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**For Publication**

**IN THE SUPERIOR COURT  
OF THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**YURIKO D. CHIPWELONG, THOMAS  
M. CHIPWELONG and THOMASO D.  
CHIPWELONG,**

Plaintiffs,

v.

**FIRST NET INSURANCE CO. and  
MOYLAN’S INSURANCE  
UNDERWRITERS (INT’L), INC.,**

Defendants.

**CIVIL ACTION NO. 03-0295**

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION FOR  
SUMMARY JUDGMENT**

THIS MATTER was heard on August 17, 2004, on Defendants’ motion for summary judgment. Appearing in court or on the briefs were A. Alexander Gorman for the Plaintiffs and Thomas C. Sterling and Thomas E. Clifford for the Defendants. After carefully considering the pleadings and the arguments made during the hearing, the Court is prepared to rule.

Summary judgment under Commonwealth Rule of Civil Procedure 56(c) should be granted only “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Com. R. Civ. P. 56(c). Defendants, as the moving party, bear “the initial and the ultimate burden of establishing . . . entitlement to summary judgment.” *Santos v. Santos*, 4 N.M.I. 206, 210 (1994) (internal quotations omitted). Once the moving party meets its initial burden, the non-moving party must introduce facts, in the form of affidavits or other evidence, to show that a genuine issue of material fact does exist. *See Cabrera*

1 *v. Heirs of De Castro*, 1 N.M.I. 172, 176 (1990). In making its determination, the Court must  
2 “review the evidence and inferences in a light most favorable to the non-moving party.” *Id.* The  
3 Court will begin with a brief recitation of the facts.

#### 4 **FACTUAL BACKGROUND**

5 The following facts form the basis for the Court’s opinion.

6 In March 2003, Defendant First Net Insurance Company (“First Net”) issued Automobile  
7 Liability Policy No. CNM-VPI102-00982. This policy was issued to all three Plaintiffs and covered  
8 a 2003 Toyota Corolla. Defendant Moylan’s Insurance Underwriters (Int’l), Inc. was the issuing  
9 agent. This vehicle was titled in the name of Plaintiffs Yuriko Chipwelong and Thomaso  
10 Chipwelong and was primarily driven by Yuriko Chipwelong and Thomas Chipwelong.

11 On September 12, 2003, the insured vehicle was being driven by Donia S. Daunny, who was  
12 using it with the permission of Yuriko Chipwelong. Ms. Daunny lost control of the vehicle and  
13 negligently collided with a vehicle owned by Moises Tagle, who is not a party to this action. The  
14 action damaged both the Chipwelong’s vehicle and Mr. Tagle’s vehicle. First Net paid Mr. Tagle  
15 \$875 to settle his claim. Defendants then sent a letter to Plaintiffs demanding subrogation payment  
16 for the settlement amount paid to Mr. Tagle.

17 At the time of the accident, Ms. Daunny had resided in the Commonwealth approximately  
18 3½ months, having moved to Saipan on May 28, 2003. Ms. Daunny had not yet acquired a CNMI  
19 driver’s license, but did possess a license issued by the state of Oregon that was valid on its face,  
20 at least in the sense that it had not yet expired. The Plaintiffs filed a claim for damage to their  
21 vehicle. Defendants denied this claim, arguing that the driver was not licensed in the CNMI and so  
22 the accident was excluded from coverage. The Plaintiffs now bring the instant action seeking  
23 damages for: breach of contract, breach of the covenant of good faith and fair dealing, negligence,  
24 intentional infliction of emotional distress, and violations of the Consumer Protection Act.

#### 25 **LEGAL CONSIDERATIONS**

26 **I. Defendants Did Not Wrongfully Deny the Claim, but Claims for Breach of Contract,**  
27 **Breach of Duty of Good Faith and Fair Dealing and Violation of the Consumer**  
28 **Protection Act Still Survive.**

1           The Plaintiffs' first cause of action is for breach of contract. They allege that Defendants  
2 improperly and unlawfully refused to compensate them for damage to their vehicle in the accident.  
3 Defendants claim that summary judgment in their favor on this cause of action is appropriate  
4 because the claim was properly denied. The Court will therefore consider the propriety of the denial  
5 of the claim.

6           The contract provision in question, Exclusion I(d), provides that there is no coverage under  
7 the policy, "[i]f the insured or any person authorized to drive the automobile does not hold a valid  
8 driver's license to drive the automobile." It is undisputed that Ms. Daunny did not hold a CNMI  
9 driver's license. However, she did possess a driver's license issued by the state of Oregon that was  
10 valid on its face. Unfortunately for Plaintiffs, this is not enough to comply with CNMI law.

11           Pursuant to 9 CMC § 2201(c), a driver in the CNMI must possess either a CNMI license or  
12 a valid license from somewhere else, subject to the provisions of Section 2202. Section 2202(b)  
13 provides that drivers with a license from outside the Commonwealth may drive within the  
14 Commonwealth for only 30 days, by which time a driver must have acquired a CNMI license. In  
15 this case, the undisputed facts show that the driver of the car in question, Ms. Daunny, entered the  
16 Commonwealth on May 28, 2003 and had not obtained a CNMI driver's license by Sept. 12, 2003,  
17 clearly more than 30 days after entry. Therefore, Ms. Daunny did not hold a valid driver's license  
18 at the time of the accident and the Defendants were well within their rights to deny coverage on that  
19 basis.<sup>1</sup> Because the Defendants did not breach their contract with the Plaintiffs in denying coverage,  
20 summary judgment on that question is appropriate and Plaintiffs may not cite the denial of coverage  
21 to support any of their causes of action or claims for damages.

22           However, there still remains a potential breach of contract claim here, because Plaintiffs have  
23 based that claim on another ground as well. Specifically, they allege that the Defendants acted  
24 wrongfully and in breach of contract by demanding subrogation payment from Plaintiffs for the  
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26           <sup>1</sup> Plaintiffs argued that the exclusion was ambiguous because the "valid license" exclusion did not specifically  
27 refer to a license valid in the CNMI and that Ms. Daunny's license was valid in Oregon. They argue that this  
28 "ambiguous" provision should be construed against the drafter. However, the Court finds nothing ambiguous about the  
provision. The driver must have a license "to drive the vehicle." Because the vehicle was being driven in the CNMI,  
only a license valid within the CNMI will do and Ms. Daunny clearly did not have one.

1 settlement amount paid by Defendants to Moises Tagle. In addition, Plaintiffs allege that this  
2 conduct violated the Defendants' covenant of good faith and fair dealing and their obligations under  
3 the Consumer Protection Act, 4 CMC §§ 5101, *et seq.* ("Consumer Protection Act"). (These last  
4 two comprise the second and fifth causes of action respectively in the complaint.) These claims  
5 must survive because Defendants have not met their initial burden of establishing entitlement to  
6 summary judgment.

7 Defendants, as the moving party, bear "the initial and the ultimate burden of establishing .  
8 . . . entitlement to summary judgment." *Santos*, 4 N.M.I. at 210. In addition, they have a  
9 responsibility under Com. R. Civ. P. 7(b)(1) to "state with particularity" the grounds upon which  
10 they are entitled to summary judgment. In this case, Defendants have simply claimed that the  
11 actions for breach of contract, breach of the covenant of good faith and fair dealing, and violations  
12 of the Consumer Protection Act, cannot survive a finding that the underlying claim was properly  
13 denied. Unfortunately for Defendants, this is simply not the case. Plaintiffs' claim that the demand  
14 for subrogation gave rise to these various causes of action is completely separate from, and is not  
15 dependent on, the claim that coverage was wrongly denied. Defendants must show the factual and  
16 legal basis upon which they are entitled to summary judgment on these causes of action based on  
17 this particular theory and they have not done so.<sup>2</sup> Therefore summary judgment on Plaintiffs' first  
18 cause of action, breach of contract, second cause of action, breach of the covenant of good faith and  
19 fair dealing, and fifth cause of action, violation of the Consumer Protection Act, must be denied.

20 **II. Plaintiffs May Not Recover for Emotional Distress Under Their Claim of Negligence.**

21 Plaintiffs' third cause of action is for negligence. Specifically, they allege that Defendants,  
22 through their behavior in relation to this claim, negligently caused both mental and emotional harm  
23 and pecuniary losses. Unfortunately for Plaintiffs, aspects of this claim are not allowed under CNMI

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25 <sup>2</sup> The Court did receive some pleadings on both sides of these issues, both in the Plaintiffs' opposition and the  
26 Defendants' subsequent reply. However, the Commonwealth Rule of Civil Procedure 7(b)(1) requires that the reasons  
27 be "stated with particularity" in the motion itself or the memorandum in support thereof. This serves both the opposing  
28 parties, who have an opportunity to respond, and the Court, which is enlightened by the discourse. In this case, that  
process did not function properly because the movants did not state their grounds with particularity in their initial  
memorandum. The Court should note that Plaintiffs did not object to the brevity of Defendants pleadings, but the rules  
are meant to serve the Court as well as the parties.

1 law.

2 Pursuant to 7 CMC § 3401, the Courts in the CNMI are to apply the common law set forth  
3 in the RESTATEMENTS OF THE LAW in the absence of contrary statutory or customary law. *Castro*  
4 *v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268, 272 n.5 (1995). Under the applicable restatement, the  
5 RESTATEMENT (2ND) OF TORTS § 436A, a person cannot be liable in tort for a negligent act that  
6 causes emotional disturbance alone unless the act is one, “creating an unreasonable risk of causing  
7 either bodily harm or emotional disturbance to another,” and actually creates some form of bodily  
8 harm or other compensable injury. *Id.* In this case, the only actions complained of are denying the  
9 claim, which the Court has already held was lawful, and sending the subrogation letter. As to the  
10 letter, the Court must conclude that the act of sending a letter threatening a lawsuit cannot, as a  
11 matter of law, create an “unreasonable risk” of bodily harm or emotional disturbance. If it were  
12 otherwise, the practice of law would grind to a halt in short order. Therefore, the Court concludes  
13 that Plaintiffs are not entitled to recover damages for their alleged emotional distress. However, the  
14 Court will not dismiss this cause of action completely, because Plaintiffs have also alleged economic  
15 damages, which would be recoverable assuming all the elements of negligence are proven.

16 **III. Plaintiffs’ Claim of Intentional Infliction of Emotional Distress**

17 Plaintiffs’ fourth cause of action is for intentional infliction of emotional distress. Such a  
18 tort will lie against “[one] who by extreme and outrageous conduct intentionally or recklessly  
19 causes severe emotional distress to another.” RESTATEMENT (SECOND) OF TORTS § 46 (1965). Such  
20 a person is liable for both the emotional distress and any physical harm that results from the  
21 intentional conduct. *Id.* To maintain such a claim, Plaintiffs must prove “(1) that the conduct  
22 complained of was outrageous; (2) that the conduct was intentional or reckless; (3) [that it caused]  
23 emotional distress; and (4) [that] the distress [was] severe.” *Charfauros v. Bd. of Elections*, 1998  
24 MP 16 ¶ 62. In *Charfauros*, our Supreme Court also noted that important role the court plays as  
25 guardian of the gateway to an action for intentional infliction of emotional distress. *Id.* at ¶ 63. This  
26 is in part because of the courts’ “justifiable reluctance . . . to become embroiled in petty disputes that  
27 nonetheless cause someone to feel emotionally disturbed and distressed.” *Id.* This Court has a duty  
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1 to “judge the sufficiency of the conduct alleged to have caused the emotional distress before  
2 allowing the case to proceed to a full trial.” *Id.*

3 In judging the sufficiency of the conduct, the Court notes that the behavior complained of  
4 is the denial of Plaintiffs’ claim and the sending of the subrogation letter. The Court has already  
5 determined that the first of these, the denial of the Plaintiffs’ claim, was lawful and the Court is  
6 unwilling to allow perfectly lawful acts to become the basis for this type of tort claim. As to the  
7 letter, even if Plaintiffs are correct that the type of lawsuit threatened is improper, illegal, a breach  
8 of contract, a breach of duty, etc., it would not be an act, “so outrageous in character, and so extreme  
9 in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and  
10 utterly intolerable in a civilized community,” *Hawks v. Alaska Dept. of Pub. Safety*, 908 P.2d 1013,  
11 1015-16 (Alaska 1995), and that is the standard this Court applies. Therefore, Plaintiffs’ claim for  
12 intentional infliction of emotional distress must be dismissed.

### 13 **CONCLUSION**

14 For the reasons cited above, Defendants’ motion to dismiss Plaintiffs’ first cause of action,  
15 breach of contract, is **GRANTED IN PART** and **DENIED IN PART**. Plaintiffs may pursue this  
16 cause of action, but Defendants’ denial of Plaintiffs’ claim under the insurance policy in question  
17 may form no part of Plaintiffs’ case, as the claim was rightly denied.

18 For the reasons cited above, Defendants’ motion to dismiss Plaintiffs’ second cause of action,  
19 breach of the covenant of good faith and fair dealing is **DENIED**. However, as described in detail  
20 above, the denial of Plaintiffs’ insurance claim may form no part of Plaintiffs’ case on this cause of  
21 action.

22 For the reasons cited above, Defendants’ motion to dismiss Plaintiffs’ third cause of action,  
23 negligence is **GRANTED IN PART** and **DENIED IN PART**. Plaintiffs may pursue this cause of  
24 action, but may not recover for mental anguish, emotional distress, etc. Furthermore, as described  
25 in detail above, the denial of Plaintiffs’ insurance claim may form no part of Plaintiffs’ case on this  
26 cause of action.

27 For the reasons cited above, Defendants’ motion to dismiss Plaintiffs’ fourth cause of action,  
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1 intentional infliction of emotional distress, is GRANTED and the cause of action is DISMISSED.

2 For the reasons cited above, Defendants' motion to dismiss Plaintiffs' fifth cause of action,  
3 violation of the Consumer Protection Act is DENIED. However, as described in detail above, the  
4 denial of Plaintiffs' insurance claim may form no part of Plaintiffs' case on this cause of action.

5 SO ORDERED this 25th day of January 2005.

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8 /s/  
JUAN T. LIZAMA, Associate Judge

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