

**Federated States of Micronesia****Truk v. Robi**

State Court, Appellate Division (Truk)  
Fritz C.J.; Welle and Marar A.J.J.  
1 February 1988

*Attorney-General—statutory authority—power to settle proceedings without consent of the Governor—compromise and settlement of civil action.*

The appellee brought an action against Truk State alleging negligence resulting in the wrongful death of her new-born infant in Truk State Hospital. The allegations were denied but, prior to trial, a court-approved settlement was agreed between her and the late Acting Attorney-General whereby liability was not admitted by the State, but judgment was entered for \$17,000 in favour of the appellee. This sum was not paid, and eventually proceedings were issued to enforce the judgment. The current Attorney-General sought to have the judgment set aside on the ground that the previous Attorney-General involved in the litigation had no authority to settle an action brought against the State without the consent of the Governor. Her motions were denied by the trial judge.

**HELD:**

The decision of the trial court is affirmed.

- (1) The discretionary authority vested in the office of Attorney-General empowers settlement of both criminal and civil litigation under the Attorney-General's supervision and control.
- (2) The statutory duties of the Attorney-General provide for a general grant of authority to represent the Government and to conduct and control proceedings on behalf of the Government. The law does not limit that authority by requiring the Governor's consent to the settlement of civil litigation, and this Court will not read into the statute something which is not within the manifest intention of the legislature as gathered from the statute itself.
- (3) A valid compromise is final and conclusive and finding upon the parties including the successors in office to the Attorney-General. The current Attorney-General has inherited, for better or for worse, the final decrees issued in cases handled by previous incumbents.

**Other cases referred to in judgment:**

*Allen v. Commissioner of Corp. and Taxn* 172 N.E. 643 70 A.L.R. 1299 (Mass. 1930)  
*Arizona State Land Department v. McFate* 348 P. 2d. 912 (Ariz. 1960)  
*Aviation Corp. v. U.S.* 46 F. Supp. 491, (Ct. Cl. 1942) cert. den. 318 U.S. 771, 87 L. Ed. 1141  
*Denn v. Reid* 35 U.S. 534, 9 L. Ed. 519 (1836)

*Ex parte Young* 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908)

- Ford v. Young* 170 P. 948 (Mont. 1918)  
*Huffman v. Oklahoma Coco-Cola Bottling Co.* 281 P. 2d. 436 (Okla. 1955)  
*Kiler v. Wohletz* 101 P. 474 (Kan. 1909)  
*Kohelbeck v. Handle* 415 P. 2d. 483, 21 A.L.R. 3d. 1248 (Ariz. 1966)  
*Leonard v. U.S. Postal Services* 489 F. 2d. 814 (1st. Cir. 1974)  
*Nix v. Ehmes* 1 F.S.M. Intrim. 114 (Pon. 1982)  
*Nolan v. District Court* 55 P. 916 (Mont. 1899)  
*Olsen v. Public Service Comm.* 283 P. 2d. 594, 20 A.L.R. 398 (Mont. 1955)  
*Parker v. Board of Commissioners* 102 P. 2d. 880 (Okla. 1940)  
<sup>50</sup> *Prout v. Starr* 188 U.S. 537, 23 S. Ct. 393, 47 L. Ed. 584 (1902)  
*State v. Dawson* 119 P. 360 (Kan. 1911)  
*State v. Finch* 280 P. 910 (Kan. 1929)  
*State v. McCarthy* 282 P. 1045 (Mont. 1929)  
*State v. Young* 7 P. 2d. 216 (Wyo. 1932)  
*State (ex rel. Derryberry) v. Kerr-McGee Corp.* 516 P. 2d. 813 (Okla. 1973)  
*Suldam v. F & F* 1 F. S.M. Intrim. 201 (Pon. 1982)  
*Tinkle v. State* 328 S.W. 2d. 111 (Ark. 1959)  
*U.S. v. Child & Co.* 79 U.S. 232, 2 L. Ed. 360 (1871)  
*Yu Cong v. Trinidad* 271 U.S. 500, 70 L. Ed. 1059, 46 S. Ct. 619 (1926)

<sup>60</sup> **Legislation referred to in judgment:**

Executive Branch Organization Act 1980, sections 15 and 26  
 Truk State Rules of Civil Procedure, rules 11, 60, and 62  
 Truk State Appellate Procedure, rule 8

**Other sources referred to in judgment:**

7 C.J.S., paragraph 1224  
 Model Rules of Professional Conduct

**Counsel:**

*J.H. Rayphand* for the appellant  
*K. Eseina* for the appellee

<sup>70</sup> **Judgment:**

This case concerns the authority involved in the discretionary power vested in the office of the Truk State Attorney-General to enter into a settlement of a civil action brought against Truk State without obtaining the consent of the Governor.

We conclude that Truk State law does not specifically require the consent of the Governor in order for the office of the Attorney-General to invoke their discretion to settle a civil action brought against Truk State.

**I. Procedural Background**

This case began on 10 December 1985, by plaintiff S. Robi filing a civil action through her trial counsellor, Kawaichy Eseina, against Truk State and Truk State Hospital, seeking monetary damages for the alleged negligence of Truk Hospital  
<sup>80</sup> resulting in the wrongful death of her new-born infant.

The late Acting Attorney-General, Fujita Peter, represented the State and denied the allegations as set forth in the plaintiff's complaint in his answer of 22 January 1986.

After an order for continuance by the Court on 30 May 1986, a stipulation for payment was entered into on 31 December 1986, and filed in Truk State Court on 5 January 1987, between the counsel for the plaintiff and Fujita Peter, on behalf of the State of Truk.

90 The stipulation was made, subject to the Court's approval, to allow the Court to enter a judgment in favour of the plaintiff and against the Truk State in the amount of \$17,000, with interest to accrue at 9% per annum until paid. The stipulation contained the following statement: "by entering into this stipulation for payment, Defendant Truk State is not admitting liability for the loss of the baby sued upon but rather is to be deemed as compromising a disputed claim".

On 10 February 1987, the trial court entered a judgment in favour of the plaintiff and against the defendant Truk State in the amount of \$17,000, and ordered full payment within a period of three months and that 9% interest shall earn if payment is not received at the expiration of that time-limit.

100 The 10 February 1987 court order requiring judgment to be paid by 10 May 1987 did not occur. On 13 May 1987, the plaintiff submitted an offer to satisfy the judgment. The plaintiff's offer entailed receiving half the amount of the judgment by 21 May 1987, and the remaining balance by 20 November 1987. The plaintiff ordered to waive the interest if Truk State could abide by that payment schedule. On the same day of 13 May 1987, when the plaintiff's offer was received, the then Acting Attorney-General, Paul Ake, informed both the Governor and the Director of Truk Finance of that offer.

Following the denial of the defendant's motions, the defendant timely filed an application with the trial court for the stay of judgment pending appeal.

110 The defendant's application to the trial court for a stay of judgment pending appeal was denied on 29 January 1988. Also, on the date of 19 January 1988 the trial court issued a writ of execution against Truk State requiring judgment to be paid in full to the plaintiff. On the same date, pursuant to Truk State Appellate Procedure rule 8, the appellant sought this Court's review for the denial of their trial court stay of judgment pending appeal, and of the trial court's order denying the defendant/appellant's motion to set aside judgment, and of the motion for a stay of proceedings to enforce judgment dated 13 January 1988. On 22 January 1988, the Truk State Court Appellate Division heard this case.

## II. Legal Analysis

### A. Discretionary Authority of Attorney-General

120 The common element of those motions asserted by the appellant is that the trial court erred by refusing to uphold the legal theory that a past Attorney-General had no authority to stipulate to a settlement of a civil action brought against Truk State without the consent of the Governor.

The first issue under analysis is the authority and discretion of the Attorney-General to settle a civil action against Truk State.

It is settled doctrine that the power vested in the office of the Attorney-General empowers settlement of litigation in which the Attorney-General has supervision and control. *Leonard v. United State Postal Services* 489 F. 2d. 814, 817 (1st. Cir. 1974), citing cases establishing an Attorney-General's power to settle.

130 The F.S.M. Supreme Court decided the issue of whether discretionary authority vests in the office of the Attorney-General in *Nix v. Ehmes* 1 F.S.M. Intrm. 114 (Pon. 1982). The *Nix* case held that "a State Attorney is necessarily given wide discretion to

determine whether to prosecute and this determination should be overruled only in the most extraordinary circumstances" (*id.* at 126; emphasis added).

Although *Nix* is a criminal case, the discretionary authority exercised by a State attorney in that case is applicable to the case at bar. The discretionary doctrine vested in the office of the Attorney-General is well settled not only in the F.S.M. but in the other jurisdictions as well:

140 It is well settled doctrine that the Attorney-General, absent specific statutory provisions limiting his discretion, has the power conferred upon him to exercise his right of discretion in a large degree. As a rule, the character of the duties pertaining to the office are such as calls for exercise of personal judgment based upon the facts and circumstances surrounding each particular question, and absent extraordinary circumstances, if he, in his discretion, declines to prosecute a criminal case or settle a civil action against the state, the courts will not assume jurisdiction to compel him to do so.

150 *State of Kansas v. Finch* 280 P. 910; *State v. Dawson* 119 P. 360; *Ford v. Young* 170 P. 948; *Ex parte Young* 209 U.S. 123, 52 L. Ed. 714, 28 S. Ct. 441 (explaining common law duties attached to the office of the Attorney-General); *Nolan v. District Court*, 55 P. 916; *Olsen v. Public Service Comm.* 283 P. 2d. 594, 20 A.L.R. 398; *Arizona State Land Department v. McFate* 348 P. 2d. 912.

The discretionary power vested in the office of the Truk State Attorney-General allows the authority to settle a civil action brought against Truk State.

Having established the discretionary power of the office of the Attorney-General does not, however, end our inquiry. The remaining issue is the determination of whether or not Truk State law limits that discretionary power to specifically require the consent of the Governor prior to the office of the Attorney-General settling a civil action against Truk State.

#### B. Statutory Authority of Attorney-General

160 The discretion vested in the office of the Attorney-General to settle a civil action brought against Truk State is provided for by law. The law does not limit that discretion by requiring the consent for the Governor before the Attorney-General may settle a civil action against Truk State.

The duties of the Attorney-General are enumerated in the Executive Branch Organization Act of 1980, Truk State Law No. 3-25, sections 15 and 26. Section 15 provides the general grant of authority: "The Office of the Attorney-General shall provide legal services to the State Government, its agencies, instrumentalities and political subdivisions".

Section 26 reads as follows:

170 The Attorney-General shall give all opinions and render all services requiring the skill of an attorney at law necessary to enable the Governor, heads of departments and offices, Chiefs of Divisions, and other offices of the State Government to discharge their respective duties, and shall on behalf of the State Government, procure the proper evidence for, and conduct, prosecute or defend all suits and proceedings in which the State Governments, or any officer thereof, as such officer, is a party or may be interested.

Evident by reading T.S.L. 3-25, section 26, is the clear fact that the law prescribing the powers and duties of the Attorney-General vests that office with the discretion: "On behalf of the state government . . . [to] conduct, prosecute or defend all suits and proceedings in which the state . . . is a party or may be interested".

The Attorney-General represents the Government in legal actions and is given the statutory authority pursuant to T.S.L. 5-32 to conduct and control the proceedings *on behalf of the government*:

The term "represented" . . . means the same thing as "on behalf of" . . . since to represent another in court means to conduct and control the proceedings *on behalf of the other*. (*State v. McCarthy* 282 P. 1045 (Sup. Ct. Mont. 1929)).

Truk State law does not require the consent of the Governor in order to settle a civil action brought against Truk State.

### C. *Decision-making Responsibility*

Absent any specific statutory authority requiring the consent of the Governor be issued to the Attorney-General prior to the settlement of a case, this Court cannot extend such a legislative enactment when it is not provided for in the law.

No intent may be imputed to the Legislature in the enactment of a law other than such as is supported by the face of the law itself. (*Denn v. Reid* 35 U.S. 524, 9 L. Ed. 519)

The decision-making responsibility to settle a civil action without the consent of the Governor is set forth in statute and neither the Attorney-General nor his court may decide among themselves to reassign that decision-making responsibility.

When Congress has passed a statute, executive branch and judiciary branch members may not decide among themselves to reassign the decision making responsibilities set forth in statute. (*Suldan v. F.S.M.* 1 F.S.M. Intrm. 201, 205 (Pon. 1982))

This Court cannot speculate as to the powers and duties of the office of the Attorney-General but must look to the wording of the relevant law. The courts may not speculate as to the probable intent of the Legislature apart from the words. (*Tinkle v. State* 328 S.W. 2d. 111; *Allen v. Commissioner of Corp. and Taxn* 172 N. E. 643, 70 A.L.R. 1299)

The general rule is that nothing may be read into a statute which is not within the manifest intention of the Legislature as gathered from the act itself. (*Yu Cong v. Trinidad* 271 U.S. 500, 70 L. Ed. 1059, 46 S. Ct. 619 (1926))

The appellant's argument regarding her theory that the office of the Attorney-General has no authority to settle a civil action against Truk State without consent of the Governor of the State of Truk is without any persuasive legal basis. Such a contention is an over-broad reading of the relevant law giving greater effect than is required by the terms of the statute.

than its terms require. (*Huffman v. Oklahoma Coca-cola Bottling Co.* 281 P. 2d. 436)

220 In the absence of explicit legislative or constitutional expression to the contrary, the Attorney-General possesses complete dominion over every litigation in which he properly appears in the interest of the state. (*State ex rel. Derryberry v. Kerr-McGee Corp.* 516 P. 2d. 813)

The decision of the Attorney-General to settle a civil action against the State of Truk without the consent of the Governor is given legislative sanction pursuant to T.S.L. 3-25, section 26. The settlement of a civil action brought against the Truk State without consent of the Governor is an allowable exercise of the discretionary power vested in the office of the Attorney-General.

#### D. *Ethical Considerations*

230 An issue raised by the appellant in her trial court motions is that the contested settlement violated the Model Rules of Professional Conduct (M.R.P.C.). The appellant cited M.R.P.C. 1.2(a) which provides that: "a lawyer shall abide by a client's decision whether to accept an offer of a settlement of a matter".

This is a general rule binding on all attorneys. However, the resulting obligations of government lawyers are not always subject to the same precise rules as are involved with private clients:

240 . . . [a] lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the Attorney-General and the state's attorney in state government, and the same may be true of other government law officers. (*Model Rules of Professional Conduct*, "Preamble: a lawyer's responsibilities" Scope 52 U.S.L.W. 1 at 2)

#### E. *Compromise and Settlement*

The judgment of the trial court was entered pursuant to a valid stipulation agreed upon by both parties. This compromise and settlement bars any further right to recovery absent any extraordinary circumstances.

The rule is that judgment entered pursuant to compromise and settlement bars any further action. [It] is treated as a judgment on the merits barring any other action for the same cause. (*State v. Young* 7 P. 2d. 216)

250 A valid compromise and settlement is final, conclusive, and binding upon the parties and upon those who knowingly accept its benefit. It is as binding as if its terms were embodied in a judgment; and regardless of what the actual merits of the antecedent claim may have been, they will not afterward be inquired into and examined. (*United States v. Child & Co.* 70 U.S. 232; *Aviation Corp. v. United States* 46 F. Supp. 491, cert. denied, 318 U.S. 771; *Kiler v. Wohletz* 101 P. 474 (emphasis added))

The stipulation entered into was a valid settlement. There has been no abuse of discretion in the trial court in refusing to vacate the judgment in the denial of the stay of judgment pending appeal.

260 The action of a trial court in refusing to vacate a judgment will not be disturbed on appeal unless it clearly appears that the trial court has abused its discretion. (*Kohlbeck v. Handle* 415 P. 2d. 483, 21 A.L.R. 3d. 1248; *Parker v. Board of Commissioners* 102 P. 2d. 880)

#### F. *Successors in Office*

Truk Rules of Civil Procedure 11 provides that a pleading signed by an attorney or trial counsellor constitutes a certification by him "to the best of his knowledge, information and belief, that there is good ground to support it".

There has not been a showing of any evidence indicating that there was no ground to support the stipulation entered into by the former Acting Attorney-General and counsel for the plaintiff S. Robi.

270 The current Truk Attorney-General is bound by the orders of the trial court entered against previous incumbents who have held the office of Attorney-General.

The current office of Attorney-General has inherited, for better or for worse, the final decrees issued in cases currently pending, held by her previous incumbents.

Several changes of incumbents in the office of the Attorney-General took place while the cases were proceeded in, but that did not deprive the court of jurisdiction. The successors in office were duly substituted, they thus became subjected to the preliminary and final decrees of the court. (*Prout v. Starr*; 188 U.S. 537, 23 S. Ct. 393 (1902); *see also* 7 C.J.S. S. 1224)

280 We find the action of the trial court in refusing to vacate the judgment, and in the denial of a motion for stay of proceedings to enforce judgment, and in the denial of a stay of judgment pending appeal, was not an abuse of discretion.

The discretionary power vested in the office of the Truk State Attorney-General allows the authority to settle a civil action brought against Truk State. The law does not limit that discretion by requiring the consent of the Governor before the Attorney-General may settle a civil action against Truk State.

Accordingly, the decision of the trial court is affirmed.

*Reported by: D.V.W.*