*Becheserrak v. ROP*, 8 ROP Intrm. 147 (2000)
**KATSUTOSHI BECHESERRAK,**
**Appellant,**

**v.**

**REPUBLIC OF PALAU,**
**Appellee.**

CIVIL APPEAL NO. 99-22
Civil Action No. 781-88

Supreme Court, Appellate Division
Republic of Palau

Decided: April 3, 2000[1]

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Janine R. Udui, Assistant Attorney General

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; and R. BARRIE MICHELSEN, Associate Justice.

BEATTIE, Justice:

Appellant Katsutoshi Becheserrak appeals from the Trial Division's July 22, 1999 judgment holding that the doctrine of sovereign immunity barred him from recovering post-judgment interest from Appellee the Republic of Palau ("ROP"). We affirm.

**I.**

Appellant is a former government employee who was awarded back pay for his wrongful termination from government employment. He later moved for post-judgment interest, contending that although the ROP's sovereign immunity had barred his claim for pre-judgment interest, *see Becheserrak v. ROP* , 7 ROP Intrm. 111, 113-15 (1998), the ROP had waived its immunity from post-judgment interest through a statute providing that "every judgment for the payment of money shall bear interest." 14 PNC § 2001. The trial court denied his motion on the grounds that section 2001, which made no reference to government liability, did not effectively waive sovereign immunity. Appellant then brought this appeal.

**II.**

[1] Because oral argument would not materially assist the Court, we find it appropriate to resolve this appeal without oral argument. *See In re Estate of Kubarii*, 7 ROP Intrm. 27, 27 n. 1 (1998).

The issue of whether section 2001 constitutes a waiver of sovereign immunity presents a question of law that we review *de novo*. *Elbelau v. Semdiu*, 5 ROP Intrm. 19, 21 (1994). Appellant, as the claimant against the government, bears the burden of demonstrating the asserted waiver. *Booth v. United States*, 990 F.2d 617, 619 (Fed. Cir. 1993); *West v. Federal Aviation Admin.*, 830 F.2d 1044, 1046 (9th Cir. 1989).

**A.**

The doctrine of sovereign immunity immunizes the ROP from lawsuits except to the extent it has waived this immunity by consenting to be sued. *Superluck Enters., Inc. v. ROP*, 6 ROP Intrm. 267, 271 (1997); *Tell v. Rengiil*, 4 ROP Intrm. 224, 227 (1994). A waiver cannot be implied, but rather must be ⊥148 explicitly and unequivocally expressed in the statute authorizing the suit. *Becheserrak,* 7 ROP Intrm. at 114; *Superluck,* 6 ROP Intrm. at 271. As we have previously emphasized in applying this express waiver rule,

> [t]here can be no consent by implication or by use of ambiguous language. Nor can an intent on the part of the framers of a statute . . . to permit the recovery of interest suffice where the intent is not translated into affirmative statutory . . . terms. The consent necessary to waive traditional immunity must be express, and it must be strictly construed.

*Superluck,* 6 ROP Intrm. at 271-72 (citations and internal quotations omitted). We must, therefore, decide whether section 2001's provision for post-judgment interest on "every judgment for the payment of money" constitutes an express waiver of sovereign immunity in accordance with these standards.

**B.**

Appellant contends that, because section 2001 uses the expansive word "every," which means "each . . . part of a class . . . without exception" [2] or "each one of all," [3] its provision for interest on "every judgment" denotes "undiluted inclusiveness" of all judgments, and therefore constitutes "an express inclusion of judgments against the ROP," despite its failure to mention the ROP. Thus, Appellant argues, because we must apply the plain meaning of this language, *see ROP v. Belau Museum*, 6 ROP Intrm. 277, 278 (1995), and must give effect to each word thereof, *see* 73 Am. Jur. 2d *Statutes* § 200, we must construe the words "every judgment" to include judgments against the ROP.

We disagree. The express waiver rule requires us to construe an asserted waiver of immunity strictly, and precludes us from recognizing any intent to hold the government liable where that intent "is not translated into affirmative statutory . . . terms." *Superluck,* 6 ROP Intrm. at 271-72. We find no affirmative terms expressing an intent to hold the government liable for post-judgment interest. In contrast to typical statutory waivers of immunity which explicitly impose liability on the government, *see, e.g.,* 14 PNC § 503 ("[a]ctions may be brought

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[2] *Webster's Third New Int'l Dictionary* 788 (1981).

[3] *Black's Law Dictionary* 555 (6th ed. 1990).

against the government . . . which shall be liable to the same extent as a private person"); 28 U.S.C. § 1961(c) (imposing interest on "judgments against the United States"), section 2001 makes no reference to government liability. Absent some reference to the government's liability, section 2001 does not constitute an explicit waiver of immunity as required by the express waiver rule. *See Superluck*, 6 ROP Intrm. at 271-72.

Contrary to Appellant's suggestion, our holding that the words "every judgment" do not constitute an express waiver of sovereign immunity does not render these words meaningless. Construing section 2001 in its context, *see King v. St. Vincent's Hosp.* , 112 S. Ct. 570, 574 (1991), we note that it is found in a chapter that provides methods of enforcing judgments, and just as surrounding sections identify the types of judgments they ⊥149 govern,[4] so section 2001 specifies that it governs "every judgment for the payment of money." These words, by extending section 2001 to any money judgment regardless of factors such as the nature of the underlying action or the reason for delay in satisfying the judgment, give the statute a broad scope. Yet, despite their significant effect in extending the statute to all types of money judgments, these words express no intent to address the distinct issue of sovereign immunity. Thus, we do not construe these words as the explicit imposition of government liability that the express waiver rule requires.

Appellant argues that section 2001's intent to waive sovereign immunity can be inferred by comparing it to 14 PNC § 503, which holds the ROP liable in tort "to the same extent as a private person," but then limits this liability by providing that the ROP "shall not be liable for interest prior to judgment." According to Appellant, section 503's express reservation of immunity from pre-judgment interest, when contrasted against section 2001's silence as to immunity from post-judgment interest, reveals an intent to waive immunity from post-judgment interest. This argument cannot prevail, however, under the express waiver rule, which requires that a waiver be affirmatively expressed. A statute cannot effectively waive immunity from post-judgment interest by its silence, even when that silence is contrasted against an express reservation of immunity from pre-judgment interest. *See Becheserrak*, 7 ROP Intrm. at 114-15; *Superluck*, 6 ROP Intrm. at 271-72.[5] Accordingly, section 2001 cannot be construed, either by its

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[4] *See* 14 PNC § 2002 (governing any "judgment adjudicating an interest in land"); 14 PNC § 2003 (addressing any judgment for "any form of relief other than the payment of money or the adjudication of an interest in land").

[5] *See also Thompson v. Kennickell*, 797 F.2d 1015, 1024 (D.C. Cir. 1986) (holding that a statute's "silence does not permit a court to find the requisite waiver of sovereign immunity with respect to awards of post-judgment interest"). Even if the express waiver rule permitted us to infer a waiver of immunity from a statute's silence based on another statute's express reservation of immunity in some circumstances, such an inference would be illogical here. Section 503 expressly waives the government's immunity from tort judgments, then limits the scope of this waiver by preserving immunity from pre-judgment interest, but has no occasion to address post-judgment interest, which cannot be awarded as part of the tort judgments authorized therein. Section 2001, by contrast, as a general post-judgment interest provision does not expressly subject the government to any liability and thus, unlike section 503, has no occasion to limit the scope of any waiver by expressly preserving immunity. Section 503's express reservation of immunity from pre-judgment interest therefore does not confer any significance on either

own terms or by reference to section 503, as an express waiver of immunity.

**C.**

While we base the foregoing conclusion on our analysis of section 2001 in light of our cases applying the express waiver rule, we also note that United States cases, which guide us in applying the common law doctrine of sovereign immunity, *see* 1 PNC § 303; *Becheserrak,* 7 ROP Intrm. at 114, have upheld assertions of sovereign immunity from post-judgment interest absent a statute explicitly holding the government liable therefor. *Transco Leasing Corp. v. United* ⊥*150* *States*, 992 F.2d 552, 554-55 (5th Cir. 1993); *A.L.T. Corp. v. Small Bus. Admin.,* 823 F.2d 126, 127 (5th Cir. 1987). Notably, while a United States statute similar to section 2001 provides that post-judgment interest "shall be allowed on any money judgment," 28 U.S.C. § 1961, courts construing this language in light of the express waiver rule have held that it "cannot be read as authorizing interest awards against the [government]." *Alaska Airlines, Inc. v. Johnson*, 8 F.3d 791, 798 (Fed. Cir. 1993). As one court explained, although the broad "any money judgment" language, when "literally read, appears to . . . mandate[ ] the award of interest on *any* money judgment," in the context of the express waiver rule this language is "insufficient . . . to permit an award of post-judgment interest against the [government]" absent explicit words to that effect. *Thompson v. Kennickell*, 797 F.2d 1015, 1016-22 (D.C. Cir. 1986). [6] We, too, are bound by the express waiver rule, and thus cannot recognize a waiver of immunity absent an express provision imposing post-judgment interest on judgments against the government. Because we find no such provision in the Palau National Code, we reject Appellant's assertion that the ROP has statutorily waived its sovereign immunity from post-judgment interest awards.

**III.**

For the foregoing reasons, we AFFIRM the trial court's judgment denying Appellant post-judgment interest.

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statute's silence as to immunity from post-judgment interest.

[6] Because the express waiver rule requires an explicitly stated intent to hold the sovereign liable, Appellant's reliance on cases construing the term "every" in unrelated contexts is misplaced. *See, e.g., United States v. Five Gambling Devices*, 74 S.Ct. 190, 192 (1953) (holding that "every manufacturer" includes intrastate manufacturers); *Choteau v. Burnet*, 51 S.Ct. 598, 601 (1931) (holding that tax on "every individual" includes American Indians); *White v. State*, 661 P.2d 1272, 1275 (Mont. 1983) (holding that "every injury" means all compensable injuries). While Appellant cites one sovereign immunity case construing the words "every civil action" expansively, these words were found in a clause that *limited* the scope of an express statutory waiver by barring every action that did not satisfy statutory requirements, not in a clause that *constituted* the purported waiver. *See Mason v. Judges*, 952 F.2d 423, 424-25 (D.C. Cir. 1991). Thus, while the broad interpretation of those words in *Mason* was consistent with the command that waivers be explicitly expressed and strictly construed, *see Superluck,* 6 ROP Intrm. at 271-72, in this case such a broad interpretation would contravene that central command of the express waiver rule.

MILLER, Justice, concurring in the judgment:

I have previously made clear my view that the "no-interest" rule--here applied with the result that a statute addressing "every judgment for the payment of money" does not apply to every such judgment--need not, and should not, be followed in Palau because it "threatens to undermine, rather than to reflect, the intent of the legislature." *Becheserrak v. ROP* , 7 ROP Intrm. 111, 116 (1998) (Miller, J., concurring in part and dissenting in part). That having been said, however, I can see no way to distinguish the treatment of post-judgment interest from our prior treatment of pre-judgment interest, and therefore concur in the result reached today on the basis of *stare decisis* . The no-interest rule is now settled law in Palau; if the OEK wishes the Republic to pay interest--pre-judgment or post- ⊥151 -judgment, in some or all cases--it now knows that it must say so expressly.