

APR 26 1993

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## Attorneys for Defendants

The Estate of James Campbell, Deceased,  
W. H. McVay and P. R. Cassidy,  
Trustees Under the Will and of  
the Estate of James Campbell, Deceased,  
acting in their fiduciary and not in  
their individual capacities, Herbert  
C. Cornuelle and F.E. Trotter

## IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

## STATE OF HAWAII

PELE DEFENSE FUND,

Plaintiff,

v.

WILLIAM PATY, in his capacity as)  
Chairman of the Board of Land )  
and Natural Resources, State of )  
Hawaii, MOSES KEALOHA, DOUGLAS )  
ING, LEONARD ZALOPANY, JOHN )  
ARISUMI and HERBERT ARATA, in )  
their capacity as members of the )  
Board of Land and Natural )  
Resources; The Estate of JAMES )  
CAMPBELL, Deceased, FRED E. )  
TROTTER, W.H. McVAY, P.R. )  
CASSIDAY, and HERBERT C. )  
CORNUELLE, in their fiduciary )  
capacity as Trustees under the )  
Will of James Campbell, )  
Deceased; TRUE ENERGY GEOTHERMAL )  
CORP., TRUE GEOTHERMAL DRILLING )  
CO., and MID-PACIFIC GEOTHERMAL )  
INC., )

CIVIL NO. 89-089 (Hilo)  
(Declaratory Judgment/  
Injunction)

DEFENDANTS THE ESTATE OF  
JAMES CAMPBELL, DECEASED, W.  
H. McVAY AND P. R. CASSIDAY,  
TRUSTEES UNDER THE WILL AND  
OF THE ESTATE OF JAMES  
CAMPBELL, DECEASED, ACTING IN  
THEIR FIDUCIARY AND NOT IN  
THEIR INDIVIDUAL CAPACITIES,  
HERBERT C. CORNUELLE AND F.E.  
TROTTER'S MEMORANDUM IN  
OPPOSITION TO PLAINTIFF'S  
MOTION TO DELETE DEFENDANTS  
WILLIAM PATY, MOSES KEAHOLA,  
DOUGLAS ING, LEONARD  
ZALOPANY, JOHN ARISUMI AND  
HERBERT ARATA AS NAMED  
DEFENDANTS FROM THE CAPTION,  
FILED ON APRIL 6, 1993;  
CERTIFICATE OF SERVICE

Defendants. ) Hearing Date: May 7, 1993  
) (By Telephone Conference)  
) Hearing Time: 8:00 a.m.  
) Hearing Judge: The Honorable  
) Ricki Amano  
)

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DEFENDANTS THE ESTATE OF JAMES CAMPBELL, DECEASED,  
W. H. McVAY AND P. R. CASSIDAY, TRUSTEES UNDER  
THE WILL AND OF THE ESTATE OF JAMES CAMPBELL,  
DECEASED, ACTING IN THEIR FIDUCIARY AND NOT IN  
THEIR INDIVIDUAL CAPACITIES, HERBERT C. CORNUELLE  
AND F.E. TROTTER'S MEMORANDUM IN OPPOSITION  
TO PLAINTIFF'S MOTION TO DELETE DEFENDANTS  
WILLIAM PATY, MOSES KEAHOLA, DOUGLAS ING, LEONARD  
ZALOPANY, JOHN ARISUMI AND HERBERT ARATA AS NAMED  
DEFENDANTS FROM THE CAPTION, FILED ON APRIL 6, 1993

Defendants The Estate of James Campbell, Deceased, W.H.  
McVay and P.R. Cassidy, Trustees under the Will and of The  
Estate of James Campbell, Deceased, acting in their fiduciary and  
not in their individual capacities (hereinafter collectively  
referred to as "Defendants Campbell Estate") oppose Plaintiff's  
Motion to Delete Defendants William Paty, Moses Keahola, Douglas  
Ing, Leonard Zalopany, John Arisumi and Herbert Arata as Named  
Defendants from the Caption. Plaintiff's cite no caselaw  
authority for deleting defendants' names from the caption in the  
Affidavit of Paul F. N. Lucas attached to its Motion.

Moreover, Haw. R. Civ. P. 21 cited by Plaintiff in its  
Motion does not pertain to amending a caption. Rule 21 has to do  
with the dropping or adding of parties where there is a  
"misjoinder" or "non-joinder."

Even assuming that Rule 21 authorizes amendment of the  
caption, it does not apply in the instant case. Rule 21

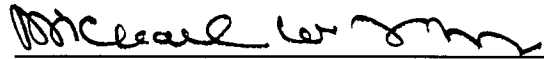
specifically deals with the "misjoinder and non-joinder of parties." In this case, the defendants were properly joined but the court lacked jurisdiction over such defendants because of the defense of sovereign immunity and the running of the statute of limitations. See Pele Defense Fund v. Paty, 73 Haw. 578 (1992). As there was no "misjoinder," Rule 21 does not authorize dropping defendants' names from the caption.

Circuit Court Rule 3(c)(4) states that the first page of all papers shall contain "the title of the cause (which title shall include the names of all of the parties in the initial pleading, but thereafter may be appropriately abbreviated.)" In accord with Circuit Court Rule 3(c)(4), defendants' names must remain in the caption.

For the foregoing reasons, Defendants Campbell Estate respectfully request that Plaintiff's Motion to Delete Defendants William Paty, Moses Keahola, Douglas Ing, Leonard Zalopany, John

Arisumi and Herbert Arata as Named Defendants from the Caption be denied.

DATED: Honolulu, Hawaii; April 20, 1993.



WAYNE NASSER

MICHAEL W. GIBSON

Attorneys for Defendants

The Estate of James  
Campbell, Deceased, W. H.  
McVay and P. R. Cassiday,  
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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089 (Hilo)
	)	(Declaratory Judgment/
	)	Injunction)
Plaintiffs,	)	
	)	CERTIFICATE OF SERVICE
vs.	)	
	)	
WILLIAM PATY, in his capacity as)		
Chairman of the Board of Land )		
and Natural Resources, State of )		
Hawaii, MOSES KEALOHA, DOUGLAS )		
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CORP., TRUE GEOTHERMAL DRILLING )		
CO., and MID-PACIFIC GEOTHERMAL )		
INC., )		
	)	
Defendants. )		
	)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date set forth below service of a copy of the foregoing document was made upon the parties below, by depositing the same in the United States mail, postage prepaid, addressed as follows:

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Attorneys for Defendants  
True Energy Geothermal Corp., True  
Geothermal Drilling Co. and  
Mid-Pacific Geothermal Inc.

DATED: Honolulu, Hawaii; April 21, 1993.



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