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3 **FOR PUBLICATION**
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6
7 **IN THE SUPERIOR COURT**
8 **OF THE**
9 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**
10

11 **IAN JOSEPH R. BABAUTA, ENGRACIA)**
12 **R. BABAUTA, personally and as Guardian)**
13 **Ad Litem for ALLEN JOHN R.)**
14 **BABAUTA, and MEGHAN R. BABAUTA,)**

15 **Plaintiffs,**)

16 **vs.**)

17 **VIC W. JACK, DEBORAH STEPHANUS,)**
18 **and ROYAL CROWN INSURANCE)**
19 **CORPORATION,)**

20 **Defendants.**)
21

Civil Action No. 04-0461E

**ORDER GRANTING PLAINTIFFS’
MOTION FOR SUMMARY JUDGMENT;
DENYING DEFENDANT ROYAL
CROWN INSURANCE
CORPORATIONS’ MOTION FOR
SUMMARY JUDGMENT**

22 **THIS MATTER** came on for hearing August 15, 2005 at 1:30 p.m. pursuant to Motions for
23 Summary Judgment by Plaintiffs and Defendant Royal Crown Insurance. Plaintiffs Ian Joseph R.
24 Babauta, et. al (“Plaintiffs”) are represented by Bruce Berline, and Defendant Royal Crown
25 Insurance Corporation (“RCIC”) is represented by G. Anthony Long. Each party has responded to
26 the motion of the other.

27 **I. BACKGROUND**

28 In August 2003, Defendant Stephanus obtained mandatory liability insurance from RCIC for
a 1991 Toyota Camry owned by Defendant Stephanus. Soon after obtaining the RCIC policy,

1 Stephanus registered the vehicle in the CNMI and within days of registration, cancelled the
2 insurance policy. The CNMI Mandatory Liability Auto Insurance Act requires an automobile
3 insurer to notify the appropriate Government officials when the mandatory liability policy has been
4 cancelled. *See* 9 CMC § 8201. RCIC did not notify any Government official that the policy had
5 been cancelled.

6 On March 28, 2004, Plaintiffs were all riding together in a vehicle involved in an accident
7 with the 1991 Toyota Camry owned by Stephanus. Plaintiffs contend that because RCIC failed to
8 notify the appropriate Government official that the mandatory liability insurance policy had been
9 cancelled, the RCIC policy was still in effect at the time of the accident. RCIC counters that the
10 relevant statute only requires notifying the government when the insurance company instigates the
11 termination of a policy; and the policy does not apply when the insured chooses to cancel.

12 **II. SUMMARY JUDGMENT STANDARD**

13 Summary Judgment may only be granted when there are no genuine issues of material fact
14 and the moving party is entitled to judgment as a matter of law. *Borja v. Rangamar*, 3 CR 890
15 (C.T.C. 1989); *Eurotex (Saipan), Inc. V. Muna*, 4 N.M.I. 280, 283 (1995); Com. R. Civ. P. 56. A
16 genuine issue of material fact is one that affects the outcome of the case. *Borja v. Rangamar*, 1
17 N.M.I. 347, 355 (1990). If no genuine issue of material facts exists, the trial court need only apply
18 the substantive law. *Wabol v. Camacho*, 4 N.M.I. 388, 389 (1996); *Santos v. Santos*, 4 N.M.I. at
19 209.

20 **III. DISCUSSION**

21 The issue here is whether RCIC was required to notify an appropriate government authority
22 that Stephanus had terminated the insurance policy issued by RCIC. Case law presented by
23 Plaintiffs' refer to instances wherein it was held that when compulsory motor vehicle policies are
24 cancelled, the insurer must strictly comply with the procedural requirements of a mandatory vehicle
25 insurance law. *See e.g., Depyper v. Safeco Ins. Co. of America*, 591 N.W.2d 344, 348 (Mich. Ct.
26 App. 1998); *Barile v. Kavanaugh*, 494 N.E. 2d 82, 86 (N.Y. 1986)("It is well established that a
27 notice of cancellation is ineffective unless it is in strict compliance with the requirements of [the
28 statute]"); *Gov't Employees Ins. CO. V. Mizell*, 36 A.D.2d 452, 454-55 (N.Y. App. Div.

1 1971)(cancellation notice is not effective until notice requirements of mandatory insurance law are
2 strictly met); *Lang v. Kurtz*, 301 N.W.2d 262 (Wis. Ct. App. 1980)(failure to comply with notice of
3 cancellation requirements of mandatory vehicle insurance statute precludes cancellations despite
4 failure to pay premium).

5 While RCIC does not dispute the legal principles asserted by Plaintiffs, RCIC disputes their
6 applicability because of the use of the word termination versus cancellation in § 8201. To that end,
7 RCIC refers to case law supporting RCIC’s proposition that the insurance policy in question no
8 longer was in force at the time of the accident because there is a legal difference between
9 termination and cancellation of a policy. Indeed, the cases cited by RCIC discuss the difference
10 between the cancellation and termination of an insurance policy. However, the cases relied on by
11 RCIC are not analogous to the situation at hand. RCIC’s case citations refer to cases involving a
12 dispute between the insurer and the insured, not a third party injured by an uninsured motorist.
13 Further, the key issue in RCIC’s cases was what constituted proper notice by the insurance company,
14 which turned on who instigated the termination or cancellation of a policy. In such disputes, there
15 is a difference between termination and cancellation. However, when the statute involves the
16 insurer’s duty to notify the government of a policy termination or cancellation for the purpose of
17 mandatory automobile liability, clearly there can be no distinction between the two words. If the
18 legislature had meant there to be a difference, the difference would have been highlighted in a
19 definitions section of the statute. There is no such definition found in 9 CMC § 8201. Furthermore,
20 the purpose of the Act is “to reduce the likelihood of a person being injured in a motor vehicle
21 accident cause by another, and then left uncompensated for their injuries and damages.” See 9
22 CMC § 8201, Commission Comment. Moreover, the Act provides causes of action against
23 insurance companies for failure to comply with the notification requirements and provides severe
24 penalties for non-compliance. 9 CMC § 8201 *et. seq.* As such, RCIC’s argument is unconvincing
25 and the Court finds that pursuant to 9 CMC § 8201, the insurance policy between RCIC and
26 Stephanus was still in effect on the date of the accident injuring Plaintiffs for purposes of Plaintiffs’
27 claims against RCIC.

28 **III. CONCLUSION**

1 For the foregoing reasons, Plaintiffs motion for Summary Judgment is hereby
2 GRANTED, and RCIC's Motion for Summary Judgment is DENIED.

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4 So ORDERED this 12th day of September 2005.

5 /s/ _____

6 David A. Wiseman, Associate Judge

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