IN THE SUPREME COURT OF GUAM

JOHNNY R. NEWBY, LYNETTE C. NEWBY,
Plaintiffs-Appellants,

v.

GOVERNMENT OF GUAM,
Defendant-Appellee.

Supreme Court Case No.: CVA09-016
Superior Court Case No.: CV1289-08

OPINION

Cite as: 2010 Guam 4

Appeal from the Superior Court of Guam
Argued and Submitted on October 16, 2009
Hagåtña, Guam

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BEFORE: Chief Justice ROBERT J. TORRES; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

CARBULLIDO, J.:

[1] Plaintiffs-Appellants Johnny R. Newby and Lynette C. Newby (collectively the "Newbys") appeal from a grant of a motion to dismiss in favor of Defendant-Appellee Government of Guam ("Government") in relation to a dispute as to damages owed in tort for events leading up to and ultimately resulting in the death of the Newbys' minor son. The Newbys argue that the Superior Court erred when it did not convert the Government's Rule 12(b)(6) motion to dismiss into a Rule 56 motion for summary judgment after considering a prior $300,000.00 settlement between the Newbys and the Guam Memorial Hospital Authority ("GMHA"), which was not part of the complaint in the above-captioned case. The Newbys also argue that their settlement with the GMHA is irrelevant because the suit against the Guam Public School System is a separate tort suit and Guam law permits double recovery in tort against the Government of Guam. In addition, the Newbys argue that the damages cap and the prohibition against jury trials in the Government Claims Act are inorganic and unconstitutional inasmuch as they violate equal protection, due process, the right to trial by jury, and separation of powers.

[2] We find that although the Superior Court should have converted the Government's motion to dismiss into a motion for summary judgment, *de novo* review permits this court on appeal to treat the Government's motion as one for summary judgment and dispose of it under Rule 56. Because we find that the Newbys received $300,000.00 pursuant to their settlement agreement with the GMHA for the wrongful death of their minor son, we hold that the Newbys have already recovered the maximum recoverable amount in tort damages against the Government and are therefore barred from any further recovery against the Government.

[3] Accordingly, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

[4] This is a wrongful death case arising out of a series of tragic events involving the assault on and resulting death of the Newbys' son, Jeromy. In October 2006, while on the campus of Southern High School during school hours, Jeromy was assaulted by another student. At some point after the assault, other students located Jeromy and assisted him to the school's nurse's office, where he remained for several hours before slipping into a coma. At some point, Jeromy was transported to the Guam Memorial Hospital, where he lingered in a coma until his death on January 5, 2007.

[5] The Newbys filed two related tort claims pursuant to the Government Claims Act, 5 GCA § 6101 *et seq.*: one against the Guam Public School System ("GPSS") alleging that the GPSS acted negligently with regard to its handling of the above-described events, and one against the Guam Memorial Hospital Authority ("GMHA") alleging that the GMHA failed to adequately and properly respond to Jeromy's injuries. The GPSS is a line agency. The GMHA is an autonomous agency. The GPSS, through its legal counsel, denied the Newbys' claim against that line agency. As to the GMHA, the Newbys settled their claim against the hospital for $300,000.00.

[6] The Newbys then filed a complaint in the Superior Court against the GPSS and the Government seeking approximately $16 million in damages for the wrongful death of Jeromy. In their complaint, the Newbys advanced six theories of Defendants' negligence, including: failure to act in *loco parentis*; failure to provide adequate security; failure to properly supervise conduct of students; failure to properly train GPSS employees; failure to provide proper care and attention; and failure to properly train school medical staff.

[7] Pursuant to Guam Rules of Civil Procedure 12(b)(6), Defendant-Appellee the Government of Guam ("Government") filed a motion to dismiss for failure to state a claim upon which relief can be granted, asserting that the Newbys' claim against the GPSS and the Government was barred by the Newbys' previous $300,000.00 settlement with the GMHA. To its 12(b)(6) motion, the Government attached copies of the original and the amended January 3, 2008 settlement agreement between the Newbys and the GMHA. The GPSS, through its legal counsel, joined the Government's 12(b)(6) motion to dismiss. Thereafter, the Newbys filed an opposition to the Government's motion to dismiss as well as their own motion to declare the damage caps and non-jury trials in the Government Claims Act inorganic and unconstitutional.

[8] The Superior Court issued its Decision and Order granting the Government's motion to dismiss, essentially finding that the Government Claims Act and the Contribution Among Joint Tortfeasors Act worked in tandem to bar any further recovery by the Newbys beyond the $300,000.00 settlement with the GMHA. In the same Decision and Order, the Superior Court dismissed the Newbys' motion to declare the damage caps and non-jury trials in the Government Claims Act inorganic and unconstitutional. The Newbys timely appealed.

II. JURISDICTION

[9] This court has jurisdiction over an appeal from a final judgment pursuant to 48 U.S.C. A. § 1424-1(a)(2) (West Supp. 2009); 7 GCA §§ 3107(b), 3108(a) (2005).

III. STANDARD OF REVIEW

[10] Pursuant to this court's power on appeal to convert a Rule 12(b)(6) motion to dismiss into a summary judgment motion, the appropriate standard to review the grant of a motion for summary judgment is *de novo*. *Iizuka Corp. v. Kawasho Int'l (Guam), Inc.*, 1997 Guam 10 ¶ 7

(citing *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996)); *Wasson v. Berg*, 2007 Guam 16 ¶ 9 (citing *Nat'l Union Fire Ins. Co. v. Guam Hous. & Urban Renewal Auth.*, 2003 Guam 19 ¶ 12).

[11] In addition, we review issues of statutory interpretation *de novo*. *Quichocho v. Macy's Dept. Stores, Inc.*, 2008 Guam 9 ¶ 13 (citing *Carlson v. Guam Tel. Auth.*, 2002 Guam 15 ¶ 16).

IV. DISCUSSION

[12] The Newbys essentially argue that the Superior Court erred in finding: 1) that the Newby-GMHA settlement was "integral" to the Newbys' complaint preparation in the instant case so as to permit a review of the Government's motion to dismiss under the 12(b)(6) standard; and 2) that the Government Claims Act, 5 GCA § 6101 *et seq.*, and the Contribution Among Joint Tortfeasors Act, 7 GCA § 24601 *et seq.*, work together to bar any recovery beyond the $300,000.00 the Newbys have already received pursuant to the Newby-GMHA settlement. In addition, the Newbys argue that the damages cap and the prohibition against jury trials in the Government Claims Act are inorganic and unconstitutional inasmuch as they violate equal protection, due process, the right to trial by jury, and separation of powers.

[13] We address each of these arguments in turn.

A. The Government's 12(b)(6) Motion

[14] The general rule is that a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, must be converted into a Rule 56 motion for summary judgment whenever "matters outside the pleadings" are presented to and considered by the court:

> If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.

Guam R. Civ. P. 12(b); *See Carter v. Stanton*, 405 U.S. 669, 671 (1972) (finding that the consideration of matters outside the pleadings, on a hearing for a motion to dismiss, required converting the motion into one for summary judgment and disposing of it as provided by Rule 56); *Lee v. City of L.A.*, 250 F.3d 668, 688 (9th Cir. 2001) (reciting the general rule that a court may not consider any material outside the pleadings in ruling on a Rule 12(b)(6) motion). In ruling on a 12(b)(6) motion, a court's consideration is limited to the complaint, written instruments attached to the complaint as exhibits, statements or documents incorporated in the complaint by reference, and documents on which the complaint heavily relies. *Mercado Arocho v. United States*, 455 F. Supp. 2d 15, 19 (D.P.R. 2006) (quotation omitted).

[15] The general rule that a court may not consider extrinsic evidence outside the pleadings for the purposes of ruling on a 12(b)(6) motion is subject to at least two exceptions. *Hotel Employees & Rest. Employees Local 2 v. Vista Inn Mgmt. Co.*, 393 F. Supp. 2d 972, 979 (N.D. Cal. 2005). One of these exceptions is relevant here. Documents whose authenticity cannot be questioned and on which plaintiff's complaint "necessarily relies" may be considered in ruling on a Rule 12(b)(6) motion. *Id.* (citation omitted). For this exception to apply, such documents must be "integral" to the plaintiff's complaint and "dispositive" in the dispute. *Id.*; *see also Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998) (finding that in ruling on a 12(b)(6) motion to dismiss, a court may consider outside documents "upon which the plaintiff's complaint necessarily relies"), *superseded by statute on other grounds as recognized in Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 681 (9th Cir. 2006); *Pension Benefit Guar. Corp. v. White Consol. Indus. Inc.*, 998 F.2d 1192, 1196 (3rd Cir. 1993) (holding that a court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if it is dispositive of plaintiff's claims). Courts have reasoned that failure on the part of plaintiffs to

reference or attach to their complaints such "integral" documents "rais[es] the spectre that plaintiff failed to incorporate them by reference in the complaint as a means of avoiding Rule 12(b)(6) dismissal." *Hotel Employees*, 393 F. Supp. 2d 972, 979.

[16] The Ninth Circuit has instructed that in ruling on a Rule 12(b)(6) motion to dismiss, courts "may consider a document the authenticity of which is not contested, and upon which the plaintiff's complaint necessarily relies." *Parrino*, 146 F.3d 699, 706. In *Parrino,* the insured under a health maintenance organization (HMO) plan sponsored by his employer sued the plan administrator and the plan's primary health care provider in state court, alleging that they improperly denied his initial claim for proton beam therapy as a treatment for a fatal brain tumor. *Id.* at 702. There, the court addressed the question of conversion, specifically whether the trial court erred in considering the FHP Master Group Application ("application") when ruling on the defendant's motion to dismiss. In his complaint, Parrino made reference to the FHP "group plan" and its "cost containment program" but did not directly reference the application or attach it. *Id.* at 706. The court reasoned that because Parrino's claims rested on his membership in FHP's plan and on the plan's terms, documents governing plan membership, coverage, and administration were "essential to his complaint." *Id.* Because the application included key terms regarding the plan covering Parrino and because its authenticity was not in dispute, the appellate court found it "proper for the district court to consider that document in ruling on the defendant's motion to dismiss." *Id.* The court ultimately held that a court in ruling on a motion to dismiss may consider a document the authenticity of which is not contested, and upon which the plaintiff's complaint necessarily relies. *Id.*

[17] For the exception to the conversion rule to apply here, the relevant inquiry is whether the Newbys "necessarily relied" on the Newby-GMHA settlement agreement in their complaint

preparation in the instant case. Here, unlike in *Parrino*, the Newbys made no mention of their prior settlement with the GMHA in their complaint, and did not attach it to their complaint. In addition, because the Newbys argue on appeal that the settlement is entirely irrelevant to the instant case for the reason that the GMHA and the GPSS are guilty of different torts, *see* Appellants' Br. at 11-15 (Aug. 19, 2009), it seems reasonably clear that the Newbys did not rely on the settlement in preparing their complaint in the instant case, despite the Superior Court's contrary finding. *See* Appellants' Excerpts of Record ("ER"), tab 3, at 4 (Dec. & Order, May 27, 2009) ("In light of the Plaintiffs' arguments in opposition to Defendant's motion and considering the fact that GMH[A] is auspiciously absent from this complaint, the court finds that the settlement agreement was integral in Plaintiff's [sic] complaint preparation. Because Plaintiffs argue that Defendants as well as GMH[A], are separately liable for torts to Jeromy Newby, it would be unreasonable not to include GMH[A] as a listed party, had Plaintiff [sic] not relied upon the settlement agreement in drafting their complaint."). Here, the Superior Court found that the Newbys' $300,000.00 settlement agreement with the GMHA was "integral" to the Newbys' complaint preparation in the instant case, which enabled it to consider the settlement as part of the pleadings for purposes of disposing of the Government's 12(b)(6) motion. ER, tab 8 at 10 (Dec. & Order). This in turn enabled the court to grant the Government's motion to dismiss without converting it into a motion for summary judgment under Rule 56. This was error.

[18] Because the Newby-GMHA settlement agreement was not referenced in or attached to the complaint in the instant case, and because its terms and effects were not necessarily relied upon by the Newbys in the instant action, the Superior Court erred when it did not convert the

Government's 12(b)(6) motion into a Rule 56 summary judgment motion after considering the Newby-GMHA settlement agreement.

[19] Upon conversion, the requirements of Rule 56 become operable and the matter proceeds as would any motion made directly under that rule. *See, e.g., S & S Lodging Co., Inc. v. Barker*, 366 F.2d 617, 623 (9th Cir. 1966) (finding that because the whole case was before the appellate court and because no counter showing was made contradicting the record at the trial level, it would be "wasteful" to remand for the consideration of the summary judgment motion); *accord Sec. & Exch. Comm'n. v. Chenery Corp.*, 318 U.S. 80, 88 (1943) ("It would be wasteful to send a case back to a lower court to reinstate a decision which it had already made but which the appellate court concluded should properly be based on another ground within the power of the appellate court to formulate."). Accordingly, the question now before this court is whether the Government can demonstrate, in accordance with the requirements of Rule 56, that there exists no genuine issue as to any material fact and that the movant is entitled to the entry of a judgment as a matter of law.[1]

[20] We now turn to the substance of the instant appeal to determine whether the Government Claims Act, 5 GCA § 6101 *et seq.*, and the Contribution Among Joint Tortfeasors Act, 7 GCA § 24601 *et seq.*, operate to bar any recovery beyond the $300,000.00 the Newbys have already received pursuant to the Newby-GMHA settlement.

[1] Remanding this matter back to the Superior Court would be contrary to the interests of judicial economy and ultimately unhelpful in the instant case. Production by the parties of supplemental additional materials would be unhelpful because the determination of governmental liability is a question of law involving interpretation of 5 GCA § 6101, *et seq.*, and 7 GCA § 24601, *et seq.*

B. Wrongful Death

[21] The Newbys argue that the Superior Court erred in finding that the Government Claims Act, 5 GCA § 6101 *et seq.*, and the Contribution Among Joint Tortfeasors Act, 7 GCA § 24601 *et seq.*, effectively bar any recovery by the Newbys against the Government for the same wrongful death beyond the $300,000.00 the Newbys already received pursuant to the Newby-GMHA settlement agreement. Specifically, the Newbys argue that neither the instant case nor their government claim against the GMHA for which they already settled, is a wrongful death action. *See* ER, tab 6 at 5 (Opp'n Mot.). ("The torts or injuries settled by GMH[A] are separate and apart from the injuries caused by GPSS. . . . GMH[A] settled only for its own wrongful acts not including death. There has been no settlement for wrongful death. There has been no settlement for the torts of [GPSS] which are separate and apart from the torts of GMH[A]."). Instead, the Newbys tacitly assert that both claims come under the catch-all category denominated in the Government Claims Act as "any other tort action." *See* 5 GCA § 6301(b).

[22] Section 6301 of the Government Claims Act, which provides the maximum amount recoverable against the Government under the Act, provides in pertinent part:

> (b) The government of Guam, in the case of line agencies, shall be liable in tort for not more than $100,000 in an action for wrongful death, nor for more than $300,000 in *any other tort action.*
>
> (c) Each autonomous agency shall be liable for torts committed by it for not more than the amounts stated in subsection (b), above.

5 GCA §§ 6301(b), (c) (2005) (emphasis added). By characterizing the Defendants' alleged negligence as "any other tort action" as opposed to "wrongful death," the Newbys would be entitled to the larger of the two amounts; that is, $300,000.00. Moreover, because their settlement with the GMHA was for $300,000.00, the Newbys assert that this indicates that the

GMHA "did not settle a wrongful death action which has a limit of $100,000, but for its own additional torts . . . ." ER, tab 6 at 5 (Opp'n Mot., Mar. 10, 2009).

[23] For the reasons set out below, we reject this argument and find that this is indeed a wrongful death case.

[24] Guam's wrongful death statute is codified at 7 GCA § 12109. Originally adopted in 1933 by the Naval Government of Guam from section 377 of the California Code of Civil Procedure, Guam's early version was codified under the same section number in the Code of Civil Procedure of Guam. Since 1933, the Guam Legislature has amended the statute, the last amendment occurring in 1978. In that year, the Fourteenth Guam Legislature amended the statute to mirror California's 1977 version[2] of section 377, which provides what is now 7 GCA § 12109 and reads in part:

> (a) When the death of a person is caused by the wrongful act or neglect of another, his or her heirs or personal representatives on their behalf may maintain an action for damages against the person causing the death, or in case of the death of such wrongdoer against the personal representative of such wrongdoer, whether the wrongdoer dies before of [sic] after the death of the person injured. If any other person is responsible for any such wrongful act or neglect, the action may also be maintained against such other person, or in case of his or her death, his or her personal representatives. In every action under this Section, such damages may be given as, under all the circumstances of the case, may be just, but shall not include damages recoverable under § 956 of the Civil Code [sic].[3]

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[2] Unlike the current Guam version, California's 1977 version of Section 377 references Section 573 of the Probate Code, and not Section 956 of the Civil Code. In addition, the reference in 7 GCA § 12109 to "§ 956 of the Civil Code" is an error. The statute should instead reference "19 GCA § 31104," which was formerly § 956 of the Civil Code. 7 GCA § 12109 (2005)

[3] Former § 956 of the Civil Code, now 19 GCA § 31104 (2005), reads:

> A thing of action arising out of a wrong which results in physical injury to the person or out of a statute imposing liability for such injury shall not abate by reason of the death of the wrongdoer or any other person liable for damages for such injury; nor by reason of the death of a person injured or of any other person who owns any such things in action. When the person entitled to maintain such an action dies before judgment, damages recoverable for such injury shall be limited to loss of earnings and expenses sustained or incurred as a result of the injury by the deceased prior to his death, and shall not include damages for pain, suffering or disfigurement, nor punitive or exemplary damages, nor prospective profits or earnings after the date of death. The damages

> The respective rights of the heirs in any award shall be determined by the court. Any action brought by the personal representative of the decedent pursuant to the provisions of § 956 of the Civil Code [sic] may be joined with an action arising out of the same wrongful act or neglect brought pursuant to the provisions of this Section. If an action be brought pursuant to the provisions of this Section, and a separate action arising out of the same wrongful act or neglect be brought pursuant to the provisions of § 956 of the Civil Code [sic], such actions shall be consolidated for trial on the motion of any interested party.

7 GCA § 12109 (2005). Although section 377 of the California Code of Civil Procedure was repealed by the California legislature in 1992, and substantially re-organized into a new section in that state's Code,[4] California cases construing that section up until 1992 are instructive for purposes here.

[25] The right of action given by 7 GCA § 12109 is a new action differing from that which the decedent would have had if he had lived; that is, a wrongful death action is not a continuation or revival of the cause of action subsisting in the decedent before his death, but instead is an original and distinct cause of action granted to heirs and personal representatives to recover damages sustained by them by reason of the wrongful death of the decedent. *See, e.g., Van Sickel v. United States*, 285 F.2d 87, 90 (9th Cir. 1960); *Garcia v. State*, 56 Cal. Rptr. 80, 81 (1967); *Pac. Employers Ins. Co. v. Hartford Steam Boiler Inspection & Ins. Co.*, 299 P.2d 928, 930 (Cal. Dist. Ct. App. 1956); *Secrest v. Pac. Elec. Ry. Co.*, 141 P.2d 747, 747-48 (Cal. Dist. Ct. App. 1943); *Fiske v. Wilkie*, 154 P.2d 725, 727 (Cal. Dist. Ct. App. 1945). The purpose of the wrongful death statute is to afford compensation to the heirs for the pecuniary loss resulting

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> recovered shall form part of the estate of the deceased. Nothing in this section shall be construed as making such thing in action assignable.

19 GCA § 31104 (2005).

[4] In 1992, Section 377 of the California Code of Civil Procedure was repealed; in the same year, its substance was re-incorporated and codified as Code of Civ. Proc. § 377.60. *See Chavez v. Carpenter*, 111 Cal. Rptr. 2d 534, 538 (2001) (citing Cal. Law Revision Com. com., reprinted at 14 West's Ann. Code Civ. Proc. (2001 supp.) § 377, p. 23).

from the death of their relative. *See, e.g., Kunakoff v. Woods*, 332 P.2d 773, 775 (Cal. Dist. Ct. App. 1958); *Helling v. Lew*, 104 Cal. Rptr. 789, 792 (Dist. Ct. App. 1972); *Alvarez v. Wiley*, 139 Cal. Rptr. 550, 553 (Dist. Ct. App. 1977); *Reyna v. City & County of S.F.*, 138 Cal. Rptr. 504, 508 (Dist. Ct. App. 1977).

[26] The pecuniary loss suffered by the heirs or personal representatives because of the death is the measure of damages recoverable under 7 GCA § 12109. *Shebley v. Peters*, 200 P. 364, 366 (Cal. Dist. Ct. App. 1921); *Cossi v. S. Pac. Co.*, 110 Cal. App. 110, 112 (Cal. Dist. Ct. App. 1930); *Ure v. Maggio Bros. Co.*, 75 P.2d 534, 536 (Cal. Dist. Ct. App. 1938). While damages recoverable under this statute are only for pecuniary loss suffered, such loss may include loss of comfort, protection, and society of deceased. *Duclos v. Tashjian*, 90 P.2d 140, 145 (Cal. Dist. Ct. App. 1939). Although there is no recovery for damages for anguish caused by the death of the decedent under this section, *see Griffey v. Pac. Elec. Ry. Co.*, 58 Cal. App. 509, 516 (Cal. Dist. Ct. App. 1922), the pecuniary value of society, comfort, and protection that might reasonably be expected had the decedent lived might be considered as recoverable, *Zeller v. Reid*, 101 P.2d 730, 731 (Cal. Dist. Ct. App. 1940), provided that the circumstances show a reasonable probability that the society, comfort, and protection afforded to the surviving parent was of such a character that it would be of pecuniary advantage to the parent, and thus would entail a pecuniary loss to him. *See Fields v. Riley*, 81 Cal. Rptr. 671, 674 (Dist. Ct. App. 1969); *see also Fuentes v. Tucker*, 187 P.2d 752, 755 (Cal. 1947); *Tyson v. Romey*, 199 P.2d 721, 724-25 (Cal. Dist. Ct. App. 1948).

[27] Because the complaint in the instant case plainly names the Newbys as the only Plaintiffs and advances no claim by the estate of their deceased son, Jeromy, to recover for damages suffered by him prior to death to which he would have been personally entitled if he had lived,

this is a wrongful death action. In their October 20, 2008 complaint, the Newbys advance six theories of negligence liability against the Government, ER, tab 4 at 4-11 (Compl., Oct. 20, 2008), seeking approximately $16 million in damages. *Id.* at 12. Throughout the complaint, the Newbys maintain that they are bringing the instant action individually to recover for *their own personal injury*, and not for the injury suffered by their deceased son prior to his death.[5] Hence this is a wrongful death action. It is an original and distinct cause of action brought by the Newbys in their individual capacity to recover damages for injury suffered by them by reason of the death of their son. Accordingly, *if this was not an action against the sovereign*, 7 GCA § 12109 would apply unhindered by the caps of the Government Claims Act, 5 GCA § 6301(b), (c), and the pecuniary loss suffered by the Newbys because of Jeromy's death would be the measure of damages recoverable under the statute, provided that loss could be reasonably calculated.

[28] But this *is* an action against the sovereign.

[29] Specifically, this is a wrongful death action brought against the Government pursuant to the limited waiver of sovereign immunity in the Government Claims Act. Accordingly, this case turns on this court's interpretation of the Government Claims Act, particularly whether the

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[5] *See* ER, tab 4 at 5 (Compl.) ("As a result of the failure of the defendants to follow Guam law and GPSS Policy regarding care of minors in the Guam Public School System and to act in loco parentis, *Plaintiffs Johnny R. Newby and Lynette C. Newby suffered loss and injury in the form of emotional distress, witnessing the extended suffering of their minor child, and the eventual loss of life of their son, Jeromy.*") (emphasis added); *see also id.* at 7 ("As a result of the failure of the defendants to follow Guam law and GPSS Policy regarding providing security for students within the Southern High School campus and a failure to provide sufficient personnel to secure the campus, *Plaintiffs Johnny R. Newby and Lynette C. Newby suffered loss and injury in the form of emotional distress, witnessing the extended suffering of their minor child, and the eventual loss of life of their son, Jeromy Paul Castro Newby.*") (emphasis added); *id.* at 8 ("As a result of the lack of ordinary care owed by Defendants to Jeromy Paul Castro Newby, *Jeromy was assaulted, injured, and eventually died, causing Plaintiffs to suffer injury.*") (emphasis added); *id.* at 10, 11 ("*Jeromy's prolonged and unnecessary suffering and eventual death resulted in injury to Jeromy's parents, the Plaintiff's herein.*") (emphasis added).

statute permits recovery beyond the $300,000.00 already received by the Newbys pursuant to the Newby-GMHA settlement, for the same wrongful death.

[30] We now address this question, and answer in the negative.

C. Limited Waiver of Sovereign Immunity in Government Claims Act

[31] The Government enjoys broad sovereign immunity. *Marx v. Gov't of Guam*, 866 F.2d 294, 298 (9th Cir. 1989); *Sumitomo Const., Co., Ltd. v. Gov't of Guam*, 2001 Guam 23 ¶ 8. Sovereign immunity can only be waived by duly enacted legislation; absent such legislation, the Government cannot be sued. *Sumitomo Const., Co., Ltd.*, 2001 Guam 23 ¶ 9 (citation omitted). This court has recognized that while sovereign immunity is inherent, Congress in the Organic Act of Guam provided a specific mechanism by which that immunity may be waived. *Id.* ¶ 8 (referencing 48 U.S.C. § 1421(a) (2008)). The Organic Act provides in pertinent part:

> The government of Guam shall have the powers set forth in this Chapter, shall have power to sue by such name, and, with the consent of the legislature evidenced by enacted law, may be sued upon any contract entered into with respect to, or any tort committed incident to, the exercise by the government of Guam of any of its lawful powers.

48 U.S.C. § 1421(a) (2008).

[32] The Government Claims Act provides a limited waiver of sovereign immunity for the Government's torts. Section 6105 provides in pertinent part:

> Pursuant to Section 3 of the Organic Act of Guam, the Government of Guam hereby waives immunity from suit, but only as hereinafter provided:
>
> . . .
>
> (b) *for claims in tort*, arising from the negligent acts of its employees acting for and at the direction of the government of Guam, even though occurring in an activity to which private persons do not engage. . . .

5 GCA § 6105 (2005) (emphasis added).

[33] Pursuant to its power to waive sovereign immunity, the Guam Legislature in the Government Claims Act set a cap on the amount a tort claimant can recover from the Government under the Act. Section 6301, which lays out the maximum amount recoverable against the Government under the Act, provides in relevant part:

> **§ 6301. Maximum Limits of Governmental Liability.**
>
> . . .
>
> (b) The government of Guam, in the case of line agencies, shall be liable in tort for not more than $100,000 in an action for wrongful death, nor for more than $300,000 in any other tort action.
>
> (c) Each autonomous agency shall be liable for torts committed by it for not more than the amounts stated in subsection (b), above.

5 GCA § 6301 (2005). In the instant case, the Superior Court found that the terms of the Newby-GMHA settlement fall within the scope of 7 GCA § 24605, and ruled that "[a]lthough the alleged actions of [the Government] are not excused, pursuant to the mandates of 5 GCA § 6301 the [Government's] potential liability has been reached." ER, tab 3 at 7 (Dec. & Order). We agree with this reasoning.

[34] The Contribution Among Joint Tortfeasors Act provides in pertinent part:

> When a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:
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> 1. It does not discharge any of the other tortfeasors from liability from the injury or wrongful death unless its terms so provide, but *it reduces the claim against the other to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it,* whichever is greater[.] . . .

7 GCA § 24605 (2005) (emphasis added).

[35] In this case, the Newbys executed a "Settlement Agreement, Release and Covenant Not to Sue" with the GMHA wherein the Newbys received $300,000.00 to settle their Government Claims Act claim against the GMHA, its officers, and agents. ER, tab 5, Exs. A-C (Mot.

Dismiss, Dec. 11, 2008). The Newby-GMHA settlement agreement contained, among others, the following recitals and articles:

> Whereas, on or about October 20, 2006, Jeromy Newby was received by GMHA due to a head injury;
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> Whereas, on or about January 5, 2007, Jeromy Newby passed away while under the care of GMHA;
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> Whereas, on or about May 18, 2007, Claimants filed a Government Claims Act claim against GMHA alleging GMHA failed to adequately and properly respond to Jeromy Newby's injuries;
>
> Whereas, under the Government Claims Act, 5 GCA § 6301(b), the maximum GMHA shall be liable for an action for negligence is Three Hundred Thousand Dollars ($300,000.00); and
>
> Whereas, Claimants and GMHA are willing to compromise and settle this matter to avoid the burden and expense of litigation.
>
> . . .
>
> Claimant and GMHA covenant and agree never to file, initiate, commence, institute, maintain, prosecute, aid or cause to be commenced or prosecuted any action, suit or proceeding, directly and or indirectly, against the other party to this Agreement based upon any claims that are the subject of this Agreement.
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> . . . .

ER, tab 5, Ex. A at 1, 4. (Mot. Dismiss).

[36] The Newbys seemingly interpret 5 GCA § 6301 to provide for two separate tort actions against the Government; one from an autonomous agency, one from a line agency. However, as articulated above, this court finds that this is a wrongful death action. In other words, this is not "any other tort action" for purposes of 5 GCA § 6301. Thus, even if the Newbys were to argue that they could maintain two separate wrongful death actions against the Government—again, one from an autonomous agency, one from a line agency—such an argument would be

ultimately fruitless under the facts of this particular case.[6] Indeed, under the facts presently before us, we need not address whether section 6301 provides for separate wrongful death caps for line and autonomous agencies or a single wrongful death cap for the Government of Guam as a whole. The reason for this is because even if the statute provided for separate wrongful death recoveries against the Government as the Newbys suggest, the $300,000.00 Newby-GMHA settlement agreement already exceeds the maximum amount recoverable against the Government for two separate wrongful death claims.

[37] In light of this court's considered position that this is a wrongful death action, and that the Newbys have already recovered $300,000.00, we hold that the Superior Court did not err in finding that the Government Claims Act, 5 GCA § 6101 *et seq.*, and the Contribution Among Joint Tortfeasors Act, 7 GCA § 24601 *et seq.*, effectively bar any recovery beyond the $300,000.00 the Newbys have already received pursuant to the Newby-GMHA settlement.

[38] We now turn to the legality of the damages cap and the prohibition of jury trials in the Government Claims Act.

D. Legality of Damages Cap and Prohibition of Jury Trials in Government Claims Act

[39] The Newbys argue that the damages cap and the prohibition against jury trials in the Government Claims Act are inorganic and unconstitutional inasmuch as they violate 1) equal protection, 2) due process, 3) the right to trial by jury, and 4) separation of powers. We reject each of these arguments in turn.

[40] We note from the outset that sovereign immunity is the normative baseline for construing limited waivers of sovereign immunity such as that contained in the Government Claims Act.

[6] Similar to this action, the Newby-GMHA settlement was not payable to the Estate of Jeromy Newby for claims Jeromy had against the GMHA prior to his death. Payment was to the Newbys. Under 7 GCA § 12109, the claim against the GMHA was similarly a wrongful death claim.

See Sumitomo Const., Co., Ltd. v. Gov't of Guam, 2001 Guam 23 ¶ 25 (citing *Library of Cong. v. Shaw*, 478 U.S., 310, 318 (1986)). Accordingly, courts have recognized that legislative bodies have the power to prescribe such limits, and that the limits prescribed are constitutionally valid. *See, e.g., Espinosa v. S. Pac. Transp. Co.*, 624 P.2d 162, 167 (Or. Ct. App. 1981) (finding that where the legislature indicates the extent to which sovereign immunity has been waived, only the legislature can waive the ceiling on liability set forth in the relevant statute); *Flournoy v. State*, 41 Cal. Rptr. 190, 192 (Dist. Ct. App. 1965) (approving the conclusion that the legislature may constitutionally alter, modify, or eliminate the rules governing tort liability of public entities); *Lowe v. Texas Tech Univ.*, 540 S.W.2d 297, 298 (Tex. 1976) (affirming longstanding precedent that waivers of governmental immunity is a matter addressed to the Legislature); *Easley v. N.Y. State Thruway Auth.*, 135 N.E.2d 572, 573 (N.Y. 1956) (finding that the state, as sovereign, may assert, waive, or condition at will, immunity from suit for itself and its agents); *Brown v. Bd. of Trustees of Town of Hamptonburg, Sch. Dist. No. 4*, 104 N.E.2d 866, 868-69 (N.Y. 1952) (finding that because the rule that the state and its municipal adjuncts may be liable in negligence did not exist at common law, but rather is statutory in origin, any such right granted "may be granted upon such conditions as the Legislature, in its wisdom, sees fit to impose.").

1. Equal Protection

[41] The Newbys argue that the damages cap in the Government Claims Act violates equal protection. This is unpersuasive. Reasoning that state legislatures have a rational basis for imposing monetary limits on the amount of damages recoverable against government tortfeasors, courts across the country have held that such damage caps do not violate the equal protection clauses of state and federal constitutions. *See, e.g., Packard v. Joint Sch. Dist. No. 171*, 661 P.2d 770, 775 (Idaho Ct. App. 1983) (upholding a $100,000.00 wrongful death recovery limitation in

the Idaho Tort Claims Act against an equal protection challenge because under a rational basis test, a fair and substantial relationship exists between the recovery limits and the legislative objective of conserving public funds); *Jetton v. Jacksonville Elec. Auth.*, 399 So. 2d 396, 399 (Fla. Dist. Ct. App. 1981) (finding that damages caps do not violate equal protection because a rational relationship exists between the statutory classifications of tort victims and the legislative objective of enabling recovery while recognizing that requiring local governments to protect themselves against full liability could impose too heavy a financial burden on local taxpayers); *Seifert v. Standard Paving Co.*, 355 N.E.2d 537, 541 (Ill. 1976) (finding that the legislature's power to limit the maximum recovery in a wrongful death action "can not be questioned" due to the fact that a wrongful death action did not exist at common law and is entirely a creature of statute), *overruled on other grounds by Rossetti Contracting Co., Inc. v. Court of Claims*, 485 N.E.2d 332, 335 (Ill. 1985); *Cargill's Estate v. City of Rochester*, 406 A.2d 704, 707-08 (N.H. 1979) (finding that the legislative goals to comprehensively define the liability to which governmental units would be exposed and to limit the financial strain to be imposed on governmental units by large judgments are not arbitrary or irrational and, absent invidious discrimination, the mere existence of a classification does not justify overturning on equal protection grounds damage caps set by the legislature); *Stanhope v. Brown County*, 280 N.W.2d 711, 716-20 (Wis. 1979) (unwilling to conclude that a $25,000.00 cap on tort damages recoverable against the government was arbitrary or unreasonable so as to violate equal protection guarantees given the fact that courts are not equipped or empowered to make investigations into the financial resources of various governmental bodies).

[42] We see no reason to depart from the widely-accepted rule that statutes limiting the amount of damages recoverable against government tortfeasors do not violate equal protection.

2. Due Process

[43] The Newbys argue that the damages cap in the Government Claims Act violates due process. Citing a general reluctance to substitute their own judgment for that of the elected legislature regarding what constitutes a reasonable limitation on tort recoveries for bodily injury against governmental units, courts have found that statutes limiting the amount of damages recoverable against government tortfeasors do not violate the due process guarantees in state and federal constitutions. *See, e.g., Cargill's Estate*, 406 A.2d 704, 708-09 (finding that although a $50,000.00 statutory limit on tort recovery against the government was dubious in light of escalating costs of medical services, legal expenses, and other damages likely to be sustained by tort victims, it was not, as a matter of law, "so severe as to be 'very wide of any reasonable line of demarcation.'" (citation omitted); *Rivera v. Gerner*, 446 A.2d 508, 512 (N.J. 1982) (finding that the legislature, in enacting the Tort Claims Act, reasonably granted injured plaintiffs the right to full recovery from any of the tortfeasors, and that this did not abridge a defendant's due process rights); *accord Jetton*, 399 So. 2d 396, 399; *Crowe v. John W. Harton Mem'l Hosp.*, 579 S.W.2d 888, 892-93 (Tenn. Ct. App. 1979). We see no reason to depart from precedent.

3. Right to Trial by Jury

[44] The Newbys argue that the damages cap in the Government Claims Act violates the right to trial by jury. Statutory caps on damages recoverable against a government have been held not to deny the constitutionally protected right to trial by jury. *See, e.g., Garner v. Covington County*, 624 So.2d 1346, 1351, 1354-55 (Ala. 1993) (finding that statute limiting recovery of damages against governmental entity to $100,000.00 for bodily injury or death did not violate provision of state constitution guaranteeing right to trial by jury because the legislature's specification of a dollar limitation on damages recoverable allows for fiscal planning and avoids

the risk of devastatingly high judgments). In *Garner*, the court found that, as a constitutional matter, the legislature had the authority to "enter the entire field" and found further that the legislature was in a "superior position" to comprehensively govern the laws regulating governmental liability. 624 So.2d 1346, 1354. Because judgments against government tortfeasors must be paid out of public moneys derived from taxation, "reasonable limitation [set by the legislature] on awards against them must be sustained." *Id.* at 1355. Although the Newbys cite a string of cases in support of their sweeping assertion that section 6301 of the Government Claims Act unconstitutionally denies the right to trial by jury, none of these cases stand for the more specific, legally significant proposition that a legislature, in enacting a limited statutory waiver of sovereign immunity, cannot limit that waiver.

[45] The Newbys likewise argue that the prohibition of jury trials in the Government Claims Act is unconstitutional because it violates the Seventh Amendment to the U.S. Constitution. Appellee's Br. at 8 (Sept. 14, 2009). This argument is untenable. As the Government rightly points out, because the Seventh Amendment's guarantee of a civil jury trial has never been extended to the States, and because the Organic Act only extends the Seventh Amendment to Guam as it applies to the States, *see* 48 U.S.C. § 1421b(u) (2008), it follows that the Seventh Amendment does not require a jury trial in civil actions against the Government of Guam.

4. Separation of Powers

[46] The Newbys argue that the damages cap in the Government Claims Act violates the doctrine of separation of powers by essentially transferring judicial powers and duties to the legislative and executive branches. They argue that because it limits the judicial branch's exclusive right to grant a new trial when a jury returns a verdict that is either inadequate or excessive, the cap constitutes an unconstitutional extension of legislative power. Toward this

end, the Newbys do not cite a single case holding that a damages cap arising from a legislature's limited waiver of sovereign immunity violates the separation of powers doctrine. Indeed, statutory caps on damages recoverable against a government have been held not to violate the doctrine. *See, e.g., Cauley v. City of Jacksonville*, 403 So. 2d 379, 387 (Fla. 1981). In *Cauley*, a woman injured in a car accident brought a tort action against the city. The court, in considering a statute that set a cap on damages available against the municipality, held that said statute was related to a "permissible legislative objective" and was "neither discriminatory, arbitrary, nor oppressive in its application." *Id.* Moreover, the damages cap enshrined in that state's statute did not violate the right to due process, jury trial, access to courts, or the separation of powers rule. *Id.*

V. CONCLUSION

[47] We find that the Government Claims Act and the Contribution Among Joint Tortfeasors Act effectively bar any recovery by the Newbys against the Government for the same wrongful death beyond the $300,000.00 they already received pursuant to the Newby-GMHA settlement. There is no genuine issue of any material fact in the case before us and the Government is entitled to a judgment as a matter of law. Thus, summary judgment in favor of the Government is proper. In addition, we find that the damages cap and the prohibition against jury trials in the Government Claims Act are neither inorganic nor unconstitutional.

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[48] Accordingly, the Superior Court's grant of the Government's motion is **AFFIRMED**.

Original Signed By: F. Philip Carbullido
F. PHILIP CARBULLIDO
Associate Justice

Original Signed By: Katherine A. Maraman
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: Robert J. Torres
ROBERT J. TORRES
Chief Justice