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CLERK OF COURT

IN THE SUPERIOR COURT OF GUAM

By: 

GUAM SURGICENTER, LLC, ISLAND
CANCER CENTER, and AC MICRO GUAM,
LLC,

Plaintiffs,

vs.

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

Defendants.

Civil Case No. CV0594-24

**DECISION AND ORDER RE: PLAINTIFFS'
MOTION FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT**

INTRODUCTION

This matter came before the Honorable John C. Terlaje on December 11, 2025, for a Motion Hearing regarding Plaintiffs' Motion for Leave to File First Amended Complaint. Attorney Minakshi V. Hemlani appeared on behalf of the Plaintiffs, Guam Surgicenter, LLC, Island Cancer Center, and AC Micro Guam, LLC ("Plaintiffs"). Attorney R. Marsil Johnson appeared on behalf of DB Insurance Co., LTD ("DB Insurance"). Attorney Geri E. Diaz appeared on behalf of Moylan's Insurance Underwriters, Inc. ("Moylan's"). Attorney Jon R. Ramos appeared on behalf of Equitable Adjusting and Service Company ("EASCO"). After reviewing the record, relevant law, and arguments from the parties, the Court **GRANTS** the Motion for Leave to File First Amended Complaint.

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PROCEDURAL BACKGROUND

On September 26, 2025, Plaintiffs filed their Motion for Leave to File First Amended Complaint. Defendants EASCO, Moylan’s, and DB Insurance each filed their Opposition to Plaintiffs’ Motion for Leave to File First Amended Complaint on October 24, 2025. Plaintiffs filed their Consolidated Reply in Support of Plaintiffs’ Motion for Leave to File First Amended Complaint on November 7, 2025. The Court heard oral argument regarding Plaintiffs’ motion on December 11, 2025.

FACTUAL BACKGROUND

On November 4, 2024, Guam Surgicenter filed its Complaint, relying upon representations made by Defendants throughout the investigation and the ultimate claim denial. Mot. for Leave to File First Am. Compl. at 1 (Sept. 26, 2025); Def. Moylan’s Insurance Underwriters, Inc. Opp. to Pls.’ Mot. for Leave to file First Am. Compl. (“Moylan’s Opp.”) at 1–2 (Oct. 24, 2025). While DB Insurance and Moylan’s timely filed an answer to the Complaint, EASCO filed a motion to dismiss on December 16, 2024. Consolidated Reply in Supp. of Pls’ Mot. for Leave to File First Am. Compl. (“Consolidated Reply”) at 1 (Nov. 7, 2024). The Court issued its decision on the motion to dismiss and the Scheduling Order on March 17, 2025. *Id.* at 1–2. EASCO filed its answer on April 29, 2025. *Id.* at 2.

The Scheduling Order imposed the deadline of May 20, 2025 on motions to amend the pleadings. Scheduling Order at 2 (Mar. 17, 2025). The Discovery Plan, filed on March 17, 2025, stated that the discovery deadline would be October 31, 2025. Discovery Plan and Order at 2 (Mar. 17, 2025). However, the discovery plan and trial date were both extended through a joint

1 stipulation on December 5, 2025. Joint Stipulation Req. Order to Extend Disc. Cutoff and
2 Dispositive Mot. Cutoff at 1 (Dec. 5, 2025).

3 Plaintiffs allege that Defendants did not sufficiently respond to Plaintiffs' requests for
4 interrogatories, production, and admissions until August 22, 2025. Consolidated Reply at 2.
5 Plaintiffs allege that some of the documents that Defendants provided by August 22, 2025 were
6 entirely new to the Plaintiffs. *Id.* at 4–5. EASCO alleges that Plaintiffs were in possession of the
7 December 14, 2023 Denial Letter and the March 28, 2024 Final Report issued by McClarens
8 regarding Guam Surgicenter's claim, which is part of the First Amended Complaint, before
9 Defendants provided discovery to Plaintiffs. Equitable Adjusting & Service Company's
10 Opposition to Pls.' Mot. for Leave to File First Am. Compl. ("EASCO's Opp.") at 6–7 (Oct. 24,
11 2025). Moylan's claims that all of the documents stamped as MIUI_000256 – MIUI_000289 and
12 MIUI_000333 – MIUI_000355 should have been provided to Plaintiff before April 1, 2025
13 because these documents were part of Plaintiffs' Business Owners Policy, which would have
14 been provided to Plaintiffs by Moylan's at the time they bought the insurance policy. Moylan's
15 Opp. at 4–5. Moylan's also claims that Plaintiff should have had access to Moylan's and
16 EASCO's annual reports through the Department of Revenue and Taxation before filing the
17 original complaint. *Id.* at 7.

21 DISCUSSION

22 In the Motion for Leave to File a First Amended Complaint, Plaintiffs argue that the Rule
23 15 standard under the Guam Rules of Civil Procedure ("GRCP") should apply. Under this rule,
24 Plaintiffs argue that they would need to satisfy the Forman factors, which are (1) bad faith or
25 dilatory move, (2) no undue delay, (3) no prejudice to Defendants, and (4) futility of the
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1 amendment. Mot. for Leave to File First Am. Compl. at 2–3. However, Plaintiffs argue that the
2 Court should interpret this standard liberally. *Id.* at 3. Plaintiffs argue that they have met these
3 standards because they are modifying the complaint according to newly discovered information,
4 they notified the Court as quickly as possible, it does not increase prejudice to Defendants if
5 allowed, and the amendment would not be futile. *Id.* at 3–6.

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7 DB Insurance, in their opposition, claims that, in addition to the Rule 15 standard,
8 Plaintiffs’ Motion should be subject to the Rule 16 and the Rule 6 standards under the GRCP
9 because of Plaintiffs’ delay in filing their Motion. DB Insurance Co., LTD.’s Opp. to Pls.’ Leave
10 to File First Am. Compl. (“DB Insurance’s Opp.”) at 3–4 (Oct. 24, 2025). DB Insurance claims
11 that under these additional standards, Plaintiffs must show excusable neglect and good cause. *Id.*
12 at 4. DB Insurance alleges that Plaintiffs have not met these standards because the amended
13 complaint would deprive the Defendants of the ability to conduct discovery on the new causes of
14 action, Plaintiffs delay is considerable and weighs against excusable neglect, Plaintiffs did not
15 explain the delay, and Plaintiffs have provided no support for a finding that they acted in good
16 faith. *Id.* at 5–8.

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19 Moylan’s and EASCO argue that Plaintiffs are subject to the foreman factors under GRCP
20 15(a). Moylan’s Opp. at 4; EASCO’s Opp. at 10–11. However, Moylan’s and EASCO argue that
21 Plaintiffs have failed to show that the four factors weigh in favor of granting the motion. Moylan’s
22 Opp. at 4–9; EASCO’s Opp. at 10–16. Moylan’s and EASCO point to the fact that some of the
23 documents Plaintiff uses in the amended complaint should have been available to Plaintiff before
24 filing the instant case; therefore, Plaintiffs have unduly delayed the litigation process. Moylan’s
25 Opp. at 4–6; EASCO’s Opp. at 11. Moylan’s and EASCO claim that granting the amendment
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1 would seriously delay proceedings and thereby prejudice Defendants. Moylan's Opp. at 7;
2 EASCO's Opp. at 12-13. Moylan's argues that the amendment would be futile because there is no
3 legal basis for several of the causes of action, but does not go into specifics regarding why that
4 would be. Moylan's Opp. at 8-9. EASCO argues that the amendment would be futile because
5 EASCO is protected from litigation by its status as an insurance adjuster. EASCO's Opp. at 14-
6 16.
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8 EASCO also argues that Plaintiff's motion should be subject to a GRCP 16(b)(4) test
9 because the motion was filed after the deadline to file motions on the pleadings. EASCO's Opp.
10 at 2. EASCO claims that the standard under GRCP 16(b)(4) is that a pleading could only be
11 modified by a finding of good cause. *Id.* at 3-4. EASCO contends that there is a three-prong test
12 that Plaintiffs must satisfy to show good cause. *Id.* at 7. Under this test, Plaintiffs must show that
13 they were (1) diligent in assisting the court, (2) noncompliant because of the development of
14 matters that could not reasonably be foreseen, and (3) diligent in seeking amendment as soon as it
15 became apparent that the Plaintiffs could not comply with the deadline. *Id.* EASCO argues that
16 Plaintiffs have failed this test because of the four-month delay, which shows that Plaintiffs were
17 not diligent in assisting the court or seeking amendment. *Id.* at 7-8. EASCO also argues that
18 Plaintiffs failed this test because Plaintiffs could have foreseen that the discovery deadline would
19 have interfered with Plaintiffs' ability to amend the complaint. *Id.* at 9.
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22 In their reply, Plaintiffs argue that the GRCP 6 standard should not apply, but concedes
23 that GRCP 16(b)(4) does apply. Consolidated Reply at 2-4. Plaintiffs, however, argue that they
24 have met the standard of good cause under GRCP 16(b)(4). *Id.* at 3-4. They point to the fact that
25 they were not given all of these documents until after discovery to show that they did not delay
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1 proceedings on purpose. *Id.* Plaintiffs also stated that two important documents to the amended
2 complaint were not revealed before the discovery process, which they argue shows that Plaintiffs
3 did not file this motion to prejudice defendants or delay litigation. *Id.* at 5–7. Plaintiffs also state
4 that the amendment is not futile against EASCO because EASCO did not act as an insurance
5 adjuster in this instance. *Id.* at 7.

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7 The Court agrees with Plaintiffs that GRCP 6(b) does not apply. The Court agrees with the
8 parties that GRCP 15(a) and 16(b)(4) do apply. The Court finds that Plaintiffs have met these
9 standards.

10 **I. Whether Rule 6(b) applies to the issue at hand.**

11 DB Insurance argues that the GRCP 6(b) standard of “excusable neglect and good cause”
12 must apply to the motion at hand because Plaintiffs moved to amend pleadings after a specified
13 deadline. DB Insurance’s Opp. at 4. Plaintiffs, however, point to the scheduling order, which states
14 that the pleadings may be amended after the deadline “only upon leave of Court and for good cause
15 shown.” Consolidated Reply at 4; Scheduling Order at 2. The Court agrees with Plaintiffs’
16 assessment.
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18 GRCP 6(b)(1) states that “the court may, for good cause, extend time . . . on motion made
19 after time has expired if the failure to act was the result of excusable neglect.” Motions that fall
20 under the standard of GRCP 6(b)(1) are required in a motion to show “that the failure to act was a
21 result of excusable neglect.” *Gov’t of Guam v. O’Keefe on behalf of Heirs of Toerres Est.*, 2018
22 Guam 4. However, the Scheduling Order states that a party needs only provide the Court with good
23 cause to amend the pleadings after the deadline. Scheduling Order at 2.
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1 Plaintiffs need only to provide good cause to amend because the stipulated Scheduling
2 Order is the standard. GRCP 6(b)(1) does generally apply when motions are made after time has
3 expired. However, in this instance, the parties agreed to a specific rule for pleading motions.
4 Because the parties agreed to the standard of good cause only, the Court finds that this is the correct
5 standard to apply. Therefore, Plaintiffs needed to show good cause under the Scheduling Order.
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7 **II. Whether Plaintiffs satisfied the Rule 16(b)(4) requirement of good cause.**

8 EASCO argues that Plaintiffs should be held to the standard of GRCP 16(b)(4) because
9 Plaintiffs are modifying the schedule of discovery without a stipulation. EASCO's Opp. at 2.
10 EASCO argues that Plaintiffs have failed to show that they acted with good cause to amend the
11 schedule of discovery. *Id.* at 4–9. Plaintiffs agree that Rule 16(b)(4) does apply, but Plaintiffs argue
12 that they have shown good cause because of the timing of when Plaintiffs received discovery.
13 Consolidated Reply at 3–4.
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15 The Court agrees that Rule 16(b)(4) applies to Plaintiff's Motion. The Court agrees with
16 Plaintiffs that they have shown good cause to amend the scheduling order.
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18 **a. Whether Rule 16(b)(4) applies to Plaintiff's Motion**

19 GRCP Rule 16(b)(4) states in full, "A schedule may be modified only for good cause and
20 with the judge's consent."
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22 The Court agrees with both parties that Rule 16(b)(4) applies. The Scheduling Order states
23 that a pleading may be modified after the deadline for good cause. But the Order does not address
24 the fact that allowing pleadings to be modified after the deadline will change the timeline of
25 discovery. Therefore, the Rule 16(b)(4) standard applies. Additionally, it should be noted that the
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1 Rule 16(b)(4) standard is the same standard as imposed by the Scheduling Order. Therefore, the
2 standard of good cause will be applied.

3 **b. Whether Plaintiff satisfied Rule 16(b)(4)'s good cause standard**

4 To amend a Scheduling Order, a moving party must first show good cause. *Palmer v.*
5 *Mariana Stones Corp.*, 2021 Guam 5 ¶ 22; Guam R. Civ. P. 16(b)(4); Fed. R. Civ. P. 16(b)(4);
6 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-08 (9th Cir. 1992). When a rule from
7 the GRCP generally tracks a rule from the Federal Rule of Civil Procedure ("FRCP"), the Court
8 can look to the precedent developed within the federal jurisdiction. *M. Elec. Corp. v. Phil-Gets*
9 *(Guam) It'l Trading Corp.*, 2016 Guam 35 ¶ 40. Such is the case with GRCP 16(b)(4) and FRCP
10 16(b)(4), which are written identically. *Compare* Guam R. Civ. P. 16(b)(4) ("A schedule may be
11 modified only for good cause and with the judge's consent"), *with* Fed. R. Civ. P. 16(b)(4) ("A
12 schedule may be modified only for good cause and with the judge's consent.").

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15 In determining whether there is good cause to amend a pleading, the Ninth Circuit primarily
16 considers the diligence of the moving party. *Johnson*, 975 F.2d at 609. "[T]he focus of the inquiry
17 is upon the moving party's reasons for seeking modification." *Id.* "If that moving party was not
18 diligent, the inquiry should end." *Id.*

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20 Here, Plaintiffs have shown good cause and diligence. Although Plaintiffs did not address
21 this standard specifically in their motion, they remedied that deficiency in their Consolidated
22 Reply. Plaintiffs have shown that while their amended complaint does rely on some information
23 they had access to before discovery, the amendment also relies on specific documents that they
24 did not have access to before discovery. Namely, Plaintiffs did not have information regarding
25 Moylan's entire insurance policy, EASCO's relationship with Moylan's, and McLaren's Final
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1 Report. Consolidated Reply at 7. Plaintiffs also showed that they diligently reviewed the discovery
2 given to them by Defendants. *Id.* at 4. Plaintiffs received the discovery of these specific elements
3 in full by August 21 and 22, 2025, and the instant motion was filed on September 26, 2025. *Id.*
4 Plaintiffs took approximately a month to review the documents in full, draft the motion, and file
5 the motion. *Id.* The Court finds these facts to be sufficient to show that Plaintiffs have shown good
6 cause and diligence in the filing of this motion. And therefore, the amended schedule caused by
7 the amended complaint is granted.
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9 **III. Whether Plaintiffs satisfied the Rule 15(a) Forman test**

10 Plaintiffs and Defendants both argue that this motion should fall under GRCP 15(a) and
11 that the standard for assessing the motion is the Forman test. Mot. for Leave to File First Am.
12 Compl. at 2–3; Moylan’s Opp. at 4; EASCO’s Opp. at 10–11 (Oct. 24, 2025). Plaintiffs argue that
13 they have met the Forman test. Mot. for Leave to File First Am. Compl. at 4–6; Consolidated Reply
14 at 5–7. Defendants argue that Plaintiffs have not met the Forman test. Moylan’s Opp. at 4–9;
15 EASCO’s Opp. at 10–16. Defendants argue that Plaintiffs lack diligence, showing bad faith and
16 undue delay, Defendants would be prejudiced by this delay, and the amendment would be futile.
17 Moylan’s Opp. at 4–9; EASCO’s Opp. at 10–16.
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19 The Court agrees with the parties that the Forman test applies. The Court agrees with
20 Plaintiffs that Plaintiffs have satisfied the Forman test.
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22 GRCP 15(a) permits the amendment of a party’s pleading with the leave of the Court, and
23 the Court shall freely give that leave when justice so requires. “GRCP 15 generally tracks the
24 language of FRCP 15 . . . [the] federal interpretation of FRCP 15 is persuasive when interpreting
25 our own GRCP 15.” *M. Elec. Corp.*, 2016 Guam 35 ¶ 40; *Compare* Guam R. Civ. P. 15(a)
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1 (“[L]eave [to amend] shall be freely given when justice so requires . . .”), with Fed. R. Civ. P.
2 15(a)(2) (“The court should freely give leave [to amend] when justice so requires.”) The Ninth
3 Circuit has interpreted this standard with “extreme liberality.” See *Morongo Band of Mission*
4 *Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990); *Poling v. Morgan*, 829 F.2d 882, 886 (9th
5 Cir. 1987); *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981).

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7 In *Forman v. Davis*, the United States Supreme Court held that in determining whether
8 leave should be granted to amend a complaint, courts should consider the following factors:

9 [U]ndue delay, bad faith or dilatory motive on the part of the
10 movant, repeated failure to cure deficiencies by amendments
11 previously allowed, undue prejudice to the opposing party by virtue
of allowance of the amendment, futility of amendment.

12 *Forman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222 (1962); see also *Arashi*
13 *& Co. v. Nakashima Enterprises, Inc.*, 2005 Gaum 21 ¶ 16 (directing the trial court to consider the
14 Forman factors when deciding a request for leave to amend.) “The four factors are generally not
15 accorded equal weight; a showing of delay alone, for example, usually will not justify denial of
16 leave to amend.” *SAES Getters S.p.A. v. Aeronex, Inc.*, 219 F. Supp. 2d 1081, 1086 (S.D. Cal.
17 2002) (citing *DCD Programs, Ltd. V. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987)). The Ninth
18 Circuit views that prejudice to the opposing party is the “touchstone” of the Rule 15(a) Inquiry
19 and carries the greatest weight. See *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052
20 (9th Cir. 2003).

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23 The Court will assess the arguments of the party under each of the relevant Forman factors.
24 The Court will not assess whether there were deficiencies in previously allowed amendments
25 because there are no previous amendments.
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1 Plaintiffs are not causing undue prejudice to Defendants. Although the amended complaint
2 will continue discovery, it does not appear to prejudice Defendants. Since the filing of the instant
3 motion, Defendants have agreed to extend discovery. Additionally, the amended complaint is
4 based on documents that were already in Defendants' possession that Plaintiffs could not have
5 accessed before discovery. Therefore, Defendants likely would not be unfairly prejudiced by
6 reopening or continuing discovery in this matter because the amended complaint is based on
7 information Defendants already could access.
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9 **c. Futility of Amendment**

10 "Futility of amendment can, by itself, justify the denial of a motion for leave to amend."
11 *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995). When determining if a proposed amendment
12 should be denied as futile, a court must analyze the proposed amendment as if it were before the
13 court on a motion to dismiss. *Lujan v. Calvo Fisher & Jacob LLP*, 2018 Guam 27 ¶ 13.
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15 The amended complaint would withstand a motion to dismiss. EASCO argues that the
16 amended complaint should be dismissed because it would fail a motion to dismiss inquiry. EASCO
17 has already filed a motion to dismiss based on the original complaint. *See* Decision and Order
18 (Motion to Dismiss) (Mar. 17, 2025). EASCO failed to dismiss all claims against it at that time,
19 but two of the claims against EASCO in the original complaint were dismissed. *Id.* The amended
20 complaint does not reintroduce the dismissed claims. *See* Mot. for Leave to File First Am. Compl.
21 at Ex. 1. EASCO's argument that because they are insurance adjustors, the causes of action will
22 fail is a factual inquiry that the Court cannot make a judgment of law on. Additionally, even if
23 EASCO could argue the amended complaint should be dismissed, the amended complaint would
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1 not be dismissed as a whole because the other parties could not dismiss the complaint as a matter
2 of law. Therefore, a motion to dismiss would not cause this amendment to fail.

3 **CONCLUSION**

4 Therefore, the Court **GRANTS** the Plaintiff's Motion for Leave to File First Amended
5 Complaint.

6 **SO ORDERED**, this 3 | 3 | 26.

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11 **HONORABLE JOHN C. TERLAJE**
12 **Judge, Superior Court of Guam**
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