

LAW OFFICES OF
ARNOLD THIELENS PHILLIPS II
ATTORNEY AND COUNSELOR AT LAW

ARNOLD T. PHILLIPS II
SUSAN R. KERN

CENTURY SQUARE, SUITE 3003
1188 BISHOP STREET
HONOLULU, HAWAII 96813
TEL: (808) 528-3911
FAX: (808) 528-5006
E-MAIL: advocate@concentric.net

Mr. Steven Guttman
1132 Bishop Street Ste 1404
Honolulu, HI 96813

November 17th, 1999

RE: Harmon litigation damages

Dear Mr. Guttman;

With regards to the above referenced matter I am responding to your request for a statement of what the plaintiff's damages are in the various litigations in which he is involved at this time. You requested this information to assist Trustee Woo in administering the Chapter 7 estate.

Presently, Mr. Harmon has an appeal of the unemployment benefits pending before the Hawaii Supreme Court in which he is defending the reversal by the First Circuit Court of the denial of benefits. *Bobby N. Harmon vs Bernice P. Bishop Estate, Attn: Personnel Division and State of Hawai'i, Dept. of Labor and Industrial Relations* S.C. No. 22624

He has a cause of action as a whistle blower raised in a counterclaim to the KSBE action to recover documents in the First Circuit Court. *P&C Insurance Company, Inc. et al vs. Bobby N. Harmon* Civil No. 97-0512-02 The counterclaim states cases of action under the Whistleblower's Protection Act and for breach of contract, tortious breach of contract, negligent and/or intentional infliction of emotional harm. The counterclaim was dismissed and can be appealed when there is a final judgment on the original complaint.

There is a RICO action in United State District Court . *Bobby N. Harmon vs. Federal Insurance Co., Inc. et al* CV 99-00304 DAE In this case an amended complaint is due on December 7th.

Because full unemployment compensation was paid to Mr. Harmon when the denial from the administrative hearing level was reversed by the First Circuit Court there would be no damages resulting from the state court appeal. Mr. Harmon seeks to protect the First Circuit Court decision in the appeal. Attorney's fees and costs are due our office for the work on this appeal.

On the other litigation the major element of damages which Mr. Harmon has is his loss of income and benefits from his employment at KSBE. Whether the damages are found to be due as a result of the RICO violation, the whistle blower action, wrongful termination or breach of contract they would cover the same elements of damage for the same time - November 1996 to date of trial.

For these damages we consider Mr. Harmon to have a base salary of approximately \$70,000 and a complete benefit package covering medical and disability plus retirement contributions. For purposes of our calculation we have figured this dollar amount as a percentage of salary. The percentage we selected was 28%.

For the four year period of time the claim for salary and benefits would be for \$364,000 exclusive of interest. The RICO claim and the unfair and deceptive practice claim in the state court action provide for treble damages or \$1,092,000. Attorney's fees and costs can be estimated at \$375,000 (approximately 1800 hours) and \$200,000 respectively.

These damage estimates do not include the compensation for the tortious breach of contract, negligent and/or intentional infliction of emotional harm claims in the state court action. The damages for the negligent and/or intentional infliction of emotional harm could be substantial especially given the recent hospitalization of Mrs. Harmon related to the deterioration of her mental status caused by the discharge of her husband.

Neither do these estimates consider the costs and expenses of any appellate work which may necessary other than the work already performed in the state appeal.

Finally, the estate should be aware of the possibility of a breach of contract claim against Federal Insurance on its failure to tender defense. If the estate decided to pursue this claim it should consider that these damages will be mitigated by the defense costs paid under Mr. Harmon's homeowners policy coverage. Although this may produce an entitlement to homeowner's carrier it may not produce any asset for the estate.

If I can be of further service to Trustee Woo on these matter please feel free to call on me.

Thank you for your attention to these matters; you have my

Kind Regards,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.
Arnold T. Phillips II

ATP:tpg