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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.

CV 0594-24

CIVIL CASE NO. CV \_\_\_\_\_

**COMPLAINT**

18 COME NOW Plaintiffs Guam Surgicenter, LLC, Island Cancer Center, and AC Micro  
19 Guam, LLC (collectively, "Guam Surgicenter" or "Plaintiffs"), by and through undersigned  
20 counsel, to file this Complaint and allege as follows:

21 **JURISDICTION**

22 1. Jurisdiction is vested in this Court pursuant to the Organic Act of Guam and 7 GCA  
23 § 3105.

24 **PARTIES**

25 2. Plaintiff Guam Surgicenter, LLC is, and was at all times mentioned herein, a Guam  
26 limited liability company, that also does business under the name Island Cancer Center.

27 3. Plaintiff Island Cancer Center is a fictitious name, or "dba", for Guam Surgicenter,  
28 LLC.



1           12.    Guam Surgicenter sought an insurance policy covering major risks endemic to  
2 Guam, including typhoon and flood damages, choosing to pay additional premiums for additional  
3 coverage.

4           13.    Moylan's represented to Guam Surgicenter that the DB Insurance policy it sold to  
5 Guam Surgicenter was such a policy.  
6

7           14.    Guam Surgicenter requested a policy specifically intended to cover losses relating  
8 to typhoon and flooding.

9           15.    Moylan's was fully aware of the significant amount of medical equipment located  
10 in the lower level of Guam Surgicenter's premises and at risk for flood damage.

11           16.    Guam Surgicenter clearly communicated their needs and intentions to Moylan's.

12           17.    Moylan's misled Guam Surgicenter by withholding information that flood coverage  
13 was limited solely to flooding from navigable waters.  
14

15           18.    Guam Surgicenter relied on Moylan's representations.

16           19.    While flood coverage in the Policy explicitly included "tidal wave, flood, highwater,  
17 and overflow," encompassing events such as typhoons, the subsequent flood insurance policy  
18 endorsement limited coverage by defining "tidal wave, flood, highwater, and overflow" as "the  
19 rising of navigable water."  
20

21           20.    Guam Surgicenter paid all premiums due for over 22 (twenty-two) years and duly  
22 performed under the contract.

23           21.    In May of 2023, Typhoon Mawar impacted Guam as a very strong Category 4  
24 typhoon, causing great damage to Guam Surgicenter's premises and property.

25           22.    Typhoon Marwar caused the rise of navigable water that damaged Guam  
26 Surgicenter's premises and property.  
27  
28

1           23. Typhoons occurring in Guam can lift significant amounts of seawater and dump that  
2 sea water onto contiguous land.

3           24. The rise of these navigable waters, whether pushed onto the shore or released with  
4 the rain, was the cause of flooding in and around Guam Surgicenter's premises and property, and  
5 resulting damage.  
6

7           25. The language of the Policy does not restrict the cause of the navigable waters to rise.

8           26. Specifically, the rise of navigable waters due to a typhoon is not excluded as a  
9 covered cause under the limitations in the endorsement.

10          27. Post-typhoon service of Guam Surgicenter's medical equipment revealed that both  
11 the inside and out of damaged medical equipment had been submerged in water that contained high  
12 salt content, indicating that the flooding inside Guam Surgicenter's premises arose from navigable  
13 water sources.  
14

15          28. Typhoon Mawar caused the overflow and rising of the navigable waters which  
16 impacted and damaged Guam Surgicenter's premises and property, to include causing backups of  
17 the sewers and drains.

18          29. Guam Surgicenter timely submitted a claim of insurance to Moylan's.

19          30. On June 3, 2023, Guam Surgicenter's representative initially described the loss and  
20 damage as "[t]otal loss of machinery, leasehold improvements, equipment, business interruption,  
21 furniture," and requested an adjuster to inspect the water level and items lost, noting "CT machine,  
22 lasers, quality assurance equipment, clinical IX, power conditioner extensive list." A true and  
23 correct copy of the Property Loss Notice is attached hereto as **Exhibit E**.  
24

25          31. Without specialized knowledge or training, Guam Surgicenter's representative  
26 guessed the "kind of loss" to be "typhoon water & sewage backup." *See* Exhibit E.  
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1           32.    Upon subsequent evaluation by its vendors, Guam Surgicenter discovered that,  
2 among other damage, its MRI/Linear Accelerator equipment was also significantly damaged by  
3 rising navigable water and required extensive repair.

4           33.    Moylan's engaged EASCO and McLarens, a commercial property loss adjuster, to  
5 evaluate Guam Surgicenter's claim.  
6

7           34.    In or around the first week of June 2023, an EASCO adjuster met with Guam  
8 Surgicenter's representative at the premises for approximately one hour or less. The EASCO  
9 adjuster conducted a visual inspection of Guam Surgicenter's damaged premises and property; no  
10 testing or further inspections were conducted.

11           35.    In or around the second week of June 2023, adjusters from McLarens met with  
12 Guam Surgicenter's representatives at the premises. The McLarens' adjusters asked Guam  
13 Surgicenter's representatives several times what caused flooding of the premises, and Guam  
14 Surgicenter's representatives could only speculate as to the cause. No testing or further inspections  
15 were conducted by McLarens.  
16

17           36.    Guam Surgicenter's vendors tested damaged medical equipment to determine  
18 salvageability. Guam Surgicenter also engaged mold specialist/decontamination specialists,  
19 electricians and others to assess damage to its premises and property.  
20

21           37.    In September of 2023, Sun Nuclear inspected Guam Surgicenter's MapCHECK3  
22 equipment and reported "water marks and mineral/salt deposits on outside of the unit", as well as  
23 "mineral/salt deposits on the inside of the chassis and PC boards". A copy of the report was sent to  
24 EASCO and McLarens as clear evidence to support saltwater submersion of medical equipment  
25 i.e., that flooding inside Guam Surgicenter's premises arose from navigable water sources. A true  
26 and correct copy of said report is attached hereto as **Exhibit F**.  
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1 38. Notwithstanding, based on limited interactions and disregarding reports provided by  
2 Guam Surgicenter, EASCO on behalf of DB Insurance and Moylan's denied Guam Surgicenter's  
3 claim in December of 2023.

4 39. DB Insurance is liable for the acts, omissions, and misrepresentations of its agents,  
5 Moylan's, EASCO, and McLaren's.  
6

7 40. The denial of Guam Surgicenter's claims caused its damages.

8 41. On September 26, 2024, Guam Surgicenter, through counsel, sent Defendants  
9 Notice pursuant to 5 GCA Sec. 32110 ("Notice") of its intent to seek damages under Guam's  
10 Deceptive Trade Practices Act. A true and correct copy of said Notice attached hereto as **Exhibit**  
11 **G**.

12 42. Defendant DB Insurance acknowledged receipt of the Notice on September 27,  
13 2024, with copy to its agents Moylan's, EASCO, and others. *See Exhibit H* attached.  
14

15 43. The Notice conservatively estimated Guam Surgicenter's covered damages as of  
16 September 27, 2024, as listed below, and did not include 12% interest and attorney's fees pursuant  
17 to 22 GCA Sec. 18608:

Machinery & Equipment:	\$1,911,364.62
Furniture and Supplies:	\$171,714.11
Leasehold Improvements:	\$111,283.90
Business Interruption:	\$1,066,587.00

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22 44. Guam Surgicenter has been damaged in the amounts to be determined at trial.  
23 Additional amounts due for interest, late charges, attorney's fees, court costs, and all other expenses  
24 for which the insurance contracts attach liability will be established at time of dispositive motion  
25 or trial.  
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1 **FIRST CAUSE OF ACTION**  
2 **BREACH OF CONTRACT**

3 45. Guam Surgicenter repeats and realleges the preceding paragraphs as though fully  
4 set forth in this cause of action.

5 46. Guam Surgicenter complied with every condition precedent before bringing this  
6 action. Further, Guam Surgicenter has paid out significant premiums over the years for the coverage  
7 being denied.

8 47. Under the terms of the insurance contract, Defendants were obligated to pay out for  
9 Guam Surgicenter's claim in the event of damage due to "'tidal wave, flood, highwater, and  
10 overflow," which encompasses events such as typhoons.

11 48. Alternatively, Defendants were obligated to pay in the event of Guam Surgicenter  
12 sustaining damage due to typhoon and typhoon-related weather events.

13 49. Defendants breached their contract with Guam Surgicenter by failing to pay the  
14 amounts due under the insurance policy

15 50. As a direct and proximate cause of Defendants' breach, Guam Surgicenter has been  
16 damaged by Defendants in the amounts to be determined at trial. Additional amounts due for  
17 interest, late charges, attorney's fees, court costs, and all other expenses for which the insurance  
18 contracts attach liability will be established at time of dispositive motion or trial.

19 **SECOND CAUSE OF ACTION**  
20 **CONTRACTUAL BREACH OF IMPLIED COVENANT**  
21 **OF GOOD FAITH AND FAIR DEALING**

22 51. Guam Surgicenter repeats and realleges the preceding paragraphs as though fully  
23 set forth in this cause of action.

24 52. The implied covenant of good faith and fair dealing in Guam requires parties to act  
25 honestly and fairly, attaching to every contract, and ensuring that contractual obligations are met  
26  
27  
28

1 without hindrance. This principle is supported by both case law and statutory provisions, which  
2 provide detailed guidelines and applications in various legal scenarios.

3 53. Guam Surgicenter and Defendants are parties to a written contract, to wit, the  
4 insurance policy documents.

5 54. Defendants owe Guam Surgicenter a duty of good faith and fair dealing in the  
6 performance and enforcement of their duties arising out of the documents, to avoid injuring Guam  
7 Surgicenter's right to receive the benefits of the contract, and to avoid self-dealing.  
8

9 55. Guam Surgicenter is not located in an area typically prone to direct flooding from  
10 navigable waters such as streams, rivers, or oceans, and the insured property is not within a  
11 designated area of commerce or shipping routes where direct navigable water flooding would be  
12 expected or common.

13 56. Moylan's was well aware of the location of Guam Surgicenter's premises and  
14 property.

15 57. The Policy Moylan's sold to Guam Surgicenter did not align with the actual risk  
16 profile of the area.  
17

18 58. The Policy Moylan's sold to Guam Surgicenter did not address obvious flood risk  
19 resulting from typhoons or runoff that exists at the insured premises.

20 59. Moylan's, by their actions in interpreting coverages in denying the claim, sold a  
21 policy to Guam Surgicenter with flood coverage limited solely to the inapplicable or highly unlikely  
22 risk of rising of navigable waters in such an area, and misrepresented the Policy's relevance and  
23 necessity.  
24

25 60. Guam Surgicenter was not aware of said limitations.

26 61. Guam Surgicenter relied upon Moylan's representations and was led to believe the  
27 insurance product Moylan's sold was appropriate for its needs and concerns.  
28

1           62.    Moylan's did not tailor the Policy to cover more appropriate risks for the area, such  
2 as runoff flooding and/or typhoon-related flooding.

3           63.    Moylan's breached the implied covenant of good faith and fair dealing with Guam  
4 Surgicenter by selling an insurance product Defendants knew was not appropriate or applicable to  
5 Guam Surgicenter's circumstances.

6           64.    Moylan's further violated this covenant by presenting Guam Surgicenter with  
7 ambiguous documents.

8           65.    DB Insurance is liable for the acts and omissions of its agent, Moylan's, who acted  
9 on DB Insurance's behalf and interest in selling the Policy to Guam Surgicenter.

10          66.    Defendants violated this covenant by failing to exercise reasonable care in their  
11 dealings with Guam Surgicenter, relying on speculation and failing to conduct any testing, in  
12 denying Guam Surgicenter's claim.

13          67.    Defendants denied Guam Surgicenter's claim without conducting a thorough  
14 investigation or gathering comprehensive evidence.

15          68.    Defendants acted in bad faith and disregarded evidence provided in support of Guam  
16 Surgicenter's claim.

17          69.    As a direct and proximate cause of Defendants' breach, Guam Surgicenter has been  
18 damaged by Defendants in the amounts to be determined at trial. Additional amounts due for  
19 interest, late charges, attorney's fees, court costs, and all other expenses for which the insurance  
20 contracts attach liability will be established at time of dispositive motion or trial.

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24                                   **THIRD CAUSE OF ACTION**  
25                                   **TORTIOUS BREACH OF IMPLIED COVENANT**  
26                                   **OF GOOD FAITH AND FAIR DEALING**

27          70.    Guam Surgicenter repeats and realleges the preceding paragraphs as though fully  
28 set forth in this cause of action.

1           71. Defendants breached their duties of care, good faith, and fair dealing. These duties  
2 include the duty to fairly investigate, process, and evaluate Guam Surgicenter's claim.

3           72. Defendants unreasonably and in bad faith denied payment of benefits rightfully due  
4 Guam Surgicenter based on a sham investigation.

5           73. Defendants failed to fairly and fully investigate Guam Surgicenter's claim,  
6 disregarding evidence Guam Surgicenter provided that was contrary to their interpretation.

7           74. The adjuster from EASCO, on behalf of Moylan's and DB Insurance, visited Guam  
8 Surgicenter's premises on a single occasion, for approximately one hour or less, and conducted no  
9 more than a visual inspection of Guam Surgicenter's damaged premises and property.

10           75. The adjusters from McLarens, on behalf of Moylan's and DB Insurance, similarly  
11 failed to conduct any testing or further investigation of Guam Surgicenter's damaged premises and  
12 property  
13

14           76. Defendants unreasonably relied on an incomplete and speculative investigation to  
15 deny Guam Surgicenter's claim, disregarding evidence Guam Surgicenter provided that was  
16 contrary to their interpretation.

17           77. Because of this unreasonable reliance, there is no genuine dispute as to coverage  
18 liability.  
19

20           78. Instead of conducting a full and fair investigation as required by their duty of good  
21 faith, Defendants unreasonably and in bad faith seized upon the first opportunity to justify denial  
22 of Guam Surgicenter's claim.

23           79. Defendants violated their duty of good faith with conscious disregard of Guam  
24 Surgicenter's right to receive benefits due under the insurance contract. Guam Surgicenter is  
25 therefore entitled to punitive damages.  
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1 **FOURTH CAUSE OF ACTION**  
2 **NEGLIGENT MISREPRESENTATION**

3 67. Guam Surgicenter repeats and realleges the preceding paragraphs as though fully  
4 set forth in this cause of action.

5 68. The elements of negligent misrepresentation are (1) a misrepresentation of a past or  
6 existing material fact; (2) without reasonable grounds for believing it to be true; (3) with intent to  
7 induce another's reliance on the fact misrepresented; (4) ignorance of the truth and justifiable  
8 reliance thereon by the party to whom the misrepresentation was directed, and (5) damages.

9  
10 69. Moylan's knew that Guam Surgicenter required a policy which covered typhoons  
11 and flooding, especially due to the millions of dollars of medical equipment located in the lower  
12 level of the insured premises.

13 70. Moylan's misrepresented to Guam Surgicenter that the proposed insurance policy  
14 was sufficient and appropriate for Guam Surgicenter's needs.

15 71. Moylan's knew that the Policy it sold to Guam Surgicenter had flood coverage  
16 limited solely to the rising of navigable waters.

17 72. Moylan's therefore knew, under its own interpretations, that the proposed Policy  
18 would not meet Plaintiffs' requirements and protect their client's insured interests.

19 74. Moylan's misrepresented to Guam Surgicenter that the Policy would appropriately  
20 address their needs in order to induce Guam Surgicenter to purchase the Policy.

21 75. Guam Surgicenter relied on Moylan's representations and purchased the Policy.

22 76. Guam Surgicenter was unaware that the policy may not cover flooding from  
23 typhoons.

24 77. DB Insurance is liable for the acts and omissions of its agent, Moylan's, who acted  
25 on DB Insurance's behalf and interest in selling the Policy to Guam Surgicenter.



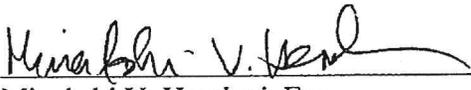


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5. For such other and further relief as the Court may deem proper.

Respectfully submitted this 4<sup>th</sup> day of November, 2024.

LAW OFFICES OF MINAKSHI V. HEMLANI, P.C

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