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CLERK OF COURT

IN THE SUPERIOR COURT OF GUAM: 

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: EASCO'S
MOTION TO DISMISS PLAINTIFFS'
FIRST AMENDED COMPLAINT
PURSUANT TO GRCP 12(B)(6)**

INTRODUCTION

This matter came before the Honorable John C. Terlaje on June 18, 2026, for a Motion Hearing regarding Equitable Adjusting and Service Company's (EASCO's) Motion to Dismiss Plaintiffs' First Amended Complaint Pursuant to GRCP 12(b)(6). Attorney Minakshi V. Hemlani appeared on behalf of the Plaintiffs, Guam Surgicenter, LLC, Island Cancer Center, and AC Micro Guam, LLC ("Plaintiffs"). Attorney Jon R. Ramos appeared on behalf of EASCO. After reviewing the record, relevant law, and arguments from the parties, the Court **GRANTS** in part and **DENIES** in part the Motion to Dismiss Plaintiffs' First Amended Complaint Pursuant to GRCP 12(b)(6).

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On March 18, 2026, EASCO filed its Motion to Dismiss Plaintiffs' First Amended Complaint Pursuant to GRCP 12(b)(6). Plaintiffs filed their Opposition to EASCO's Motion to Dismiss the First Amended Complaint on April 17, 2026. EASCO filed its Reply to Plaintiffs' Opposition on April 29, 2026. The Court heard oral argument regarding EASCO's Motion on June 18, 2026.

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On March 4, 2026, the Court granted the Plaintiffs’ Motion to File First Amended Complaint. *See* Dec. & Order Re: Pls.’ Mot. for Leave to File First Am. Compl. (Mar. 4, 2026). In that Decision and Order, the Court found that the Amended Complaint would withstand a motion to dismiss because the Amended Complaint does not reintroduce claims that had previously been dismissed. *Id.* at 12.

On March 5, 2026, Plaintiffs filed their First Amended Complaint. *See* First Am. Compl. (Mar. 5, 2026). The Amended Complaint contains eight causes of action. *Id.* The claims arise from an insurance policy held by Plaintiffs and damage to the Plaintiffs’ premises caused by Typhoon Mawar. *Id.* at 2–14. Five of these claims are against EASCO. *Id.* EASCO moves to dismiss three of the eight claims: the Fourth (Negligent Misrepresentation), Seventh (Civil Conspiracy – Fraudulent Misrepresentation), and Eighth (Declaratory Judgment) Causes of Action. Equitable Adjusting & Service Company’s Mot. to Dismiss Pls.’ First Am. Compl. Pursuant to GRCP 12(b)(6) (“EASCO’s Mot. to Dismiss”) at 2 (Mar. 18, 2026).

Plaintiffs allege that from 2021 through 2023, EASCO was essentially not a separate entity from Moylan's insurance. First Am. Compl. at 2. EASCO claims that during that same

1 period, EASCO acted solely as an insurance adjuster. EASCO's Mot. to Dismiss at 2. On or
2 about the second week of June 2023, Plaintiffs allege that EASCO completed a less than
3 adequate inspection of the Plaintiffs' premises. First Am. Compl. at 7. They allege that EASCO
4 knew or should have known that McLarens was not licensed to investigate or adjust insurance
5 claims on Guam but continued to use McLarens as a third-party consultant. *Id.* Plaintiffs allege
6 that these actions, among others, led to EASCO denying Plaintiffs' damages claim on behalf of
7 DB Insurance and Moylan's on December 14, 2023. *Id.* at 10.

9 DISCUSSION

10 In its Motion and Reply, EASCO argues that these causes of action fail on legal grounds
11 because EASCO is an insurance adjuster, did not create the policy nor financially benefit from the
12 policy, and Plaintiffs failed to plead with particularity the fraud claim. EASCO's Mot. to Dismiss
13 at 5–14; Equitable Adjusting & Service Co.'s Reply to Pls.' Opp. to EASCO's Mot. to Dismiss
14 the First Am. Compl. ("EASCO's Reply") at 2–9 (Apr. 29, 2026). Therefore, EASCO requests
15 that the Court dismiss the Fourth, Seventh, and Eighth Claims in the Amended Complaint against
16 EASCO for failure to state a claim upon which relief can be granted. *Id.* at 6–14. Plaintiffs respond
17 that the Court has already addressed a Rule 12(b)(6) dismissal in when the Court granted the
18 Amended Complaint. Pls.' Opp. to EASCO's Mot. to Dismiss the First Am. Compl. ("Opp.") at
19 3–4 (Apr. 17, 2026). Plaintiffs also respond that their assertions of EASCO's financial
20 entanglement with Moylan's and EASCO's misrepresentation of the insurance policy overcome
21 EASCO's argument that the Fourth, Seventh, and Eighth Claims in the Amended Complaint
22 should be dismissed against EASCO. *Id.* at 4–10.

1 The Court disagrees with the Plaintiffs that the Court cannot now consider a Motion to
2 Dismiss. However, the Court agrees with Plaintiffs that the Fourth Claim should not be dismissed.
3 The Court disagrees with Plaintiffs on the Seventh and Eighth Claims. The Court will dismiss the
4 Seventh Claim against EASCO, but will allow Plaintiffs to amend. The Court will dismiss the
5 Eighth Claim against EASCO, but will not allow Plaintiffs to amend.
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7 **I. Court will Consider the 12(b)(6) Motion on the Merits**

8 Under the Guam Rules of Civil Procedure, “[i]f a party makes a motion under [Rule 12]
9 but omits therefrom any defense or objection then available which this rule permits to be raised by
10 motion, the party shall not thereafter make a motion based on the defense or objection so omitted.
11 . . .” Guam R. Civ. P. 12(g).
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13 Here, EASCO has not made a motion under Rule 12 and therefore is permitted to bring this
14 motion. Although Plaintiffs’ previous motion required the Court to assess the Amended Complaint
15 under a 12(b)(6) standard, this does not preempt any defendant from bringing a Rule 12(b)(6)
16 motion. Rather, the Court inquired into the arguments EASCO presented at the time and decided
17 based on those arguments. EASCO can now assert a Rule 12(b)(6) motion with different arguments
18 that the Court can consider because EASCO did not file a motion to dismiss on this Amended
19 Complaint previously. EASCO filed an opposition to an amended complaint, not a Rule 12(b)(6)
20 motion. In that opposition, EASCO incorrectly cited the Twombly/Iqbal standard, which Guam
21 has not accepted. The Court could not grant their argument at the time because Guam is a notice-
22 pleading jurisdiction. In this case, EASCO applied the correct standard and framed its arguments
23 around the notice-pleading standard. Therefore, it is appropriate for the Court to consider
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1 EASCO's Motion to Dismiss despite its previous opposition to the Amended Complaint because
2 the opposition did not constitute a Rule 12 motion and EASCO has presented new arguments.

3 **II. Rule 12(b)(6) Inquiry**

4 "A Rule 12(b)(6) motion tests the sufficiency of a claim." *Navarro v. Block*, 250 F.3d 729,
5 732 (9th Cir. 2001). When reviewing a Rule 12(b)(6) motion, the Court must "construe the
6 pleading in the light most favorable to the non-moving party and resolve all doubts in the non-
7 moving party's favor." *First Hawaiian Bank v. Manley*, 2007 Guam 2 ¶ 9 (citation omitted); *Ukau*
8 *v. Wang*, 2016 Guam 26 ¶ 51. Dismissal is appropriate only when the non-moving party "can prove
9 no set of facts in support of his claim which would entitle him to relief." *Taitano v. Calvo Fin.*
10 *Corp.*, 2008 Guam 12 ¶ 9 (quoting *Vasquez v. Los Angeles*, 487 F.3d 1246, 1249 (9th Cir. 2007));
11 *Ukau*, 2016 Guam 26 ¶ 51.
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14 Plaintiffs have presented sufficient law and facts to put EASCO on notice as far as it
15 concerns the Fourth Claim. However, because the Seventh Claim has an additional requirement
16 that Plaintiffs have not met, the Court will dismiss the Seventh Claim but allow Plaintiffs to amend.
17 The Court will dismiss the Eighth Claim and give Plaintiffs no opportunity to amend because the
18 Eighth Claim is dismissed on legal grounds that cannot be remedied by amendment.
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20 **a. The Fourth Claim is Not Dismissed**

21 EASCO's argument regarding the factual deficiency of Plaintiffs' Fourth Claim fails.
22 EASCO states that because Plaintiffs claim that EASCO never made a pre-contractual
23 misrepresentation to Plaintiffs, EASCO cannot be held liable for the Fourth Cause of Action. In
24 response, Plaintiffs allege that EASCO is so closely tied to Moylan's as to make the distinction
25 negligible between the two defendants. Plaintiffs also allege that while EASCO did not make a
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1 pre-contractual misrepresentation, they did make misrepresentations upon denying the insurance
2 claim. Plaintiffs allege in their Amended Complaint that because of EASCO's misrepresentation,
3 Plaintiffs suffered damages that they now seek in this case. The Court, interpreting the facts in
4 favor of Plaintiffs, finds that EASCO is on notice based on the Amended Complaint of Plaintiffs'
5 allegations. Plaintiff is not deficient in explaining how these factual allegations show that EASCO
6 allegedly caused Plaintiff to rely on their representations. Therefore, the Court will not dismiss the
7 Fourth Claim at this time.
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9 **b. The Seventh Claim is Dismissed with Opportunity to Amend**

10 Guam Rules of Civil Procedure include a heightened pleading standard for complaints that
11 allege fraud. Guam R. Civ. P. 9(b). "[T]he circumstances constituting fraud or mistake shall be
12 stated with particularity." *Id.*; *Ukau*, 2016 Guam 26 ¶ 35.
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14 Here, Plaintiffs have not provided specific facts to support their legal allegations of
15 fraudulent activity. Plaintiffs used language in their complaint such as "Defendants entered into a
16 common plan and agreement to misrepresent the scope of coverage and to issue a denial based on
17 false grounds." Am. Compl. at 26. This language does not include any factual allegations that the
18 parties entered into an agreement to commit fraud; rather, it is conclusory. Plaintiffs state in their
19 opposition to the Motion to Dismiss that the facts are shown throughout the evidence they have
20 provided. This is not sufficient because it requires that EASCO scour over two hundred pages of
21 documents to try to string together the facts Plaintiffs allege show conspiracy. This is not pleading
22 with sufficient particularity. Therefore, the Court will dismiss the Seventh Claim at this time
23 against EASCO but will allow Plaintiffs to amend because the complaint is deficient in fact only.
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CONCLUSION

Therefore, the Court **GRANTS** in part and **DENIES** in part EASCO's Motion to Dismiss. The Seventh and Eighth Claim are dismissed against EASCO. Plaintiff will have an opportunity to amend the Seventh Claim. The Fourth Claim is retained as written in the Amended Complaint.

HONORABLE JOHN C. TERLAJE
Judge, Superior Court of Guam