE OF THE CASE

Defendants incorporate those portions of the Nature of the Case contained in Appellants' Brief (Appellants' Brief, pp. 5-10) which relate to the sequence of procedural events. Defendants do not incorporate those portions of the text which editorialize or which emphasize procedural events for the benefit of the Plaintiffs. As to this cross appeal it should also be noted that the lower court denied Defendants' claim for attorneys' fees (CR 1256) and that a timely appeal was taken from that order (CR 1271).



## STATEMENT OF FACTS

The Plaintiffs-Appellants have presented a lengthy and colorful "Statement of Facts" in their Brief. (Appellants' Brief, pp. 10-31). The picture painted by Appellants is that of two sisters and their respective husbands who would virtually stop at nothing to intimidate and coerce Maxine Grimm and her children into agreeing to give the scheming daughters a much larger percentage of the Edward Grimm estate than they could ever possibly hope to obtain by any legal or ethical course of conduct. In desperation the appellants were finally driven to the breaking point, according to this scenario, and reluctantly agreed to enter into the Family Settlement Agreement to their great detriment and sorrow. Appellants conclude this story by showing that the defendants continued to make life miserable for them and finally after regaining their strength and resolve the plaintiffs repudiated the Family Settlement Agreement and sought judicial relief from the document which they acknowledged they all signed.

This "Statement of Facts" would have made an excellent outline for a closing statement to a fact finder. It basically includes all of the direct evidence favorable to the plaintiffs' position and, in addition, takes every opportunity to make innuendos and insinuations as to any implied evidence or conclusions. While Plaintiffs maintain that their Statement focuses "on the documentary exhibits and the testimony of the defendants and their witnesses" (Appellants' Brief, p. 11), a review of their citations shows this is incorrect. A majority of the references utilized in the Statement of Facts refer to testimony of the plaintiffs, the plaintiffs' witnesses, or the plaintiffs' exhibits.

Defendants maintain that while the "Statement of Facts" submitted by the plaintiffs contain an entertaining version of the facts as viewed by the plaintiffs during the many years that this controversy developed, it is nonetheless an improper view for purposes of this appeal. Even in equity cases, as long as there is substantial evidence to support the findings of the lower court, this Court must view the findings favorably and not substitute its own judgment except to prevent manifest injustice if the evidence clearly preponderates against the Court's findings. Penrose v. Penrose, 656 P.2d 1017 (Utah 1982); Provo City v. Lambert, 574 P.2d 727 (Utah 1978).

With this standard of appellate review in mind, Defendants shall rely upon the Findings of Fact entered by the lower court as to Findings 1 through 64. The additional findings of the lower court will be cited during the Argument portion of the Brief. In addition, supplementary material will be added to the findings in order to clarify certain of the events and to refute some of the allegations contained in Plaintiffs' Statement of Facts. Material which was not originally found in the Findings of the lower court will be included in brackets [] with the exception of the subheadings used throughout the Statement of Facts which are not found in the original court Findings. The transcript and record designation utilized by the appellants in their Brief will be utilized here (Appellants' Brief, p. 9) and, in addition, the name of the witness giving the testimony will be inserted for further clarification.

#### The Early Grimm Family History 1929-1958

1. On February 22, 1926, Edward Miller Grimm (GRIMM) married defendant Juanita Kegley Grimm (JUANITA). [Juanita Grimm, TRB 111]. They resided in the Philippine Islands from 1926 until 1937. [Juanita

Grimm, TRB 110-112]. Two children were born of that marriage, defendant Ethel Grimm Roberts (ETHEL), born in 1928, and defendant Juanita Grimm Morris (NITA), born in 1930. [Id.].

2. In 1937, defendants JUANITA, ETHEL and NITA moved to San Francisco. [Id.]. GRIMM remained in the Philippine Islands and later served in the U.S. Army in the South Pacific. (Maxine Grimm, TRA 18-19].

3. In 1945, plaintiff Maxine Tate Grimm (MAXINE), employed as a Recreational Director by the American Red Cross, met GRIMM in the Philippines. [Maxine Grimm, TRA 11]. [During this time period Grimm served as a Colonel for General Douglas MacArthur's staff and was responsible for sea logistics. (Id.)].

4. In 1947, without personally contacting JUANITA, GRIMM came to the United States and filed a Complaint for Divorce in Reno, Nevada (PX-1). [PX-2, 3]. [Maxine Grimm, TRA 15; Juanita Grimm Morris, TRB 112-113].

5. GRIMM came to Nevada, established residency for the sole purpose of obtaining a divorce and, other than meeting the divorce residency requirement, GRIMM was never an actual resident of Nevada. [Maxine Grimm, TRA 422].

6. On June 2, 1947, a Decree of Divorce was entered, divorcing JUANITA and GRIMM (PX-3). Three weeks later, on June 25, 1947, GRIMM and MAXINE were married in Tooele, Utah. [PX-5].

7. Following the marriage, GRIMM and MAXINE returned to the Philippines. [Maxine Grimm, TRA 18]. They maintained homes in the Philippine Islands and Tooele, Utah, which homes they could occupy when not traveling. [Maxine Grimm, TRA 28]. They occupied the home in the Philippine Islands most of the time except for the last two

years of GRIMM'S life when the Grimms spent more time in Tooele, Utah. [Id.]. GRIMM died November 27, 1977, in the Philippine Islands. [Maxine Grimm, TRA 75]. [During this entire period of time Grimm remained an American citizen. (Maxine Grimm, TRA 9)].

8. Two children were born to GRIMM and MAXINE, Edward Miller Grimm II (PETE), born in 1951, and Linda Grimm Lawyer (LINDA), born in 1953. [Maxine Grimm, TRA 10].

9. In 1947, ETHEL, GRIMM'S daughter by his first marriage, returned to the Philippines. [Maxine Grimm, TRA 26]. She married Pat McFadden, an employee of GRIMM. [Id.]. They had six children by that marriage. She divorced Mr. McFadden and married Rex Roberts after 1947. [Maxine Grimm, TRA 27].

10. After the Second World War, GRIMM rebuilt and developed his various businesses. [Maxine Grimm, TRA 19]. [A large part of this effort was made with his long-time partner Charles Parsons. (Maxine Grimm, TRA 20-21). Through their combined effort they established businesses in maritime shipping throughout the Philippines, Hong Kong and Japan. (Maxine Grimm, TRA 20-22). In addition, Grimm owned an American company established in Utah called Globe Investment Company. (DX-272)].

#### The Later Years of Edward Grimm 1959-1977

11. In 1959, GRIMM executed two wills prepared by a lawyer in California. [Maxine Grimm, TRA 214]. The first will was referred to as the Non-Philippine Will (PX-6). The second will was referred to as the Philippine Will (PX-7). In general, under the Philippine Will ETHEL and NITA would receive that portion of the estate to which they would be entitled under Philippine law if they were compulsory heirs. [Maxine Grimm, TRA 41]. Under the Non-Philippine Will, ETHEL and

NITA would receive nothing. [Maxine Grimm, TRA 40].

[Plaintiffs describe the "Law of Legitime" in their Brief as that peculiar doctrine under Philippine law which requires compulsory inheritance of certain heirs. They then continue with the statement that this law of legitime was not applicable "to Mr. Grimm's estate regardless of whether he was domiciled in Utah or in the Philippines." (Appellants' Brief, p. 14). This conclusion rests upon the testimony of Emilio Benavince, a Philippine lawyer, who testified on behalf of the Plaintiffs. The statement contained in Appellants' Brief is correct as far as it goes. However, upon cross-examination Mr. Benavince acknowledged that the doctrine of renvoi (a principle used in conflict of law disputes) is applicable in the Philippines. A telegram sent by an attorney retained by Maxine Grimm in 1978 concluded that if the doctrine of renvoi applied, then the Philippine courts would apply the Philippine law of succession even if that were inconsistent with Utah law. (DX-253). Thus, while Appellants in their Statement of Facts present the question of legitime law as one without dispute, the evidence is to the contrary and the arguments presented by Defendants' trial counsel illustrate the substantial question raised under the conflict of law rule. (TRB 771-779)].

12. After 1959, assets situated outside the Philippines became significantly greater. [Maxine Grimm, TRA 215-216]. In 1964, GRIMM organized Globe Investment Company, essentially a holding company for real properties located in the United States. [DX-272]. In addition, Globe had a wholly-owned subsidiary, Proud Porker Ranch, a hog farm in Tooele, Utah (DX-272, PX-12). [Maxine Grimm, TRA 177]. On the other hand, Luzon Stevedoring was sold in 1964 and Everett Steamship Lines in 1976, both substantial companies owned by GRIMM

and Charles Parsons. [Maxine Grimm, TRA 24, 216].

13. In the summer of 1976 [sic], GRIMM came to Utah for medical treatment. [Maxine Grimm, TRA 44]. While in Utah, he caused a trust agreement to be prepared. [PX-11; Maxine Grimm, TRA 44].

14. On July 12, 1977, GRIMM executed the Trust Agreement naming PETE Trustee and MAXINE, PETE and LINDA as beneficiaries. [PX-11, Maxine Grimm, TRA 45-48]. When the Trust Agreement was executed, the only assets purportedly transferred to the Trustee were the share of Globe Investment Company (PX-8). [PX-11, Pete Grimm, TRB 439-442].

15. In July of 1977, GRIMM returned to the Philippines. [Maxine Grimm, TRA 52]. He was not in good health and from September through November of 1977 his health deteriorated to the point that death was imminent. [Maxine Grimm, TRA 54-57].

16. On August 16, 1977, certain assignments were executed by GRIMM purporting to place most Philippine assets of GRIMM in trust (PX-14, 15). [PX-16 through PX-55; Maxine Grimm, TRA 53; Pete Grimm, TRB 443-450]. [The transfer of the Globe Investment Company stock was also reflected in the stock ledgers of the company on July 12, 1977, and a new stock certificate was issued and delivered to Pete as Trustee. (PX-12; PX-13)].

17. It is questionable if the assignments were in fact properly delivered to the Trustee because PETE testified that he placed the assignments in his dad's safety deposit box which was in the name of E. M. Grimm. [Pete Grimm, TRB 541]. In October or November of 1977 but prior to GRIMM'S death, MAXINE took the contents out of GRIMM'S safety deposit box and placed the contents in a safety deposit box in her name. [Maxine Grimm, TRA 223-225; Pete Grimm, TRB 542]. It was not until after the death of GRIMM that she placed the Trustee's

name on the box. [Maxine Grimm, TRA 225]. PETE wrote on November 14, 1977, "Before transferring them (stocks) I think we should get their (Kirton, McConkie) opinion" (DX-302). [Pete Grimm, TRB 544-47].

18. As previously stated, GRIMM sold his interest in Everett Steamship Company in 1976. [Maxine Grimm, TRA 216]. At the time of his death on November 27, 1977, GRIMM was owed three payments of \$984,092.31 each, due June 30, 1978, June 30, 1979, and June 30, 1980 (DX-272, p. 9). [Maxine Grimm, TRA 345]. GRIMM made no effort to transfer the Everett receivable or certain land located in Daggett County, Utah, to the Trust. [Pete Grimm, TRB 449].

Events Surrounding Edward Grimm's Death  
October-December 1977

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19. On October 1, 1977, GRIMM entered Makati Medical Center where he remained until his death. [Maxine Grimm, TRA 56]. During that time, his medical condition steadily deteriorated. [Maxine Grimm, TRA 57]. Prior to October 1977, the relationship between ETHEL and REX on the one hand, and GRIMM, MAXINE, PETE and LINDA on the other hand, was cordial, friendly and close; they were all supportive and helpful of one another during GRIMM'S last illness. [Maxine Grimm, TRA 59, 243; Ethel Roberts, TRA 483-84; Rex Roberts, TRB 921-22, Juanita Grimm Morris, TRB 1080].

20. NITA'S relationship with her father and with MAXINE, PETE and LINDA also was a good relationship. [Juanita Grimm Morris, TRB 1080].

21. In November 1977, just prior to GRIMM'S death NITA visited her father in the Makati Medical Center. [Juanita Grimm Morris, TRB 1080]. Her trip from California was paid for by MAXINE. [Maxine Grimm, TRA 60].

22. While NITA was in the Philippines, she also visited with

Charles Parsons and his wife. [Juanita Grimm Morris, TRB 1081]. Mr. Parsons was a business associate, friend, and partner of GRIMM in several business ventures located in the Philippines and in Hong Kong, including G-P & Co., FEMOLA and Hong Kong Transportation Co. [Maxine Grimm, TRA 20-21]. During that visit, NITA was informed by Parsons that there was a trust in existence and that it was unfavorable to ETHEL and NITA. [Juanita Grimm Morris, TRB 1082].

[Juanita Grimm Morris testified that as she began to think of the inflection in Mr. Parsons' voice as he told her about the trust agreement, she began to cry hysterically. She reported this conversation to Ethel, at which time a meeting was arranged with Maxine concerning the trust. On November 7 a meeting occurred with Juanita, Ethel and Maxine, at which time the two sisters were allowed to review a copy of the Trust Agreement and Maxine promised she would have one made for them. (Juanita Grimm Morris, TRB 1082-85). Ethel Roberts testified that Maxine did not supply them with a copy of the Trust or its listed assets and that therefore on November 17, 1977 she wrote a letter to Maxine requesting a copy of the Trust and asset list. In her letter she stated that "it is a shock to Nita and me to learn about your Trust, which I understand deliberately eliminates her completely and includes me for \$10,000. Is this a fair and proper share of my father's estate?" (PX-70). (A copy of this exhibit is included in the Addendum to the Brief). Ethel Roberts stated that it was not her intent to put pressure upon Mrs. Grimm but only to obtain a copy of the Trust Agreement. She testified she was not asking Maxine for a large portion of the estate but merely the opportunity to look at the Trust Agreement. (Ethel Roberts, TRA 498-500)].

[On November 7, 1977 Maxine Grimm sent a letter to Bob Morris,



Nita's husband, thanking him for allowing her to come and visit.

In the letter she stated:

I especially appreciate her leveling with me. The trouble with all of us, Bob, is that we get so involved in our own hurt and problems that we forget others have them too. I should have known this about Nita without her having to say it. It's hard to face yourself when you know how wrong you have been. Fortunately we can all change. I hope from now on that we can be a very close family.

\* \* \*

Thanks for being so patient with all of us and so good to Nita and being so good yourself.

Love you Bob,

Maxine

(DX-286). (A copy of this Exhibit is attached to the Addendum to the Brief)].

23. During GRIMM'S last illness MAXINE had consulted with Britt McConkie, who was in the Philippine Islands for the L.D.S. Church and who was also a member of the law firm of Kirton, McConkie, Boyer & Boyle [Maxine Grimm, TRA 230-231]. [In order to appease NITA and ETHEL'S concern about distribution of the estate, Maxine Grimm decided that new testamentary papers should be prepared for her husband. (Maxine Grimm, TRA 246)].

24. In November 1977, before GRIMM'S death, MAXINE directed PETE, who was then residing in Utah, to consult with Mr. McConkie's law firm in Utah and have documents prepared which would treat ETHEL and NITA equally with PETE and LINDA, and give MAXINE one-half of GRIMM'S estate. [Maxine Grimm, TRA 233, 246; Pete Grimm, TRB 453; Linda Grimm, TRB 426-27].

25. Pursuant to MAXINE'S direction, PETE conferred with the law firm of Kirton, McConkie, Boyer & Boyle. [Pete Grimm, TRB 544].

PETE reported his conference to GRIMM, MAXINE and LINDA by letter dated November 14, 1977 (DX-302). [Pete Grimm, TRB 545-47]. [The November 14 letter expresses Pete's concern that he is unable to find a "Philippine Will" which is referenced in the Utah Will which he had in his possession. In the letter he also states:

The lawyer here is talking as if the estate could come under the laws of (the Philippines)--(not Utah as King had proposed)--and if that's the case, Mom probably already owns one-half of everything. . . that's where there could be problems with a trust with transferring those stocks to my name right away. Before transferring them I think we should get their (Kirton & McConkie's) opinion.

(DX-302). (A copy of this Exhibit is attached to the Addendum to the Brief)]. New documents were prepared in accordance with MAXINE'S direction. [Pete Grimm, TRB 545]. These documents were sent to the Philippines but did not arrive before GRIMM'S death on November 27, 1977. [Linda Grimm Lawyer, TRB 426].

[On November 28 Ethel Roberts invited Linda over for lunch. Linda told Ethel that they had found a will in Utah but were not sure what it contained. (Linda Grimm Lawyer, TRB 417)].

#### Maxine Returns to Utah - Dec. 1977 - Jan 1978

26. On December 1, 1977, the day before MAXINE and LINDA left for Tooele, Utah, to attend the funeral, REX and ETHEL visited to say goodbye. [Rex Roberts, TRB 925]. At that meeting, they inquired about a will. [Maxine Grimm, TRA 246]. MAXINE denied any knowledge of a will and, in her own words, "blew up." [Maxine Grimm, TRA 121, 247; Linda Grimm Lawyer, TRB 417]. It was a very emotional time for all involved and a very emotional meeting. [Linda Grimm Lawyer, TRB 416, Rex Roberts, TRB 926].

[While on the plane Linda wrote Ethel a letter. This letter said in part:

I wanted to write and thank you for all the help you gave Mom and Dad while Dad was in the hospital, especially before I came. I had intended to write you from Utah, but before I got a chance to I was in Manila. I also want to thank you for inviting me over for lunch. I really enjoyed it--and the talk we had.

I asked Mom why she told you she knew nothing about a 1959 will after I had already told you I knew Pete had found one. She actually didn't remember anything about it. So, I don't want you to think she didn't want you to know about it. I think all the pressure was building up. I will have Pete send you what info we find as soon as we get things straightened around.

(PX-73). (A copy of which is attached to the Addendum to the Brief)].

27. While en route to Utah, MAXINE wrote a letter to ETHEL which said, in part:

Dearest ETHEL -

Please forgive me for blowing up--I was so ashamed. . . . I am also sorry about all the mix-up on the will bit. [I don't really think I knew what I was saying. I am still confused over it so I shall wait until I get to Utah and write you from there.] . . . .

[I just hope we can be the best of friends. I plan to spend more time in Manila and I really need your friendship and help.]

[I never realized until yesterday the impact of your feeling about disinheritance. I wish now I had insisted on knowing more. You have already learned this lesson. If you recall, you were the one to warn me.]

[I was so sure your daddy would live to straighten out all the problems. Perhaps he died so we could become big enough to solve them ourselves. I am sure we can.]

Thanks so much for your support during those trying days.

Love,

Maxine

(DX-202). [A copy of which is attached to the Addendum to the Brief)].

The letter is indicative of MAXINE'S desire to continue harmonious family relationships with ETHEL'S family.

28. MAXINE also wrote REX, ETHEL'S husband, thanking him for

all his help in the past and then. (DX-287). [The letter stated that Mrs. Grimm was grateful for Mr. Roberts' taking care of Linda the night before and that she was sorry that he was in the middle of all the problems but indicated she felt that when you marry into a family you marry their problems as well. She thanked him for giving Ethel and their children the feeling of security they needed so badly. She thanked him for his help and support and stated she could never have made it without all of his help. In closing she asked him to check the lock on the bodega by the back stairs while she was away. (DX-287). (A copy of which is attached to the Addendum to the Brief). (Maxine Grimm, TRA 248-252)].

29. During December 1977, the relationship between MAXINE, ETHEL, REX, NITA, LINDA and PETE was still cordial but strained due to the emergence of the trust, whose terms were not favorable to ETHEL and NITA. [Linda Grimm Lawyer, TRB 432]. Correspondence and communications were sent and received during the month of December also showing a desire on behalf of all family members to resolve the matter amicably. (PX-75, PX-76, PX-77, PX-78). [Copies of these exhibits are attached to the Addendum to the Brief; (Maxine Grimm, TRA 85-89)].

30. ETHEL was appointed Special Administratrix by the Philippine court on January 12, 1978, which was in accord with Mr. Salisbury's [sic] recommendation. (PX-80). [Ethel Roberts, TRA 503, 521, TRB 1040-43; Rex Roberts, TRB 636]. On January 18, ETHEL wrote MAXINE reporting her temporary appointment and informing MAXINE of the hearing date when a regular administrator would be appointed. (PX-81). (Maxine Grimm, TRA 92-93)]. [The letter from ETHEL to MAXINE read, in part:

I went to consult some lawyers as you advised and they told me it would be best for all of us to have someone in control here. Accordingly I have been appointed Special Administratrix in the Philippines. All the heirs are represented. It has been difficult for me as I have had no answer from you as to my queries. The hearing will be March 13. I hope you will be able to be here before.

\* \* \*

I truly hope Maxine, and Pete and Linda, that we can come up with a fair and equitable solution to satisfy all of us. I am saddened to think that you never considered us as being equally Daddy's children. I never thought of it any other way.

With Love,

Ethel

(PX-81). (A copy of which is attached to the Addendum to the Brief)].

[Ethel Roberts testified that frequently while her father and Mrs. Grimm were out of the country she and her husband would perform periodic checks upon the residence. She testified that they became concerned about the safety of the valuables in the house because of the presence of robbers in the area and inadequate guards at the residence, as well as the absence of any responsible person living in the house. (Ethel Roberts, TRB 17-21). Rex Roberts further testified that during this period of time he placed additional barbed wire across the front of the compound and erected a high barricade across the front also. He also extended the wall on the western side of the compound and built a four- or five-foot extension so no one could walk around one compound to the other. Finally, he erected a floodlight at the corner. (Rex Roberts, TRB 948). He stated he had reason to fear for the security of the possessions in the premises for the reasons stated by his wife, and also was afraid that the Bureau of Internal Revenue (the IRS in the Philippines) was going to come into the home and take an inventory without Mrs. Grimm's being present.

(Id. TRB 928). Maxine Grimm acknowledged in her testimony that she had written Exhibit 287 asking the Robertses to check on the security of the house and that she expected the Robertses to look after the house while she was gone. (Maxine Grimm, TRA 248-52). She also admitted that there were problems with the guards sleeping on the job at her residence. (Id. TRA 268)].

The Dispute Begins - Jan. 1978 - Feb. 1978

[While Mrs. Grimm was in Utah, and after receiving PX-81 informing her of Ethel's appointment as temporary Administratrix, Maxine contacted David Salisbury, a partner in the firm of VanCott, Bagley, Cornwall & McCarthy. She reported to Mr. Salisbury the conversations she had had with Ethel prior to the time she left the Philippines and also showed him the letter she had received from Ethel. (Maxine Grimm, TRA 100)].

31. On January 24, 1978, ETHEL and REX visited MAXINE'S house in the Philippines and, without the express permission of MAXINE, removed certain valuables from the house for safekeeping. [Rex Roberts, TRB 930-33; Ethel Roberts, TRB 17-27]. An inventory was prepared of all items removed. (PX-85, 86). [PX-82; Ethel Roberts, TRB 22-25]. After learning of the appointment and the removal of items from her home, Mr. Salisbury prepared a cable to ETHEL objecting to the appointment and made demand that items taken from the house be returned. (PX-88). [Maxine Grimm, TRA 115-17].

[After Mrs. Grimm returned to the United States, Ethel consulted with a non-practicing lawyer friend named Mr. Ilisorio. She told him that she did not know what the situation was as to her father's estate and had asked Maxine for any wills but had been ignored. She told him that she knew Maxine had been transferring assets from the safety

deposit boxes which included stock deposits. She told him that she was personally asked to provide food for the pigs and monkey food for the Grimm house, since there was no money for the pearl farm or the household expenses. She asked what her position was and what she should do. Mr. Ilisario advised her to consult with the law firm of Dean Reyes. He advised her that in order to obtain control of the situation, the quickest option was to swear that there was no will in existence since she had not personally seen it. He told her that this petition could always be changed if a will was found. (Ethel Roberts, TRA 502-03, TRB 1040-43). She stated, contrary to the assertion made in Appellants' Brief at page 19, that while she was aware her father had a permanent resident visa in the Philippines she did not know whether Maxine had one or not. (Ethel Roberts, TRB 15). It is also interesting to note that while Appellants observe that Ethel later amended the petition to allege that Maxine indeed was a resident of the Philippines "precisely contrary to her perjurious allegation" (Appellants' Brief, p. 19), they fail to point out that Maxine joined in the amended petition on the basis that no will had been found and that the Philippine estate was ultimately settled as if no wills existed. (DX-214). (Pete Grimm, TRB 559). Thus, it is apparent that all the parties to the estate made an effort to obtain the best advantage possible to preserve the estate and to minimize the effects of probate.]

32. By January 31, 1978, Mr. Salisbury had been made aware by MAXINE of an income tax case concerning GRIMM'S taxes pending before the U.S. Tax Court, Washington, D.C., which was being handled by Mr. Bert Rand for GRIMM prior to GRIMM'S death. [DX-252; Maxine Grimm, TRA 102].

33. In January and February 1978, Mr. Salisbury was informed and discussed with MAXINE the fact that for Philippine estate tax purposes, the estate of non-citizen domiciliaries of the Philippines included all property of the deceased, real or personal, tangible or intangible wherever situated, except real estate located outside the Philippines and that the tax rate was 60 percent. (PX-272). [sic] [DX-253; David Salisbury, TRB 100].

34. In January or February 1978, Mrs. Maxine Grimm retained a lawyer in the Philippine Islands, Mr. Edgardo J. Angara. [David Salisbury, TRB 99]. Mr. Salisbury and Mr. Angara exchanged telegrams and conversed by telephone about the numerous questions concerning the estate, including GRIMM'S domicile and the effect of Philippine domicile, the law of legitime by which children are compulsory heirs, and its effect on the trust, the Civil Law doctrine of collation, the assets subject to taxation in the Philippines and the doctrine of renvoi as applied to succession from persons having citizenship different from their domicile. [PX-174, DX-243, 254; David Salisbury, TRB 100-101, 276-78].

On February 17, 1978, Mr. Angara telegraphed Mr. Salisbury as follows:

Please advise us, therefore, whether the disposition made by the decedent in his Philippine will in accordance with Philippine Law are contrary to Utah law.

(HH) We would also like to know from you whether there is a conflict of law rule in Utah providing that the law of a domicile of the decedent shall govern successional rights. If there is such a rule, and the Philippines is held to be the domicile of the decedent at the time of his death, the Philippine courts will accept the renvoi or the reference back to Philippine law, in which case the testamentary dispositions of the late Mr. Grimm in his Philippine will in accordance with the Philippine law even if inconsistent with Utah law will be valid and operative.



(II) We now turn to the legal effects of the trust agreement executed by the late Mr. Grimm. Under Philippine law, properties transferred to a trust where the trustor retains the power to revoke are included as part of the gross estate in determining the net estate subject to estate tax. Furthermore, such trust properties are subject to collation in determining the compulsory legitimes of the heirs. Thus, if the transfer in trust affects the legitimes of the heirs, such transfer shall be accordingly reduced; otherwise, the properties held by the trustee will be left intact.

(FF) Under Philippine law, the order of succession, the amount of successional rights and the intrinsic validity of the national law of the decedent, whatever may be the nature of the property and regardless of the country, wherein said property may be found, with respect to an American citizen, the applicable law will be that of the state where he is a citizen. In the case of the late Mr. Grimm, we assume that he was a citizen of the State of Utah at the time of his death.

We would like to know, therefore, the Utah law on the order of succession and the amount of successional rights, particularly whether Utah law recognizes community of property between spouses and whether the surviving spouse and the children are considered compulsory heirs and if so, the amount of their respective successional rights or what is known in civil law as compulsory legitimes. [DX-253; (Emphasis added). (A copy of this Exhibit is included in the Addendum to the Brief)].

In response to this question from Mr. Angara, Mr. Salisbury said:

It would therefore be my opinion that the Philippine Will should be governed by Philippine law even though inconsistent with the laws of the State of Utah because of the conflict of law rule referred to above. Prior to the above referred code section, Utah would have adopted the common law rule that the law of the domicile controls the validity of the Will and successional rights.

(II) With respect to the legal effect of the trust agreement, both U.S. and Utah law would be the same as the Philippine law and include the assets of the trust in the estate for death tax purposes. However, as indicated above, under Utah law the assets of the trust would not be subject to collation in determining the compulsory share of the heirs. (DX-254). [A copy of this Exhibit is included in the Addendum to the Brief].

[Mr. Salisbury had a memorandum of law prepared by a lawyer in his office named William A. Meaders addressing some of the complex questions of which law would govern the various assets. (DX-249;

David Salisbury, TRB 84-98). Subsequently, after receiving the cablegram from Mr. Angara, an additional memorandum was prepared by William A. Meaders. (DX-255; David Salisbury, TRB 109-10). The memorandum stated, in part:

It was our general conclusion that if Mr. Grimm is determined to have been domiciled in the Philippines at the date of his death, the Utah Probate Court will apply the Philippine laws of descent and distribution to all of his personal property. Utah laws of descent and distribution will probably be applied to any real property located in Utah.]

Mr. Benavince, an after the fact witness, was called as an expert to testify as to the applicability of the Philippine law in regards to this case. [Emilio Benavince, TRB 321-403]. Mr. Benavince testified that pursuant to Article 16 of the Philippine Code that the law of the country in which the decedent is a citizen is the applicable law. [Id. at TRB 347-361]. However, MAXINE, having the benefit of Mr. Angara's and Mr. Salisbury's opinion did execute the family settlement agreement. [PX 58; Maxine Grimm, TRA 253, 299; Pete Grimm, TRA 527; David Salisbury, TRB 123, 243-44].

At the time of GRIMM'S death, his estate, mostly personal property, was in excess of Eight Million Dollars, with assets situated in the Philippines, in Hong Kong, and in the United States. (Merle Norman, TRB 737; Maxine Grimm, TRA 21; Pete Grimm, TRB 439-441]. There were numerous questions to be resolved. [Donald Holbrook, TRB 871-72; David Salisbury, TRB 107]. Mr. Salisbury also corresponded with an attorney in Reno, Nevada, concerning the validity of GRIMM'S divorce and hence the validity of his marriage to MAXINE. (DX-250; Maxine Grimm, TRA 102; David Salisbury, TRB 283-86].

A Settlement Draws Near - Feb. 1978 - March 1978

35. By February, 1978, Mr. Salisbury had concluded that it

might be an advantage to work out a settlement for tax purposes if the trust could be left intact. (PX-254). [DX-254 is a cablegram sent to Edgardo Angara dated February 21, 1978, and February 24, 1978. The February 21 cablegram extensively discusses various tax and estate problems raised by both attorneys. Mr. Salisbury concluded that it would be virtually impossible to establish a domicile other than the Philippines and that the Philippine Will would be governed by Philippine law even though it was inconsistent with the laws of Utah because of the conflict of law rules. He ended by stating:

There may be some merit after considering all of the circumstances and discussing the matter with Mrs. Grimm to try to work out some settlement with the two daughters by the prior marriage as to the percentage of the Philippine estate in which they will be entitled to participate, particularly if the assets in the trust could be left intact. (DX-254, p. 6)].

[In February of 1978 Maxine invited Rex and Ethel to dinner after returning to the Philippines. She stated she could not carry hate or vengeance and prayed for peace of mind and decided she would try to invite them over to resolve any hard feelings caused by their removal of her possessions and Ethel's appointment as temporary administratrix. At dinner they discussed no business relating to the estate but only pleasant social matters. (Maxine Grimm, TRA 268-270)].

36. During March 1978, Mr. Salisbury talked at least five times with MAXINE about legal issues concerning this estate and the possibility of settlement. [David Salisbury, TRB 123, 229; Maxine Grimm, TRA 289-290]. Mr. Salisbury made calculations as to what ETHEL and NITA might receive under various assumptions. [David Salisbury, TRB 115]. MAXINE told Mr. Salisbury that ETHEL had presented a paper outlining a settlement proposal and had asked her to sign it. [David Salisbury, TRB 113]. Mr. Salisbury advised MAXINE

not to sign and, upon his advice, she did not do so. [David Salisbury, TRB 114].

[The "paper" referred to in paragraph 36 of the Findings was a typed proposal prepared by Ethel Roberts (PX-92; Rex Roberts, TRB 653)]. The proposal came about from numerous discussions among Pete, Maxine, Ethel, and Rex. (Rex Roberts, TRB 642). At the time Pete Grimm had completed one and a half years of an MBA degree and basically negotiated on behalf of himself, his mother and sister Linda. (Pete Grimm, TRB 607-08). Maxine expressed her desire to maintain family harmony and to avoid unpleasanties between the two factions of the family. (Rex Roberts, TRB 946). "Ethel's Proposal" (PX-92) developed over a period of weeks and initially contained nine points. (Rex Roberts, TRB 654). Six of these points were later incorporated into the completed family agreement prepared by the lawyers. (Id. TRB 658). It was decided jointly that Maxine Grimm, Linda Grimm, and Pete Grimm collectively would receive 75% of the estate with Juanita and Ethel to receive 25%. (Pete Grimm, TRB 478-480). In order to assure Maxine a minimum inheritance, it was agreed that in any case she would receive \$1 million plus the Philippine home and the Utah home. This condition was not listed in Exhibit 92. (Rex Roberts, TRB 953)].

[Appellants in their Brief attempt to depict Maxine and Pete as victims of a vicious and brutal attack by Ethel and Rex. (Appellants' Brief, pp. 29-26). There is no doubt that various claims were being asserted by the Robertses concerning the validity of Maxine's marriage, questions regarding taxation, and other matters concerning the estate. While Appellants attempt to show that these claims were all without merit, further review of the facts (as will be developed) show that there were substantial problems involving this complicated estate and

that all parties concluded it was in their best interest to unite for tax purposes and to provide a united front against Mr. Grimm's former partner, Mr. Parsons. Appellants have carefully selected only evidence given by their witnesses and have ignored all evidence to the contrary which shows this mutual negotiated agreement.]

37. MAXINE was agreeable to and desirous of entering into an agreement, but wanted it consummated in Utah under Mr. Salisbury's supervision and wanted to receive her one-half free of tax. [Maxine Grimm, TRA 137-142, 272; David Salisbury, TRB 114].

38. On March 7, 1978, MAXINE wrote Mr. Salisbury indicating her desire and need for a settlement. She said:

I am wondering if our communication is getting through. We understood that you were going to let us know if you needed the will. We could have sent it earlier if we had known. As you know, time is a factor with us. We cannot do anything until we get that court order out of our hair. I have talked to Ethel and she well understands that if we fight we can all lose, so she is agreeing not to fight, but I still know that there is great feeling there and she could turn under pressure, although I think she would be afraid to. I have no feeling of pressure anymore. I can talk without any emotional feelings, so I am grateful for that blessing. Peter, of course, has no problem. I feel good about the way he is talking. As soon as our position is straightened out, we can begin to act, and then I think we will get more cooperation. At this time everyone is afraid to do or say anything, as they know what a horrible thing it would be if the family fought in court--everything then would get exposed--good and bad.

I feel that these lawyers are a bit puffed up with their name and need direction and push. They are more apt to follow than lead.

Mail is very slow. We are getting ours in 2 weeks. You will probably get ours in 4 to 7 days. Clark Air Base gets theirs in 4 days, but it is a long ride up there to get it, however, with important papers that is the best way I think. Sending them by courier is expensive--\$30 plus, but we felt this was the only way to send the will, as we know of no one going to the States.

Thank you so much for your interest and help. Somehow all of this will come out alright. Are you aware that

Rand is coming in April? (DX-256). [Emphasis added. Copy of Exhibit is attached to the Addendum to the Brief. Maxine Grimm, TRA 274-78].

The Lawyers Begin Their Task - March 1978 - April 1978

39. In late February or early March 1978, ETHEL and NITA employed Mr. Donald Holbrook of Jones, Waldo, Holbrook & McDonough to represent their interests in Utah. [Donald Holbrook, TRB 868-74; David Salisbury, TRB 116]. Mr. Holbrook and others in his office and Mr. Salisbury and others in his office communicated over a period of several weeks. [David Salisbury, TRB 115-117; Donald Holbrook, TRB 874-75, 897, 917]. [Pete Grimm, on March 29, 1978, sent Mr. Salisbury a letter and a chart asking Mr. Salisbury to examine it in relation to the inheritance taxes and to Ethel's proposal. (DX-259). A copy of this Exhibit is attached herein to the Addendum]. On April 4, 1978, Mr. Holbrook's office and Mr. Salisbury's office stipulated to the admission of the non-Philippine will to probate in Tooele County under certain conditions. (DX-260). [David Salisbury, TRB 120-21; Donald Holbrook, TRB 882-82]. [Mr. Salisbury did not agree to the probate proceeding until he had talked to Mrs. Grimm the previous day. (David Salisbury, TRB 123; Maxine Grimm, TRA 289-290). Mr. Holbrook sent a letter to Rex Roberts on April 6, 1978 outlining the possible claims they could assert. (DX-308). (A copy of this Exhibit is attached herein to the Addendum)]. Final negotiations, with REX representing ETHEL and NITA, and PETE representing MAXINE and LINDA consumed at least five days, from April 20 through April 25, 1978. [Pete Grimm, TRB 551-57; Rex Roberts, TRB 966-68; David Salisbury, TRB 133-34]. There were at least four revisions of the first draft prepared by Mr. Salisbury. (DX-261, DX-261A, DX-263, DX-264, DX 265). [At least one of those revisions

was exchanged between the Salisbury law firm and the Holbrook law firm. (DX-264; David Salisbury, TRB 139)]. The final agreement was incorporated into two documents, the Settlement Agreement and the Supplemental Memorandum. (PX-57, 58, 59). [David Salisbury, TRB 148].

40. During the negotiations each side presented points and proposals to advance the positions of their clients. [David Salisbury, TRB 133-38; Donald Holbrook, TRB 887-89, 910]. [Mr. Salisbury testified as to his recollection of his meeting with Donald Holbrook. He stated that Holbrook indicated the claims that would be made if the matter had to go to litigation. Holbrook said he would question the validity of the divorce of the decedent from the first Mrs. Grimm and the validity of the marriage to Maxine Grimm. He also said he would make whatever claims he could under Philippine law and would challenge the validity of the trust that had been created in Utah and the circumstances surrounding its creation. (David Salisbury, TRB 118)]. PETE and Mr. Salisbury were insistent and [sic] the first wife, JUANITA, sign the agreement to relinquish any claims she might have to the estate. [David Salibury, TRB 136; Pete Grimm, TRB 555]. During the negotiations it was agreed that MAXINE receive a guaranteed minimum of \$1,500,000 plus her two houses and certain bank accounts regardless of the eventual size of the estate. [David Salisbury, TRB 143-44]. PETE and Mr. Salisbury also insisted that MAXINE receive her share without reduction by way of death taxes. [David Salisbury, TRB 141; Pete Grimm, TRB 591A; Rex Roberts, TRB 969; Donald Holbrook, TRB 890]. Negotiations also resulted in an agreement that PETE and LINDA receive certain bank accounts and that ETHEL and NITA be guaranteed a minimum. [Pete Grimm, TRB 554; Rex Roberts, TRB 969].

[Rex Roberts testified that the increase of Maxine's guaranteed minimum from \$1 million to \$1.5 million, the addition of land surrounding the houses, allowing Maxine to receive her share before taxes were paid, and the allocation of the separate bank accounts were all different from that which was agreed during the discussions among the heirs in the Philippines. (Rex Roberts, TRB 969). A comparison of Exhibit PX-190 (Ethel's proposal), which was prepared in the Philippines with the actual Family Settlement Agreement, disputes the statement made in Appellants' Brief that the "lawyers only played a peripheral role in the settlement negotiation." (Appellants' Brief, p. 24)].

41. Mr. Salisbury communicated at least twice in April with MAXINE. [David Salisbury, TRB 122]. [Maxine and Pete both wanted to have family harmony and to avoid expensive litigation. (David Salisbury, TRB 298-99)]. PETE conferred with Mr. Salisbury on a continual basis between April 17 and April 25, 1978. [David Salisbury, TRB 133; Pete Grimm, TRB 551-57]. On the morning prior to signing the Family Settlement Agreement PETE represented to Mr. Salisbury that he had discussed the agreement with his mother (MAXINE) the night before and that she wanted to go ahead. [David Salisbury, TRB 146].

#### The Agreement Takes Effect - April 1978 - Jan. 1979

42. The Agreement was signed on April 25, 1978, by PETE and LINDA, by PETE as attorney-in-fact for MAXINE and by REX as attorney-in-fact for ETHEL and NITA. [PX-57, PX-97; Pete Grimm, TRB 487; Maxine Grimm, TRA 155-56; Linda Grimm, TRB 435]. It was also signed by both attorneys. [PX-57; Rex Roberts, TRB 970]. Subsequently a copy was signed by NITA in California and by ETHEL and MAXINE in the Philippine Islands. [PX-58; Juanita Grimm Morris, TRB 1099; Maxine



Grimm, TRA 151; Rex Roberts, TRB 972]. [Rex Roberts testified that when he took the copy of the Family Settlement Agreement to Maxine in the Philippines she was in a happy mood and told him that it was the right thing to do for the entire family. (Rex Roberts, TRB 972-75)]. Pursuant to the Family Settlement Agreement, Mr. Salisbury was retained as attorney for the Estate to represent all of the "heirs". [David Salisbury, TRB 248].

43. The Family Settlement Agreement was not signed as a result of threats, duress or coercion. MAXINE was represented by Mr. Salisbury who advised Mrs. Maxine Grimm that he had investigated the claims made by NITA and ETHEL and she did not have to enter into a settlement agreement if she did not desire to do so. [David Salisbury, TRB 310-314]. [Previously, Salisbury had discussed the settlement agreement with Maxine and said she should not sign it if she felt pressured or did not have the opportunity to review and reflect upon what she was doing. He also told her that in his opinion the 25% figure given to Nita and Ethel was too generous. (David Salisbury, TRB 248, 314). Mrs. Grimm acknowledged this advice, but said she felt it was necessary to enter into the agreement to end the pressure and disagreement that had occurred between the family members. (David Salisbury, TRB 243)].

[Appellants in their Brief state that "Rex acknowledged that without Maxine, Pete would not have agreed to the FSA." (Appellants' Brief, p. 27). This statement incorrectly characterizes Mr. Roberts' testimony. He stated that he did not believe that Pete would have agreed to the entire nine points contained in the FSA, but steadfastly maintained that he would have agreed to some form of settlement regardless of Maxine's interest. (Rex Roberts, TRB 1014-16)].

44. The Family Settlement Agreement was incorporated into two

separate documents to preserve maximum flexibility for filing of state tax returns. [David Salisbury, TRB 148-49, 154; Rex Roberts, TRB 970].

45. During the negotiations and afterward, there was a discussion about the desirability of presenting the Family Settlement Agreement to the court for approval. [David Salisbury, TRB 150]. Mr. Salisbury concluded that it was not unusual not to file the Family Settlement Agreement. [Id. at 151]. Mr. Salisbury also stated that the tax consequences were a consideration for not filing the Family Settlement Agreement with the court for approval. [Id.].

46. Mr. Salisbury concluded that it was not in the interest of the estate to make the agreement a matter of public record at that time. It was preferable to preserve maximum flexibility for the Estate and all signatories to the Agreement. [David Salisbury, TRB 149-51].

47. Subsequent to the signing of the Settlement Agreement all of the parties worked toward and pursuant to the Agreement. [DX-229, DX-240, DX-242; Pete Grimm, TRB 560-68].

48. On May 4, 1978, MAXINE and ETHEL jointly retained the accounting firm of Price-Waterhouse to be Estate Accountant. (DX-213). [Maxine Grimm, TRA 297-99].

49. On May 19, 1978, MAXINE, PETE and ETHEL filed a Joint Petition for Letters of Administration in accordance with the terms of the Agreement (DX-214) [Maxine Grimm, TRA 172] which Petition was granted and Joint Letters issued on July 2, 1978. (DX 218). [Maxine received many benefits from the Settlement Agreement and, conversely, Ethel and Nita changed positions in reliance upon the Settlement Agreement. If the Settlement Agreement were allowed to be repudiated the parties as a practical matter could not be returned to status quo.

For instance, the major assets of the estate, namely, Globe Investment Company, and receivables from the Everett Steamship Company were excluded from the Philippine Estate (DX 239). If no Settlement Agreement had been entered into, of course, Ethel and Nita would have sought that the gross Philippine estate of E. M. Grimm would include all property, real or personal, wherever situated (DX 253)}.

50. On June 27, 1978, MAXINE wrote NITA a letter expressing her pleasure with the Agreement and that "much money will be saved" because of it. (DX-292). [Maxine Grimm, TRA 301-02]. [This letter refutes the claim by Appellants in their Brief that Maxine was a beaten woman with no spirit at the time the Settlement Agreement was entered into. In one paragraph Maxine told Nita:

I hope you will be pleased with the way we are running everything. It is so complicated that we have to tread lightly with everything we do. We are trying to avoid bankruptcy with the pigs--trying to make the most out of everything and I really feel that we are making headway. It has taken some time to get people to help, but I think now everyone knows that we are not going to fight in the family and are now willing to help all they can. This is going to make a tremendous difference and much money will be saved as a result of it. We have still not submitted any inventory to the court--that is, not since Ethel did, so we have no details to report, but by the time Ethel comes she will be able to explain everything to you. I just wanted you to know that we have not been idle and in this case doing things cautiously and slowly I think is best. (DX-213). (A copy of this Exhibit is attached in the Addendum to the Brief)].

[In May of 1978 a conference was held with various tax accountants, lawyers, and Pete Grimm. As a result of that conference a letter was prepared on July 10, 1978 by Peat, Marwick & Mitchell, CPAs to David Salisbury, listing various alternatives as to how the Everett Steamship installment sale should be treated in the estate. (DX-268). The conference as well as the accounting letter made assumptions as to how the installment contract should be treated

based upon the provisions of the FSA. (David Salisbury, TRA 156-62)].

51. In August of 1978, MAXINE borrowed \$500,000 from Globe Investment Company, an asset of the estate, and before liquid funds became available, Globe was required to borrow money at 9.65%. (DX-293, DX-371). [Maxine Grimm, TRA 306; Earl Tate, TRB 670].

52. On September 20, 1978, Mr. Salisbury wrote to the beneficiaries again reaffirming the Agreement (DX 221). [Maxine Grimm, TRB 313]. This letter is the first of a number of reports to the beneficiaries by Mr. Salisbury concerning the progress of the Estate pursuant to the Family Settlement Agreement. [DX-229, DX-240, DX-242; David Salisbury, TRB 175; Maxine Grimm, TRA 313, 339, 373, 385]. At no time did MAXINE, PETE or LINDA take exception to any of the reports of Mr. Salisbury. [David Salisbury, TRB 170, 175, 258, 262; Maxine Grimm, TRA 323, 392].

[Another example of the disparity between the plaintiffs' version of facts and the defendants' version is illustrated by Appellants' statement "The Roberts' accusations and attacks became so intense in November of 1978 that Maxine finally got up and walked out." (Appellants' Brief, p. 29). Ethel Roberts, on the other hand, stated that during a meeting with Maxine, Pete, Ethel, and Rex, plus an attorney named Tabo, Maxine became very upset when she was asked a question about the accounting of the estate. (Ethel Roberts, TRB 1057-59). The next day Ethel wrote a letter to Maxine expressing Ethel's concern regarding Maxine's behavior. The letter states in part:

I was dismayed when you walked out on us during the meeting yesterday morning. I can't understand what you are trying to accomplish and whether you are truly sincere or not when you say you are completing the accounting and will have it finished by the time Salisbury gets here. And I can't understand why any mention of an accounting should upset you so much and why you should take it so personally when you are in

fact dealing solely with estate funds.

As you and Pete are the only ones with access to estate funds it is no more than natural that Nita and I would want to know what is being disbursed and for what . . .

Pete told us you have not been feeling well and I hope you are better today. Is there anything I can do? Perhaps you and Pete are trying to do too much yourselves when you should be having much more professional help.

Sincerely,

Ethel

[PX-110. A copy of this Exhibit is attached to the Addendum to the Brief].

The Agreement Continues to be Enforced  
Feb. 1979 - Oct. 1979

53. In February, 1979, MAXINE obtained an Order for a family allowance of \$3,000 per month retroactive to the date of GRIMM'S death. [DX-230; Maxine Grimm, TRA 334-35, 430].

54. Also in February, 1979, the U.S. Estate Tax Return was signed by MAXINE and filed. [DX-272; Maxine Grimm, TRA 338; David Salisbury, TRB 178]. The estate tax issue was simplified and aided by the Family Settlement Agreement in the opinion of Mr. Salisbury. [David Salisbury, TRB 307]. Under the return MAXINE claimed the maximum marital deduction. [DX-272; David Salisbury, TRB 307].

55. In November of 1978, Mr. Salisbury visited MAXINE in the Philippine Islands. [David Salisbury, TRB 172-73]. Again, there was no indication by MAXINE during that meeting that she wanted to repudiate the Settlement Agreement. [David Salisbury, TRB 174, 250-51; 258; Pete Grimm, TRB 584-86].

56. On May 23, 1979, \$800,000 of the Everett receivable was distributed in accordance with the Family Settlement Agreement and in percentages designated by the Family Settlement Agreement:

\$400,000 to MAXINE and \$100,000 each to the four children. [Maxine Grimm, TRA 358]. In addition pearls and silver were distributed in accordance to the terms of the Family Settlement Agreement. [Rex Roberts, TRB 936-37].

57. In September, 1979, the Philippine estate taxes were paid. [Maxine Grimm, TRA 203-05; David Salisbury, TRB 267]. [Appellants in their Brief insinuate a wrongful motive on the part of Defendants in urging that a "bribe" be paid to the Philippine authorities. (Appellants' Brief, pp. 29-30). They state, "Maxine was opposed to paying a bribe." The evidence showed that all parties were opposed to paying this additional sum of money but that the realities of the Philippines required it. Mr. Salisbury stated that upon advice of Philippine legal counsel it was recommended that the 500,000 pesos payment be made. Mr. Salisbury talked to Mr. Linquenco, to Mr. Del Collar--Maxine's personal lawyer--and Mr. Simon concerning this payment. All of the attorneys indicated that this is the way it is done in the Philippines. (David Salisbury, TRB 300-02). Salisbury stated that whereas the term "bribe" may be used in the United States, it would not be used in the Philippines. He adamantly stated that had this been in the United States he would not have recommended it. (Id. 368-69)]. Because there were not sufficient liquid funds to pay all of the estate taxes due, the shortfall was paid by the respective beneficiaries in accordance with their shares under the Family Settlement Agreement. [Rex Roberts, TRB 996; Maxine Grimm, TRA 379]. [Ethel and Nita paid 25% of this amount from their own funds. (Maxine Grimm, TRA 335)].

58. In August, 1979, Mr. Salisbury again visited MAXINE in the Philippine Islands and traveled with MAXINE to Hong Kong.

[David Salisbury, TRB 186-87].

59. In September, 1979, Mr. Salisbury, as part of his regular reports, provided for a plan of partition in accordance with the Family Settlement Agreement. [DX-241; DX 242; Maxine Grimm, TRA 385-90]. Again, no obligation was made by MAXINE, PETE or LINDA. (DX-241). [David Salisbury, TRB 258-62].

[On September 29, 1979 Ethel wrote Maxine a letter. (DX-24)]. In the letter Ethel stated that she had been trying to reach Maxine for several days and could not do so. She stated she was concerned that a brokerage house in which some of the estate money was banked had closed. She then stated:

I must insist that you furnish me immediately, today, a complete accounting of all the Philippine stock assets which have been in your care and custody since my father's death. The accounting should include all dividends, cash and stock.

Also, I want to see the stock certificates that you are holding.

And please as I have requested before, I must again ask you for the accounting files which I turned over to Pete and was assured would be returned to me on request. I have had your continual promise but no files. (DX-243). (A copy of this Exhibit is attached to the Addendum to the Brief)].

60. On October 1, 1979, MAXINE wrote ETHEL stating that soon the beneficiaries would have the actual partition. [DX-244; Maxine Grimm, TRA 401-03]. [The letter relates various figures about the estate and the taxes that had been paid. The letter then states, "As to the other things stated in your letter, we are still working on them. Since we shall soon have the actual partition, all those other matters mentioned by you shall be taken care of." (DX-244). (A copy of this Exhibit is attached to the Addendum to the Brief)].

Maxine Refuses to Cooperate - Oct. 1979 - May 1980

61. After October, 1979, MAXINE did nothing to cause the partition of the estate to occur. [Another glaring example of the diversion in testimony between Plaintiffs and Defendants and the Appellants' reliance solely upon their own version of the story concerns the evidence surrounding the pig and pearl farms. Appellants in their Brief maintain that the pearl farm was a valued possession of the decedent, who wanted his daughter Linda to have it, but that Rex Roberts bought it "but did not pay for it." (Appellants' Brief, p. 29). This paragraph in Appellants' Brief implies that Mr. Roberts took something away from Maxine, Pete, and Linda which they wanted to retain. The evidence is to the contrary. DX-306 is a letter dated January 18, 1979, from Pete to Maxine. In the letter Pete tells his mother, "I am not sure that I want to manage a farm down there anyway--so I'm talking. I'm not sure I like his price though. Also--he needs something to keep busy--if he's not working on something he may get in the way." Pete Grimm stated in cross-examination that he was interested in selling the pearl farm because it was a long way from Manila and it had many problems associated with it. (Pete Grimm, TRB 577). Rex Roberts never admitted that he paid no money for the farm, but, on the contrary, explained in detail how the money was arrived at and how it was to be paid. (Rex Roberts, TRB 989-90)].

[Likewise, the story of the pig farm paints two completely different pictures. According to Appellants, Rex Roberts wanted the farm placed in bankruptcy so he could avoid paying the creditors but Maxine resisted, auctioned off the pig farm, and ultimately paid off everybody. (Appellants' Brief, p. 28-29). To the contrary, Mr. Roberts testified that the pig farm went into insolvency in November



of 1978, leaving many creditors. Maxine, according to Rex Roberts, only wanted to pay the creditors who were members of Mrs. Grimm's church. She did not want to pay the other creditors. Rex Roberts objected and said that everyone had to be paid equally. He eventually put the farm in involuntary bankruptcy, which he thought saved the estate approximately 7 million pesos, and held the farm past the point where general creditors could come in against the estate. (Rex Roberts, TRB 979-84)p.

62. MAXINE did not file an inventory in the Utah Probate proceeding, and attempted to block any progress toward partition by failing to communicate with ETHEL and NITA. [PX-131, PX-137; Maxine Grimm, TRA 199-202].

[In December of 1979 Mr. Salisbury prepared a letter to be sent to Maxine. While he never sent it to Maxine, he showed it to Pete. He criticized Maxine for not contacting his firm or consulting with him as to the hiring of accountants and attorneys in connection with a number of important decisions and stated that this placed him in an untenable situation as to the other beneficiaries, who were given to believe that he would be coordinating the legal work involved in administering the estate. (PX-281). (A copy of this Exhibit is attached herein to the Addendum to the Brief). (David Salisbury, TRB 199-202)].

63. On May 14, 1980, a petition for removal was filed on behalf of ETHEL and NITA requesting MAXINE to be removed as Personal Representative and requesting distribution in accordance with the Family Settlement Agreement. [PR 81-84; Maxine Grimm, TRA 411].

The Agreement is Repudiated by Maxine - June 1980

64. On June 13, 1980, Mr. Rand wrote Mr. Salisbury informing

Mr. Salisbury that MAXINE, PETE and LINDA were repudiating the Agreement. [DX-283; Maxine Grimm, TRA 209-10]. [Mr. Salisbury accordingly withdrew. (David Salisbury, TRB 204)].

[Maxine Grimm acknowledged that during the entire course of proceedings she had been represented by the following attorneys: Mr. McConkie, Mr. Salisbury, Mr. Rand, and Mr. Berman in the United States and Mr. Angara, Mr. Limqueco, Mr. Del Collar and Mr. Blanco in the Philippines. (Maxine Grimm, TRA 413)].

#### SUMMARY OF ARGUMENT

1. The terms of the Family Settlement Agreement were binding upon the plaintiffs in that court approval was not required in order to make a legally enforceable contract among the parties signing it. In addition, the conduct of the plaintiffs brings into play a number of equitable doctrines which would prevent them from being able to escape the obligations of the Family Settlement Agreement because of change of positions which have occurred since its execution.

2. The lower court was correct in concluding that the alleged spendthrift trust did not effect the validity of the Family Settlement Agreement or the ability of the court to approve it. The inter vivos trust is merely illusory and in any case contains few assets because of no proper delivery prior to the decedent's death. Plaintiffs have renounced any interest in the trust and are estopped from now claiming under it. Section 75-3-1101, in any event, makes a Family Settlement Agreement binding upon the parties even if it affects a trust or inalienable interests. It was unquestionably in the best interests of all of the beneficiaries to enter into this Agreement and to terminate the trust.

3. Proper notice was given to all necessary parties pursuant

to Section 75-3-1102(c) and the claimed deficiency of Plaintiffs simply does not exist.

4. Plaintiffs were not entitled to a jury trial on their defenses of duress and failure of consideration once the defendants elected not to proceed on their counterclaim. In addition, they were not entitled to a jury trial on their claim of intentional infliction of severe emotional distress. First, under Philippine law their complaint failed to state a claim. Second, even if Utah law is applied the evidence is insufficient to state a claim. Third, the plaintiffs were not entitled as a matter of right to have a jury trial on this issue and the lower court, if it reached that point, properly found the evidence against the plaintiffs. Fourth, if Plaintiffs were entitled to a jury determination they waived this right by failing to make proper objection.

5. The lower court correctly applied the evidence in this case to the correct standard in concluding that there was adequate consideration exchanged between the parties creating a binding Family Settlement Agreement. Although there are two standards in the country used for evaluating compromise and settlements, the "good faith" standard is by far the best over the "bona fide claim" standard. In any event, under either standard the evidence in this case shows that Defendants asserted both good faith and bona fide claims thereby providing sufficient consideration for the Family Settlement Agreement.

6. The Findings of the lower court comply with Rule 52 Utah Rules of Civil Procedure and provide an adequate basis for appellate review. The Findings contain factual support for any conclusionary statements. The failure of the court to include the evidence listed by Plaintiffs is simply explained by the fact that the court did not find in the plaintiffs' favor and therefore rejected their evidence.

## CROSS APPEAL

The lower court erred in failing to award Defendants reasonable attorneys' fees in their effort to enforce the Family Settlement Agreement. Since there was a specific contractual provision to this effect the lower court should have awarded fees to compensate the defendants for this expensive litigation.

## ARGUMENT

### POINT I

#### THE TERMS OF THE FAMILY SETTLEMENT AGREEMENT WERE BINDING UPON PLAINTIFFS.

The plaintiffs attack the validity of the Family Settlement Agreement on the basis that they had supposedly repudiated the Agreement prior to court approval. They argue that without such court approval the Agreement by them was revocable at any time and that "there is simply no way, given the language of the statute and the rule, that the Grimms should be held to have been bound to an FSA for seven years after its execution and four years after its repudiation. The testators' intent is entitled to more respect than that." (Appellants' Brief, p. 43). See Appellants' Brief, pp. 39-43 as to these arguments.

There are two responses to these contentions. First, under Utah law Plaintiffs were bound by the terms of the Agreement regardless of the fact that the court had not formally approved it. Second, even if Plaintiffs had the ability to repudiate prior to court approval, such ability was lost because of equitable considerations and Plaintiffs are now precluded from asserting any repudiation claim. These arguments will now be addressed.

A. The Family Settlement Agreement Was a Legal Contract and Did Not Require Court Approval to Bind the Signing Parties.

The lower court entered the following Conclusions of Law:

8. The Family Settlement Agreement was not subject to repudiation without legal consequences prior to approval by the court. Failure to obtain court approval does not invalidate the Family Settlement Agreement. The Family Settlement Agreement could be presented to the Court for approval at any time prior to distribution and closing of the estate.

9. The Family Settlement Agreement is just and reasonable and should be approved and all fiduciaries under the supervision of this Court should be directed to administer and distribute the estate in accordance with the terms of the Family Settlement Agreement.  
CR 1232-1231.

The lower court thus (1) concluded the fact that the court had not formally approved the Family Settlement Agreement did not give the plaintiffs the right to repudiate the Agreement without impunity and (2) formally approved the Family Settlement Agreement pursuant to Section 75-3-1102, U.C.A. At this point in time the Family Settlement Agreement, therefore, has been judicially approved and the only question remaining is whether the plaintiffs were able to repudiate it prior to such approval.

Appellants argue that they had the right to repudiate the Agreement at any time prior to this approval, and base such argument upon Section 75-3-1101 and 1102, U.C.A. In addition, they cite several cases from other jurisdictions dealing with repudiation of settlement agreements as well as this Court's case of In the Matter of the Estate of Frank Chasel, dealing with an attempt to repudiate a family settlement agreement. (Appellants' Brief, pp. 39-42). All of Appellants' authorities are either distinguishable or are misplaced. A careful review of the statutory scheme in this type of case shows without doubt that Plaintiffs did not have the right to repudiate

without suffering severe legal consequences.

This Court in Chasel observed the general rule that "compromise agreements in estate disputes, even more than in settlement of litigation generally, are encouraged to promote harmony and to prevent the waste of assets." 12 Utah Adv. Rep. 3, 4 (Sept. 15, 1986). This statement is in accord with the general rule throughout the United States:

In accord with the general policy of law which favors the compromise of controversy and the avoidance or termination of litigation, it is said that the law looks with favor upon agreement of compromise among members of a family which avoids a will contest or promotes the settlement and distribution of the testator's estate, or, as it is sometimes stated, that such agreements are favorites of the law. 29 A.L.R.3d 8, 25.

Appellants in their Brief have ignored another section of the Probate Code which is critical to this type of agreement. Section 75-3-912, U.C.A. states the following:

Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interest, shares or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in the written contract executed by all who are affected by its provisions. . . .

This section clearly allows all of the parties in this lawsuit who are now named as Plaintiffs and Defendants to contractually agree as to how the estate of Edward Grimm should be divided. The Family Settlement Agreement executed by all of these parties together with their attorneys certainly would be considered a "written contract" pursuant to Section 912.

In Matter of Estate of Kruse, 710 P.2d 733 (N.M. 1985) the New Mexico Supreme Court interpreted the language of Section 912, which is modeled from the Uniform Probate Code. In that case, four heirs entered into an oral agreement as to the division of an estate.

Certain letters were exchanged between the heirs, including one written by the defendant acknowledging that an agreement had been made but repudiating the agreement. The New Mexico Supreme Court found that the controlling issue in the case was whether there was sufficient evidence of a written agreement to have been made before any repudiation occurred. In other words, if the contract was valid the subsequent repudiation was not significant. The case was remanded to the lower court to determine whether there was sufficient evidence to constitute a written agreement. Of course, here, there is no such problem.

If Section 75-3-912, U.C.A. allows heirs to enter into written contracts concerning the distribution of assets of an estate, then what is the purpose of Section 75-3-1101 and 1102, relied upon by the Appellants in their Brief? The answer to this question can be found by examining an older Michigan case entitled In Re Peck's Estate, 34 N.W.2d 533 (Mich. 1948). The law of Michigan has been utilized in the development of the Model Probate Code, which is the source of the present Utah Probate Code. See Editorial Board Comment to §75-3-1102, U.C.A. In the Peck case an agreement was entered into between the widow of the decedent and a bank which was acting as a trustee for his estate. The settlement arrangement was never approved by the probate court. The agreement continued in effect from 1934 through 1946. The heirs of the widow brought an action against the bank, claiming that the settlement agreement was invalid on the basis that it had not been approved by the probate court. In dealing with this contention the Supreme Court of Michigan stated:

It was not necessary to secure the consent of the Probate Court to the settlement as there were no minors or unknown heirs involved. The court encourages settlements where there is no fraud or mistake and the parties

are of age, particularly so where there is a full understanding of the provisions in the settlement and the parties are represented by able counsel. Id. at 538.

The Court then noted a prior case argued by the heirs in which court approval was required. In stating that such approval was not required in this case the Court stated:

[The existing Michigan law] does provide a method for securing approval of settlements by the probate court and the purpose of the act principally was to allow settlements to be made with approval of the court so as to bind minors and unborn heirs and others whose present existence or whereabouts cannot be ascertained, etc. It does not prevent settlement of controversies by parties legally competent to act in their own behalf. Id. at 538.

Thus, the Michigan Supreme Court recognized the distinction between binding legally competent parties and binding parties of a limited capacity or unknown parties.

The Court of Appeals of Missouri further clarified the reason for the creation of Sections 1101 and 1102. In Columbia Union National Bank v. Bundschu, 641 S.W.2d 864 (Mo. App. 1982) a family settlement agreement had been entered into between several groups of heirs. Missouri has also adopted the same provision of the Uniform Probate Code. The Court noted that heirs could always enter into a settlement agreement as to the disposition of assets even before the statutory probate code had been adopted. However, the court noted:

The new law provides a more defined and competent procedure for that purpose and, as a matter of public policy, settles and binds not only the parties to the compromise agreement but also those in interest "unborn, unascertained, or who could not be located" according to a prescribed method of representation and notice. Id. at 874, fn. 7.

Thus, the purpose of 75-3-1101 and 1102 is not to create a legally binding contract upon the parties to a family settlement agreement, since Section 75-3-912 has already performed this function. Rather, its purpose is to eliminate any claims by non-party heirs to



the family settlement agreement in order to place it at rest. It is essentially analogous to the purpose of recording statutes in real estate. As is true between the parties of a real estate transaction, a legal right exists. Gregerson v. Jensen, 659 P.2d 396 (Utah 1983). As to third parties, however, whose rights are dependent upon knowledge of such transaction, the failure to record precludes extinguishment of their interest. See §57-1-6, U.C.A.

Here, all of the parties were represented by competent counsel, and after extensive negotiations entered into the Family Settlement Agreement. The Agreement continued in effect for nearly two years, even using Plaintiffs' view of the evidence, before any repudiation occurred. All of the necessary parties in this dispute were parties to that agreement. There is no one in the present controversy who can claim that the lack of court approval somehow impaired their interest in the estate. None of the types of interests referred to in §1101 and 1102 are present in the claims asserted by Plaintiffs, and therefore these statutes cannot be used by them as an excuse for breaching their contractual agreement.

None of the cases relied upon by Plaintiffs is applicable to this type of situation. This is not a workmen's compensation case in which those specific statutes govern the rights and liabilities of employee and employers. Obviously, the Legislature may feel that an employee is at an unfair advantage in dealing with his employer in any claim and therefore may choose to protect that employee by requiring Commission approval of any agreement entered into with that employee. This same type of disparity in positions is not found in the present situation. In addition, the Safeway Stores, Inc. case and the Mackey case did not even have signed agreements at the time the settlement

was being sought. (Appellants' Brief, p. 40). Likewise, in the Bece case only oral conversations between attorneys had occurred. (Appellants' Brief, p. 40).

The Dacaney case (Appellants' Brief, p. 40) is another example of specific legislation designed to protect a far different class of people. In Dacaney a statute of Guam required that before any settlement could be reached regarding a minor, a court would have to approve the guardian's recommendation. Here again is a legislative prerogative to protect minors from unscrupulous guardians in entering into settlement agreements. Similarly, in Georgevich (Appellants' Brief, pp. 40-41) the Federal Rules have required that a Federal District Court act as a representative of the members of a class whenever a class action has been approved by the court. Again, this statutory requirement is to protect absent members of the class from unfair settlements by parties to litigation. Here, no such protection is required.

Finally, Appellants have on several occasions asked what would have occurred in the Chasel case of this Court had the will been found prior to court approval. It is Defendants' contention that the result in Chasel would be exactly the same. In other words, had the son of Frank Chasel entered into a binding agreement with the other heirs for distributing the estate, that agreement would be binding regarding those heirs regardless of whether a will was subsequently found before formal approval of the settlement agreement had been made. This conclusion is supported by the case of In Re Estate of Thompson, 601 P.2d 1105 (Kan. 1979). In that case an heir entered into a family settlement agreement because he was unable to find a will of the decedent and was fearful that if the will were not found he would recover nothing under the law of intestate succession. Accordingly, he entered

into an agreement with the other heirs and on July 17, 1975, he was appointed as Executor of the estate. The following day the original will was found and he immediately sought to vacate the settlement agreement. The court, in rejecting the heir's contention that the family settlement agreement should have been set aside, stated:

The original of the will has since been found. The District Court concluded that the family settlement should be set aside on the basis of mutual mistake of fact. We disagree. In entering into the settlement the parties knew that the original will had not yet been found. They could not know what had happened to it; it might have been destroyed, by testator, or someone else, intentionally or unintentionally. It might still have existed, yet been permanently lost, or it might have still turned up. It was the intention of the parties to accept the consequences of the uncertainty. The possibility the original will might be found was a risk appellee accepted when he entered into the settlement. The fact that now, with full benefit of hindsight, he would not agree to the settlement is no basis for setting it aside. Id. at 1110.

The cases cited by Appellants are not inconsistent with the statutory scheme established by the Utah Legislature. It is clearly justified in some cases to require the court's approval of agreements before they can be officially binding upon the parties. In each instance the Legislature had elected to classify certain groups, such as minors, employees, class members, etc., as deserving of this protection. In the probate field this same reasoning applies as to all parties who are "unborn, unascertained or who could not be located." §75-3-1101, U.C.A. Until the court has approved the Family Settlement Agreement, any heirs who claim an interest in an estate but who are not parties to the agreement would not be bound by such agreement. On the other hand, the Legislature, by adopting the Model Probate Code and §75-3-912, has clearly approved the practice of allowing competent heirs to contractually bind themselves as to the distribution of estate assets. It did not intend to allow these individuals to escape these contrac-

tual obligations on the basis of two other sections of the code which were not directed to these individuals.

For these reasons, therefore, the lower court was correct in concluding that the failure to obtain court approval did not allow the plaintiffs an opportunity to repudiate the Family Settlement Agreement with immunity and they were therefore bound by its written terms.

B. Assuming Arguendo That Plaintiffs Were Entitled to Repudiate the Agreement Prior to Court Approval, The Plaintiffs are Nevertheless Equitably Foreclosed From Such Repudiation.

The lower court entered the following Conclusions of Law relating to the conduct of the plaintiffs:

5. Following the execution of the Family Settlement Agreement the parties acted in conformity therewith for a period of approximately twenty months during which time the plaintiffs received certain benefits and the defendants made changes in position to their detriment in reliance upon the provisions of the Family Settlement Agreement.

6. If the plaintiffs had grounds to set the Family Settlement Agreement aside at the time of its execution, which the court concludes they did not, such grounds were waived by the subsequent conduct of the plaintiffs.

7. If the plaintiffs had grounds to set the Family Settlement Agreement aside at the time of its execution, which the court concludes they did not, Plaintiffs have ratified and affirmed the Family Settlement Agreement. CR. 1232.

As noted above, the lower court found that the plaintiffs were legally bound by the terms of the Family Settlement Agreement and that the failure of the court to approve it prior to the repudiation did not allow the plaintiffs an avenue of escape. Even if it is assumed that this conclusion is incorrect, the plaintiffs still should not be allowed to repudiate the terms of the Agreement. The facts in this case as found by the lower court and as supported by the evidence give rise to a number of equitable doctrines which prohibit Plaintiffs

from repudiating the Family Settlement Agreement. As stated by one authority:

Even if a compromise and settlement is invalid or defective, a party seeking relief from it may not be entitled to a judicial remedy. Waiver, estoppel, ratification and adoption are among the grounds which may preclude a party from challenging validity of a compromise and settlement and from obtaining judicial relief. 15 A. Am. Jur.2d §44, p. 816.

These equitable doctrines clearly are applicable to the facts of this case. The following events illustrate the reasons why equity cannot allow the repudiation of this Agreement.

1. After the Family Settlement Agreement was signed, the plaintiffs and defendants jointly provided representatives to the intestate proceeding in the Philippines. (Maxine Grimm, TRA 261). They jointly hired accountants and lawyers for the Philippine estate. (Maxine Grimm, TRA 298). They jointly hired the Rand law firm to litigate the U.S. tax case. (Maxine Grimm, TRA 319).

2. All of the heirs agreed to the distribution of assets between the U.S. Tax Return (DX-272) and the Philippine Tax Return (DX-239).

3. All of the heirs agreed that Maxine should be allowed to draw \$3,000 per month as her widow's allowance in the Tooele County probate proceeding. (DX 229).

4. In May of 1979 the Everett Steamship contract payment was distributed, with \$400,000 going to Maxine and \$100,000 going to each of the children. The next two years she retained the entire payment. (Maxine Grimm, TRA 358; TRB 765).

5. In September of 1979 all of the parties contributed to payment of the Philippine Estate Tax. (Maxine Grimm, TRA 371). Ethel and Rex Roberts paid out of their own personal funds 225,000 pesos or over \$30,000 on behalf of the estate.

6. Because of the agreement between the parties, Mr. Salisbury was able to utilize the maximum marital deduction and to allocate the various assets according to the best tax advantages. (David Salisbury, TRB 137, 141). The Philippine estate specifically excluded the two major assets of the estate, Globe Investment Company and the Everett Steamship receivable, to the clear detriment of Juanita Morris and Ethel Roberts. (DX-239).

7. With the use of the Family Settlement Agreement, the separate Supplemental Agreement, and the inter vivos trust the lawyers and accountants were able to use the highest flexibility in reporting the estate to the various jurisdictions. (David Salisbury, TRB 151; Pete Grimm, TRB 564).

8. Maxine Grimm was able to borrow \$500,000 from the Globe Investment Company at a favorable interest rate. (Lavar Tate, TRB 670-71).

The preceding events occurred because the disputes between family members had been settled by the Agreement. It is obvious that the estate and the plaintiffs received substantial benefits from these events which otherwise may not have been received had an ongoing dispute been in existence. There is no question, for example, that substantial savings in estate taxes were achieved by the placement of the major assets under the U.S. return and not under the Philippine return. (Compare DX-272, U.S. Tax Return with DX-239, Philippine Tax Report). While this was a clear benefit to the estate and to the plaintiffs, it was a clear detriment to the defendants, since their strongest claim to any estate assets came under the terms of the Philippine will; and, by eliminating the majority of the assets from the Philippine jurisdiction, the defendants thereby were substantially prejudiced in any claim they could assert.

The defendants' payment of approximately \$30,000 for the Philippine estate taxes was also a detriment to their position if Plaintiffs' claim that the Agreement was not binding is sustained. In addition, the heirs provided a united front in their negotiation with the Parsons family, which maintained a 50 percent interest in many of the jointly-owned companies. (Pete Grimm, TRB 579). To the defendants, however, this seriously weakened their position, since they originally considered Parsons as a potential ally in any battle against the plaintiffs.

As will be discussed infra, the additional benefits to the estate during this period of time consisted of the original consideration for the Agreement, including family harmony, absence of litigation regarding the validity of the inter vivos trust, litigation as to the domicile and distribution of assets of the decedent, litigation as to the validity of the marriage and divorce of the decedent, and questions concerning tax practices of the decedent, as well as several other claims. While the absence of litigation, for example, constitute the initial consideration for the Agreement, it continued on as a benefit up until the time that the present dispute began some two and a half years later.

The preceding conduct, resulting in various benefits and detriments to the parties, justifies the imposition of several equitable doctrines. It can be said that the actions of the plaintiffs ratified any deficiency existing in the Agreement, since they obviously accepted the benefits of the contract after becoming aware of the claims they are now asserting. 15 A. C.J.S. Compromise and Settlement, §40, p. 264 §42, p. 269.

It is fundamental that any right to repudiate the contract can be waived by the parties. The plaintiffs can easily be said to have waived their right of repudiation by taking advantage of the two-year period for the benefit of the estate and thereby relinquishing any valid claim they would have had. See American Savings & Loan Assn. v. Blomquist, 445 P.2d 1 (Utah 1968); Lichtenstein v. Lichtenstein, 454 F.2d 69 (3d Cir. 1972); Prude v. Lewis, 430 P.2d 754 (N.M. 1968).

Even more applicable is the doctrine of equitable estoppel. This Court has defined equitable estoppel as involving an admission or statement or act inconsistent with a claim afterwards asserted;

where the other party acts on faith of such admission, statement or act; and injury to the other party results from allowing the first party to repudiate such admission, statement or act. Celebrity Club, Inc. v. Utah Liquor Commission, 602 P.2d 689 (Utah 1979); Blackhurst v. Transamerica Ins. Co., 699 P.2d 688 (Utah 1985). The Kansas Supreme Court in an earlier case applied the doctrine of estoppel to a family settlement agreement. The court there stated:

It has been held that, where the widow and each of the children make a division of the estate satisfactorily to themselves in which all parties concerned have acquiesced and retain the shares so allotted for a long period of years, they will be estopped from thereafter objecting to the arrangement.

The parties to such an arrangement would be forever equitably estopped from disturbing it, as amongst themselves, upon the most familiar principles of justice. . . . Family arrangements are favorites of the law, and when fairly made are never allowed to be disturbed by the parties, or any other for them. Riffe v. Walton, 182 Pac. 640, 642 (Kan. 1919).

See also, Hughes v. Betenbough, 373 P.2d 318 (N.M. 1962). (Horton changed his position during his lifetime in reliance upon the contract and the appellants should therefore now be estopped to deny the validity of the agreement).

These cases illustrate that courts of equity will utilize whatever means are necessary to prevent unjust enrichment by one party at the expense of another when the first party has performed in good faith the agreement. In Morris v. Leverett, 434 P.2d 912 (Okla. 1967) there was no written family settlement agreement introduced into evidence. The court found, however, that the defendant had induced other relatives to forego a will contest by promising to divide the estate equally with them and refused to enter into a written agreement because of various excuses. After distribution of the estate to him he denied such agreement existed and attempted to rely upon lack of consideration



and the parole evidence rule. The court held that equity would not permit him to gain the advantage by such acts, but would treat the property which he acquired as being closed under a constructive trust for the benefit of the other parties.

The present case is no different. Equity will not allow the plaintiffs to repudiate the terms of the Family Settlement Agreement after the defendants for over two years had relied upon it, had compromised their various legal positions and monetary positions because of it, and had made every effort to comply with its terms. Quite simply put, the plaintiffs cannot "have their cake and eat it too." Plaintiffs cannot be allowed to ally themselves with the defendants during the initial two years of probate and tax audits for the purpose of increasing the assets of the estate and then, after the rough waters have subsided, claim the benefit of all of the assets. "Equity will not allow a party to wait until another has improved property so that it becomes valuable before asserting an equitable claim."

Williams v. International Assn. of Machinists, 484 F. Supp. 917, 920 (D. Fla. 1978).

Finally, a settlement agreement cannot be rescinded even for cases of fraud or misrepresentation when there is no possibility to put the parties in their original position. Id. at 920. As noted by another authority, "Where the parties cannot be placed in status quo, relief will ordinarily be denied, as where the rights of third persons have intervened." 15 A. C.J.S., Compromise and Settlement, §41, p. 267. There is no conceivable way that the parties here could ever be restored to their pre-settlement positions.

## POINT II

THE LOWER COURT WAS CORRECT IN CONCLUDING THAT THE ALLEGED SPENDTHRIFT TRUST DID NOT AFFECT THE VALIDITY OF THE FAMILY SETTLEMENT AGREEMENT OR THE ABILITY OF THE COURT TO APPROVE IT.

Appellants in their Brief maintain that the existence of the "Trust Agreement" created by the decedent prior to his death (PX-11) precludes the Family Settlement Agreement from affecting the assets and terms of that trust. (Appellants' Brief, pp. 43-47). Appellants cite several cases from other jurisdictions as well as the Sundquist case from this Court. The Appellants conclude that "the court should have rejected the FSA because it terminated and materially modified Mr. Grimm's spendthrift trust." (Appellants' Brief, p. 45).

The authorities cited by Plaintiffs are in accordance with the general rule of law applying to trusts. Respondents do not dispute these cases or authorities. However, a review of these decisions and authorities show that they are inapplicable to the present situation for the following reasons: (1) the trust in this case is merely illusory, and in any case, contains few assets; (s) plaintiffs have renounced any interest in the trust and are estopped from now utilizing it to avoid the FSA; (3) Section 75-3-1101, U.C.A. specifically allows family settlement agreements to be binding even if they affect a trust or inalienable interest; (f) regardless of the validity of the trust or the statutory probate scheme, it was in the best interests of the beneficiaries to enter into the Family Settlement Agreement. These arguments will now be discussed in serium.

A. The Inter Vivos Trust is Merely Illusory and in Any Case Contains Few Assets.

The trust executed in this case by the decedent is testamentary and illusory in character. It grants no present vested interest in

the beneficiaries at the time that it was signed and gives them a vested interest only upon the death of the decedent. In Alexander v. Zions Savings Bank & Trust Co., 273 P.2d 173 (Utah 1954) this Court was presented with a similar purported inter vivos trust which stated that the interest of the beneficiaries did not vest until after the settlor's death. This Court stated that "such declaration and intent makes the trust testamentary in character and thus inoperative. For us to otherwise hold would be to render impotent altogether the Statute of Wills." Id. at 174.

Even if the trust is valid it contains few assets. The lower court made the following finding:

It is questionable if the assignment (of various stocks) were in fact properly delivered to the trustee because Pete testified that he placed the assignments in his Dad's safety deposit box which was in the name of E. M. Grimm. [Pete Grimm, TRB 541]. In October or November of 1977 but prior to Grimm's death, Maxine took the contents out of Grimm's safety deposit box and placed the contents in a safety deposit box in her name. [Maxine Grimm, TRA 223-225; Pete Grimm, TRB 542]. It was not until after the death of Grimm that she placed the trustee's name on the box. Pete wrote on November 14, 1977, "Before transferring them (stocks) I think we should get their (Kirton, McConkie) opinion" (DX-302). [Pete Grimm, TRB 544-547]. (CR 1250, Finding No. 17).

If the trust res is a stock certificate representing shares in a corporation, the method of transfer into a trust is to endorse the certificate to the trustee and deliver it to him. Delivery is an absolute essential element for the validity of the trust. Bogart on Trusts states the general rule:

If the trust res is a stock certificate representing shares in a corporation, the normal method of transfer is to endorse the certificate to the trustee and deliver it to him. Section 32, at p. 107.

Delivery is absolutely essential to the trust or the trust fails. Under Utah Code Annotated, §70A-8-309, endorsement of any stock certificate or purchase thereby is not enough. There must also be delivery.

The statute states:

An endorsement of the security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or, if the endorsement is on a separate document, until delivery of both the document and the security.

While new stock certificates were prepared by Globe Investment Company naming E. M. Grimm II as Trustee, the stock records themselves do not show or reveal that E. M. Grimm II actually took receipt and delivery of said stock certificates from the trustor. (PX-12).

Finally, to create a valid "Spendthrift Trust" the beneficiary must only be able to receive the income--not the corpus. Rose v. Southern Michigan Bank, 238 N.W. 284 (Mich. 1931). Here Maxine could receive all of the assets if she needed them for her needs.

For these reasons, therefore, there was no valid trust in existence at the time the Family Settlement Agreement was executed.

B. Assuming Arguendo That There is a Valid Trust, Plaintiffs Have Nevertheless Renounced Any Interest in it and Are Estopped From Claiming Under It.

Since the death of Edward Grimm, the plaintiffs have in no manner acted as though any assets of the estate were in trust property. Distributions have been made from the estate. The wills have been probated in Utah as though there were no trust agreement in existence and there is no evidence that the plaintiffs in this case ever accepted their interest in the trust assets.

Under Utah Code Annotated, §75-2-801, beneficiaries to a purported trust can clearly renounce their interest even in cases where there is a spendthrift provision. The statute states, in part:

(b) The right to renounce exists notwithstanding any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

(c) A renunciation or a written waiver of the right to renounce is binding upon the person renouncing or person waiving and all persons claiming through or under him.

It has been to the advantage of the plaintiffs to treat the assets allegedly contained in the trust as if they were part of the estate for tax and other purposes. Equitable doctrines will not now allow them after this usage to come back and claim that the assets were all the time held in a trust made for their benefit.

C. Assuming Arguendo That There is a Valid Trust With Assets, Section 75-3-1101, U.C.A. Makes a Compromise Family Settlement Agreement Binding Upon the Parties Even if it Affects a Trust or Inalienable Interest.

Historically, courts have frequently given effect to agreements made for the purpose of resolving pending litigation but which have terminated spendthrift trusts. This has been true both in litigation involving the validity of the trust itself and in controversies involving other matters. See In Re Hansen, 533 A.2d 834 (N.J. Sup. 1981); Third National Bank v. Schribner, 370 S.W.2d 482 (Tenn. 1963) and In Re Dutton's Estate, 79 N.W.2d 608 (Mich. 1956). Such actions have been approved even in the absence of any express statutory authority empowering the court to terminate the spendthrift trust.

In Utah, however, courts have been given specific statutory authority to validate and enforce settlement agreements which alter or entirely destroy spendthrift trusts. The provisions of Utah Code Annotated §75-3-1101 have been referred to by one text author as a specific example of "legislation permitting a court to terminate a spendthrift trust. . . ." Bogart, Trusts and Trustees, §226, p. 490.

The Utah statute specifically states, "An approved compromise is binding even though it may affect a trust or an inalienable interest." Clearly, whatever rules were previously applicable to the termination

of trusts involving spendthrift clauses have been altered by the enactment of this statutory authority. It should be observed that none of the cases relied upon by the appellants in their Brief concern interpretation of similar statutory language.

For these reasons, the lower court was correct in rejecting the argument that the Family Settlement Agreement was somehow impaired by the existence of the Trust Agreement.

D. Even if it is Assumed Arguendo That There is A Valid Trust, That the Trust Contains Assets, and That it Can Only be Terminated for the Best Interests of the Beneficiaries, Such Interest Exists in This Case.

Appellants in their Brief have noted the position taken by the Restatement (2d) of Trusts concerning the termination of a trust agreement. Section 337 states:

(1) Except as stated in subsection (2), if all of the beneficiaries of a trust consent and none or them is under an incapacity, they can compel the termination of the trust.

(2) If the continuance of the trust is necessary to carry out a material purpose of the trust, the beneficiaries cannot compel its termination.

The comment to this section states that before a trust can be terminated the court must approve any agreement and determine that it is in the best interests of the beneficiary. The comment then continues:

The mere fact that the interests of the beneficiaries is not transferrable by him does not preclude the court from approving a compromise under which he surrenders a part of his interest under the trust, since otherwise if a contest were successful his interest might be destroyed altogether. So also, the court can approve a compromise although the beneficiary is an infant or insane person or otherwise under an incapacity. Comment O, p. 166.

Defendants do not believe that the statutory scheme in Utah requires that termination be conditioned upon a showing of the "best interests of the beneficiaries." But even if it did such would be

the case here. Appellants, of course, contend that it was not in their best interest to terminate the trust since the defendants had no bona fide claim that jeopardized their interest and essentially only derived the benefit through means of blackmail and duress. (Appellants' Brief, p. 46-47). This conclusion is refuted by the Findings of the lower court as well as the evidence which clearly shows that material disputes existed and that it was in the best interest of all the beneficiaries to resolve them without litigation. The discussion as to whether these claims were "bona fide" or not will occur infra.

In addition, there is nothing inconsistent with the terms of the Family Settlement Agreement and the terms of the trust established by Grimm. The Trust Agreement itself empowers Pete, as Trustee, to exercise complete discretion in distributing the res of the trust to his mother Maxine as he feels advisable. Mrs. Grimm, as beneficiary, is free to make whatever agreement she chooses regarding the disposition of trust assets which the trustee transfers to her. See Smith v. Smith 253 N.W.2d 143 (Minn. 1977); Mirot v. Mirot, 6 N.E.2d 5 (Mass. 1946); Restatement of Trusts 2d, §152, Comment J. Therefore, the Family Settlement Agreement can easily be interpreted as an agreement whereby the trustee vests the entirety of the trust estate in Maxine Grimm, who simultaneously agrees to a plan for distribution of the estate.

Appellants' contention that the Family Settlement Agreement is somehow radically inconsistent with Mr. Grimm's intent is incorrect. Unlike many trusts, the one in question in this action has no definite terms, such as for the life of the person to be supported, but allows the trustee to convey the entirety of the trust property anytime he

deems it advisable to do so. As such, Maxine's position and ability to control the assets was extremely similar under both the trust and the Family Settlement Agreement.

Certainly, any purpose in establishing the trust was for the protection of Maxine and to make sure that she was taken care of during her lifetime. The terms of the Family Settlement Agreement insuring that she receive the two properties plus a minimum of \$1.5 million certainly assures this purpose.

For these reasons, therefore, the mere existence of the trust agreement does not affect the validity of the Family Settlement Agreement or the decision of the court to abide by it.

#### POINT III

PROPER NOTICE WAS GIVEN TO NECESSARY PARTIES  
PURSUANT TO SECTION 75-3-1102(c) AND THEREFORE  
APPROVAL OF THE FAMILY SETTLEMENT AGREEMENT WAS  
PROPER.

As noted by Appellants the lower court found that all interested persons had received notice as required by Section 75-3-1102(c). (Appellants' Brief, pp. 47-48; CR 1233). Appellants complain, however, that this finding is in error since there is no evidence that either Charles Parsons or Byron S. Huie received notice. Because of this alleged failure this Court is asked to reverse the lower court's judgment approving the Family Settlement Agreement. (Appellants' Brief, p. 48).

The argument raised by Appellants in Section C of their Brief is an excellent example of other arguments raised throughout their Brief. There is no doubt, for example, that notice is required under the statute to all "interested persons." Respondents certainly do not disagree with this requirement. However, as is the case throughout



their Brief, the facts developed in the litigation do not support the legal argument being made. The argument concerning notice is perhaps the easiest of all to refute to show that these cited legal principles or requirements either do not apply to the facts of this case or have been completely satisfied by the facts of this case.

The entire argument advanced by Appellants assumes that Charles Parsons and Byron S. Huie "were appointed with Maxine as Co-Executors of the Philippine Will." To support this claim Appellants cite Plaintiffs' Exhibit 7 at page 5. This exhibit is the so-called "Philippine Will" and paragraph 11 appoints Charles Parsons, Byron Huie, and Maxine Grimm as Co-Executors of the will. When this citation is examined, however, in light of the other evidence in the case it becomes apparent that the alleged factual statement is incorrect. While it is true that Mr. Grimm requested in his will that these individuals be appointed as co-executors, such request did not in fact make them executors.

The Philippine proceeding was handled as an intestate matter with Maxine, Pete and Ethel being appointed as joint administrators of the estate. (Maxine Grimm, TRA 261). The Philippine will was not admitted in that proceeding. Instead, the Philippine will as well as the U.S. will were both filed in Tooele County along with a codicil and by stipulation of all the parties Maxine Grimm and Lavar Tate were appointed as personal representatives for both wills. (PR 54-50; PR 60-57; Lavar Tate, TRB 667).

Thus, there is no need to address the question as to what would occur if executors were not properly notified as to the proceedings surrounding a family settlement agreement since in this case the facts show that both executors were parties to all proceedings. While

this alleged claimed error is extremely easy to refute since it is based upon the simple fact of appointment of executors other claims throughout the Brief are equally unsupported but cannot be so easily shown. It is for this reason that Respondents urge the court to carefully examine the facts of this case as viewed from the Respondents' position before deciding whether the legal principles proclaimed by the Appellants are applicable to the circumstances of this case.

#### POINT IV

THE PLAINTIFFS WERE NOT ENTITLED TO A JURY TRIAL ON INTENTIONAL INFLICTION OF SEVERE EMOTIONAL DISTRESS, DURESS AND FAILURE OF CONSIDERATION.

Appellants complain that they were deprived the right of a jury trial as to the issue of intentional infliction of emotional distress based upon their 11th Cause of Action in the civil case (Appellants' Brief, pp. 48-52), and were entitled to a jury trial on their defense of duress and failure of consideration relating to the counterclaim filed by the respondents seeking damages for breach of contract. (Appellants' Brief, pp. 52-54). In order to simplify discussion of this issue the second contention of the appellants will be addressed first.

On August 10, 1983 Defendants filed a counterclaim contending that the Family Settlement Agreement was completely valid and enforceable and that the plaintiffs Maxine, Pete and Linda Grimm had violated the terms of the Agreement thereby giving rise to a breach of contract action. Defendants sought damages in the amount of \$10 million for such breach plus a reasonable attorneys' fee. (PR 1638-1632). On July 29, 1985 the plaintiffs filed their Amended Reply to Counterclaim. (CR 948-942). They essentially claimed as part of

their defenses that the Family Settlement Agreement (the document from which the claimed breaches occurred) had been entered as a result of duress and was without consideration. (CR 942).

At the conclusion of the trial the lower court found in favor of the defendants and against plaintiffs. It found that the Family Settlement Agreement was a valid document, could not be repudiated by the plaintiffs, and could be enforced according to its terms. If the Agreement had not been specifically enforceable, Defendants could have had the right to proceed upon their counterclaim asking for damages as a result of the breaches allegedly committed by the plaintiffs. Had Defendants so proceeded, then, of course, Plaintiffs would have been entitled to assert their legal defenses and the entire matter would have been heard before the impaneled jury.

The lower court in the hearing prior to trial described how this procedure would work. The court stated:

Therefore, I grant you the benefit of having a jury trial, but so that everybody understands, the Court will make the decision as to whether or not the Family Settlement Agreement is valid or invalid, and then based upon that you may proceed on your counterclaim--you may not proceed, but at that time the plaintiffs here cannot say they did not have the right for the jury to hear all of the defenses with regard to coercion, duress and other defenses. That's the way the Court is going to handle this. (Tr. July 26, July 30, 1985 hearings, p. 23).

Plaintiffs have taken the novel approach of arguing that they have been deprived of a jury trial because the defendants were not required to proceed on their breach of contract counterclaim. In other words, Plaintiffs are asserting that they had a legal right to a trial so that they could assert their affirmative defenses. Such an argument is contrary to both logic and civil procedure.

This conclusion can best be seen by taking the following hypothetical example. Assume that "X" sues "Y" for a breach of contract

alleging damages. "Y" answers by stating that the contract is invalid for a number of reasons. "X" decides to dismiss the lawsuit against "Y". "Y" has no right (nor would he have any desire) to require that the trial proceed so that he could assert his affirmative defenses.

Plaintiffs in this case filed their initial Complaint on the basis that the contract was void because of the various reasons listed in the numerous causes of action including duress and failure of consideration. They sought rescission of the contract on this basis. Rescission is clearly an equitable remedy and the lower court found against them. They cannot now complain that because the defendants elected not to proceed upon their breach of contract counterclaim that they have somehow been deprived of a jury right to assert their affirmative defenses.

The analysis concerning their claim for intentional infliction of emotional harm requires a different analysis. No reversible error occurred as to this issue because of the following: (1) under Philippine law there is no cause of action for intentional infliction of emotional harm and therefore the action was not properly before the court; (2) if a cause of action did exist under Utah law, the court determined as a matter of law that the evidence did not state a claim; (3) the plaintiffs were not entitled as a matter of right to have a jury decide this issue and the lower court found in favor of the defendants and against the plaintiffs on the merits; (4) in the alternative, if Plaintiffs were entitled to a jury determination as to this issue, then they have waived it by failing to make proper objection. These matters will now be discussed.

A. Under Philippine Law There is No Cause of Action for Intentional Infliction of Emotional Harm and Therefore the Action Was Not Properly Before the Court.

Under Utah Choice of Law Rules governing causes of action sounding in tort, the law to be applied is the law of the state where the acts constituting the alleged tort occurred. Buhler v. Maddison, 175 P.2d 118, 122 (Utah 1947). In the instant case, the alleged tort of intentional infliction of emotional distress took place in the Philippines and therefore Philippine law must apply.

The Philippines do not recognize a cause of action for intentional infliction of emotional distress without attendant physical injury. Philippine Civil Code §2219 provides that moral damages may be recovered for torts causing physical injuries. Thus, emotional distress inflicted without attendant physical injury directly provable to the alleged wrongful acts cannot be claimed in the Philippines. See generally J. Sangco Philippine Law on Torts and Damages, 513-528 (1973). Plaintiffs failed to allege in their Complaint that the purported outrageous conduct of the defendants caused actual physical injury to the plaintiffs. (CR 72). In addition, there was no evidence introduced at trial establishing physical injury as a result of the alleged conduct of the defendants. For these reasons, therefore, under Philippine law the lower court was correct in concluding that no cause of action existed and in finding in favor of the defendants.

B. If Utah Law is Applicable, The Court Determined as a Matter of Law That the Evidence Did Not State a Claim.

At the conclusion of Defendants' case Defendants' counsel moved for a Motion to Dismiss and Motion to Direct a Verdict as to Plaintiffs' claim for intentional infliction of emotional distress. (TRB 1119). The Court stated during that same proceeding that it found

in favor of the defendants on all issues. (TRB 1121). While admittedly there has been no specific finding entered by the lower court to this effect the intent of the lower court can be ascertained from the trial transcript and from the Judgment entered against the plaintiff

This Court on a number of occasions has concluded, as a matter of law, a claim for intentional infliction of emotional distress has not been stated or proved. In Gygi v. Storch, 503 P.2d 449 (Utah 1972) this Court held that the conduct of a woman towards a man who ultimately killed himself did not give rise to a claim even though her conduct had caused him great mental anguish and he repeatedly threatened to kill himself. See also, Covert v. Kennecott Corp., 461 P.2d 466 (Utah 1969) (Summary Judgment aff'd.); Reiser v. Lohner, 641 P.2d 93 (Utah 1982) (Summary Judgment aff'd.).

In addition, the Federal District Court of Utah on two occasions applying Utah law has also found no cause of action existed as a matter of law. In Amos v. Corporation of the Presiding Bishop, 594 F. Supp. 791 (D. Utah 1984) the court dismissed a cause of action claiming that employees of the Mormon Church had suffered great humiliation because of inquiries and practices relating to the religious beliefs and actions of the employees. The court after reviewing this Court's decision of Samms v. Eccles, 358 P.2d 344 (Utah 1961) stated the following:

Regardless of how the court feels about the appropriateness of the defendant's conduct and, even though the plaintiffs may have been embarrassed, distressed and humiliated, the court concludes, as a matter of law, that the defendant's conduct does not rise to the level of "outrageous and intolerable conduct" contemplated by the Utah Supreme Court. Id. at 831.

In Singer v. Wadman, 595 F. Supp. 188 (D. Utah 1982) the court found that the conduct of the defendants was privileged at the time

that the occurrences complained about by the plaintiffs occurred. This privilege nullified any outrageous or extreme conduct committed by the defendants.

The Restatement of Torts 2d §46 is the foundation for this cause of action in Utah. Comment j discusses the type of severe distress which is required. It states:

The rule stated in this Section applies only where the emotional distress has in fact resulted, and where it is severe. Emotional distress passes under various names, such as mental suffering, mental anguish, mental or nervous shock or the like. It includes all highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea. It is only when it is extreme that the liability arises. Complete emotional tranquility is seldom attainable in this world, and some degree of transient and trivial emotional distress is a part of the price of living among people. The law intervenes only when the distress inflicted is so severe that no reasonable man would be expected to endure it. (Emphasis added).

Comment h to the Restatement mandates that it is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as to extreme and outrageous as to permit recovery. Comment g states that "the actor is never liable, for example, where he has done no more than to insist upon his legal rights in a permissible way. Even though he is well aware that such insistence is certain to cause emotional distress." Courts in other jurisdictions have dismissed cases as a matter of law involving conduct similar to that alleged by the plaintiffs.

In Hassing v. Wortman, 333 N.W.2d 765 (Neb. 1983) the plaintiff and defendant were married for over thirty years. They obtained a divorce in 1977 and for over three years the plaintiff claimed her husband continued to harass her even after she had remarried. The lower court entered judgment in favor of the plaintiff but the Supreme

Court of Nebraska reversed. The court held that although the harrassment caused the plaintiff to be embarrassed and humiliated and had resulted in her crying, losing sleep, and consulting a psychiatrist, she had not shown that her distress was so severe that no reasonable person could have been expected to endure it.

In Whiehe v. Kukl, 592 P.2d 860 (Kan. 1979) the court held there as a matter of law that the conduct of the defendant on several occasions in verbal profane outbursts together with an assault by brandishing a pitchfork against the plaintiff was not the type of reckless conduct giving rise to a claim.

Several courts have specifically held that efforts to enforce legal rights or to assert legal claims do not give rise, as a matter of law, to a cause of action. Wade v. Ford Motor Credit Co., 455 F. Supp. 147 (D. Mo. 1978); Batchelor v. Sears Roebuck & Co., 547 F. Supp. 1480 (D. Mich. 1983); Nestlerode v. Federal Ins. Co., 414 N.Y.S.2d 398 (N.Y. Sup. App. Div. 1979); Thompson v. Sikov, 490 A.2d 472 (Pa. Super. 1985).

Even taking the allegations most favorably to the plaintiffs as they have done in their Brief (Appellants' Brief, pp. 50-51) there are still not sufficient facts to allow this case to be submitted to a fact finder. While this no doubt involved a very emotional dispute between family members over a large sum of money a legal cause of action does not exist. Even under Plaintiffs' version of the facts Defendants were always asserting a claimed legal and moral right to an inheritance and while such conduct no doubt caused grief among all of the parties the tort has not been created for the purpose of allowing family members to sue other family members as a result of family financial disputes.



For these reasons, therefore, the lower court was correct in concluding as a matter of law that no cause of action existed as to this claim.

C. The Plaintiffs Were Not Entitled as a Matter of Right to Have a Jury Decide This Issue and the Lower Court Found in Favor of the Defendants and Against the Plaintiffs on the Merits.

Plaintiffs maintained in the lower court that they were entitled to a jury determination as to their 11th Cause of Action for emotional distress. It should be observed that the entire nature of Plaintiffs' Complaint was one for repudiation or rescission of the Family Settlement Agreement or, in the alternative, for damages resulting from it. Plaintiffs acknowledged that they could not plead both damages and rescission and that they would have to elect remedies at the time of trial. (CR 164-165). They obviously elected to seek repudiation and rescission of the Family Settlement Agreement rather than damages. Thus, the only claim which was unrelated to the validity of the Family Settlement Agreement was the 11th Cause of Action seeking damages for the intentional infliction of emotional distress.

This cause of action was independent and separate from the entry of the Family Settlement Agreement. It could have been brought separately at any time with no equitable issues at all being involved. Instead, however, Plaintiffs chose to integrate this cause of action with their equitable claims and as such cannot now claim a right to a jury trial. This Court in Colman v. Dillman, 624 P.2d 731 (Utah 1981) held that where the issues presented are entirely or predominantly equitable in nature, a litigant is not entitled to a trial by a jury as a matter of right. See also, Bradshaw v. Kershaw, 529 P.2d 803 (Utah 1974). The International Harvester Credit case cited by Appellants in their Brief (Appellants' Brief, pp. 48, 50, 53) is not

to the contrary. In that case this Court concluded that since Plaintiffs' Complaint was seeking money damages it was clearly an action at law and was entitled to a jury trial. In dictum the Court observed that litigants had a right to a jury trial on legal claims raised in conjunction with equitable issues. This Court did not discuss the Colman case cited just months before nor did it discuss the situation here where a legal claim is completely separate and apart from the equitable claims being asserted. Defendants submit that the facts and circumstances of this case preclude the 11th Cause of Action from being a jury question. An annotation collecting cases throughout the country dealing with these types of circumstances states the following:

In the absence of a statute or rule of procedure dictating a contrary holding, the great weight of authority has always been to the effect that the inter-position by the defendant in an equitable action of a counterclaim of a legal nature gives him no right to a jury trial, either of the case generally or of the issue raised by the counterclaim. Having elected to assert in equity--as he was certainly not bound to do--a legal counterclaim, the defendant has been held to have elected to have submitted all of the issues raised in the action to trial in accord with the rules of equity procedure. 17 A.L.R.3d 1321, 1327.

In Rosenberg v. Rosenberg, 419 A.2d 167 (Pa. Super. 1980) a former wife initiated an action in equity against her former husband alleging that he had not complied with various terms of a property settlement, support and custody agreement. She sought equitable relief. The ex-husband filed a counterclaim alleging that the wife had not vacated the marital residence contrary to the terms of the agreement, asked enforcement of the agreement, and also sought damages. The court held that where a litigant chooses to initiate an action in equity he has assented to have all matters arising out of the occurrence or transaction decided by the equity court and therefore has waived

his right to jury trial with respect to the case in chief or any properly maintained counterclaim. Likewise a defendant who files a legal counterclaim to an equitable action, rather than asserting it as a separate action at law, has waived any right to have issues of fact thus raised tried by a jury.

Thus, the emotional distress claim of Plaintiffs, assuming that it stated a valid cause of action, was not properly triable before a jury and the lower court was empowered to decide the case on its merits if it was not previously dismissed as a matter of law. Again, while the Findings do not specifically address the intentional infliction claim per se they do address the underlying facts. The court found, for example, that Maxine was not deprived of her free will during the negotiation period, that the plaintiffs were not put in such fear as to overcome their free will or to compel them to act against their will, and that they did not use duress, coercion, or fraud against the plaintiffs. (Findings 65, 66 and 67). In addition, many of the factual findings state that the defendants were acting within their rights and were attempting to peaceably exist with the plaintiffs in spite of their differences as to their legal rights.

For these reasons, therefore, the lower court did not err in failing to submit this matter to a jury and properly concluded that the evidence was in favor of the defendants and against the plaintiffs as to this claim.

D. In the Alternative, if Plaintiffs Were Entitled to a Jury Determination as to This Issue Then They Waived it by Failing to Make Proper Objection.

Even if it is assumed for the purposes of argument that the plaintiffs were entitled to a jury determination as to their 11th Cause of Action the record is clear that they waived any such right.

On August 16, 1985 at the conclusion of the trial motions were made by both sides in the chambers of the Court. At that time the Court announced that it was going to rule on behalf of the defendants as to all issues. It then asked the parties how they wanted to proceed as to the defendants' claim of attorneys' fees. (TRB 1121). A discussion then occurred among counsel as to how the attorneys' fee question should be handled. (TRB 1122-24). The court then adjourned and reconvened in open court before the jury. At that time it explained its decision to the jury, thanked them for their services, and complimented the various sides. (TRB 1125-27).

At no time during the in-chambers proceedings or in the open court proceedings did Plaintiffs' counsel object that the jury was entitled to decide the emotional distress issue. Had he done so the court could have addressed the question at that time with the jury still sitting. By raising it during this appeal Plaintiffs are now seeking a new trial which will necessarily require the recalling of numerous witnesses some of whom reside out of the country.

A party must make an objection at the time of submission or lack of submission as to whether an issue legal or equitable and cannot wait until appeal to make such argument. First National Bank of Oregon v. Porter, 608 P.2d 598 (Ore. App. 1980). It is, of course, fundamental that appellate courts will not review a ground of objection not urged in the lower court and that counsel must give the trial court the opportunity to correct a claimed error before asking the appellate court to reverse a decision and require a new trial. Porcupine Reservoir Co. v. Lloyd Keller Corp., 392 P.2d 620 (Utah 1964). See also, Lopez v. Schwendiman, 720 P.2d 778 (Utah 1986); Condas v. Condas, 618 P.2d 491 (Utah 1980).

Thus, the failure of the plaintiffs' counsel to timely object to the jury submission issue constitutes a waiver of that issue and cannot now be raised on appeal.

#### POINT V

THE LOWER COURT CORRECTLY APPLIED THE EVIDENCE IN THIS CASE TO THE CORRECT STANDARD IN CONCLUDING THAT THERE WAS ADEQUATE CONSIDERATION EXCHANGED BETWEEN THE PARTIES THEREBY CREATING A BINDING FAMILY SETTLEMENT AGREEMENT.

Appellants contend that the lower court erred in both its legal standard of determining consideration for the Family Settlement Agreement and as to its application of the facts to that standard. (Appellants' Brief, pp. 54-64). The standard to be applied in determining consideration of family settlement agreements is one of first impression in Utah. Neither party has been able to find any Utah cases dealing with this subject. It is therefore critical to discuss the conflicting standards utilized throughout the country in order to allow this Court the opportunity to decide which standard it wishes to adopt. The cases and authorities cited by Appellants in their Brief take the hard-line approach that the compromise of a claim is only valid if the claim itself can be shown to be "bona fide" and have "merit" and it matters not the beliefs of the individual asserting the claim or the beliefs of the individual the claim is being asserted against.

The second, and what Respondents believe to be the most rational approach is that a claim which is asserted in "good faith" by an heir constitutes sufficient consideration even if ultimately the claim is shown to have no merit and to be completely worthless. As will be discussed, courts consider this adequate consideration because the controversy itself is being settled regardless of the ultimate outcome

of the various claims.

The evidence in this case supports either standard. Defendants will show that these claims were asserted in "good faith" under the lesser standard of proof and will also show that the claims were "bona fide" using the higher standard. These standards and the evidence in this case will now be discussed.

- A. This Court Should Adopt the Standard That Adequate Consideration is Shown in a Family Settlement Agreement if the Forebearing Party Has a Reasonable Belief That He Has a Ground For Opposing the Other Heirs and That He Forebears The Exercise of His Right Because of the Family Settlement Agreement.

The lower court entered a number of Findings concerning the consideration question although not necessarily in chronological order. The Court stated:

65B. Defendants in good faith believed that the claims they asserted regarding possible invalidity of the trust, possible invalidity of Grimm's divorce and effect of application of Philippine law were legitimate claims. The claims were of such merit that Mr. Salisbury researched the issues and advised Maxine and Pete accordingly.

65C. Defendants did not know that the claims they asserted were unfounded. It is not necessary to find whether they were or were not unfounded.

69. With more specific reference to the claim of lack or failure of consideration the Court finds:

- A. Mutual forbearance to prosecute claims;
- B. Mutual promises for the sake of family harmony constitute consideration;
- C. Both sides of the controversy recieved benefits from the Family Settlement. Litigation was avoided (until repudiation) expense was minimized (until repudiation). The parties were united in dealing with taxing authorities and with the Parsons. Maxine received the residences. Maxine received a minimum guarantee. Maxine got her share free of tax. Philippine estate tax was reduced by making it unnecessary for Ethel and Nita to claim entire estate, except for real estate in Daggett County subject to distribution (and taxation) under law of the Philippines.

70D. The contest or controversy was and is in good faith and the effect of the agreement upon the interests of persons affected is just and reasonable.

Conclusion No. 3: The Family Settlement Agreement is supported by good and sufficient consideration and is a valid and binding agreement.

Conclusion No. 4: Following the execution of the Family Settlement Agreement there was no failure of consideration or breach of the Family Settlement Agreement by Ethel or Nita or Juanita. (CR 1236-1233).

The lower court adopted the "good faith" position utilized by many courts and authorities throughout the United States. Appellants have relied upon a contrary line of cases utilizing the "bona fide" reasoning. It is unnecessary to explain it further since Appellants have adequately discussed it in their Brief. (Appellants' Brief, pp. 54-58).

The general "good faith doctrine" applicable to any compromise agreement is stated as follows:

If doubts expressed by the parties are based upon good faith, and if it is agreed to resolve those doubts by means of compromising the claim, the fact that judicial developments or other sources of knowledge may subsequently reveal to the parties that the claim was unfounded will not justify invalidating the compromise. The validity of a compromise is not impaired by the fact that the compromise resolved issues differently than a court might have.

If a compromise is based on a claim asserted in good faith, the compromise agreement will not be regarded as void for lack of consideration merely because it ultimately appears that the claim could not have been sustained at law. This is so since if the right to compromise a claim depended upon an ultimate judicial decision as to the validity of the claim, a compromise, instead of being a means of avoiding or ending litigation would be only an additional complication in the progress of it; if the validity of a compromise depended upon which party was actually right, the very object of a compromise which the law favors--avoiding the necessity of having a court resolve uncertainties--would be defeated. 15 A. Am. Jur. 2d §17, pp. 789-790. (Emphasis added).

This general principle has been applied by a host of courts to

family settlement agreements. See cases listed at 29 A.L.R.3d 8, at 91 and 29 A.L.R.3d 174, at 202. See also Columbia Union National Bank v. Bundschu, 641 S.W. 2d 864 (Mo. App. 1982); Howard v. C.I.R., 447 F.2d 152 (5th Cir. 1971); Morris v. Leverett, 434 P.2d 912 (Okla. 1967); Hughes v. Betenbough, 373 P.2d 318 (N.M. 1962); and Weade v. Weade, 150 S.E. 238 (Va. 1929). Some courts even go further and hold that the mere agreement to settle a dispute between members of a family is itself sufficient consideration regardless of their good faith since it is important to have tranquility within a family, prevent further litigation, and preserve family property. Clark v. Clark, 288 N.W.2d 1 (Minn. 1979).

The application of the "good faith" doctrine is in line with this Court's recent decision in the Matter of the Estate of Frank Chasel, supra. Basically that decision states that parties to a family settlement agreement must take their chances as to future events and cannot later reverse their positions because facts or legal conclusions have changed. Under the appellants' "bona fide" approach the Chasel case would be decided differently since it would be determined that an error had been made in concluding the will had been lost and therefore there was no "bona fide" forbearance given at the time of the agreement justifying adequate consideration.

Applying the two doctrines to this case also shows a clear difference. Under the "good faith" approach it is only necessary to look at the parties and what they did at the time of the transaction. For example, look at the letters and legal memoranda written by Mr. Salisbury as to his concerns of the various claims being asserted. To use the "bona fide" approach, however, requires the moving party to bring in witnesses such as Mr. Benavince to argue as to whether the claims and concerns of the parties at the time the agreement was



entered into were reasonable and contained merit. As noted earlier, this in effect required a trial on the very issues the Family Settlement Agreement is designed to resolve.

In any event, whichever standard is adopted in Utah the evidence in this case shows that both bona fide and reasonable claims were asserted and that they were asserted in good faith by the parties. This evidence will now be discussed.

B. The Evidence in This Case Justified the Lower Court's Conclusion That Defendants Asserted Good Faith Claims and Also Justifies the Finding That There were Bona Fide Claims.

Before proceeding further, it should be noted that if any estate case could ever be considered unpredictable and complex this is the one. The decedent left assets in Hong Kong, the Philippines, and the United States. He executed both a "U.S. Will" and a "Philippine Will". He also executed a trust agreement. His assets consisted of everything from the usual real estate, stocks, bonds, and partnership interests, to the unusual pig and pearl farms. The decedent had married twice, and had two children from each marriage, some living in the United States and some living in the Philippines. The decedent himself was a resident of the United States but had lived for over thirty years in the Philippines maintaining a home in Tooele. All of these facts certainly justified the conclusions by the various attorneys who testified that this was a very complex and difficult estate to settle and involved many difficult and complex questions.

Appellants argue that there was no evidence that the defendants asserted valid claims at the time the Family Settlement Agreement was being negotiated and then cite several areas of testimony by the defendants. (Appellants' Brief, pp. 62-63). Rather than explaining how these statements were made in their correct context Defendants

shall merely state evidence in their favor which amply supports the lower court's Findings.

1. The Defendants Had a Bona Vide Claim Asserted in Good Faith that Mr. Grimm's Divorce was Invalid. Mr. Holbrook testified that in his meeting with Mr. Salisbury the question of the validity of the divorce came up. There was a question of the decedent's divorce being obtained in Nevada and the issue is whether or not under Nevada law the residency had been properly obtained in order to make the divorce valid. (TRB 879). There was also a claim that a misrepresentation of the assets had been made at the time the divorce was entered into. (TRB 880). Mr. Salisbury was concerned enough about this claim that he engaged a law firm in Reno to search the records and render an opinion as to the validity of the 1947 divorce. He stated that he considered the effect of the validity of the marriage as one of the elements that would be resolved in an ultimate settlement agreement. He received a letter from Nevada counsel on January 27, 1978 giving an opinion as to the validity of the divorce.

Rex Roberts testified that he met with a lawyer friend in Oregon concerning the marriage and that this lawyer told him that it was entirely possible that Maxine Grimm's marriage was not legal. (TRB 958). Mr. Roberts admitted that he told Mrs. Grimm and Pete Grimm on at least one occasion each that he had questions as to her marriage. (TRB 643-44). He told them that if this were the case Juanita Grimm would have a 50% interest in the estate. (Id.)

Mr. Merrill Norman, Plaintiffs' accountant, testified that if the marital deduction utilizing Maxine Grimm's marriage was not allowed that the estate tax would go up considerably and that the family would collectively become much poorer. (TRB 739). The preceding

outline shows that the question of the marriage was adequately discussed at the time of the settlement and that the defendants had a "reasonable belief" that the claim may have some validity.

As to the question of being "bona fide" the case of Plunket v. Plunket, 283 P.2d 225 (Nev. 1955) holds that in order to obtain a divorce in Nevada there must be a bona fide residence. The case of Brill v. Brill, 102 P.2d 523 (Cal. 1945) applies Nevada law and indicates that under the Nevada code the plaintiff in an action for divorce must have resided six weeks in the state before suit is brought and that persons residing for the sole purpose of obtaining a divorce were not bona fide residents for purposes of subject matter jurisdiction.

The case of Howard v. Commissioner of Internal Revenue, 447 F.2d 152 (5th Cir. 1971) concluded that a bona fide compromise claim existed between an ex-wife and ex-husband concerning the validity of a divorce which had occurred approximately twenty-one years before.

2. The Defendants Had a Bona Fide Claim that Mr. Grimm's Trust Was Invalid. Mr. Holbrook testified that in his meeting with Mr. Salisbury they discussed the validity of the inter vivos trust. (TRB 877). He wrote to Mr. Roberts in a letter on April 6, 1978 (DX-308). In the letter he relates all of the various issues involved in the case including domicile, community property ramification, fraudulent concealment of the marriage, laches, the validity of the irrevocable trust and the validity of the transfers into the trust and the location for domicile purposes of the assets. Mr. Salisbury verified that Holbrook had claimed he would challenge the validity of the trust that had been created in Utah and the circumstances surrounding the transfer of assets. (TRB 118). A memo prepared in Salisbury's office

questions the validity of the trust. (DX-249).

As to whether such claims were reasonable see the discussion supra, Point II.

3. The Defendants Had a Bona Fide Claim That They Were Compulsory Heirs. Once again, Appellants have quoted the evidence most favorable to themselves and have ignored all the evidence which disputes their contention. During negotiations two facts were admitted by all parties: first, that Nita and Ethel were given an interest in the "Philippine" estate under the terms of the Philippine will based upon the law of legitime; second, the law of legitime established a percentage of distribution for all heirs who came under it. Mr. Holbrook advised both Mr. Salisbury and Mr. Roberts concerning the possibility of asserting a claim to the Philippine assets. (TRB 877, 885). In the letter to Mr. Roberts Mr. Holbrook states that he was awaiting information from Roberts' Philippine lawyers concerning the issue. (DX-308).

In the meantime Mr. Salisbury had discussed the inheritance problem with Maxine and Pete in his office in January and pursuant to that conversation initiated research in his office as to the legitime and domicile questions. (TRB 81-84). An eight-page legal memorandum discussed several issues including the validity of a trust connected with more than one jurisdiction as well as the legitime principle under Philippine law. Later, he sent a telegram to Mr. Angara who had been retained by Mrs. Grimm as her Philippine lawyer. (DX-253). The six-page telegram extensively discusses various questions raised concerning domicile, legitime law, validity of trust provisions, and the probate code. The telegram concluded with the following:

There may be some merit after considering all of the circumstances and discussing the matter with Mrs. Grimm to try to work out some settlement with the two daughters by

the prior marriage as to the percentage of the Philippine estate in which they will be entitled to participate, particularly if the assets in the trust could be left intact.

A telegram sent by Mr. Angara to Mr. Salisbury discusses the conflict of law rule in Utah and states that under the renvoi doctrine it is possible that the Philippine estate would be probated in accordance with the Philippine law (including legitime) even if inconsistent with Utah law. (DX-253; Findings of Fact No. 34).

Mr. Salisbury admitted that under the legitime provisions there were possibilities under various constructions that the defendants could inherit assets in the Philippines. A subsequent legal memorandum (DX-255) prepared by a lawyer in Mr. Salisbury's office concluded that if Mr. Grimm was determined to have been domiciled in the Philippines at the date of his death the Utah Probate Code would apply the Philippine law of descent and distribution to all of his personal property. (TRB 109). Mr. Holbrook testified in later conversations with Salisbury that Salisbury said it was in the best interests of the estate to settle it quickly and to have a single lawyer proceed with the probate and the treatment of the tax case and marshalling of the assets. (TRB 878). The above certainly indicates a "good faith" claim on the part of the defendants as to their ability to inherit under the Philippine law. Since most of the assets in the estate were of personal property including the Everett Steamship contract and the Globe stock, it was possible that almost all of the estate could wind up in the Philippines subject to the claims of Nita and Ethel under the Philippine will.

The question as to whether the legitime interest in the Philippine estate is "bona fide" does not need to be answered at this point since it is extremely complex and space limitation does not permit

the required discussion. It is useful, however, to note that the Philippine lawyer who testified on behalf of the plaintiffs, Emilio Benavince, was himself unable to venture an opinion as to whether Nita and Ethel would have an interest under the Philippine will.

The question was asked by Plaintiffs' counsel:

Q. Under the non-Philippine will, would Ethel Grimm Roberts and Juanita Grimm Morris be entitled to receive anything under that will?

A. I am sorry. You are referring to--

Q. I am referring to the non-Philippine will.

A. I think that might be an easier relating to the construction of this will. I am not prepared to give an opinion on it. (TRB 372).

In another discussion with defense counsel the witness was asked whether if a person was domiciled in one country but a citizen of another country would give rise to a question of conflict of laws. He replied:

The question is a question that would require qualification. And if I were to say yes, the answer would be wrong. If I were to say no, the answer would be as wrong. If you want a wrong answer, I will give it to you. (TRB 387).

Defendants would refer this Court to the cross-examination of Mr. Benavince by defense counsel as to the inter relationship between the legitimate Philippine law, domicile, and the doctrine of renvoi. (TRB 374-400). In addition, the arguments of defense counsel to the court concerning this issue also explains the position taken by Defendants as to why a valid claim was being asserted under the Philippine will. (TRB 771-79).

The preceding discussion concerning the law of legitimate illustrates why the "bona fide" dispute approach is not satisfactory. A complex and difficult matter of law was presented to the lower court to decide an issue which is in effect a hypothesis as to what would

have happened had the parties continued to litigate. The court is thus being forced to make a declaratory judgment in order to determine the merits of the settlement agreement. It is far better to only examine the first portion of the question which is whether at the time of the negotiations the parties believed a substantial question existed even if the claim is later shown to be invalid. In any event, however, under either standard there is clear evidence that the parties in this case were making good faith and bona fide claims based upon the advice of attorneys and other professionals.

The very fact that the attorneys themselves believed it to be in the best interests of all parties to settle the dispute obviously shows that they believe there were some merits in them thereby certainly verifying that consideration was being exchanged for the Family Settlement Agreement. Howard v. C.I.R., 447 F.2d 152 (5th Cir. 1971). In addition, the requirement of a "good faith controversy" required by Section 75-3-1102 was certainly met.

#### POINT VI

THE FINDINGS OF THE LOWER COURT COMPLIED WITH  
RULE 52 U.R.C.P. AND PROVIDE AN ADEQUATE BASIS  
FOR APPELLATE REVIEW.

The last point urged by the appellants is that the lower court findings contained omissions, half-truths and unsubstantiated conclusionary statements. (Appellants' Brief, pp. 64-73). Little comment is needed here. First, while there may be several "conclusionary findings" contained near the end of the document there are obviously numerous factual findings which provide the basis for such conclusions. Each of the findings has been documented by the defendants to refer to the transcript references and exhibit references supporting the statements.

Second, while it would no doubt be ideal for the state trial courts to be able to prepare their own findings of fact and conclusions of law economic reality prevents this from occurring since to do so a trial court would have to take many days away from the bench to prepare findings in this type of complex and lengthy litigation. There is no doubt, however, that the lower court was fully aware of all of the arguments being made throughout the proceedings by counsel and was carefully reviewing the legal arguments each night. See e.g., TRB 809-824; 833-34; 844-52; 856; 1119-26. This case was not decided in a vacuum and the lower court knew exactly what the issues were at the time the decision was made.

This Court has held that although findings should be made on all material subordinate and ultimate factual issues, it is not necessary that the court resolve all conflicting evidentiary issues and the court is not required to negate allegations in its findings of fact. Sorenson v. Beers, 614 P.2d 159 (Utah 1980). The majority of Plaintiffs argument is their disagreement with the evidence as viewed by the court and by the defendants. Obviously, with a record of this size numerous additional items could be quoted and other items could be omitted depending upon the ultimate conclusion to be reached. Here, the conclusion was reached contrary to the Plaintiffs' position as was the prerogative of the court. Plaintiffs cannot now cite those references favorable to themselves and claim error as long as there is substantial evidence to support the court's findings. Moreover, these findings should not be disturbed on appeal except to prevent manifest injustice. Penrose v. Penrose, 656 P.2d 1017 (Utah 1982); Jackson v. Jackson, 617 P.2d 338 (Utah 1980).



## CROSS APPEAL

THE LOWER COURT ERRED IN FAILING TO AWARD DEFENDANTS  
THE REASONABLE ATTORNEYS' FEES INCURRED TO ENFORCE  
THE FAMILY SETTLEMENT AGREEMENT.

Defendants have cross appealed from the order of the lower court entered April 29, 1986 denying Defendants' claim for attorneys' fees. (CR 1271). The Family Settlement Agreement provides:

In the event any legal action is required to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover all costs of suit, including reasonable attorneys' fees. (Para. 14C, PX 58).

This Court has held that attorneys' fees should be awarded for the "successful vindication of contractual rights within the terms of [the] agreement." Trayner v. Cushing, 688 P.2d 856, 858 (Utah 1984). As such, therefore, Defendants were entitled to be awarded the reasonable attorneys' fees incurred in the enforcement of the Family Settlement Agreement.

The decision of the lower court as to attorneys' fees should be reversed.

## CONCLUSION

The lower court was literally inundated with hundreds of exhibits, many volumes of pleadings and many days of testimony. The case is replete with numerous legal issues some of international concern. The lower court after listening to the evidence concluded that the plaintiffs were bound by the agreement they had voluntarily negotiated over a two to three month period with the assistance of numerous lawyers and other advisors.

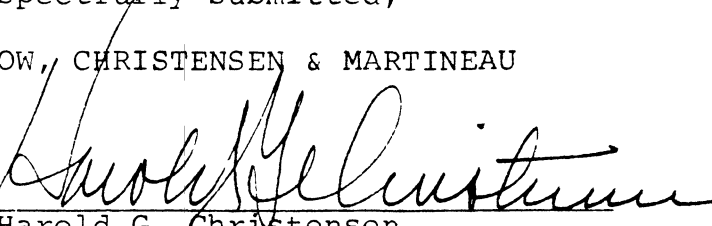
The decision of the lower court was sound and is supportable as has been previously stated through the various sections of this Brief. The decision enforcing the Family Settlement Agreement

should be affirmed. The lower court erred, however, in failing to award attorneys' fees to the defendants who prevailed in their claim under the Family Settlement Agreement and as to that order it should be reversed.


Respectfully submitted,

SNOW, CHRISTENSEN & MARTINEAU

By

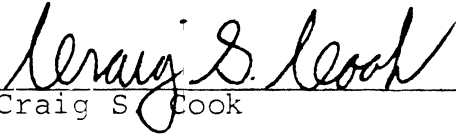
  
Harold G. Christensen

By

  
R. Brent Stephens

and

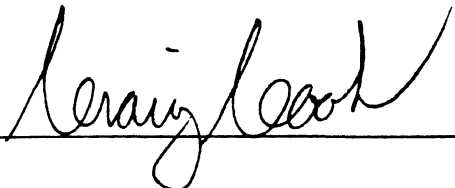
By

  
Craig S. Cook

Attorneys for Defendants-Respondents

#### CERTIFICATE OF HAND DELIVERY AND MAILING

The undersigned hereby certifies that he delivered four copies of the Brief of Respondents to Daniel Berman, 50 South Main Street, Suite 1250, Salt Lake City, Utah 84111 and mailed four copies to David Eckersley, 419 Boston Building, Salt Lake City, Utah 84111 Postage prepaid on this 16th Day of March, 1987.

  
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## ADDENDUM

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## APPLICABLE STATUTES

75-3-912. Private agreements among successors to decedent binding on personal representative.--Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement, subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estate are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing contained in this section relieves trustees of any duties owed to beneficiaries of trusts.

75-3-1101. Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons.--A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any probated will, the rights or interests in the estate of the decedent, any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto, including those unborn, unascertained, or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

75-3-1102. Procedure for securing court approval of compromise.--

(1) The procedure for securing court approval of a compromise is as follows:

(a) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

(b) Any interested person, including the personal representative or a truee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee or every affected testamentary trust, and other fiduciaries and representatives.

(c) After notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest

or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, may make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

*Etzel Roberts*

November 17, 1977

Dear Maxine,

I do not care to cause you additional problems at this time, but Nita and I decided while she was here that we would wait for you to approach us as you indicated you would when you asked us to trust you regarding our interests in our father's estate.

However, it is obvious that you do not intend to include us in your arrangements in as much as you have not mentioned the subject since Nita left, and that you continue to conceal from us your intentions and plans regarding his affairs, particularly with regard to your hopefully obtaining a Will from my father in the future.

It is a shock to Nita and me to learn about your Trust which I understand deliberately eliminates her completely and includes me for US\$10,000. Is this a fair and proper share of my father's estate?

In order to evaluate this situation prior to taking legal action I request that you furnish me with a copy of this Trust. Also I want a list of all assets wherever, and to the best of your knowledge a list of all known outstanding obligations owing by his estate. I would like to have this by Monday at the latest.

Maxine, I hope that we will be able to work out something that will not involve court procedure. We both understand what this will mean, but I can see that you are giving us no other option.

Sincerely,



cc: C. Parsons

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~~CONFIDENTIAL~~

Deposition Ex. No.	4
Witness	Etzel Roberts
Date	10-6-81
Norman Shindler Ernest S. Thacker	



Text of letter from Linda Grimm to Ethel Roberts:

December 2, 1977  
From Hong Kong to San Francisco  
Via PAA

Dear Ethel,

I wanted to write and thank you for all the help you gave Mom and Dad while Dad was in the hospital, especially before I came. I had intended to write you from Utah, but before I got a chance to I was in Manila. I also want to thank you for inviting me over for lunch. I really enjoyed it- and the talk we had.

I asked Mom why she told you she knew nothing about a 1959 Will after I had already told you I knew Pete had found one. She actually didn't remember anything about it. So, I don't want you to think she didn't want you to know about it. I think all the pressure was building up. I will have Pete send you what info we find as soon as we get things straightened around.

We're now on our way to San Francisco. It's an 11 hr. flight from Hong Kong.

Thanks again for your help. I'll write you again from Utah.

Love, SGD Linda

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light =

Date: Oct 2, 1972

From: Hong Kong

To: Mrs. F. H. H. H.

PAN AM.

Dear Dad,

I wanted to write and thank you for  
the trip you and Mom and kids while  
I was in the hospital. I'm sorry I  
couldn't have been there to see you and  
the kids. I'll have to thank you for  
meeting me and for making it so easy  
to get it - and the talk at the end.

I asked Mom what she told you she  
told nothing about a lot of things after I  
had already told you I had - she had found  
out she actually didn't remember anything  
about it. So, I don't want you to thank her  
about it and you to know about it. I think  
all the pressure she's building up. I will  
tell you and you what she has said to  
see as it gets things straightened around.

I'll be on my way to San Francisco  
it's a bit of flight from Hong Kong.

Thank you for your help. I'll write  
you again from there.

Mrs.  
F. H. H.

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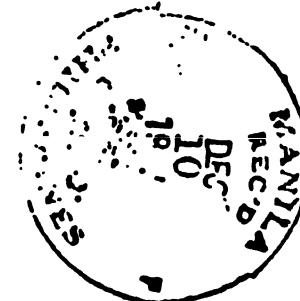
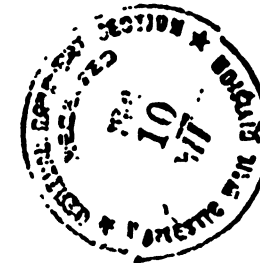
Maxine Grimm  
Box 369  
Rock, Utah 84074



Dear Family of Roberts,

Linda and I arrived safely on Friday and spent the next day selecting a very nice coffin. I wish they had had one like that in Manila. Earl and LeVar really made Grandpa look very nice. He was dressed in his Temple clothing and looked very much at peace--so much better than in Manila. We had the services on Monday and people came from far off. The Church was full--the same as at Manila and there were very beautiful flowers. I brought some to the house so they would not freeze and they are still very fresh. The orchids that I brought--the florist made a beautiful spray for the casket and a basket which we put under the picture that Jess had made--a very nice picture--I will bring one for you if you like. Also we taped the services and I will bring it so you can hear it. Linda talked as in Manila, Pete and his friend sang--I played for them. Everyone said it was the nicest funeral they had ever attended. Gordon Hinckley, who is one of the Twelve Apostles, spoke. Pres. Wilkinson, who was Pres. of the BYU is going to print the program up for us. I will bring it also. Pres. Oakes of the BYU came to the funeral as did Billy Casper and many very prominent people from around here. Nita and Bob and Mike and Janet and Kris came. I was so happy that they did. Nita and Kris stayed over night--I had hoped that they could stay longer. Kris is radiant. I was so pleased to see her that way. We also found Carol in the S.F. airport and had a good visit with her. She looked great--radiant like Kris, so I guess they are both very happy and that is good.. We were so lucky to see Carol. Vi Hader came over from Colorado. There have been some very nice articles written--Linda is going to make a book with all of them plus pictures. I will enclose one that was written. I might mention that the orchids are still fresh--I took some to my niece who is in the hospital and a friend who is dying of cancer.

I am sending this with my cousin who is Father of Valerie Whitehouse--you could send a letter back with them. I would think that the post office is very confused at this time.



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I am sorry that we are not there for Christmas. It had looked as if I might all have a very happy Christmas together--one never knows what is going to happen these days.

Pete and I plan to come to Manila after the first of the year. When do you intend to leave? We would like to get there before that time if possible.

Linda has gone back to work. They were certainly happy to have her return. Pete is taking final exams. I don't know how he is going to come out, for he has been out of school for at least 2 weeks. He won't be able to graduate as he has one more quarter to go.

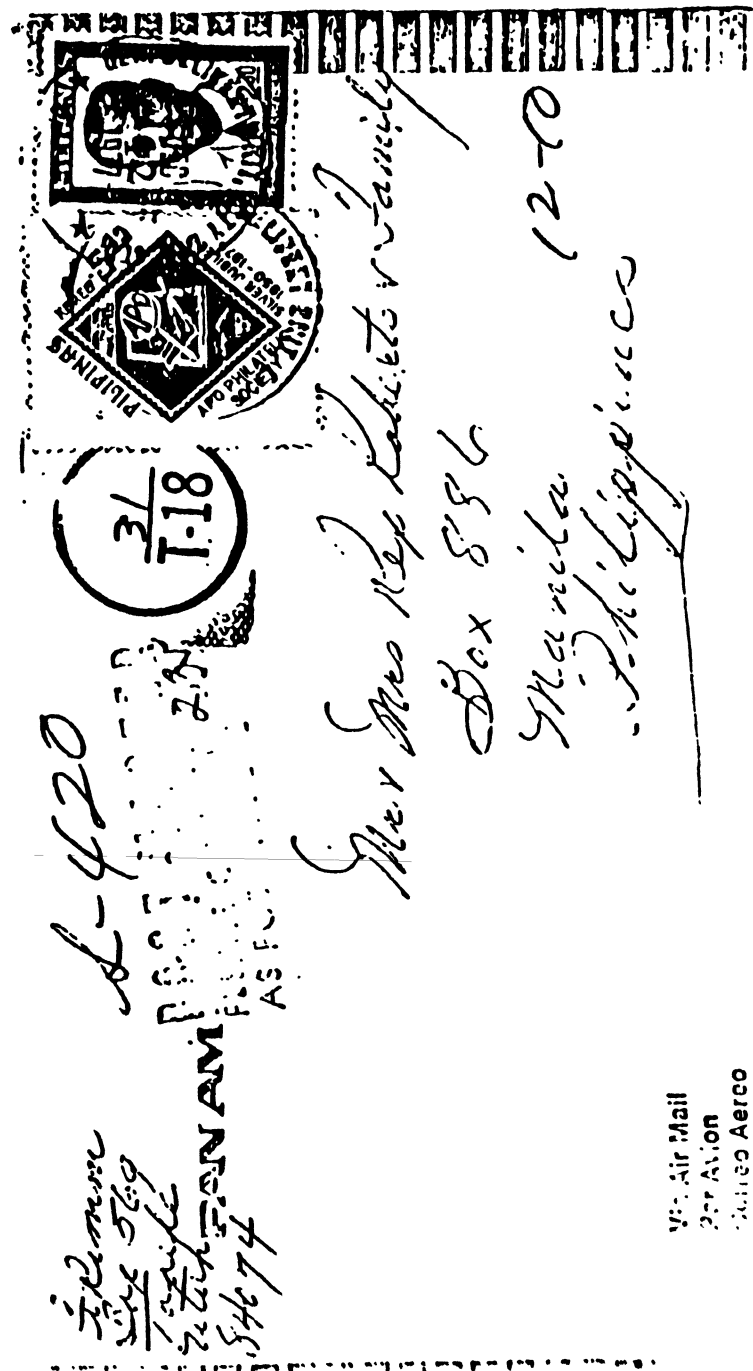
We hope that you will all have the Best Christmas that is possible. We are hoping we might have a white Christmas, but so far it is the weather is sunny and clear. Today it was 60, very mild for this time of year.

Marie, don't forget to send me those measurements.

Thank you so much for taking care of everything. I really appreciate your help.

Love to All,

*Marjorie*



December 14, 1977

Dear Maxine,

I want to thank you and Linda for your nice letters to us all. I am sure you have been very busy with the funeral and getting settled before Christmas.

I have been trying to help Pressy get thank you notes out to people who helped. Letters of condolence are still coming in. We will save them for you so you will know. Pressy also put a note of thanks in the newspaper which is the customary thing to do here. I think all is in order.

Lily called up yesterday and said there were men diving under the Lanikai so Rex went over to chase them off. How could anyone see anything in that water, much less live to tell of it? Rex said everything else is c.k.

The girls are getting very excited about Christmas. Joanne is leaving tomorrow with the baby so our house will be much quieter without Paul. Mrs. Perrine sends us a big Christmas tree each year from Mindanao. We are very lucky since it is illegal to cut them on Luzon.

About our problem, I am still very much concerned. I am waiting to hear how you plan to probate my father's estate, and I hope you are sending Schedule A as you promised. It will be better for us all to settle this situation amicably.

I hope you, Linda and Pete have as nice a Christmas as you can under the circumstances. I know you will miss my father very much as we shall too. It still does not seem possible he is gone.

With love from us all,

000006

December 15, 1977

Dear Maxine,

It seems hard for me to believe that it has been ten days since I was with you in Utah. The empty feeling of losing Daddy is so prevalent... I cannot believe that I can no longer tell him in person of the great love I have always had for him.

I want you to know that I thought the services in Tooele were lovely. The tremendous tributes paid to Daddy by your friends there were over-whelming... the graciousness and thoughtful expressions of sympathy extended to me by so many of Daddy's friends were so appreciated not only by me, but also by Bob, Mike and Janet. We are all so appreciative of your generous offer to bring us all to Tooele.

My flight back to San Jose was a good one (and a funny one). In order to get a seat by myself I practically sat in the kitchen - and they were training new personnell. It was almost as good as a circus. The flight that Kris chose to return to SF was delayed for over an hour...her poor Mike, probably thought he had lost his bride forever!

I went up and saw Kris in her new apt. a few days after my return. I am sure that after she gets it fixed up that it will be a decorator showpiece. She has the knack of taking an old crate and making it look like something out of the finest furniture shop. Their apt. reminds me of Nana's house...small rooms, high ceilings, etc.

Remembering all the promises that we made to each other when I was leaving Tooele, I am trying to live up to mine! I wrote notes of thanks to both Norma and LaVar... and I thank again whoever it was that returned LaVar's jeep to him. I hope that Pete has time to make the cassette recording of the service for me. Or, if you would prefer, would you send me a copy of Bro. Hinkley's speech. It was so nice. I would like to hear Linda again... she was so wonderful, and what a beautiful talent she has to get up and speak so well in front of a large group of people - especially at a time like that. I hope Maxine that you will send me a copy of Daddy's will very soon. You told me that Ethel and I were mentioned in it and it is very important to me to know details at this time. Bob and I are in the midst of formulating new wills and trusts for ourselves and our lawyer asked me the other day if I had any interests outside of this country, and as I started to think over the matter I said quite possibly I would. Since we began this project last September we are most anxious to have it completed. Please let me know if there is anything I can do to help.

I have tried twice in person to get ahold of Elsa, and will continue. Although she told me to call her, I question if she hears the telephone for I have called early in the day and late too. I understand that she goes "out to lunch downtown" everyday. Apparently this is not done at a conventional hour because the day that Carol and I were in SF she was leaving for downtown and it was 3:00 in the afternoon. This is my last week of work before having two weeks off for Christmas vacation and I plan to go to SF next Tuesday, and will try again. If I do not catch

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-2-

her in person I shall leave a large note taped to her door. Maybe I shall be lucky and get a response!!!

I trust that Pete is back at school taking his finals and Linda back at the gym in Salt Lake. I enjoyed seeing them both so very much... I wish that it had all happened during a happier time, but the short time I had with each of them was delightful.

Did I tell you that our cabin had been broken into. Kris and Mike, when they went there for their honeymoon, were greeted with no power and a mess left by our uninvited visitors. Whoever the person(s) were, went in and got very sick during their stay....consequently, Kris and Mike brought me LOADS of washing to do. They of course didn't know all that we had in the cabin so couldn't really tell if anything had been stolen. Bob and I went up over the weekend to finish cleaning up, repair locks, nail things closed and take inventory. The only real theft was the taking of all my first aid equipment, and because of the location of the place I had everything for bee-stings, to slings, etc....they even took my treasured bottle of Ute-sol! They completely went through every drawer leaving them topsy-turvy, drank all our soft drinks, and shot 5 bullet holes in the ceiling (which of course went through the roof).... Needless to say Robert is not too happy about that!!! This is the first time I haven't been too mad about the drought - I don't want rain in my house! - and, it's hard to repair a metal roof.

We did bring our usual load of Christmas trees home for ourselves, the stores, the mothers, and a few special friends. I put up ours and it is pretty. Tonight we are having Kris and Mike for dinner, for I guess what you would call an early Christmas, since they will be heading back to his folks place.

I must run for now... just wanted you to know that I am thinking of you and hope that things are going a bit more smoothly. We have all been over a pretty rough road lately... I am sure though that love and friends can help make it smoother. Thank you in advance for sending me the will and again thank you for your generosity in bringing us all to Utah. The children are most grateful to have been able to have been there.

Please tell your caretaker's wife (Lynn?) that I delivered her gifts to her parents. They were pleased to hear from her.

I am enclosing this letter in a card done by one of my former students.. needless to say, I am quite proud of her, and delighted to know that maybe I was a small part of her success... I must admit however that she was born with a tremendous talent!

Take good care of yourself Maxine, and do let me hear from you soon.

Much love from all of us,



PS --I forgot to mention my new wooden tea set...I have a perfect place to display it in our new kitchen and it looks great! Thanks so much.... The tea set is the first pieces of the inlaid wooden ware that I have, so I am truly delighted.

000008

December 21, 1977

Dear Maxine,

Just a note to report on my trip to San Francisco yesterday....

I finally got to see Elsa. I am convinced that she has been at home the other times that I have tried, but she simply can't hear. (While I was there someone came to the door and cranked that bell.... it's so loud I thought the whole house was going to come down around us, and she didn't even hear it!!!!). She won't have an extension put on her telephone either, so that is still out in the front hall and she keeps the front part of the house closed off, so there is little chance of getting ahold of her. Finally the neighbors saw me out in front of her house and came out to ask me what I wanted. After telling them who I was her one neighbor told me that she had a key to the house and would let me in. That is how I finally got to her. (Needless to say, I have given my name and address to that neighbor and have asked that they call me if they ever suspect that anything is wrong with her.) She was delighted to see me and we had a nice visit. I took her a poinsetta and she was delighted to have "a Christmas thing"..... only 3 cards sat on top of the table.... a very sad setting - the poinsetta helped!

Regarding the house: Elsa told me that C & H holds all of her papers (they apparently take very good care of their employees)... She told me that Nana had willed the house to her and that she in turn has willed it to Freda, and that Frank and Marylou will get it. She says it is in her name, and that she gets the tax bill each year in her name, and she pays the taxes on it!!! I didn't feel that I could question her word.

Regarding the help that Daddy was <sup>giving</sup> ~~doing~~ her, she also in conversation told me that she plans to return to Spain at least once more - probably leaving after the first of the year, and she went on to tell me that she had a good income with plenty left over for travel, etc.

I also went to see Fred yesterday. I always take him a poinsetta each year.... he's always pleased and looks forward to it. He was just getting ready to be picked up by his lady friend who was taking him to her house for dinner. I stayed long enough to meet her, and traded names and addresses with her too. (The lady has an incredible resemblance to Alice - short, short cropped white hair, pleasant face and engaging smile.) I would guess she is in her early 60's - a very active real estate saleswoman. While she was there Fred told me that he guessed he should give me a key to his house so I could get in in case anything happened to him..... she said, "You should give me one too!"... Fred said, "If I give you one, you'll come in and take my chair!" - At that point Fred went in his room for a minute and she turned to me and said, "You know honey, if I just get that chair I'll be happy!" She said this as she was patting my arm - I didn't come

000009



-2-

I really felt that I had a good visit with both of them and am delighted to have some insight on how to keep in touch with them. I think that we are most fortunate to have them both in good health and with no apparent financial needs.

I trust you received my letter of December 15th. I am watching the mail box closely each day awaiting your answer!

I assume that Kristine is back with Mike's family by now. She was to leave last Monday I believe. I received a Christmas card from Mike's mother in which she told me she was giving a party to introduce Kris to their friends - she is having 70 people in - poor Kris - you know how she hates crowds!!!! Mike and Kris were down for dinner the other night.... it was an "early Christmas" for them. Then last Sunday we entertained Bob's employees along with their spouses, girl/boy friends, etc. We had 45 here in our new "small" house..... it was cozy! Bob doesnot believe in "store parties" at the store, so we do it at the house. I think he is right after reading for years about the harm that comes from office parties - but it is a chore! Thank goodness Jannie was here to help me... between Jannie and my microwave all went well, but I'm exhausted.

We are planning a very quiet Christmas - just the grandmothers and Bob's sister will be here for dinner on Christmas Day. I still have shopping to do, and am trying to send out a few Christmas cards to close friends. I'm keeping busy! and, looking forward to doing very little the week after Christmas!!!!

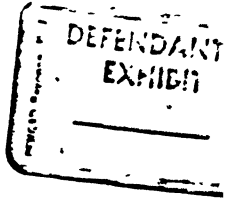
Maxine, please keep in touch and let me hear from you soon. Also, please let me know about Daddy's papers that I asked you for. Thanks again, and as I said in my last letter, if there is anything I can do to help just let me know.

Regards to Pete and Linda, and much love to you all,

000010

Ethel Roberts

Manila  
January 18, 1978



Dear Maxine,

We have been waiting for you. I appreciate your nice letters telling me about the services for Daddy. I am sure he would have been pleased, & I am comforted to know he is finally at peace after his ordeal. We miss him very much.

I went to consult some lawyers as you advised and they told me it would be best for all of us to have someone in control here. Accordingly,

I have been appointed Special Administrator in the Philippines. All of the heirs are represented.

It has been difficult for me as

000011

Ethel Roberts

I have had no answers from you to my queries. The hearing will be March 13. I hope you will be able to be here before.

Rex has been working with Paul to try to pay the bills and to try keep the pig farm from sinking. Rex will be in the States by the end of this month & will call you then.

I truly hope Maxine, and Pete, and Linda, that we can come up with a fair & equitable solution to satisfy all of us. I am saddened to think that you & never considered us as being equally Daddy's children. I never thought of it any other way. With love from Ethel

000012

November 10, 1978

Dear Maxine,

I was dismayed when you walked out on us during the meeting yesterday morning. I can't understand what you are trying to accomplish and whether you are truly sincere or not when you say you are completing the accounting and will have it finished by the time Salisbury gets here. And I can't understand why any mention of accounting should upset you so much and why you should take it so personally when you are in fact dealing solely with Estate funds.

As you and Pete are the only ones with access to Estate funds it is no more than natural that Nita and I would want to know what is being disbursed and for what. We really have no idea of what Santillan is doing either, aside from your personal records. Further I think you are making a mistake trying to use Santamaria stockbrokers as a bank. Estate funds must and should be very well accounted for.

Pete told us you have not been feeling well and I hope you are better today. Is there anything I can do? Perhaps you and Pete are trying to do too much yourselves when you should be having much more professional help.

Sincerely,

000013

Text of letter from Maxine Grimm to Ethel Roberts, handwritten while on Pan American Airways, December 2, 1977:

Dearest Ethel -

Please forgive me for blowing up - I was so ashamed. I hadn't slept nor had I eaten and I was just not prepared to confront you. I am especially sorry about what I said about Linda being asked to lunch. I didn't really believe that - Linda and I changed our plans so she could go - I was especially happy for her to do so - maybe I had wished I had been asked also.

I'm also sorry about all the mixup on the Will bit. I don't really think I knew what I was saying. I'm still confused over it so I shall wait until I get to Utah and write you from there.

Linda was sick with a high fever and we slept little - had to find sweaters for warmth and now we are on a 747 straight for S.F. - 11½ hours. It is full as JAL was on strike and they put the passengers on this flight.

I still do not have things in their proper perspective - it will take some time, but I especially hope that we can keep the girls from losing faith in their Grandfather. They had enough qualms over their father - I would like to spare them any more.

I just hope we can be the best of friends. I plan to spend more time in Manila and I really need your friendship and help.

If I have not returned before you leave, let us know your plans. Perhaps you could come to Utah?

I hope that from now on I won't have to say anything about religion. Had I been doing instead of talking I would have been better off. It is good that we can always change.

I never realized until yesterday the impact of your feeling about disinheritance. I wish now I had insisted on knowing more. You have already learned this lesson. If you recall, you were the one to warn me.

I was so sure your Daddy would live to straighten out all the problems. Perhaps he died so we could become big enough to solve them ourselves. I am sure we can.

I left wheat, wheat germ and flour in the lower refrigerator. Would you take out what you want. As I mentioned there will always be plenty of duck eggs.

Thanks Ethel - I'll write after the funeral. I'll tape it so you may hear it sometime.

Thanks so much for your support during those trying days.

Love,

(Signed) Maxine

000014

Dearest Ethel —

Date:

From:

To

Please forgive me for blowing up — I was so ashamed — I hadn't slept nor had I eaten & I was not prepared to confront you. I am especially sorry about what I said about Linda being asked to lunch. I didn't really believe that — Linda & I changed our plans & she could go — I was especially happy for her to do so — maybe I had wished I had been asked too.

PAN AM.

I'm also sorry about all the mixup up on the will bit. I don't ~~really think~~ I knew what I was saying. I'm still confused over it so I shall wait until I get to Etah & write you from there.

Linda was sick with a high fever & she's little — had to find sweaters for her & I had to run at 7:47. I was full of ~~things~~ on the flight. I still do not have things in their proper perspective — it will take some time, but I especially hope that we can keep the girls from losing faith in their Grandfather. They had enough qualms over their father — I would like to spare them any more.

000015

to help you to spread your wings  
in the world & really need your  
friendship & help.

I have not returned home  
yet. Leave it as it is. I will  
stay. — Perhaps you could come  
to visit?

I hope that from now on I won't  
have to say anything about religion.  
Had I been doing instead of talking  
I would have been better off. It's  
good that we can always change.

I never realized until yesterday  
the impact of your feeling about  
discrimination. I thought your  
concern was over possessions only.  
I'm sure your father had no feeling  
of discrimination. I wish now I had  
insisted on knowing more. You  
have already helped this season.  
If you recall, you were the one to  
warn me.

I was so sure your Daddy would  
be able to straighten out all the problems.  
Perhaps he felt so we could become  
big enough to solve them ourselves.  
I'm sure we can.

I left what, what germ & show up  
the bookkeeping. Would you take what  
you want as I mentioned, there will  
always be plenty of duck eggs.

Thanks Ethel — I'll write after  
the funeral. I'll hope it, so you may  
have it in return.

Thanks to you for the book. I'm  
sure it will help you. I'm  
sure it will.

May 4, 1978

Mr. Jose C. Florento  
Price Waterhouse & Co.  
8th Floor, Rufino Building  
Ayala Avenue, Makati  
Metro Manila

Dear Mr. Florento,

With reference to our meeting this morning, May 4, it is our understanding that you and your firm would be willing to handle the accounting work that we feel we need in order to settle the estate in the Philippines of the late Edward Miller Grimm, and that you will work with our attorneys in the Philippines and whomever we may designate in the United States or elsewhere to coordinate on Philippine related matters.

We understand that your fees will run from P20 to P250. per hour, depending on the personnel involved.

We would appreciate your billing us on a monthly basis for all work performed up to date, and we hope that we will be able to pay you as billed.

If this does not conform with your understanding please let us know, otherwise we will consider that we will have your complete cooperation and assistance in this matter.

If for any reason either party should decide to terminate this agreement 30 days notice will be required.

Very truly yours,

*Maxine Tate Grimm*  
Maxine Tate Grimm

*Ethel G. Roberts*  
Ethel Grimm Roberts

RECEIVED

MAY - 8 1978  
JOAQUIN CUNANAN & CO.

Conforme:

*Jose C. Florento*  
Jose C. Florento

000017



Saturday, September 29

Dear Maxine,

I have been trying to reach you for several days and have been unable to do so.

I am very concerned about the closure of the Santamaria Brokerage Office which as you know occurred Monday of this week. I can only assume from the fact that you have not contacted me that all of the Estate's stocks and/or deposits are intact, or I would have heard from you.

However, I must insist that you furnish me immediately, today, a complete accounting of all of the Philippine stock assets which have been in your care and custody since my father's death. The accounting should include all dividends, cash and stock.

Also I want to see the stock certificates that you are holding.

And please as I have requested before, I must again ask you for the accounting files which I turned over to Pete and was assured would be returned to me on request. I have had your continual promise but no files.

I am still waiting for you to come by to sign the BIR paper so I can return it to the BIR for their signature and acknowledgement of taxes paid. Attorney Salisbury needs this paper for the IRS in the United States.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ethel".

000018

October 1, 1979

Dear Ethel,

I just received your letter of September 29th.

As to the BIR papers which require my signature, I shall appreciate it if you can send them to me. I will return them right away.

As I understand it we have already paid the BIR about ₱1.9 million, aside from the representation expenses in the sum of ₱500T.

However, I received today a notice of assessment dated September 7, 1979 for ₱1,568,029.64, inquiring if the estate has already paid said sum of money. I then need the BIR receipts so that I may fill out the BIR form.

As to the other things stated in your letter, we are still working on them. Since we shall soon have the actual partition, all those other matters mentioned by you shall be taken care of.

To complete my records, I also need copies of your check and that issued by Atty. W. Limqueco, which checks were both paid to the BIR.

Sincerely,

A handwritten signature in cursive script, appearing to read "Napine".

000019

western union

Telegram

SLB008(0957)(1)0900226048)PD 02/17/78 0957

ICS IPMIHA-IISS -

IISS FM WUI 17 0957

PMS SALT LAKE CITY UT

UWB9302 MNW398 EHA119

UWNX CV PNHA 344

MANILA VIA ETPI MNL 344 17 142 PART1 PAGE1/64

DAVID E. SALISBURY

VAN COTT, BAGLEY, CORNWALL AND MCCARTHY

141 EAST FIRST SOUTH

SALT LAKE CITY, UTAH 84111

MRS MAXINE TATE GRIMM HAS ENGAGED OUR SERVICES AS  
COUNSEL TO HANDLE PHILIPPINE END IN THE SETTLEMENT OF  
ESTATE OF HER LATE HUSBAND. CERTAIN QUESTIONS NEED TO  
BE RESOLVED IN ORDER TO DETERMINE HOW THE INTERESTS OF  
THE ESTATE WILL BE BEST AND MOST ECONOMICALLY SERVED

2996

BF-1201 (R6-60)

western union

Telegram

COL 141 84111

PAGE2/70

(AA) THE DETERMINATION OF THE DOMICILE OF THE DECEDENT  
IS THE CRUCIAL THRESHOLD QUESTION UNDER PHILIPPINE  
LAW, THE GROSS ESTATE OF A DECEDENT DOMICILED IN THE  
PHILIPPINES WILL INCLUDE ALL PROPERTY, REAL OR PERSONAL,  
TANGIBLE OR INTANGIBLE, WHEREVER SITUATED, EXCEPT REAL  
PROPERTY SITUATED OUTSIDE THE PHILIPPINES, IN THE CASE OF  
ONE NOT DOMICILED IN THE COUNTRY, INTANGIBLE PROPERTY  
IS INCLUDED IN THE GROSS ESTATE ONLY IF SITUATED IN THE PHILIPPINES

COL (AA)

PAGE3/65

CONSIDERING THAT THE LATE MR. GRIMM WAS A RESIDENT OF  
THE PHILIPPINES FOR MORE THAN FOUR DECADES AND THAT HE

2997

BF-1201 (R6-60)



Telegram

HELD A PHILIPPINE PERMANENT RESIDENT VISA AT THE TIME OF HIS DEATH, PHILIPPINE LAW WOULD CONSIDER HIM DOMICILED IN THE COUNTRY. FOR ESTATE TAX PURPOSES, THE POSSESSION OF A PERMANENT RESIDENT VISA IS CONSIDERED CONCLUSIVE IN ESTABLISHING THE DOMICILE OF THE DECEDENT IN THE PHILIPPINES  
COL GRIMM

PAGE 4/93

(BB) THE FOLLOWING ARE THE PRINCIPAL CONSEQUENCES UNDER PHILIPPINE LAW FLOWING FROM THE FACT THAT THE DECEDENT WAS DOMICILED IN THE PHILIPPINES AT THE TIME OF HIS DEATH:  
(1) HIS WILL MAY BE ADMITTED TO PROGATE IN THE PHILIPPINES  
(2) HIS GROSS ESTATE WILL INCLUDE (I) REAL PROPERTY LOCATED IN THE PHILIPPINES; (III) INTANGIBLE PERSONAL PROPERTY WHEREVER SITUATED.

2998

DP-1201 (PB-68)



Telegram

(3) THE ESTATE TAX IS 60% ON A NET ESTATE OF PESOS 3,000,000 (APPROXIMATELY USDLRS 407,000.00 BASED ON THE CURRENT EXCHANGE RATE OF USDLRS 1.00 : PESOS 7.37) OR ABOVE.

COL (BB) (1) (2) (I) (II)

(III) (3) 60% PESOS 3,000,000 (USDLRS 407,000.00 USDLRS 1.00 : PESOS 7.37)

PAGE 5/52

PHILIPPINE LAW ONLY IMPOSES AN ESTATE TAX; INHERITANCE TAXES WERE ELIMINATED IN A RECENT STATUTE (BUT THE RATES OF THE ESTATE TAX WERE APPRECIABLY INCREASED).

(CC) UPON THE OTHER HAND, ASSUMING THAT THE LATE MR. GRIMM MIGHT BE HELD TO BE DOMICILED IN SALT LAKE CITY, THE FOLLOWING ARE THE MAJOR CONSEQUENCES:

2999

COL ( ) (CC) :

DP-1201 (PB-68)

000021



Telegram

SLB009(1005)(13100218G048)PD 02/17/78 1007

ICS IPMIIHA-IISS ~

IISS FM WUI 17 1007

PMS SALT LAKE CITY UT

UWA7037 MNW399 EHA119

UWNX CV PNMA 365

MANILA (VIA ETPI/MNL) 1678/1999 17 2142 PAGE6 PART2

DAVID E. SALISBURY

VAN COTT, BAGLEY, CORNWALL AND MCCARTHY

141 EAST FIRST SOUTH

SALT LAKE CITY, UTAH 84111

(1) INTANGIBLE PROPERTY WILL BE INCLUDED IN THE GROSS ESTATE ONLY IF LOCATED IN THE PHILIPPINES.

(2) NO ESTATE TAX SHALL BE COLLECTED IN RESPECT OF INTANGIBLE PERSONAL PROPERTY OF THE DECEDENT IF (A)

US FEDERAL LAW OR UTAH LAW DOES NOT IMPOSE A TRANSFER TAX

3000

BP-1201 (78-00)



Telegram

OR DEATH TAX OF ANY CHARACTER IN RESPECT OF INTANGIBLE PERSONAL PROPERTY OF PHILIPPINE CITIZENS (NOT) RESIDING IN UTAH, OR COL (1) (2) (A)

PAGE7/51/50

(B) IF US FEDERAL LAW OR UTAH LAW ALLOWS A SIMILAR EXEMPTION FROM TRANSFER TAXES OR DEATH TAXES IN RESPECT OF INTANGIBLE PERSONAL PROPERTY OF PHILIPPINE CITIZENS (NOT) RESIDING IN UTAH. WITH PARTICULAR REFERENCE TO SHARES OF STOCK AND BONDS, THEY ARE INCLUDED IN THE GROSS ESTATE OF A NON-RESIDENT COL (B)

PAGE8/69/64

DECEDENT REGARDLESS OF LOCATION AT THE TIME OF DEATH IF ISSUED BY ANY ENTITY ORGANIZED OR CONSTITUTED IN THE PHILIPPINES IN ACCORDANCE WITH ITS LAWS, OR IF ISSUED BY ANY FOREIGN

3001

BP-1201 (78-00)

000022



CORPORATION EIGHTY-FIVE PER CENTUM OF THE BUSINESS OF WHICH IS LOCATED IN THE PHILIPPINES, OR IF SUCH SHARES OR BONDS ISSUED BY A FOREIGN CORPORATION HAVE ACQUIRED A BUSINESS SITUS IN THE PHILIPPINES.

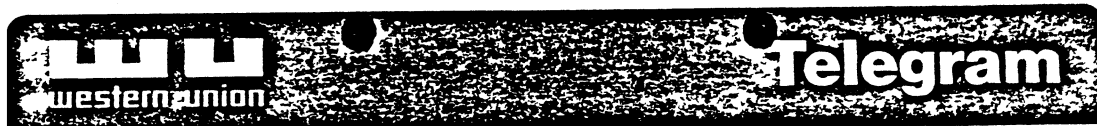
PAGE9/106/102

(CC) QUERY: IS THERE ANY ADVANTAGE UNDER UTAH LAW FOR PURPOSES OF THE ESTATE AND INHERITANCE TAXES IF THE LATE MR. GRIMM WOULD BE CONSIDERED DOMICILED IN UTAH AT THE TIME OF HIS DEATH?

(DD) THE PROBATE OF THE WILL EXECUTED BY THE LATE MR. GRIMM PERTAINING TO HIS PHILIPPINE PROPERTIES (PHILIPPINE WILL, FOR SHORT) DOES NOT NECESSARILY HAVE TO BE DONE IN THE PHILIPPINES. THE PHILIPPINE WILL MAY BE PROBATED ELSEWHERE. IF THE WILL IS PROBATED ABROAD, PHILIPPINE LAW

3003

WF-1201 (RS-60)



PROVIDES AN EXPEDITIOUS PROCEDURE FOR THE ALLOWANCE OF A WILL ALREADY PROBATED OUTSIDE THE COUNTRY AND THE ADMINISTRATION OF THE ESTATE THEREUNDER.

COL (CC) (DD)

PAGE10/72/65

CERTAIN CIRCUMSTANCES, HOWEVER, COMPEL IN OUR OPINION PROBATE OF THE PHILIPPINE WILL IN THE PHILIPPINES, TO WIT:  
(1) THE APPARENT INTENT OF THE DECEDENT IN THE PHILIPPINE WILL WHICH CONTEMPLATES PROBATE THEREOF IN THE PHILIPPINES AS MAY BE GLEANED FROM THE PROVISIONS OF THE ELEVENTH PARAGRAPH OF THE WILL DESIGNATING THE EXECUTORS QUOTE FOR THE PURPOSE OF ITS PROBATE AND ADMINISTRATION IN THE PHILIPPINES UNQUOTE.

COL (1)

NNN

3003

WF-1201 (RS-60)

000023



Telegram

SLA011(1013)(1-100304G048)PD 02/17/78 1014

ICS IPHIIHA IISS

IISS FM WUI 17 1014

PMS SALT LAKE CITY UT

UWC3626 MNW400 EHA119

UWNX CV PNMA 351

MANILA (VIA ETPI/MNL) 1678/1599 17 2142 P11/83/80 PART3

DAVID E. SALISBURY

VAN COTT, BAGLEY, CORNWALL AND MCCARTHY

141 EAST FIRST SOUTH

SALT LAKE CITY, UTAH 84111

(2) TWO OF THE EXECUTORS NAMED IN THE PHILIPPINE WILL,  
CHARLES PARSONS AND BYRON S. HUIE, ARE RESIDENTS OF THE  
PHILIPPINES.

(3) THE PROPERTIES COVERED BY THE PHILIPPINE WILL ARE  
ALL LOCATED IN THE PHILIPPINES.

8F-1201 (78-00)



Telegram

(4) MRS. ETHEL GRIMM ROBERTS, ONE OF THE DAUGHTERS OF  
THE DECEDENT FROM HIS FIRST MARRIAGE, HAS ALREADY COMMENCED  
INTESTATE PROCEEDINGS IN A PHILIPPINE COURT. UNDER PREVAILING  
PHILIPPINE JURISPRUDENCE, THE PETITION FOR THE PROBATE  
OF THE PHILIPPINE WILL SHOULD BE FILED IN THE SAME COURT.

COL (2) (3) (4)

PAGE12/98/92

(EE) A PROBATE OF THE PHILIPPINE WILL IN THE  
PHILIPPINES, HOWEVER, WILL ENTAIL AN ADDITIONAL BURDEN  
AND EXPENSE FOR THE ESTATE ARISING FROM THE FOLLOWING:

(1) CONSIDERING THAT THE PHILIPPINE WILL WAS EXECUTED IN  
SAN FRANCISCO AND THE RULE UNDER PHILIPPINE LAW THAT THE  
FORMS AND SOLEMNITIES OF WILLS ARE GOVERNED BY THE LAWS  
OF THE COUNTRY IN WHICH THEY ARE EXECUTED, COMPLIANCE WITH

8F-1201 (78-00)

000024



Telegram

THE REQUIREMENTS OF CALIFORNIA LAW ON THE FORMALITIES  
REQUIRED IN RESPECT OF THE EXECUTION OF THE PHILIPPINE WILL  
MUST BE SATISFACTORILY PROVED IN THE PHILIPPINE PROBATE COURT.

COL (EE) (1)

PAGE13/73/67

(2) SINCE THE TWO ATTESTING WITNESSES ARE BOTH RESIDENTS  
OF THE UNITED STATES, THEY WILL HAVE TO TESTIFY PERSONALLY  
BEFORE THE PHILIPPINE COURT OR THEIR DEPOSITIONS MUST BE  
TAKEN IN THE UNITED STATES.

(FF) A SIGNIFICANT CONSEQUENCE OF THE PROBATE OF THE  
PHILIPPINE WILL IN THE PHILIPPINES IS THE APPLICATION OF THE  
LAW OF THE STATE OF UTAH IN DETERMINING THE INTRINSIC VALIDITY  
OF THE TESTAMENTARY PROVISIONS.

COL (2) (FF)

300

BF-1201 (RS-66)



Telegram

PAGE14/97/94

UNDER PHILIPPINE LAW, THE ORDER OF SUCCESSION, THE  
AMOUNT OF SUCCESSIONAL RIGHTS AND THE INTRINSIC VALIDITY  
OF THE TESTAMENTARY PROVISIONS ARE REGULATED BY THE NATIONAL LAW  
OF THE DECEDENT, WHATEVER MAY BE THE NATURE  
OF THE PROPERTY AND REGARDLESS OF THE COUNTRY WHEREIN SAID  
PROPERTY MAY BE FOUND. WITH RESPECT TO AN AMERICAN CITIZEN, THE  
APPLICABLE LAW WILL BE THAT OF THE STATE WHERE HE IS A  
CITIZEN. IN THE CASE OF THE LATE MR. GRIMM,  
WE ASSUME THAT HE WAS A CITIZEN OF THE STATE OF UTAH AT THE  
TIME OF THIS DEATH.

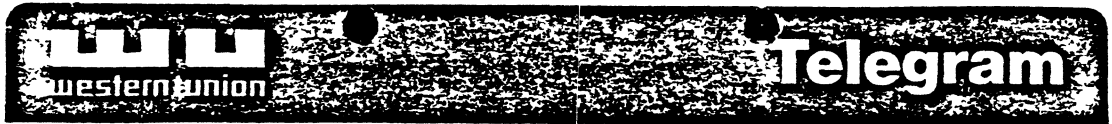
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BF-1201 (RS-66)





SLA020(1107)(1-111389G048)PD 02/17/78 1107

ICS IPMIHB IISS

IISS FM WUI 17 1107

PMS SALT LAKE CITY UT

UWB9356 MNV401 EHA119

UWNX CV PNMA 389

MANILA VIA ETPI/MNL 369 17 2142 P15/65/62 PART4

DAVID E. SALISBURY

VAN COTT, BAGLEY, CORNWALL AND MCCARTHY

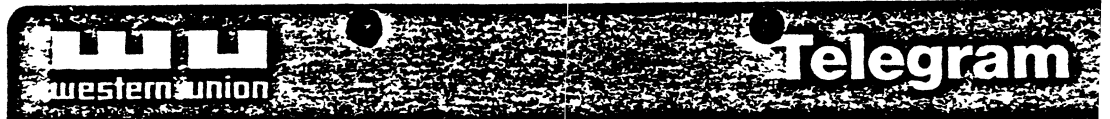
141 EAST FIRST SOUTH

SALT LAKE CITY, UTAH 84111

WE WOULD LIKE TO KNOW, THEREFORE, THE UTAH LAW ON THE  
ORDER OF SUCCESSION AND THE AMOUNT OF SUCCESSIONAL RIGHTS,  
PARTICULARLY WHETHER UTAH LAW RECOGNIZES COMMUNITY OF  
PROPERTY BETWEEN SPOUSES AND WHETHER THE SURVIVING SPOUSE  
AND THE CHILDREN ARE CONSIDERED COMPULSORY HEIRS AND,

300

GP-1201 (76-00)



IF SO, THE AMOUNT OF THEIR RESPECTIVE SUCCESSIONAL RIGHTS OR  
WHAT IS KNOWN IN CIVIL LAW AS COMPULSORY LEGITIMES.

PAGE16/135/128

(GG) IT SHOULD BE NOTED THAT THE PHILIPPINE WILL  
PROVIDES FOR THE DISTRIBUTION OF THE ESTATE IN ACCORDANCE WITH  
PHILIPPINE LAW. THIS GOES AGAINST THE RULE UNDER PHILIPPINE  
LAW THAT THE NATIONAL LAW OF THE DECEDENT GOVERNS THE  
ORDER OF SUCCESSION, THE AMOUNT OF SUCCESSIONAL RIGHTS AND THE  
INTRINSIC VALIDITY OF TESTAMENTARY PROVISIONS. HENCE,  
THE TESTAMENTARY DISPOSITIONS PROVIDING FOR THE  
APPLICATION OF PHILIPPINE LAW IN THE DISTRIBUTION  
OF THE ESTATE MAY BE RENDERED INOPERATIVE IF INCONSISTENT WITH UTAH  
LAW FOLLOWING A DECISION OF THE PHILIPPINE SUPREME COURT THAT  
A PROVISION IN A FOREIGNER'S WILL TO THE EFFECT THAT HIS

31

GP-1201 (76-00)

000026



Telegram

PROPERTIES SHALL BE DISTRIBUTED IN ACCORDANCE WITH PHILIPPINE LAW AND NOT WITH HIS NATIONAL LAW IS ILLEGAL AND VOID FOR HIS NATIONAL LAW CANNOT BE IGNORED.

COL (GG)

PAGE17/88/85

PLEASE ADVISE US, THEREFORE, WHETHER THE DISPOSITIONS MADE BY THE DECEDENT IN HIS PHILIPPINE WILL IN ACCORDANCE WITH PHILIPPINE LAW ARE CONTRARY TO UTAH LAW.

(HH) WE WOULD ALSO LIKE TO KNOW FROM YOU WHETHER THERE IS A CONFLICT OF LAW RULE IN UTAH PROVIDING THAT THE LAW OF THE DOMICILE OF THE DECEDENT SHALL GOVERN SUCCESSIONAL RIGHTS. IF THERE IS SUCH A RULE, AND THE PHILIPPINES IS HELD TO BE THE DOMICILE OF THE DECEDENT AT THE TIME OF HIS DEATH, THE PHILIPPINE COURTS WILL ACCEPT THE RENVOI OR THE

3010

GF-1201 (PG-00)



Telegram

REFERENCE BACK TO PHILIPPINE LAW, IN WHICH CASE THE TESTAMENTARY DISPOSITIONS OF THE LATE MR. GRIMM

IN HIS PHILIPPINE WILL IN ACCORDANCE WITH PHILIPPINE LAW EVEN IF INCONSISTENT WITH UTAH LAW WILL BE VALID AND OPERATIVE.

COL (HH)

PAGE18/101/97

(II) WE NOW TURN TO THE LEGAL EFFECTS OF THE TRUST AGREEMENT EXECUTED BY THE LATE MR. GRIMM.

UNDER PHILIPPINE LAW, PROPERTIES TRANSFERRED TO A TRUST WHERE THE TRUSTOR RETAINS THE POWER TO REVOKE ARE INCLUDED AS PART OF THE GROSS ESTATE IN DETERMINING THE NET ESTATE SUBJECT TO ESTATE TAX. FURTHERMORE, SUCH TRUST PROPERTIES ARE SUBJECT TO COLLATION IN DETERMINING THE

3011

GF-1201 (PG-00)

000027



COMPULSORY LEGITIMES OF THE HEIRS. THUS, IF THE TRANSFER  
IN TRUST AFFECTS THE LEGITIMES OF THE HEIRS, SUCH TRANSFER  
SHALL BE ACCORDINGLY REDUCED; OTHERWISE, THE PROPERTIES HELD  
BY THE TRUSTEE WILL BE LEFT INTACT,

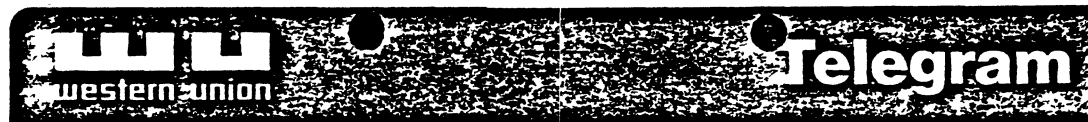
COL (II)

NNN

NNNN

3012

GP-1201 (7-6-69)



SLA012(1023)(1=100543G048)PD 02/17/78 1024

ICS IPMIIHA IISS

IISS FM WUI 17 1024

PMS SALT LAKE CITY UT

UWE5464 MNW402 ENA119

UVNX CV PNMA 210

MANILA (VIA ETPI/MNL) 1678/1599 17 2142 PAGE19/48 PART5

DAVID E. SALISBURY

VAN COTT, BAGLEY, CORNWALL AND MCCARTHY

141 EAST FIRST SOUTH

SALT LAKE CITY, UTAH 84111

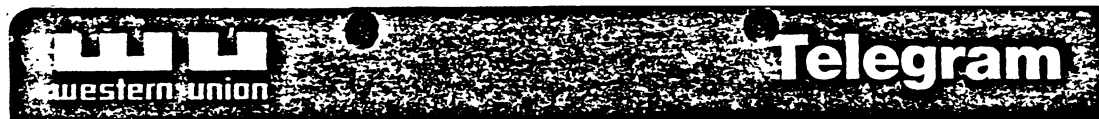
QUERY: IS UTAH LAW THE SAME AS PHILIPPINE LAW IN THE  
TREATMENT OF PROPERTIES TRANSFERRED PURSUANT TO A REVOCABLE  
TRUST FOR PURPOSES OF ESTATE TAXATION AND COLLATION?

PLEASE NOTE THAT UNDER THE TRUST AGREEMENT EXECUTED BY THE  
DECEDENT THE GOVERNING LAW IS THAT OF THE STATE OF UTAH.

301

GP-1201 (7-6-69)

000028



PAGE20/89/87

FOR YOUR INFORMATION, PHILIPPINE LAW ADOPTS THE PRINCIPLES OF THE GENERAL LAWS ON TRUSTS AS DEVELOPED BY AMERICAN JURISPRUDENCE AND OUR SUPREME COURT HAS RELIED ON AMERICAN PRECEDENTS IN CASES INVOLVING QUESTIONS ON TRUST. (JJ) WE INVITE YOUR ATTENTION TO THE CODICIL TO THE LAST WILLS AND TESTAMENTS OF THE LATE MR. GRIMM. PLEASE NOTE THAT THE EXACT DAY OF EXECUTION IN JANUARY 1966 IS NOT INDICATED. WE SUGGEST THAT MR. KING EXECUTE AN AFFIDAVIT WITH RESPECT TO THE DATE OF THE EXECUTION OF THE SAID CODICIL.

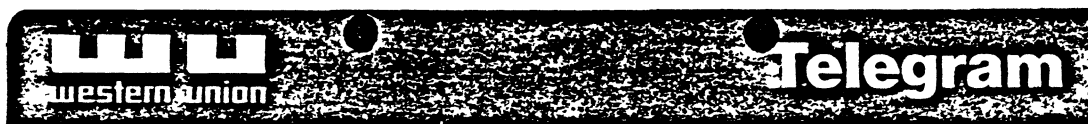
COL (JJ) 1966

PAGE21/73/71

WE SHALL APPRECIATE A REPLY AS SOON AS POSSIBLE.

3014

BP-1201 (76-00)



PHILIPPINE LAW REQUIRES DELIVERY OF A WILL TO THE COURT BY THE EXECUTOR NAMED IN THE WILL WITHIN TWENTY DAYS AFTER HE KNOWS OF THE DEATH OF THE TESTATOR OR AFTER HE KNOWS OF HIS APPOINTMENT IF HE OBTAINED SUCH KNOWLEDGE AFTER THE DEATH OF THE TESTATOR, THE NAMED EXECUTOR IS SUBJECT TO A FINE FOR ANY INEXCUSABLE DELAY.

EDGARDO J. ANGARA

NNN

NNNN

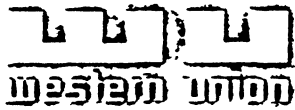
3015

BP-1201 (76-00)

000029

*Cable sent 2/24/78*

*12:00 noon*



**Telegram**

February 24, 1978

CABLE ADDRESS:

ACRALAW, PHILIPPINES  
Telex: RCA 7222374  
Eastern 3 622 PN

TO: EDGARDO J. ANGARA  
122 GAMBOA STREET  
LEGASPI, MAKATI  
METRO MANILA, PHILIPPINES

Re your cable of February 24, 1978, I will call you at 1645 hours (Utah time) on February 24, but will not have had an opportunity to do further research in reply to your cable just received.

David E. Salisbury

000030



# Telegram

NO. WDS.-CL. OF SVC.	PD. OR COLL.	CASH NO.	CHARGE TO THE ACCOUNT OF	<input type="checkbox"/> OVER NIGHT TELEGRAM UNLESS BOX ABOVE IS CHECKED THIS MESSAGE WILL BE SENT AS A TELEGRAM

Send the following message, subject to the terms on back hereof, which are hereby agreed to

*Office Copy*

February 21, 1978

**CABLE ADDRESS:**

ACRALAW, PHILIPPINES"  
Telex: RCA 7222374  
Eastern 3 622 PN

EDGARDO J. ANGARA  
ANGARA, ABELLO, CONCEPCION, REGALA & CRUZ  
122 GAMBOA STREET  
LEGASPI, MAKATI  
METRO MANILA, PHILIPPINES

Your cable of February 17, 1978 was received by us on Friday, February 17, 1978. We are pleased that you have agreed to represent Mrs. Grimm and the estate of her late husband. I will endeavor to answer the questions raised by your cable, making reference to your lettering system. After receiving this if you feel a telephone conference would be advisable, please call at a suitable time.

(AA) I agree that the domicile of the decedent is the crucial threshold question which we must resolve. I am inclined to agree that it will be difficult, if not impossible, to establish his domicile as being other than in the Philippines, particularly in view of the information in your cable concerning the conclusive presumption where a permanent resident visa is held.

(BB) The consequences under Philippine law flowing from a domicile in the Philippines is substantially the same as the conclusion would be in the United States if he were domiciled here. My biggest concern is the tax rate in the Philippines and whether or not there will be any difference in ability to negotiate the amount of the gross estate in the Philippines as compared with the United States.

(CC) Even assuming a U. S. domicile it would appear to be your conclusion under (CC) that the Philippine gross estate will still include a substantial portion of the Grimm estate because of the provisions relating to stocks and bonds of Philippine corporations.



# Telegram

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					DPR	NPR	

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Page 2 of 6

With respect to the U. S. law (and any Utah tax is based upon the Feder tax determination) the following situation would apply to a Philippine citizen and domicile who died a resident of Utah: Stock would only be taxed if issued by domestic U. S. corporation and debt obligations would be taxed only if issued by U. S. person, corporation or State or Federal governmental agency. Funds in U. S. banks and U. S. insurance companies would be taxed here including funds in a domestic branch of a foreign bank but excluding funds in foreign branches of U. S. banks. I am sure you are also familiar with the credit for foreign death taxes allowed a U. S. citizen for taxes paid to a foreign jurisdiction. This credit is set forth in Section 2014 of the Internal Revenue Code and related sections.

With respect to your query under (CC) concerning the advantage of a Utah domicile at the time of death, the principal advantage would be that on an estate of \$407,000 with at least one-half of the estate passing to the widow, the combined Federal estate tax and Utah inheritance tax would be \$25,920 with one-half of the excess of the estate above this amount being taxed at a 32 percent rate rather than the 60 percent rate in the Philippines. I have not had an opportunity to thoroughly research the double taxation effect if both the Philippines and the United States seek a tax on the same estate.

000032

WESTERN UNION

Telegram

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Page 3 of 6

(DD) I concur in your opinion that probate of the Philippine Will in the Philippines is desirable. We have filed the other Will for probate in Utah, together with the codicil and I believe you should also include the codicil in the Philippine probate even though it does not affect the provisions of the Will. We will endeavor to determine through Mr. King the day of the month which should have been filled in on the codicil.

(EE) With respect to the burden and expense involved in probating the Philippine Will in the Philippines, as I indicated in the letter to Mrs. Grimm which I am sure you have, both of the attesting witnesses to the Philippine Will which was executed in San Francisco are deceased. We should be able, however, to prove the validity of the document and the compliance with the requirements of California law through the law partner of Mr. Roth, the attorney who drafted the Will, who should be able to identify the signatures of the attesting witnesses as well as the signature of Mr. Grimm. If you will advise us as to the nature of the information you would want included, we can either obtain an affidavit from Mr. George O. Bahrs, the law partner of Mr. Roth, or we can arrange to take his deposition.

(FF) With respect to the validity of the testamentary provisions of the Philippine Will under Utah law you should be aware that as of July 1, 197 Utah adopted the Uniform Probate Code with some minor variations. Under Utah law if the Philippine Will were probated here, the Will would be upheld according to its terms and distribution under the Will would be permitted even though it were contrary to the Utah law which would apply in the case of intestate succession. Section 75-2-602, Utah Code Annotated 1953, as amended, provides that the meaning and legal effect of a disposition in a Will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that



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Page 4 of 6

law is contrary to the provisions relating to the elective share of a surviving spouse. Under Section 75-2-201, Utah Code Annotated, if a married person domiciled in this state dies, the surviving spouse has a right of election to take in lieu of the Will an elective share equal to approximately one-third of the decedent's estate. If a married person not domiciled in this state dies, the right, if any, of the surviving spouse to take an elective share is governed by the law of the decedent's domicile at death. No provision is made under Utah law for an elective share by children. Utah is not a community property state but would recognize community property acquired in another jurisdiction. Under Section 75-2-302 provision is made for pretermitted children if a testator fails to provide for them in his Will but this would not apply to the present estate because the decedent recognized the existence of all of his children.

In answer to your question, Utah does not have compulsory heirs and except for the widow's one-third elective share a decedent can disinherit his heirs if he so desires. Under the Utah law of succession, if Mr. Grimm had died intestate, one-half of his estate would have passed to his widow and the remaining one-half would have been divided equally among his four children. It might further be noted at this point that the trust created by Mr. Grimm would have been recognized under Utah law as valid even though its provisions were contrary to the decedent's Will or the succession laws of the State of Utah. Utah would recognize the validity of the trust as overriding the Will of the decedent unless it could be proved that the decedent was incompetent or acting under fraud or undue influence at the time the trust was executed.

(GG) In answer to your principal inquiry under this section, it would appear that in view of Section 75-2-602 of the Utah law referred to above that the dispositions by the decedent in his Philippine Will in accordance

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Page 5 of 6

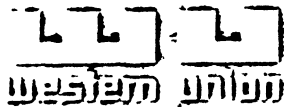
with Philippine law should be given effect since the decedent indicated in that document that the Philippine law should control. This should end the matter even though under Utah law the result might be different. (HH) I believe your inquiry under this section has already been answered since Section 75-2-602 provides for the local law selected by the testator to govern. This section specifically refers to the law of a particular state but I believe the same rule would apply to the selection of the law of a foreign country. It would therefore be my opinion that the Philippine Will should be governed by Philippine law even though inconsistent with the laws of the State of Utah because of the conflict of law rule referred to above. Prior to the above referred code section, Utah would have adopted the common law rule that the law of the domicile controls the validity of the Will and successional rights.

(II) With respect to the legal effect of the trust agreement, both U. S. and Utah law would be the same as the Philippine law and include the assets of the trust in the estate for death tax purposes. However, as indicated above, under Utah law the assets of the trust would not be subject to collation in determining the compulsory share of the heirs.

(JJ) As indicated above we will obtain an affidavit from Mr. King with respect to the date of the execution of the codicil and will send a copy of the codicil, certified by the Utah probate court, to you as soon as possible.

In summary, I might suggest for your guidance the following feelings which I have after reading your cable:

- (1) I believe the Philippine Will should be offered for probate in the Philippines as soon as possible and that personal representatives should be appointed there in accordance with the Will.



# Telegram

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Page 6 of 6

- (2) My principal concern about domicile relates to the high rate of taxation in the Philippines which we will probably not avoid as to a substantial portion of the property even by contesting the domicile.
- (3) Because of the condition of many of the assets and business interests perhaps you will be more successful in negotiating values for tax purposes in the Philippines than we would be in the U. S.
- (4) There may be some merit after considering all of the circumstances and discussing the matter with Mrs. Grimm to try to work out some settlement with the two daughters by the prior marriage as to the percentage of the Philippine estate in which they will be entitled to participate, particularly if the assets in the trust could be left intact.
- (5) Once the foregoing questions are resolved, it will be imperative to commence the preparation of an accurate inventory of the decedent's assets.

I will anticipate having an opportunity in the near future to talk with you.

David E. Salisbury

3/7/78

Jean David,

I am wondering if our communication is getting through. We understood that you were going to let us know if you needed the will. We could have sent it earlier if we had known. As you know, time is a factor with us. We cannot do anything until we get that court order out of our hair. I have talked to Ethel and she well understands that if we fight we can all lose, so she is agreeing not to fight, but I still know that there is great feeling there and she could turn under pressure, altho I think she would be afraid to. I have no feeling of pressure anymore. I can talk without any emotional feelings, so I am grateful for that blessing. Pete of course has no problem. I feel good about the way he is talking. As soon as our position is straightened out, we can begin to act, and then I think we will get more cooperation. At this time everyone is afraid to do or say anything, as they know what a horrible thing it would be if the family fought in court--everything then would get exposed--good and bad.

I feel that these lawyers are a bit puffed up with their name and need direction and push. They are more apt to follow than lead.

Mail is very slow. We are getting ours in 2 weeks. You will probably get ours in 4 to 7 days. Clark Air Base gets theirs in 4 days, but it is a long ride up there to get it, however with important papers that is the best way I think. Sending them by courier is expensive--\$30 plus, but we felt this was the only way to send the will, as we know of no one going to the States.

Thank you so much for your interest and help. Somehow all of this will come out alright. Are you aware that Rand is coming in April?

Sincerely,

Maxine

Maxine Grimm marked on inner envelope  
Roger Whitehouse  
PS # 1 Box 1706  
RM San Francisco 96286

Please give enclosed to  
Linda -

000037

Text of handwritten letter from Edward "Pete" Grimm to David Salisbury, dated March 29, 1978:

David -

I have a question. As I understand it aren't the inheritance taxes dependent upon the amount the wife gets? (she gets hers, up to 50% of the estate, tax free - tax is then computed on the remainder. For the US, it is the marital deduction that allows this - in the PI, it is community property.) So how can you agree to split up an amount that can't be determined until you first know how it's going to be split up?

Mother I'm sure is sending you a copy of Ethel's proposed agreement - it's like we mentioned, 25% of after-tax estate to her and Nita. Look at my chart (Rows 1-4) on line one - if the wife takes half, the total after-tax estate is maximized. However, under Ethel's plan, the wife doesn't get half - she and the other two children (Linda and I) combined get 4.88 (48%) of the original 10. So the wife has to, subsequent to estate taxes, take .12 of the assets that were put into her name (so as to qualify for the marital deduction) and gift them to Ethel and Nita.

Under your proposed 60/10/10/10/10 plan, (Rows 5-8) Ethel and Nita (Column 6) never get more than is available for the children (Column 4) - but they get the greatest portion of it.

That's why I talked of some deal that splits up Column 4 - the after-tax estate.

The .75 isn't very much, but look what happens without the marital deduction - they get the same (Row 13). I'm having trouble with the rows and columns.

Is that idea sound though? I'm assuming that the first wife has no claim on anything (it being 30 years now since the dissolution of that conjugal partnership).

If Mom weren't around at all, they might hope for 50% of the after-tax estate, or 1.50 - but no more (Row 13).

I can see that Linda and I might give up some of our portion of the children's share (Column 4) as the interest we would get in Mom's half is worth something. But I don't see why, as under Ethel's formulae, we should get only a future/hoped for interest in Mom's half - let alone the possibility that Mom might not even get her half.

---

I haven't considered the effects of not reporting any portions of the estate.

---

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>
	TAXABLE ESTATE	WIFE'S	TAXABLE	AFTER 70%TX	4+2 TOTAL AFTER-TAX ESTATE	x.25	x.5	x.75
1-	10	5	5	1.5	6.5	1.63	3.25	4.88
2-	10	4	6	1.8	5.8	1.45	2.90	4.35
3-	10	3	7	2.1	5.1	1.28	2.55	3.83
4-	10	2	8	2.4	4.4	1.10	2.20	3.30
						<u>20%</u>	<u>60%</u>	
5-	10	5	5	1.5	6.5	1.3	3.9	
6-		4	6	1.8	5.8	1.16	3.48	
7-		3	7	2.1	5.1	1.02	3.06	
8-		2	8	2.4	4.4	.88	2.64	
						<u>50%</u>		
9-				1.5		.75		
10-				1.8		.90		
11-				2.1		1.05		
12-				2.4		1.20		
						<u>x.25</u>	<u>x.5</u>	<u>x.75</u>
13-	10	-	10	3		.75	1.50	2.25

000040

I looked at a lot of other numbers, but nothing popped out. They probably look like yours. I figured the best they could do might be 2.6 of 10 - and that's high. The worst - nothing.

I'm not sure what's fair - but I certainly don't like her scheme.

If Ethel thought these numbers came from me I don't know that she'd even look at them.

Thanks for all your help.

(Signed) Pete

000039

DAVID —

I have a question. As I understand it aren't the inheritance taxes dependant upon the amount the wife gets? (she gets hers up to 50% of the estate, tax free — tax is then computed on the remainder. In the US, it is the marital deduction that allows this — in the PI, it is community property.) So how can you agree to split up an amount that can't be determined until you first know how it's going to be split up?

Mother I'm sure is sending you a copy of Ethel's proposed Agreement — it's like we mentioned, 25% of After-tax estate to her & Nita.

Look at my chart — (rows 1-4) on line one — if the wife takes half

000041



The total after-tax estate is maximized. However, under Ethel's plan, The wife doesn't get half — she ~~gets~~ and the other two children (Linda & I) combined get 4.88 (48%) of the original 10. So the wife has to, subsequent to estate taxes, take .12 of the assets that were put into her name & gift them to Ethel & Nita. (so as to qualify for the marital deduction)

Under your proposed 60/10/10/10/10 plan (rows 5-8) Ethel & Nita (column 6) never get more than 15 available for the children (~~column~~ 4) — but they get the greatest portion of it.

That's why I talked of some deal that splits up column 4 — the after-tax estate.

The .75 isn't very much, but look what happens without the marital deduction — they get the same (~~row~~).

I'm having trouble with the rows & columns.

Is that idea sound though? I'm assuming that the 1<sup>st</sup> wife has no claim on anything (it being 30 yrs now since the dissolution of that conjugal partnership).

If Mom weren't around at all, they might hope for 50% of the after-tax estate or 1.50 — but no more. (row 13)

I can see that Linda & I might give up some of our portion of the children's share ~~(that)~~ (column 4), as the interest we would get in Mom's half is worth something. But I don't see why ~~we should have to give~~, as under Ethel's formulae, we should get only A

future/hoped for interest in mom's half — let alone ~~why mom should~~ the possibility that mom might not even get her half.

I haven't considered the effects of not reporting any portions of the estate.

I looked at a lot of other numbers, but nothing popped out. They probably look like yours. I figured the best they could do might be 2:6 of 10 — of that's high. The worst — nothing.

I'm not sure what's fair — but I certainly don't like her scheme.

If Beth thought these numbers came from me I don't know that she'd even look at them.

Thanks for all your help

000044

0001

PBR

TAXABLE ESTATE	WIFE'S	TAXABLE	After TAX	4+2 TOTAL After ESTATE	x .25	x .5	x .7
10	5	5	1.5	6.5	1.63	3.25	4.8
10	4	6	1.8	5.8	1.45	2.90	4.3
10	3	7	2.1	5.1	1.28	2.55	3.8
10	2	8	2.4	4.4	1.10	2.20	3.30

					<u>20%</u>	<u>60%</u>	
10	5	5	1.5	6.5	1.3	3.9	
	4	6	1.8	5.8	1.16	3.48	
	3	7	2.1	5.1	1.02	3.06	
8	2	8	2.4	4.4	.88	2.64	

					<u>50%</u>		
9			1.5		<u>.75</u>		
10			1.8		.90		
11			2.1		1.05		
12			2.4		1.20		

3	10	10	3	x .25	x .5	x .75
				<u>.75</u>	1.50	2.25

BERNETT, MARCELLE & HERBERT A  
1974-1980

BERNETT, MARSHALL & GRADLEY  
1980-1988

BERNETT MARCELLE MRS?  
BUTHERLAND & VAN COTT  
1986-1988

BUTHERLAND VAN COTT & ALLISON  
1987-1991

VAN COTT ALLISON & ENTER  
1987-1917

VAN COTT, ENTER & PARKHURST  
1917-1947

OF COURSE,  
CLIFFORD & ADAMTON

not sent on  
delivered

12/18/79  
Red. P.

Page two

and to decisions affecting the estate have not been channeled through our firm and recommendations which we have made concerning matters abroad have either been ignored or have not been followed. This places us in an untenable position with you and with the other beneficiaries who were given to believe that we would be coordinating the legal work involved in administering the estate.

I believe that in many ways the estate has made considerable progress in the past 20 months that I have been associated with it. There are many important decisions now awaiting decisive action. Within the next few months, there will be many other important problems to solve and matters to be negotiated. Maybe it will not be possible for any one individual or firm to represent the estate but it will be vital if these matters are to be resolved without litigation on every issue that the attorney for the estate have the confidence and support of all of the beneficiaries involved.

I am sorry that this decision has been necessary. I have enjoyed my association with you and with the others involved in the estate and I certainly wish you well beyond this point.

I will submit a statement for our services which have not been billed and I will cooperate fully with whomever is selected to represent the estate.

Very truly yours,

DES/to

David L Salisbury

Encl.

000047

Mrs. E. M. Grimm  
Box 582  
Manila, Philippines

Nov. 7, 1977

Dear Bob -

Thank you for letting Rita come. It has been good for all of us. I only wish she could stay longer. It is so trying right now because her Daddy cannot talk & tell her the things I know he would want to tell her. I especially appreciate her leveling with me! The trouble with all of us, Bob, is that we get so involved in our own hurts & problems that we forget others have them too. I should have known this about Rita without her having to say it. It's hard to face yourself when you know how wrong you have been. Fortunately we can all change. I hope from now on that we can be a very close family.

000048



I have asked everyone that would like to do so to make a commitment for Pete. I have asked your family to read the Book of Mormon with an open heart - would you do so? Start on the first page & read the origin etc. I know this would please Pete cause I've asked him & he nodded his head. He also shook it when I asked him if he wanted me to shave him.

Thanks for being so patient with all of us & so good to Nita & being so good yourself.

Love you Dad,  
Majine



Nov 19, 1911

Dear Mom Dad & Linda —

Yesterday got a bit tight & I didn't get to the office to write you a 'normal' letter. Had lunch w. the winners & went to church — ward conference, & they called me up from the audience (a one-minute flub) — visited w. Gpa & then did some reading.

Had the pool uncovered & heated on Saturday — went for a swim. Enjoyable.

I talked Friday w. Bill Kirtan & two of his associates — they have probably talked w. Bro. & he with you by now. They aren't sure that a trust is the answer of I think it certain that they would like a will in addition to a trust. Your comments about Nita & Ethel raise the question? Dad never talked to me about them — except to mention that they were 'taken care of' already. Whether he had reference to some will I do not know — the Utah will which I found provided that all Assets outside of the Philippines would go  $\frac{1}{2}$  to Mom &  $\frac{1}{2}$  to Lin & I; but that will made specific reference to another will that took care of Philippine property & it mentioned that ~~for~~ There were provisions in the "philippine will" for Nita & Ethel. Was such a will ever prepared? Might Judge have it in his files? Might one be among Dad's personal papers? I personally don't know.

The lawyers will want to consolidate all these loose provisions into one will & one trust (I suppose?), and will want to know just what Dad wants, Nita & Ethel to have — whether a set amount (before or after estate tax?) or a %? Or maybe he already gave them something (which was my

impression). I personally wasn't very happy to hear about their comments — but I realize that Dad is the one to make the final decisions.

The lawyer here is talking as if the estate could come under the laws of RI (not Utah as King had supposed) — & in that case, Mom probably already owns  $\frac{1}{2}$  ~~to~~ of everything ... That's where there could be probs. w. a trust & w. transferring those stocks to my name right away. Before transferring them, I think we should get their opinion.

I hoped to get a value on the stocks — I have already a copy of the list of names & numbers. I talked to Richard Kelly on the phone last night but haven't got the papers he brought — & may not get them till Wed.

Pls send a valuation of the stocks.

On the house etc — it would be good to establish a low price — and if you can substantiate a low price w. an appraiser's report or any other fact. it would be good. IRS has power to value an estate when there isn't a ~~specific~~ established value — & they usually place exorbitantly high values so that they can get lots of tax.

Has Judge got the new company organized yet??  
Have you put the HK shares in it??

The WS hospital has been sending a bill for \$1200 — saying it's long overdue — etc — what is it? Should I pay it?

I'll send Nita the check for \$1200 — and the \$100 to Kris via Nita — I don't have Kris's address.

Peter Ng is talking about going to Manila to talk to Judge about a marble contract.

I wonder if he needs to or just wants the vacation? Wants to check on Dad? (his letter sounded worried).

Everyone says hello — Pres Dunn & Doran & others are keeping Dad's name in the Temple.

I'm making plans to have Thanksgiving Dinner w. the Winns. Denise, Eileen & I are having a joint birthday party next Sat — we're all 26. Bill's birthday is today — maybe I'll phone him.

~~At the Islands & Manila for a while~~

Time to run to class — hope to talk w. you soon on the phone.

Love  
Jeff

P.S. I received letters up to Nov 7 — mailed by Nita.

DONALD B. HOLBROOK  
CALVIN L. HAMPTON  
ROGER J. McDONOUGH  
W. ROBERT WRIGHT  
I. DANIEL STEWART  
RANDON W. WILSON  
RONALD J. OCKEY  
ROBERT M. McDONALD  
JACK LUNT  
EDWARD J. McDONOUGH  
MERRILL R. WEECH  
JAMES S. LOWRIE  
RONNY L. CUTSHALL  
MICHAEL R. MURPHY  
CHRISTOPHER L. BURTON  
LARRY C. HOLMAN  
D. MILES HOLMAN  
JAMES R. HOLBROOK  
GLEN D. WATKINS  
RUSSELL H. LOWE  
FREDERICK P. MCBRIER  
ROBYN O. HEILBRUN  
PETER C. COLLINS  
RICHARD B. JOHNS  
SUZANNE M. DALLIMORE  
THOMAS E. K. CERRUTI  
CRAIG R. MARIGER

JONES, WALDO, HOLBROOK & McDONOUGH  
ATTORNEYS AND COUNSELORS  
800 WALKER BANK BUILDING  
SALT LAKE CITY, UTAH 84111

PHONE 521-3200  
AREA CODE 801

SHEEKS & RAWLINS	1875
RAWLINS & CRITCHLOW	1891
RAWLINS, THURMAN, WEDGEWOOD & HURD	1897
RAWLINS, RAY & RAWLINS	907
INGEBRETSEN, RAY & RAWLINS	928
INGEBRETSEN, RAY, RAWLINS & CHRISTENSEN	184
INGEBRETSEN, RAY, RAWLINS & JONES	348
RAY, RAWLINS, JONES & HENDERSON	1948

OF COUNSEL  
JOSEPH S. JONES

April 6, 1978

Mr. Rex Roberts  
Post Office Box 215  
Greenhills Post Office  
Rizal, Philippines

Dear Mr. Roberts:

As I have indicated to you by telephone, we have been negotiating with David Salisbury to obtain a stipulation in connection with the petition for probate pending before the Tooele County Court. After extensive discussions with Mr. Salisbury and consultation with Mr. Mike Matthews, we have entered into a stipulation, a copy of which is enclosed. As you will note, matters involving domicile and heirship will not be resolved by the court at this time. Nonetheless, we will plan to attend the court hearing to make sure there are no unexpected developments.

Meanwhile, as I have indicated to you, Mr. Salisbury has expressed a desire to settle the case. I agree with him that if a satisfactory settlement could be reached, the parties would then be able to work together to obtain the best possible results under the tax laws and in ascertaining the existence and location of assets. However, Mr. Salisbury does not believe that the agreement contained in your letter of March 31, 1978, sets forth his understanding of what is intended. The principal difference has to do with the marital deduction. Mr. Salisbury believes that Maxine Tate Grimm should be entitled to claim a full marital deduction before estate taxes and the remainder of the estate after taxes would be divided equally among the four children.

Mr. Salisbury has made a series of calculations under

000053

Mr. Rex Roberts  
April 6, 1978  
Page Two

various assumptions as to his view of how the estate would be divided in the absence of an agreement. There are a variety of issues involved in these assumptions, but they do present some indication of his thinking.

From time to time we have been advised that your Philippine lawyers have researched the Philippine laws of succession. As soon as possible we would appreciate all the information they can provide on this subject. Also, it would be helpful to have your lawyers react to the calculations contained in connection with Mr. Salisbury's assumptions.

Some of the other issues involved in the case include the question of domicile and the accompanying issues of succession and taxation. Another significant issue is community property ramifications, including determination of how much of the estate of the deceased has been accumulated since the second marriage. Another issue is the possibility of fraudulent concealment in connection with the divorce settlement of the first marriage. That issue would substantially affect the community property concepts. Relating to the issue of fraudulent concealment are such matters as the statute of limitations, laches, and complicated factual matters relating to the status of the property holdings at the time of the divorce and whether there was in fact concealment. Another issue relates to the validity of the irrevocable trust and transfers into the trust. Another issue is whether certain property which is known to be in existence is to be included in the estate. Indeed, there are a variety of issues, both legal and factual relating to each principal issue, none of which has been developed to the point where we can present a concrete opinion. One fundamental issue, of course, concerns the assets of the estate and where the assets are located.

These issues could either be resolved by factual and legal preparation and ultimate litigation, or any of them could be avoided as a practical matter through an agreement. At this time an agreement which would offer sufficient protection to your rights seems to be the best course of action.

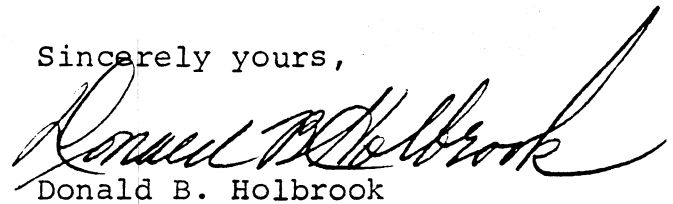
We have tentatively agreed to meet with Mr. Salisbury

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Mr. Rex Roberts  
April 6, 1978  
Page Three

on April 18 to discuss further settlement. I believe it  
would be well for you and Mr. Matthews to attend the meeting  
in Salt Lake City.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Donald B. Holbrook".

Donald B. Holbrook

DBH/br  
Encl.  
cc: Mr. Michael Matthews

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