

1 the issue of the validity and enforceability of the liquidated damages clause will be addressed in
2 due course pursuant to the Government Claims Act.

3 There is nothing evasive about GSWA's Motion to Dismiss. Jurisdiction is a critical and
4 threshold issue. Indeed, it appears to be Maeda's attempt to evade the proper administrative
5 channels and jurisdiction over this dispute by semantically separating the validity of the liquidated
6 clause from the question of whether Maeda owes GSWA money. They are the same issue. Maeda
7 is engaging in mere wordplay to separate the same issue of law. The law does not allow Maeda
8 to bifurcate the same dispute. It clearly states that "[t]he Public Auditor shall not have jurisdiction
9 over disputes *having to do with* money owed to or by the government of Guam." 5 G.C.A. §
10 5703. (Emphasis added). "Having to do with" is very broad language clearly anticipating that
11 should the dispute have anything to do with money, as in this case, the Public Auditor "shall not
12 have jurisdiction." *Id.* It does not leave room for Maeda's interpretation that the Public Auditor
13 can determine part of the dispute, while leaving the remainder of the dispute to be resolved by the
14 Superior Court. This is an illogical and ridiculous interpretation of 5 G.C.A. § 5703 and *Pacific*
15 *Rock Corp. v. Dept. of Education*, 2001 Guam 29. Therefore, the Public Auditor must reject it.

16 Maeda merely seeks to substitute the Public Auditor's jurisdiction over that of the
17 Government Claims Act on the issue. There can be no reasonable question that the issue of the
18 validity and enforceability of liquidated damages goes directly to the heart of the dispute over
19 money damages. The validity and enforceability of the liquidated damages is only relevant
20 because this is a money dispute. This was never a dispute over the validity and enforceability of
21 the liquidated damages clause. Maeda did not object or dispute the validity and enforceability of
22 the liquidated damages clause when the bid was solicited. Maeda did not object or dispute the
23 validity of the liquidated damages clause when the amount was presented in the contract. Maeda
24 did not object or dispute the validity of the liquidated damages clause when it executed the
25 contract. Maeda only raised the issue of the validity and enforceability of the liquidated damages
26 clause years after execution of the contract, when there was a dispute having to do with money
27 owed to or by the government of Guam. Therefore, the Public Auditor lacks jurisdiction over this
28 dispute. See G 5 G.C.A. § 5703.

1 **II. THE ADJUDICATOR'S PERSONAL CRITICISM OF THE RECEIVER**
2 **REQUIRES RECUSAL.**

3 Officials in public office often do express opinions on public matters, because doing so is
4 part of their duties as elected public officials. The Public Auditor's office, however, does not
5 have a duty to issue an advisory opinion on the judiciousness of the District Court of Guam's
6 continued appointment of the federal receiver as management over GSWA. Nor does the Public
7 Auditor's office have a duty to issue an advisory opinion on the judgment of the federally
8 appointed receiver over GSWA. Although Maeda compares the Public Auditor's role and actions
9 to that of a senator, the Public Auditor's role in this appeal is more akin to that of a judge who is
10 required to be fair and impartial. *See* 5 G.C.A. § 9222. The Public Auditor's role involves
11 investigating and deciding a procurement appeal. Therefore, the standards applicable to Judges
12 are better suited to the issue than the standard any other elected official.

13 Those standards require disqualification "in any proceeding in which his or her
14 impartiality might *reasonably be questioned*." 7 G.C.A. § 6105(a). In this proceeding, the Public
15 Auditor's impartiality has certainly and reasonably been questioned as detailed in GSWA's
16 Motion to Dismiss. In addition to the bias expressed against the Receiver for GSWA, it is
17 questionable that the Public Auditor's press release had no relation to her duties and yet still came
18 out of the Office of the Public Auditor in the Public Auditor's official capacity. Again, GSWA
19 could find no other open letter or press release from the Public Auditor outside of her statutory
20 duties that opines on her confidence – or lack thereof - in the management of any other public
21 agency. Therefore, the Public Auditor's "impartiality might reasonably be questioned." *See* 7
22 G.C.A. § 6105(a). Holding the Office of the Public Auditor to this high standard of judicial
23 integrity as an adjudicator, it is prudent that the Public Auditor recuse herself.

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CONCLUSION

For the foregoing reasons, the appeal should be summarily dismissed for the OPA's lack of jurisdiction to hear the appeal under 5 G.C.A. § 5703. The appeal should also be dismissed due to the disqualification or recusal of the Public Auditor in accordance with 2 G.A.R. § 12601.

Respectfully submitted this 24th day of September, 2015.



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