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7 **IN THE SUPERIOR COURT OF GUAM**

8 GUAM SURGICENTER, LLC, ISLAND  
9 CANCER CENTER, and AC MICRO GUAM,  
10 LLC

11 Plaintiffs,

12 vs.

13 DB INSURANCE CO., LTD, MOYLAN'S  
14 INSURANCE UNDERWRITERS, INC., and  
15 EQUITABLE ADJUSTING & SERVICE  
16 COMPANY

17 Defendants.

CIVIL CASE NO. CV 0594-24

**PLAINTIFF'S OPPOSITION TO  
EQUITABLE ADJUSTING & SERVICE  
COMPANY'S MOTION TO DISMISS**

18 **INTRODUCTION**

19 Defendant Equitable Adjusting & Service Company's ("EASCO") motion to dismiss rests  
20 on a mischaracterization of the Complaint's allegations, an unsupported interpretation of Guam  
21 law, and reliance on non-binding, factually inapposite authority. Plaintiffs Guam Surgicenter, LLC,  
22 Island Cancer Center, and AC Micro Guam, LLC ("Plaintiffs" or "Guam Surgicenter") alleged that  
23 EASCO, acting as an insurance adjuster, played a critical and conflicted role in the bad-faith denial  
24 of their insurance claim. *See* Complaint ("Compl.") ¶¶ 7, 8-9, 33, 37-38, 42, 74. Specifically, the  
25 Complaint asserts that EASCO was "a member of Moylan's insurance company," which Moylan's  
26 Insurance Underwriters, Inc. ("Moylan's") disputes. *Compare* Compl. ¶ 6 with Moylan's Answer  
27 ¶ 6. If true, EASCO's entanglement with Moylan's—the underwriter of the policy at issue—creates  
28 a plausible inference that EASCO was incentivized to act in bad faith when it denied Plaintiffs'  
claim. *Id.* ¶¶ 36-38.



1 v. *Calvo Fin. Corp. (Taitano I)*, 2008 Guam 12 ¶ 9, *aff'd on reh'g*, 2009 Guam 9). Dismissal is  
2 improper if the facts alleged, when taken as true, provide any plausible basis for relief.

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4 **II. AC MICRO'S CLAIMS ARE PROPERLY PLEAD AND SHOULD NOT BE DISMISSED.**

5 Defendant's argument for dismissing AC Micro Guam, LLC ("AC Micro") as a plaintiff  
6 relies on an overly narrow interpretation of the Complaint and fails to consider the liberal pleading  
7 standards under applicable law. A motion to dismiss is only appropriate if the plaintiff has failed to  
8 allege any facts that, taken as true, could support a claim for relief. *Ukau*, 2016 Guam 26, ¶¶ 51-  
9 53. This is not the case here.

10 AC Micro is a named insured under the policy at the center of this lawsuit, as explicitly  
11 stated in the Complaint and attached as Exhibit B. This alone establishes AC Micro's standing as a  
12 plaintiff, as it has a direct contractual interest in the policy and the claims arising from it.

13  
14 The Complaint alleges that defendants engaged in conduct damaging to the Plaintiffs,  
15 collectively defined in the introductory sections of the Complaint, which explicitly includes AC  
16 Micro. *See e.g.*, Compl. ¶ 4, 72\*, 87\* The fact that the Complaint does not repeat AC Micro's name  
17 in every paragraph does not render its claims invalid. Pleadings are not required to provide  
18 exhaustive detail at this stage. Instead, they must merely put the defendant on notice of the claims  
19 against them and the general basis for those claims. *Core Tech Int'l Corp. v. Hamil Eng'g & Constr.*  
20 *Co.*, 2010 Guam 13 ¶ 52. Here, AC Micro's inclusion as a plaintiff and its connection to the alleged  
21 damages provide adequate notice to EASCO.

22  
23 If the Court finds any ambiguity in the pleading with respect to AC Micro's claims, the  
24 appropriate remedy is not dismissal but amendment, consistent with the principle that leave to  
25 amend should be granted. *See Foman v. Davis*, 371 U.S. 178, 182 (1962). For these reasons,  
26 Defendant's motion to dismiss AC Micro as a plaintiff should be denied.  
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**III. EASCO LIABILITY**

Plaintiffs assert six distinct causes of action, several of which directly implicate EASCO, for its role in the events leading to the denial of coverage under the insurance policy. Central to these claims is the allegation that EASCO failed to conduct a fair and adequate investigation into Guam Surgicenter’s insurance claim, contributing to the bad-faith denial of coverage. The Complaint asserts that EASCO’s actions were not merely procedural errors but constituted a tortious breach of its duties, as well as negligence, which directly harmed Plaintiffs. The following section addresses EASCO’s liability considering the specific allegations in the Complaint and demonstrates why its motion to dismiss should be denied.

**A. TORT LIABILITY**

**1. EASCO’s Corporate Entanglement with Moylan’s Undermines Objectivity and Warrants Its Continued Inclusion in the Litigation.**

EASCO argues that it should be dismissed from the litigation because it is merely “an adjusting company that evaluates claims and makes recommendations to an insurer on how the insurer should resolve claims.” Motion to Dismiss at p. 6. However, objectivity is a cornerstone of the insurance industry, particularly in the roles of adjusters and underwriters. Adjusters are expected to evaluate claims independently, free from influence of underwriting considerations, while underwriters are tasked with determining coverage and terms based on objective risk assessment. This separation of roles is essential to ensuring fair and impartial decision-making in handling insurance claims.

The Complaint alleges that EASCO’s relationship with Moylan’s—a key underwriter for the insurer involved in this case—deviates from industry standards. Compl. ¶¶ 7 (“Upon information and belief, Defendant [EASCO]. . . is, and was at all times mentioned herein, a member

1 of Moylan's Insurance Companies."<sup>1</sup>), and 68 ("Defendants acted in bad faith and disregarded  
2 evidence provided in support of Guam Surgicenter's claim."). This entanglement, Plaintiffs argue,  
3 incentivizes EASCO to recommend denying claims underwritten by Moylan's, prioritizing the  
4 commercial interests of its affiliated entity over conducting a fair and objective investigation.  
5 Although Moylan's denies this claim in its answer to the Complaint, EASCO's motion to dismiss  
6 relies on the very existence of such a connection to argue that it acted as an agent of DB Insurance.  
7 Motion to Dismiss at pp. 6-9.

9 EASCO's alleged lack of independence is central to Plaintiffs' claims. Unlike an adjuster  
10 operating at arm's length from underwriting functions, EASCO's recommendations are tainted by  
11 its shared interests with Moylan's. If proven, this conflict undermines the integrity of the claims  
12 process and contributes to the insurer's alleged bad-faith denial of coverage.

14 At this early stage of litigation, the Court must accept these allegations as true and construe  
15 them in the light most favorable to Plaintiffs. *Cruz*, 2023 Guam 20 ¶ 10. Granting EASCO's  
16 dismissal at this stage would prematurely foreclose Plaintiffs' ability to fully investigate the extent  
17 of this conflict and its impact on the denial of their claim. Discovery is essential to uncover whether  
18 EASCO's recommendations were influenced by its relationship with Moylan's and whether this  
19 conduct contributed to the insurer's bad-faith actions.

21 The unique allegations against EASCO justify its continued inclusion in the litigation. The  
22 Court should deny the motion to dismiss, allowing Plaintiffs to develop the factual record and  
23 demonstrate how EASCO's actions and relationships materially harmed them.

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27 <sup>1</sup> See attached **Exhibit A**, a true and correct copy of EASCO's denial letter to Guam Surgicenter which states  
28 on its letterhead "Member of Moylan's Insurance Companies"; see also <https://equitableadjusting.com/> EASCO's is  
identified on its banner of its website as "A Member of the Moylan's Family of Companies".



1 insurer required further inquiry into whether the agent's actions were attributable to the insurer).

2 Moreover, even if EASCO's argument about its contractual relationship with DB Insurance  
3 were accurate, it would not warrant dismissal. Plaintiffs have alleged that EASCO's conduct—  
4 whether acting as an agent, contractor, or in another capacity—directly contributed to the insurer's  
5 bad-faith denial of their claim. In *Ramsey v. Farmers New World Life Ins.*, a California District  
6 court found that an insurance agent could be held liable under California law where evidence  
7 suggested affirmative misrepresentations or negligent omissions by the agent in addressing a  
8 policyholder's unilateral mistake. No. CV 1:19-405, 2024 WL 3967470 (E.D. Cal. Aug. 28, 2024);  
9 *see also Sivil v. Country Mut. Ins. Co.*, 619 F. Supp. 3d 1072, 1081 (finding genuine issue of  
10 material fact as to whether broker acted as insurer's agent, precluding summary judgment on bad-  
11 faith claim).  
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14 Here, Plaintiffs allege that EASCO, as the adjuster, failed to conduct an adequate  
15 investigation or correct Guam Surgicenter's initial assessment of its claim. Compl. ¶¶ 67, 71, 75,  
16 76, 78. This failure to investigate or provide clarification mirrors the type of conduct that courts  
17 have found sufficient to preclude dismissal or summary judgment. EASCO's role was not passive;  
18 its alleged omissions and actions directly contributed to the insurer's bad-faith denial of coverage,  
19 creating a plausible basis for liability. As with the agent in *Ramsey v. Farmers New World Life Ins.*,  
20 EASCO's conduct raises significant factual disputes that must be resolved through further inquiry  
21 rather than dismissal at this stage.  
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23 At the motion-to-dismiss stage, the Court must accept the allegations in the Complaint as  
24 true and construe them in the light most favorable to Plaintiffs. Plaintiffs have alleged sufficient  
25 facts to suggest that EASCO's role in the claims process materially contributed to the harm they  
26 suffered. Whether EASCO acted within a contractual relationship or in another capacity is a  
27 question of fact that cannot be resolved in the pleadings.  
28

1 For these reasons, EASCO's reliance on the statutory definition of "adjuster" and its claimed  
2 contractual relationship with DB Insurance does not justify dismissal. Plaintiffs are entitled to  
3 conduct discovery to clarify the nature of EASCO's relationship with DB Insurance and the extent  
4 of its involvement in the denial of their claim.  
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6 **3. EASCO's Argument Based on Non-Binding and Factually**  
7 **Distinct Authority Should Be Rejected.**

8 EASCO's motion relies heavily on a Superior Court Decision & Order dismissing a  
9 complaint in CV0631-21 to justify its dismissal, but the procedural and substantive context of that  
10 case renders it inapplicable to the allegations here and highlights the speculative nature of EASCO's  
11 legal reasoning.

12 The decision was based on a *pro se* lawsuit with a Complaint the court had already found  
13 deficient before addressing the plaintiff's arguments in opposition. *De Vera v. Payless*  
14 *Supermarkets and Clifford J. Ruder*, CV0631-21 at p. 3 (Decision & Order Re Motion to Dismiss  
15 Complaint, Mar. 8, 2022). The court's analysis, including its reliance on the principle that insurance  
16 adjusters generally lack duties to personal tort victims, was therefore conducted in a case where the  
17 plaintiff failed to meet even the most basic pleading standards.<sup>2</sup> By contrast, the Plaintiffs here have  
18 adequately alleged specific and detailed facts about EASCO's role in the claims process, its  
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24 <sup>2</sup> The discussion of adjuster liability was primarily based on out-of-jurisdiction authorities and general  
25 principles, not binding precedent from Guam or any court with controlling authority over this case. *Id.* at 4. The court's  
26 references to cases from other jurisdictions and the citation to a single, non-binding federal decision (*Sutor v. FEMA*,  
27 2009 WL 2004375 at \*6 (E.D. Pa.)) do not establish a settled rule of law in Guam. The court acknowledged that its  
28 reasoning aligned with "the majority of states" but did not address whether Guam law mandates a similar outcome or  
whether exceptions might apply in cases involving allegations of bad-faith conduct, as alleged here. Notably, the court  
dismissed the claims without prejudice and explicitly left open the opportunity for the plaintiff to amend the complaint  
to allege a valid cause of action, emphasizing that it was premature to foreclose such an opportunity. CV0631-21 at pp.  
4-5.

1 conflicts of interest, and its bad-faith conduct in concert with the insurer and its agents.<sup>3</sup> Second,  
2 the court in CV0631-21 addressed a markedly different scenario from this case. The plaintiff  
3 there—a third-party tort victim—alleged only that the adjuster failed to conduct an adequate  
4 investigation before denying his claim. There were no allegations of a conflicted relationship  
5 between the adjuster and an underwriter or of concerted bad-faith conduct between the adjuster,  
6 insurer, and other agents. Here, Plaintiffs allege that EASCO’s investigation was not only  
7 inadequate but also tainted by its corporate entanglement with Moylan’s, creating a financial  
8 incentive to deny claims. *See e.g., Riccatone v. Colo. Choice Health Plans*, 315 P.3d 203, 207  
9 (Colo.App.2013) (holding that a financial incentive to deny claims or coerce reduced settlements  
10 can create a duty of good faith and fair dealing owed by a third party to the insured”). Additionally,  
11 Plaintiffs have alleged that EASCO acted in concert with the insurer and other agents to deny claims  
12 in bad faith, an allegation entirely absent in *De Vera*.

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15 Defendant EASCO’s reliance on *Sanchez v. Lindsey Morden Claims Services, Inc.*, 72 Cal.  
16 App. 4th 249 (1999), oversimplifies its applicability and ignores important distinctions recognized

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19 <sup>3</sup> Courts in several jurisdictions have recognized exceptions to the general rule that insurance agents owe no  
20 duty to the insured. For example, in Michigan, when an independent agent has been granted binding authority, the  
21 agent assumes a limited fiduciary relationship with the insurer but retains a primary fiduciary duty to the insured. This  
22 duty does not negate the agent’s contractual obligations to the insurer but underscores the independent agent’s dual  
23 obligations. *Opera Block Properties, Inc. v. Auto-Owners Ins. Co.*, No. 365213, 2024 WL 3907171, at \*5 (Mich. Ct.  
24 App. Aug. 22, 2024) (citing *Al-Hajjaj v. Hartford Accident and Indemnity Co.*, 345 Mich. App. 361, 376, 5 N.W.3d  
25 353 (2023); *Genesee Foods Servs., Inc. v. Meadowbrook, Inc.*, 279 Mich. App. 656, 760 N.W.2d 259 (2008)). Michigan  
26 courts have characterized an insurance agent’s failure to procure requested insurance as a tort. *Holton v. A+ Ins. Assoc.,*  
27 *Inc.*, 255 Mich.App. 318, 324–325, 661 N.W.2d 248 (2003). *See also Zaremba Equip., Inc.*, 280 Mich.App. at 37–38,  
28 761 N.W.2d 151 (holding that an insurance agent who does not procure the insurance coverage requested breaches his  
or her duty, suggesting a negligence claim). Similarly, the Montana Supreme Court has held that “[i]f an insurance  
agent is instructed to procure specific insurance and fails to do so, he is liable for damages suffered due to the absence  
of such insurance.” *TCF Enterprises, Inc. v. Rames, Inc.*, 2024 MT 38, ¶ 27, 415 Mont. 306, 323, 544 P.3d 206, 219  
(citing *Bailey v. State Farm Mut. Auto. Ins. Co.*, 2013 MT 119, ¶ 20, 370 Mont. 73, 300 P.3d 1149). Under Mississippi  
law, insurance agents and adjusters, while not liable for ordinary negligence in performing their duties on behalf of  
insurers, can incur independent liability when their conduct constitutes gross negligence, malice, or reckless disregard  
for rights of insured. *Wilson v. Kemper Corp. Servs., Inc.*, 635 F. Supp. 3d 506 (S.D. Miss. 2022) (appeal pending)

1 in subsequent case law. *Sanchez* relied on the premise that holding adjusters directly liable to  
2 insureds would provide “few additional benefits” because insurers are already liable for improper  
3 claims handling. *Id.* at 802. This reasoning does not account for situations, such as the one alleged  
4 here, where an adjuster’s actions may have been influenced by financial incentives or conflicts of  
5 interest, thereby contributing directly to the harm suffered by the insured. Imposing liability in such  
6 cases would serve the important function of holding adjusters accountable for conduct that exceeds  
7 the boundaries of their typical role and directly harms insureds.

9 While *Sanchez* held that insurer-retained adjusters generally do not owe a duty of care to  
10 insureds, later California decisions have clarified that this principle is limited in scope and does not  
11 shield adjusters from liability for independent torts.

12 For instance, in *Bock v. Hansen*, the California Court of Appeal distinguished *Sanchez* by  
13 recognizing that different tort theories, such as negligent misrepresentation, are not barred by the  
14 same reasoning that limits negligence claims. 225 Cal. App. 4th 215, 227–28, 170 Cal. Rptr. 3d  
15 293, 302 (2014). The *Bock* court emphasized that negligent misrepresentation is a “separate and  
16 distinct tort” with unique elements and policy considerations. *Id.* (citing *Bily v. Arthur Young &*  
17 *Co.*, 3 Cal. 4th 370, 407 (1992)); see, *Supra*, *Ramsey v. Farmers New World Life Ins.*, No. CV 1:19-  
18 405, 2024 WL 3967470 (E.D. Cal. Aug. 28, 2024) (holding that genuine issues of material fact  
19 regarding whether the insurance agent misrepresented the status of a life insurance policy or failed  
20 to question and correct the policyholder’s understanding precluded summary judgment on a  
21 negligence claim).<sup>4</sup> The court quotes a “leading California treatise” on insurance litigation, “in  
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26 <sup>4</sup> In addition to *Bock*, several other state courts have held that an insurance adjuster may be liable to the insured  
27 under alternative theories. See *Bock v. Hansen*, 225 Cal.App.4th 215, 170 Cal.Rptr.3d 293, 304 (2014) (holding “that

(Footnote continues on following page.)

1 point-blank terms,” for the following:

2           The insurer's agents and employees may have committed some independent  
3 tort in the course of handling the third party claims; e.g., *misrepresentation or*  
4 *deceit*, invasion of privacy, intentional infliction of emotional distress, etc. In such  
5 event, they can be held personally liable, even though not parties to the insurance  
6 contract.

7 *Id.* at 228 (quoting Croskey et al., Cal. Practice Guide: Insurance Litigation (The Rutter Group  
8 2013) ¶ 12:104, p. 12A-36 (rev. #1, 2010)) (emphasis in original). Subsequent California courts  
9 have applied and interpreted *Bock* broadly, emphasizing that it opens the door to negligent  
10 misrepresentation claims even in commercial settings. In rejecting an insurance agent’s claim that  
11 he was improperly joined to a lawsuit, one court posited the following about *Bock*:

12           Even if *Bock* is presumed to represent a minority view on this issue of law,  
13 that is not the relevant question here. The decision plainly demonstrates that a claim  
14 of the type Plaintiff has set forth here – even in the absence of any threatened or  
15 realized physical injury to Plaintiff – can potentially be asserted against Zernik.  
16 Indeed, little over two years ago, *Bock* specifically rejected three federal court  
17 decisions that had determined otherwise. As such, this Court cannot conclude that  
18 Plaintiff has failed to state a cause of action against Zernik or that any failure is  
19 “obvious according to the settled rules” of California.

20 *See Maghsoodi v. Assurant, Inc.*, No. CV 16-3867-GW(GJSX), 2016 WL 4411479, at \*4 (C.D.  
21 Cal. Aug. 15, 2016) (finding defendant not fraudulently joined where plaintiff stated a possible  
22 claim against insurance adjuster for negligent misrepresentation); *Zuccolotto v. Zurich Am. Ins.*  
23 *Co.*, No. 816CV01277JLSKESX, 2016 WL 10981515, at \*3 (C.D. Cal. Sept. 26, 2016)

24 \_\_\_\_\_  
25 a cause of action for negligent misrepresentation can lie against an insurance adjuster”); *Riccatone v. Colo. Choice*  
26 *Health Plans*, 315 P.3d 203, 207 (Colo.App.2013) (holding that, “absent a financial incentive to deny an insured's  
27 claims or coerce a reduced settlement, a third party that investigates and processes an insurance claim does not owe a  
28 duty of good faith and fair dealing to the insured”); *Bass v. Cal. Life Ins. Co.*, 581 So.2d 1087, 1090 (Miss.1991)  
(holding that a claims adjuster is not liable for simple negligence but may be liable for gross negligence). *But see*  
*Bleday v. OUM Grp.*, 435 Pa.Super. 395, 645 A.2d 1358, 1363 (1994) (holding that insured could not bring a breach  
of good faith action against an adjuster because the adjusters owed no contractual duty). Generally, however, courts  
reject attempts to impose liability on an insurance adjuster. *See* 14 Steven Plitt et al., *Couch on Insurance* § 208:10 (3d  
ed. 2005 & Supp.2014) (“Liability for conduct of adjusters and investigators employed by the insurer directly generally  
falls primarily on the insurer in its status as the employer, and personal liability is unusual.”); Thomas R. Malia,  
Annotation, *Liability of Independent or Public Insurance Adjuster to Insured for Conduct in Adjusting Claim*, 50  
A.L.R.4th 900 (1986 & Supp.2014) (providing an overview of the legal theories under which claims are brought against  
claims adjusters, generally without success).

1 (“uncertainty surrounding the proper scope of *Bock* indicates that Plaintiff’s claim is not foreclosed  
2 by settled principles of California law and a state court must determine whether it has merit.”);  
3 *818Computer, Inc. v. Sentinel Ins. Co., Ltd.*, No. CV190009MWFPLAX, 2019 WL 698102, at \*4  
4 (C.D. Cal. Feb. 19, 2019). Thus, *Bock* and the line of California cases stemming from it, clarify  
5 that under California law, adjusters and other insurer agents can be held personally liable for  
6 independent torts committed during the claims handling process, including misrepresentation,  
7 deceit, or other wrongful acts.

8  
9 In this case, Plaintiffs have alleged that EASCO’s investigation was not merely deficient  
10 but actively influenced by its conflicted relationship with Moylan’s, an entity sharing common  
11 ownership with EASCO and acting as the policy underwriter. Such allegations go beyond the  
12 standard adjuster-insurer relationship addressed in *Sanchez* and justify further inquiry.

13  
14 Considering these distinctions, *Sanchez* does not support EASCO’s argument for dismissal.  
15 The unique allegations in this case require the Court to deny EASCO’s motion and allow Plaintiffs  
16 the opportunity to develop the factual record regarding EASCO’s role and responsibilities.

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18 **B. CONTRACT CLAIMS**

19 EASCO argues that it cannot be held liable for breach of contract (Count 1) or contractual  
20 breach of the implied covenant of good faith and fair dealing (Count 2) due to the absence of privity  
21 of contract between EASCO and Plaintiffs. While it is true that EASCO is not a party to the  
22 insurance contract, this does not categorically preclude its liability under the claims alleged.

23 First, Plaintiffs have not asserted a direct contractual relationship between EASCO and  
24 themselves but instead allege that EASCO, acting as an agent or subcontractor of DB Insurance,  
25 participated in the breach of contract and bad faith conduct that harmed Plaintiffs. Courts have  
26 recognized that agents and adjusters working on behalf of an insurer may be liable where their  
27 actions contribute to the insurer’s breach of contractual obligations. For example, where an  
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1 adjuster's conduct directly impacts the insurer's compliance with its contractual duties, the  
2 adjuster's role may form a basis for liability, even in the absence of direct contractual privity.

3         Second, while EASCO relies on *Natividad v. Alexis, Inc.*, 875 S.W.2d 695 (Tex. 1994),  
4 and similar authorities to argue that privity is required to impose a duty of good faith and fair  
5 dealing, this argument is overly rigid and inapplicable here. Unlike in *Natividad*, Plaintiffs have  
6 alleged more than a mere lack of privity. They contend that EASCO's conflicted relationship with  
7 Moylan's, coupled with its failure to conduct a fair and adequate investigation, directly contributed  
8 to the insurer's breach of the implied covenant of good faith and fair dealing. This covenant is  
9 inherently tied to the claims process, and EASCO's conduct as a key participant in that process  
10 raises factual issues that cannot be resolved at the motion-to-dismiss stage.

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12         Finally, EASCO's argument disregards the broader context in which it operated. Plaintiffs  
13 have alleged that EASCO performed many of the functions of an insurer, including investigating  
14 claims and recommending denials, while operating under a conflict of interest due to its shared  
15 ownership with Moylan's. Under similar circumstances, courts have recognized that entities  
16 performing quasi-insurer functions may owe duties to the insured, even in the absence of direct  
17 contractual relationships. *See, e.g., Cary v. United of Omaha Life Ins. Co.*, 68 P.3d 462, 469 (Colo.  
18 2003) (holding that a third-party administrator performing many functions of an insurer and bearing  
19 financial risk owed a duty of good faith and fair dealing to the insured).

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21         At this stage of the litigation, Plaintiffs have plausibly alleged that EASCO's actions, in  
22 concert with DB Insurance and Moylan's, materially contributed to the breaches of contract and  
23 the implied covenant of good faith and fair dealing. Whether EASCO's conduct gives rise to  
24 liability is a fact-intensive inquiry that cannot be resolved on the pleadings. Accordingly, EASCO's  
25 motion to dismiss Counts 1 and 2 should be denied.  
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**C. VIOLATION OF GUAM CONSUMER PROTECTION ACT**

EASCO argues that it cannot be held liable under the Guam Consumer Protection Act (“GCPA”) because it did not make representations to induce Plaintiffs to purchase goods or services and was not involved until after Plaintiffs had purchased their insurance policy. This argument fails for two reasons.

First, the GCPA’s scope is broader than EASCO asserts. The legislature explicitly directed that the GCPA “shall be liberally construed so that its beneficial purpose may be accomplished.” 5 GCA § 32101. Similarly, the GCPA provides that its provisions “are to be liberally construed in favor of the consumer, balanced with substantial justice,” and that violations may be raised as a claim, defense crossclaim or counterclaim.” 5 GCA § 32201. The GCPA prohibits specific deceptive trade practices, several of which apply to EASCO’s conduct.

If EASCO’s claims handling created confusion about the legitimacy or scope of the insurance policy, this could fall under subsection (2), which prohibits “[c]ausing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.” Additionally, if EASCO misrepresented the policy’s coverage by asserting that it did not apply—potentially to pressure Plaintiffs into purchasing additional coverage—subsection (5) could apply, which prohibits “[r]epresenting that goods or services have sponsorship, approval, characteristics, uses, benefits, or quantities which they do not have.” Finally, the catchall provision in subsection (29) prohibits “[d]oing any other act which is prohibited by the laws of Guam to mislead a consumer to his detriment.” Plaintiffs allege that EASCO engaged in misleading and deceptive practices as an adjuster, including failing to conduct a fair and thorough investigation and denying legitimate claims in bad faith. These allegations, if proven, demonstrate conduct that misled Plaintiffs to their detriment, satisfying the GCPA’s broad prohibitions.

Second, EASCO’s argument that it had no involvement in the sale of the insurance policy

1 and thus cannot be liable under the GCPA mischaracterizes the claim. Plaintiffs' allegations against  
2 EASCO are not limited to representations at the point of sale. Instead, Plaintiffs allege that EASCO,  
3 through its actions in the claims process, engaged in deceptive practices that harmed Plaintiffs. *See*  
4 *e.g.*, Compl. ¶ 38. Courts interpreting similar consumer protection statutes have found that claims  
5 handling practices can fall within the scope of such laws when they involve deceptive or misleading  
6 conduct. The GCPA does not categorically exclude post-sale misconduct from its reach,  
7 particularly when the alleged misconduct directly impacts the consumer's rights under the  
8 purchased product—in this case, the insurance policy.

10 At this stage, Plaintiffs are entitled to proceed with discovery to develop evidence  
11 supporting their allegations. Whether EASCO's actions constitute a violation of the GCPA is a fact-  
12 intensive question that cannot be resolved on the pleadings. Plaintiffs have alleged sufficient facts  
13 to support a plausible claim under the GCPA, and EASCO's motion to dismiss Count 6 should be  
14 denied.

### 16 CONCLUSION

17 For the foregoing reasons, EASCO's motion to dismiss should be denied. Plaintiffs have  
18 alleged sufficient facts to establish a plausible claim against EASCO, including its conflicted role  
19 in the bad-faith denial of their insurance claim and its entanglement with Moylan's, which  
20 undermines the objectivity required of an adjuster. The nature of EASCO's relationship with DB  
21 Insurance remains a disputed fact, and EASCO's reliance on non-binding and procedurally  
22 deficient authority is insufficient to justify dismissal. At this early stage of the litigation, Plaintiffs  
23 are entitled to proceed with discovery to fully develop the factual record and substantiate their  
24 claims.  
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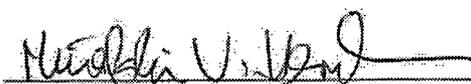
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Respectfully submitted this 28<sup>th</sup> day of January, 2025.

LAW OFFICES OF MINAKSHI V. HEMLANI, P.C

By:   
Minakshi V. Hemlani, Esq.  
*Counsel for Plaintiffs*

# EXHIBIT A



**EQUITABLE ADJUSTING  
& SERVICE COMPANY**

MEMBER OF  MOLAN'S INSURANCE COMPANY

424 West O'Brien Drive, Suite 217

Hagåtña, Guam 96910

Phone: (671)477-7514 Fax(671)477-7515

December 14, 2023

Attn: Leonard Orloff, Esquire  
8302 Old York Road  
Elkins Park, Pa. 19027

Re: Damages to Guam Surgicenter & Island Cancer Center

Dear Mr. Orloff,

We reviewed the claim form submitted to our office regarding the kind of loss damages caused by Typhoon Mawar. The policy provides Typhoon & Tidal, Wave, Flood, Highwater and Overflow (among others) coverage to Item #3 on the basement floor of a 2-storey building, constructed of concrete walls and roof, consisting of Leasehold Improvements, Medical Machines/Equipment, Office Fixtures / Equipment, and Stocks of Merchandise, known as Island Cancer Center as follows:

Item	Limit of Insurance
Stocks of Merchandise	\$ 50,000.00
Plant/Machinery/Equipment	2,457,149.00
Office Furniture/Fixtures	42,423.00
Leasehold Improvements	378,441.00

Under 3. Covered Causes of Loss:

f. Windstorm or Hail (typhoon), but not including:

(4) Loss of or damage to the interior of any building or structure, or the property inside the building or structure, caused by rain, snow, sand or dust, whether driven by wind or not, unless the building or structure first sustains wind or hail damage to its roof or walls through which the rain, snow, sand or dust enters.

Under B. Exclusions 1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

g. Water

(3) Water that backs up from a sewer or drain

The Insured indicated on claim form that the kind of loss is typhoon, water and sewage backup. The primary damages were caused by the sewage backup and based on the exclusions the damages will not be covered.

The Insured purchased coverage for tidal wave, flood, highwater & overflow; however, based on the endorsement it states, "For the purpose of this insurance "Tidal Wave, Flood, Highwater & Overflow is defined as the rising of navigable water." Following our review of this matter as well as the investigation carried out by the carrier's third-party consultant, we concluded that the Flood coverage does not apply to this case and that coverage for damages caused by the Typhoon are excluded.

Based on the foregoing the claimed damages will not be covered. Our authority as adjusters is limited to the determination of value, loss and liability, this communication is not to be construed as an admission of liability nor a waiver of any of the rights and defenses of the insurance company all of which the company has reserved to itself for determination.

Respectfully,

Equitable Adjusting & Service Co.

Jessica T. Aguero  
Adjuster