C. *Quashing the Information for Lack of Probable Cause*

While most of the known evidence is suppressed including the statements made by Benjamin, some physical evidence is not suppressed since this evidence would have been obtained without the information provided by the statements of Benjamin. This would include the list of items that were missing from the employees of the FSMDB. These would have been revealed after the employees reported to work and noticed that the items were missing. This evidence would have been obtained by means sufficiently distinguishable to be purged of the primary taint. Since this evidence and others which may be presented later are not suppressed, the court will not quash the information and this part of the Defendant's motion is HEREBY DENIED.

V. CONCLUSION

All evidence obtained from the Defendant after his unlawful arrest in the police vehicle going to the Pohnpei police station is HEREBY SUPPRESSED. Upon application of the fruit of the poisonous tree doctrine, the suppressed evidence shall include the statements made by Defendant Benjamin while in the police vehicle on the way to the national police headquarters in Palikir and any other statements made to the police after the initial confession, as well as the fingerprint evidence taken from a window at the FSMDB office. The evidence of missing items are not suppressed and the motion to quash the information is HEREBY DENIED.

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FSM SUPREME COURT TRIAL DIVISION

KARLYNN JOHNNY, Plaintiff, vs. OCCIDENTAL LIFE INSURANCE and NET CARE LIFE AND HEALTH, Defendants.	)	CIVIL ACTION NO. 2013-002

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Dennis K. Yamase
Associate Justice

Trial: October 15-16, 2013
Decided: March 28, 2014

APPEARANCES:

For the Plaintiffs: Salomon M. Saimon, Esq.
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* * * *

HEADNOTES

Constitutional Law – Judicial Guidance Clause

The FSM Constitution's judicial guidance clause requires that the court's review of U.S. courts' decisions proceed against the background of pertinent aspects of Micronesian society and culture, but when the business activities which give rise to the lawsuit are not of a local or traditional nature, and the work setting and the work itself are of a markedly non-local, international character, the court need not conduct an intense search for applicable customary laws and traditional rules when none have been brought to its attention by the parties and none are apparent. Johnny v. Occidental Life Ins., 19 FSM R. 350, 357 (Pon. 2014).

Contracts – Breach; Contracts – Formation

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. Johnny v. Occidental Life Ins., 19 FSM R. 350, 357 (Pon. 2014).

Contracts – Interpretation

Contracts are not interpreted on the basis of subjective, uncommunicated views or secret hopes of one of the parties. Instead, courts interpret and enforce agreements on an objective basis, according to the parties' reasonable expectations or understanding based upon the circumstances known to the parties and their words and actions, at the time the agreement was entered into. Johnny v. Occidental Life Ins., 19 FSM R. 350, 357 (Pon. 2014).

Contracts – Formation; Insurance

An insurance contract was formed when there was an invitation made by the insurer to provide life and cancer insurance coverage to the plaintiff and the plaintiff offered to enroll under the policy and the insurer accepted the offer by issuing life and cancer insurance policies and accepting premiums that the plaintiff paid through bi-weekly allotments. The parties' reasonable expectations were that the plaintiff would make timely payments on the policy, and that the insurer would provide coverage subject to the policy's terms. Johnny v. Occidental Life Ins., 19 FSM R. 350, 357 (Pon. 2014).

Contracts – Breach; Insurance

The insurer did not breach an insurance policy's terms when it denied coverage because the dependent was not a covered family member since, although she was under 25, she had not been enrolled as a full time student in a post-secondary institution of higher learning for five calendar months or more. Johnny v. Occidental Life Ins., 19 FSM R. 350, 358 (Pon. 2014).

Equity – Estoppel; Torts – Negligent Misrepresentation

To claim promissory estoppel a party must prove that: 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3) the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. Elements 3) and 4) are sometimes referred to collectively as "detrimental

reliance." Misrepresentation, too, contains the elements of reasonable reliance and damages. Johnny v. Occidental Life Ins., 19 FSM R. 350, 358 (Pon. 2014).

Insurance; Torts – Duty of Care

While there may be no general duty to explain the type of insurance involved, insurance agents may be found to have additional duties when specifically questioned by the insured as to the appropriate level of insurance. Johnny v. Occidental Life Ins., 19 FSM R. 350, 358 (Pon. 2014).

Agency; Equity – Estoppel; Insurance

The promises made by the insurer's agents bind the insurer and must be enforced in order to avoid manifest injustice because if the plaintiff had enrolled her daughter under a separate cancer policy, she would have been covered under her own policy, but instead, the agent's misrepresentation caused her to keep her daughter under her cancer policy, making the daughter ineligible at the time she was diagnosed with cancer because she did not qualify as a covered family member under that policy's provisions. Johnny v. Occidental Life Ins., 19 FSM R. 350, 359 (Pon. 2014).

Equity – Estoppel; Insurance

A plaintiff's claim under a promissory estoppel and detrimental reliance cause of action is supported when the plaintiff has timely paid the insurance premiums since 1996; when her reasonable expectation was that she and her dependents would receive life and cancer insurance coverage; when she expected that, as an insured, that the insurer's agents would provide her with accurate and reliable information about the policies, which would include when a dependent is no longer covered and what steps to take when coverage has ceased; when the insurer did not fulfill these expectations, to the detriment of her and her dependents; and when, if the insurer had properly advised her, she would have had the opportunity to take out a separate cancer policy for her daughter and her daughter would have been eligible for cancer policy benefits once she was diagnosed with cancer in 2009. Johnny v. Occidental Life Ins., 19 FSM R. 350, 359-60 (Pon. 2014).

Remedies – Restitution

The equitable doctrine of unjust enrichment operates in the absence of an enforceable contract. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

Contracts – Implied Contracts; Remedies – Restitution

Unjust enrichment relates to the doctrine of implied contracts, which is to say that in order to avoid unjust enrichment the court will, in the absence of a legally enforceable contract, imply a contract in law in the absence of a contract in fact. Neither the concept of unjust enrichment or the closely associated idea of an implied contract apply when there is an enforceable written contract, since an express contract and implied contract for the same thing cannot govern a legal relationship at the same time. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

Contracts – Implied Contracts; Insurance; Remedies – Restitution

The doctrine of unjust enrichment does not apply when there is a legally binding agreement in the form of life and cancer insurance policies that the parties agreed to and executed. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

Contracts – Third-Party Beneficiary

There must be a valid agreement between two parties to enable a third person, for whose benefit the promise is made, to sue upon it. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

Contracts – Third-Party Beneficiary

A third party beneficiary can only recover if he or she is an intended beneficiary of a contract.

When a contract is made especially for the benefit of a third person, he or she may enforce it directly against the promisor. The determining factor in a third party beneficiary claim is the parties' intent, which is a question of the construction of the contract as determined by the contract's terms as a whole. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

Contracts – Third-Party Beneficiary

When it is unclear what testimony or evidence forms the basis for the plaintiff's third-party beneficiary cause of action, she will not prevail on the claim. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

Insurance

When the insurance benefit is a amount of $10,000 lump sum payment; when the agreement does not specify if expenses incurred for an attendant accompanying a patient for off-island treatment is covered under the policy; and when there was no evidence presented at trial as to the nature and amount of expenses incurred, the expenses claim will be denied. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360-61 (Pon. 2014).

Insurance

When certain expenses had been covered by a different insurance plan, the court will not grant relief that would provide the plaintiff with a double recovery. Johnny v. Occidental Life Ins., 19 FSM R. 350, 361 (Pon. 2014).

Insurance

The statutory requirement that an insurance policy must be signed by two major officers of the insurance company is fulfilled when the cover page of the policy shows the signatures of the company's Secretary and President. Johnny v. Occidental Life Ins., 19 FSM R. 350, 361 (Pon. 2014).

Torts – Breach of Implied Covenant of Good Faith

Breach of an implied covenant of good faith and fair dealing is a common law cause of action, which is a tort claim that arises out of a contractual relationship between the parties. The implied covenant of good faith and fair dealing rests on the premise that whenever a party's cooperation is necessary for the performance of a contractual promise, there is a condition implied that the cooperation will be given. Johnny v. Occidental Life Ins., 19 FSM R. 350, 361 (Pon. 2014).

Insurance; Torts – Breach of Implied Covenant of Good Faith

Contracts impose on the parties a duty to do everything necessary to carry them out, and there is an implied undertaking in every contract on each party's part that he will not intentionally and purposely do anything to prevent the other party from carrying out his part of the agreement, or do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract. The FSM Supreme Court will entertain such claims in the context of insurance contracts, when the insurer possesses greater sophistication, provides the policy, can be expected to assist insureds in understanding the relevant terminology in the policy, and has a specialized role in processing claims. Johnny v. Occidental Life Ins., 19 FSM R. 350, 361-62 (Pon. 2014).

Contracts; Torts – Breach of Implied Covenant of Good Faith

The duty of good faith and fair dealing is implied in the performance and enforcement of all contracts. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362 (Pon. 2014).

Insurance; Torts – Breach of Implied Covenant of Good Faith

Under the circumstances of an insurance case, there may be a duty to disclose information, based on a relationship of confidence or trust between the parties, or based on one party's superior

knowledge or means of knowledge. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362 (Pon. 2014).

Insurance; Torts – Breach of Implied Covenant of Good Faith

As used in the insurance context, bad faith does not refer to misconduct of a malicious or immoral nature. Rather, the bad faith concept emphasizes unfaithfulness to an agreed common purpose or to the justifiable expectations of the other party to the contract. In short, a showing of bad faith requires that insurers not act unreasonably or arbitrarily when dealing with their insureds. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362 (Pon. 2014).

Agency; Insurance

A principal is bound by, and liable for, the acts which his agent does with or within the actual or apparent authority from the principal, and within the scope of the agent's employment, and an insurance company's general agent is one who has authority to transact all the business of an insurance company of a particular kind, or in a particular place, and whose powers are coextensive with the business entrusted in the agent's care. Agents have been regarded as general agents when they fully represent the insurance company in a particular district and are authorized to solicit insurance, receive money and premiums, issue and renew polices, appoint subagents, and adjust loses. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362-63 (Pon. 2014).

Agency; Insurance

When an agent has been employed by the insurer for approximately 25 years and, although he may not have had the power to unilaterally amend policies, he informed the plaintiff that cancer coverage was up to 25 years of age; and when, because he was the manager of the insurer's office in Pohnpei and aside from a subordinate he was the only insurer's representative whom the plaintiff was in contact with, the plaintiff had ample reason to rely and accept his statements as the truth. Johnny v. Occidental Life Ins., 19 FSM R. 350, 363 (Pon. 2014).

Judgments – Interest

In the absence of a statute an award of prejudgment interest is in the court's discretion. Prejudgment interest is recoverable in cases where the plaintiff is entitled to recover a liquidated sum of money. Johnny v. Occidental Life Ins., 19 FSM R. 350, 363 (Pon. 2014).

Insurance; Judgments – Interest

When the damages amount was a liquidated sum and the insurance contract involved a promise to pay money if certain events occurred, the plaintiff will be awarded the 9% statutory rate of interest from a reasonable time of 60 days after the diagnosis of her daughter's cancer was submitted to the insurer in a claim form for accident and health policies. Johnny v. Occidental Life Ins., 19 FSM R. 350, 363 (Pon. 2014).

* * * *

COURT'S OPINION

DENNIS K. YAMASE, Associate Justice:

I. BACKGROUND

The Plaintiff Karlynn Johnny (Johnny) is represented by Salomon M. Saimon, Esq. of the Micronesian Legal Services Corporation (MLSC), The Defendants Occidental Life Insurance (OLI) and Net Care Life and Health (NCLH) (collectively Occidental) are represented by Fredrick L. Ramp, Esq.

The trial in this matter was held on October 15 and 16, 2013. The Plaintiff Johnny was present during the trial. Melner Isaac (Isaac), who is a resident insurance agent and branch manager for Moylan's Pohnpei office was present during the trial. Moylan's is an insurance agency operating out of Guam, selling NCLH insurance policies, and handling some insurance policies originally issued by OLI.

On October 14, 2013, the parties filed a Stipulated Motion Re: Defendant's Exhibits. The Plaintiff's and the Defendants' Exhibits listed in the stipulated motion were all entered into evidence prior to the conclusion of trial.

The witnesses for the Plaintiff Johnny were Johnny herself and the Defendants Occidental's resident insurance agent and branch manager of Moylan's Pohnpei office, Melner Isaac. The Defendants Occidental put Isaac on the stand.

After the Plaintiff Johnny rested, the Defendants Occidental made a motion for directed verdict pursuant to FSM Civil Rule 41(b). That motion was granted for cause of action number seven, the Plaintiff stating that she would withdraw that cause of action. The motion was denied as to all of the other causes of action. The trial proceeded and at the conclusion of trial, the parties agreed to submit written closing arguments. Both parties submitted their closing arguments on October 23, 2013. No replies were filed.

II. Findings of Fact

1. The Plaintiff Karlynn Johnny is married to Billy Mudong and had one daughter, Primrose Mudong (Primrose), who was born on March 31, 1985 and who passed away in Guam at the age of twenty seven (27) years old on July 23, 2012 from complications of cancer of the cervix. Pl.'s Ex. A – Certificate of Live Birth; Pl.'s Ex. B – Certificate of Death. The Plaintiff Johnny worked at the Pohnpei State Hospital as a nurse/mid-wife for twenty four (24) years.

2. Primrose Mudong was diagnosed with cancer in 2009 by Dr. Bermanis a physician in Pohnpei. She was 24 years old and was a dependent on the Plaintiff Johnny and her husband at the time.

3. To treat her cancer Johnny and Primrose took two trips in 2010 and one trip in 2011 to medical facilities in the Philippines for treatment. After Primrose's second trip in July, 2010, the cancer seemed under control. The last trip Johnny and Primrose took was to Guam in July, 2012 where Primrose passed away.

4. The Plaintiff had life and cancer insurance policies with the Defendants Occidental. Johnny had signed up for these policies on June 24, 1996 and since that time had kept up with payment of all of her premiums for both policies. Defs.' Ex. 1 – Cancer Insurance Policy. Johnny testified that her copy of the policies had been destroyed in a storm.

5. The insurance policies were sold to her by an agent of OLI, Menast Debich who had come to the Pohnpei Hospital to sell the policies. Johnny stated that at the time of her purchase of the insurance policies she was told by the agent Debich that her family, including her husband and child, would have coverage if they should be diagnosed with cancer for the 20 year period of the policies. Based on that information from the agent, it was her understanding that her insurance policies would be in effect for 20 years for herself and her family, including her husband and daughter. Dep. Tr. at 18 to 20.

6. The life insurance policy covered Johnny herself, and as riders, her husband, and daughter Primrose who was 11 years old at the time. The policy number is 0980961H. Defs.' Ex. 11 – Request for Loan/Partial Withdrawal. This life insurance policy accrues value and can be loaned against.

7. The cancer insurance policy covered Johnny herself, and as riders, her husband, and Primrose until the age of 21, but if she was still in school and dependent upon Johnny coverage would continue. The policy number is 230980960K. Pl.'s Ex. D – Application for Cancer Insurance; Defs.' Ex. 1 – Cancer Insurance Policy. This cancer insurance policy does not accrue value and cannot be loaned against.

8. The cancer insurance policy states in pertinent part that: "A dependent child shall continue to be covered to age 25 if the child remains your dependent and the child, in each calendar year since reaching the age for termination of benefits as a dependent, has been enrolled for five calendar months or more as a full time student in a post-secondary institution of higher learning, or if not so enrolled, would have been eligible to be so enrolled and was prevented due to illness or injury." Pl.'s Ex. C – Cancer Insurance Policy.

9. Johnny testified that every couple of years, usually the agents from Moylan's would call her to inform her of increases to her premiums. They had never informed her that Primrose was not covered anymore. Dep. Tr. at 19 to 20.

10. Toward the end of 2008, Johnny met with Elizabeth Franklin who was an insurance account executive working with Isaac and who could sell insurance policies. At that meeting, Johnny asked about the cash value of her life insurance policy. Franklin asked about the age of Johnny's daughter and when told that she was 23 or 24, Franklin told Johnny that she was no longer covered under her insurance policies. Johnny was told by Franklin that Primrose could be covered if she was in school. Primrose had attended the College of Micronesia – FSM in 2002 and 2003 and had gotten pregnant. She had applied for a scholarship from Australia for dental school, but did not receive it in 2003. She gave birth in 2003.

11. Johnny asked Franklin what she should do and Franklin informed her that she could sign her daughter up for a separate policy. Dep. Tr. at 20. Johnny signed a discontinuation of ridership in the form of a Request for Policy Change on July 4, 2008 and Franklin prepared Primrose's own separate insurance policy. Johnny also inquired if there would be any refund of premiums paid for Primrose after her coverage had ceased. Defs.' Exs. 8 and 9 – E-mail Communications.

12. The documentation Franklin prepared was for a life insurance policy. None had been prepared for a cancer insurance policy. Defs.' Ex. 11 – Request for Policy Change. During this meeting there was no differentiation made between Johnny's life and cancer insurance policies.

13. After six or seven months, Isaac contacted Johnny and told her to come to his office to pick up a check for the cash value of her life insurance policy. Defs.' Ex. 11 – Request for Loan/Partial Withdrawal. When Johnny came to the office she sat down with Isaac. Isaac told her that Franklin had just started working when she had met with her and that she had misunderstood the terms of the policies. He said that what Franklin had told her applied to Net Care and not to Occidental. Johnny stated that Isaac had told her that she had signed under Occidental, so there was different coverage. Isaac told her that her daughter Primrose would be covered until age 25 no matter what. Johnny withdrew her cancellation with regard to Primrose as she was 24 at the time. Dep. Tr. at 20 to 21.

14. During the meetings with Franklin and Isaac the two different life and cancer insurance policies were not differentiated. Johnny stated that Franklin and Isaac had used the plural word "policies" and not the singular word "policy". Johnny had thought that the two agents were referring to both life and cancer policies and that what she had been told applied to both policies. Johnny stated that she had been told that Primrose was covered until the age of 25 with no conditions. She had begun the insurance policies in 1996 and she thought that she would be covered by both policies for the 20 year

period until 2016. Isaac had thought that his conversation with Johnny referred only to the life insurance policy.

15. On December 22, 2009, Johnny signed and dated a Claim Form for Accident and Health Policies for her daughter Primrose, who was 24 years old at the time. Defs.' Ex. D – Claim Form for Accident and Health Policies.

16. On January 26, 2010, a letter from Neil Darwin P. Lazarte, Claims Department, NetCare Life and Health Insurance to Johnny informed her that her claim had been denied based on information that they had received. Defs.' Ex. D – Letter to Johnny from Lazarte, dated January 26, 2010.

17. On April 20, 2010, a letter from Darlene E. Hiton of the Law Offices of Phillips & Bordallo, to Danally Daniel, Esq. of the Micronesian Legal Services Corporation (MLSC) informed her that Johnny's claim had been denied based on information that they had received. Defs.' Ex. D – Letter to Daniel from Hiton, dated April 20, 2010.

III. ANALYSIS

Review of decisions of U.S. courts and any other jurisdictions, must proceed against the background of "pertinent aspects of Micronesian society and culture." The FSM Constitution's judicial guidance clause requires that the court's review of U.S. courts' decisions proceed against the background of pertinent aspects of Micronesian society and culture, but where the business activities which give rise to the lawsuit are not of a local or traditional nature, and the work setting and the work itself are of a markedly non-local, international character, the court need not conduct an intense search for applicable customary laws and traditional rules when none have been brought to its attention by the parties and none are apparent. Semens v. Continental Air Lines, Inc., 2 FSM Intrm. 131, 142 (Pon. 1985); Reg v. Falan, 14 FSM Intrm. 426 (Yap 2006).

A. *Breach of Contract*

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. Goyo Corp. v. Christian, 12 FSM Intrm. 140, 146 (Pon. 2003); Ponape Constr. Co. v. Pohnpei, 6 FSM Intrm. 114, 123 (Pon. 1993).

Contracts are not interpreted on the basis of subjective, uncommunicated views or secret hopes of one of the parties. Instead, courts interpret and enforce agreements on an objective basis, according to the parties' reasonable expectations or understanding based upon the circumstances known to the parties and their words and actions, at the time the agreement was entered into. Goyo Corp., 12 FSM Intrm. at 146; Kihara v. Pohnpei, 5 FSM Intrm. 342, 345 (Pon. 1992). When one party fails to perform their promise, there is a breach of contract. Malem v. Kosrae, 9 FSM Intrm. 233, 236 (Kos. S. Ct. Tr. 1999).

In 1996, there was an invitation made by the OLI, to provide life and cancer insurance coverage to Johnny. Johnny offered to enroll under the policy and OLI accepted the offer by issuing life and cancer insurance policies and accepting premiums that were paid through bi-weekly allotments made by Johnny. The reasonable expectations of the parties was that Johnny would make timely payments on the policy, and that OLI would provide coverage subject to the terms of the policy.

OLI claims that Johnny's claim for coverage was denied because at the time of her diagnosis, Primrose no longer qualified as a "Covered Family Member." Under the Definition section of the agreement, it states:

> "Covered Family Member" refers to you and a dependent child shall continue to be covered to age 25 if the child remains your dependent and the child, in each calendar year since reaching the age for termination of benefits as a dependent, has been enrolled for five calendar months or more as a full time student in a post-secondary institution of higher learning, or if not so enrolled, would have been eligible to be so enrolled and was prevented due to illness or injury.

The facts show that Primrose was diagnosed with cancer at the age of 24, however, was not enrolled as a full time student in a post-secondary institution of higher learning for five calendar months or more. Johnny testified that Primrose was enrolled as a student at the College of Micronesia, but had ceased attending school in 2003.

Further, because of the lengthy interval between her not attending school and her cancer diagnosis, Primrose's enrollment was not prevented by illness or injury. Based on the above-stated section of the contract, and as argued by the parties during trial, OLI did not breach its obligation under this section of the agreement.

B. *Promissory Estoppel and Detrimental Reliance*

Under the complaint, Johnny's second cause of action is a claim based on Promissory Estoppel and Detrimental Reliance. These two legal theories are similar and the court will consider them together. Dias v. Federal Nat'l Mortgage Ass'n, 990 F. Supp. 2d 1042, 1057 (D. Haw. 2013) (holding "the essence of promissory estoppel is detrimental reliance on a promise.")

To claim promissory estoppel a party must prove that: (1) a promise was made; (2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; (3) the promise did in fact induce such action; and (4) the circumstances require the enforcement of the promise to avoid injustice. Elements (3) and (4) are sometimes referred to collectively as "detrimental reliance." Misrepresentation, too, contains the elements of reasonable reliance and damages. AHPW, Inc. v. Pohnpei, 14 FSM Intrm. 188, 191-92 (Pon. 2006); Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 195 (Kos. S. Ct. Tr. 2001).

Here, the court considers the statements made by the agents of OLI to Johnny. Menast Debich who initially sold the policies to Johnny in 1996, stated and the understanding by Johnny, was that coverage would be for a period of 20 years. Isaac, in a meeting with Johnny told her that Primrose would be covered under the insurance policies until age 25 "no matter what."

While there may be no general duty to explain the type of insurance involved, insurance agents may be found to have additional duties when specifically questioned by the insured as to the appropriate level of insurance. Martinonis v. Utica Nat'l Ins. Group, 840 N.E.2d 994, 996-97 (Mass. App. Ct. 2006). GE HFS Holdings, Inc. v. National Union Fire Ins. Co. of Pittsburgh, 520 F. Supp. 2d 231 (D. Mass. 2007).

During the meeting with Johnny, when she thought they were discussing both the life and cancer insurance policies, Isaac made the representation that Primrose was covered up to the age of 25 without any restrictions. This statement caused Johnny to cancel the life insurance policy that she signed up for under the advice of Franklin during the meeting six to seven months earlier. It was later

revealed that the new policy that was taken out under the advice of Franklin was for life insurance only, and not the cancer insurance policy.

These promises made by the agents of OLI induced Johnny to continue making premium payments with the assurance that Primrose was covered under the cancer policy up to the age of 25 without any conditions or limitations, to the detriment of Johnny and her dependants because Johnny had the reasonable expectation that Primrose was covered under the cancer insurance policy until age 25.

The promises made by the agents of OLI bind the insurance company and must be enforced in order to avoid manifest injustice because had Johnny enrolled Primrose under a separate cancer policy, she would have been covered under her own policy. Instead, Isaac's misrepresentation caused Johnny to keep Primrose under her cancer policy, making Primrose ineligible at the time she was diagnosed with cancer because she did not qualify as a Covered Family Member under the provisions that were part of the policy.

In Tonkovic v. State Farm Mut. Auto. Ins. Co., 521 A.2d 920, 926 (Pa. 1987) (citing Collister v. Nationwide Life Ins. Co., 388 A. 2d 1346 (Pa. 1978)), the Supreme Court of Pennsylvania held:

> The reasonable expectation of the insured is the focal point of the insurance transaction involved here. E.g. Beckham v. Travelers Insurance Co., 424 Pa. 107, 117-118, 225 A.2d 532, 537 (1967). Courts should be concerned with assuring that the insurance purchasing public's reasonable expectations are fulfilled. Thus, regardless of the ambiguity, or lack thereof, inherent in a given set of insurance documents (whether they be applications, conditional receipts, riders, policies, or whatever), the public has a right to expect that they will receive something of comparable value in return for the premium paid. Courts should also keep alert to the fact that the expectations of the insured are in large measure created by the insurance industry itself. Through the use of lengthy, complex, and cumbersomely written applications, conditional receipts, riders, and policies, to name just a few, the insurance industry forces the insurance consumer to rely upon the oral representations of the insurance agent. Such representations may or may not accurately reflect the contents of the written document and therefore the insurer is often in a position to reap the benefit of the insured's lack of understanding of the transaction.
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> . . . .
>
> Courts must examine the dynamics of the insurance transaction to ascertain what are the reasonable expectations of the consumer. See, e.g., Rempel v. Nationwide Ins. Co., 471 Pa. 404, 370 A.2d 366 (1977). Courts must also keep in mind the obvious advantages gained by the insurer when the premium is paid at the time of application. An insurer should not be permitted to enjoy such benefits without giving comparable benefit in return to the insured.

Here, Johnny had made timely payments on the insurance premiums since 1996. Her reasonable expectation was that she and her dependents would receive life and cancer insurance coverage. Another expectation, as an insured, was that agents of OLI would provide her with accurate and reliable information with regards to the policies, which would include when a dependent is no longer covered, and what steps to take when coverage has ceased. OLI did not fulfill these expectations, to the detriment of Johnny and her dependents.

Had OLI properly advised Johnny, she would have had the opportunity to take out a separate

cancer policy for Primrose, and Primrose would have been eligible for cancer policy benefits once she was diagnosed with cancer in 2009. *Cf.* FSM Dev. Bank v. Bruton, 7 FSM Intrm. 246 (Chk. 1995) (a creditor who undertakes to secure credit insurance for the debtor and fails to inform debtor that it failed to obtain such insurance is liable for the debtor's losses).

Therefore, the court finds that the requirements for Johnny's claim under her second cause of action for Promissory Estoppel and Detrimental Reliance are supported through testimony and evidence presented during trial.

C. *Unjust Enrichment and Third Party Beneficiary claims*

The equitable doctrine of unjust enrichment operates in the absence of an enforceable contract. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM Intrm. 510, 514 (Pon. 2005). Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 195 (Kos. S. Ct. Tr. 2001). Unjust enrichment relates to the doctrine of implied contracts, which is to say that the court will, in the absence of a legally enforceable contract, imply a contract in law in the absence of a contract in fact in order to avoid unjust enrichment. Neither the concept of unjust enrichment or the closely associated idea of an implied contract apply where there is an enforceable written contract, since an express contract and implied contract for the same thing cannot govern a legal relationship at the same time. Actouka Executive Ins. Underwriters v. Simina, 15 FSM Intrm. 642, 651-52 (Pon. 2008).

Here, the doctrine of unjust enrichment does not apply because there is a legally binding agreement in the form of life and cancer insurance policies that were agreed to and executed by the parties. Therefore, Johnny's claim for unjust enrichment must be denied.

Johnny's fourth cause of action is a Third Party Beneficiary claim. There must be a valid agreement between two parties to enable a third person, for whose benefit the promise is made, to sue upon it. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 633 (Pon. 2002). A third party beneficiary can only recover if he or she is an intended beneficiary of a contract. When a contract is made especially for the benefit of a third person, he or she may enforce it directly against the promisor. The determining factor in a third party beneficiary claim is the parties' intent, which is a question of the construction of the contract as determined by the contract's terms as a whole. Benjamin v. Youngstrom, 13 FSM Intrm. 542, 547 (Kos. S. Ct. Tr. 2005).

In the present case, it is unclear through the testimonies or the evidence presented at trial as to the basis for this cause of action. Little evidence was presented by Johnny to support a Third Party Beneficiary claim, therefore, she does not prevail on this claim.

D. *Reimbursement/Indemnification and Violation of Statutory Authority Claims*

Under her fifth cause of action, Johnny claims that she incurred costs related to the off-island medical treatment of Primrose that would otherwise be covered under the cancer policy by OLI. The Benefit section of the agreement, with regards to eligible dependents, states:

> We will pay the Covered Dependent Cancer First Occurrence Benefit shown in the Policy Schedule when a covered dependent is first diagnosed with Cancer. This benefit is payable only with respect to a diagnosis of a cancer which is made more than 30 days after the Policy Date. It is only payable the first time the diagnosis of cancer is made for a Covered Family Member.

The Policy Schedule indicates that a Covered Dependents Cancer First Occurrence Benefit

payment is a lump sum amount of $10,000. The agreement does not specify if expenses incurred for an attendant accompanying a patient for off-island treatment is covered under the policy. Also, there was no evidence presented at trial as to the nature and amount of expenses incurred by Johnny during the off-island medical treatment of Primrose to support this claim.

Johnny testified that her policy under the MiCare plan had covered Primrose's travel and treatment during the medical referrals to the Philippines. To grant Johnny relief under this claim will provide her with a double recovery, which the court will not do. Parker v. Esposito, 677 A.2d 1159, 1162 (N.J. Super. App. Div. 2008). *See* AHPW, Inc. v. FSM, 12 FSM Intrm. 544, 556 (Pon. 2004); Warren v. Pohnpei State Dep't of Public Safety, 13 FSM Intrm. 483, 493 (Pon. 2005); Atesom v. Kukkun, 10 FSM Intrm. 19, 23 (Chk. 2001).

Under her sixth cause of action, which is a claim for Violation of Statutory Authority, Johnny claims that OLI violated Public Law No. 14-66.[1] During trial, Johnny raised three issues under the statute. First, Johnny stated that OLI was not in compliance with Public Law No. 14-66, section 402(1) because the insurance policy was not written in at least 10 point font. The court finds that noncompliance with this requirement is de minimis, as it does not affect the terms of the contract or the rights of the parties. Also, Johnny argued that under section 402(3), the policy must be signed by two major officers of the insurance company. OLI referred to the cover page of the policy, which shows the signature of the Secretary and President of OLI, which fulfills the statutory requirement.

Johnny also argued that the diagnosis by Dr. Bermanis of the Pohnpei State Hospital is in violation of the policy requiring that the diagnosis be made by a legally licensed physician certified by the American Board of Pathology or American Board of Osteopathic Pathology. However, an exception to this requirement is stated in the policy, which states:

> Clinical diagnosis of cancer will be accepted as evidence that cancer existed in an insured when a pathological diagnosis cannot be made, provided such medical evidence substantially documents the diagnosis of cancer and the insured receives treatment for cancer by a physician legally licensed for the practice of medicine.

Based on the medical summary by Dr. Bermanis, dated December 16, 2009, which fits under the exception above, Johnny's sixth cause of action is denied.

E. *Breach of Implied Covenants of Good Faith and Fair Dealing*

Breach of an implied covenant of good faith and fair dealing is a common law cause of action, which is a tort claim that arises out of a contractual relationship between the parties. The implied covenant of good faith and fair dealing rests on the premise that whenever a party's cooperation is necessary for the performance of a contractual promise, there is a condition implied that the cooperation will be given. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 301, 307 (Pon. 2004).

Contracts impose on the parties a duty to do everything necessary to carry them out, and there is an implied undertaking in every contract on each party's part that he will not intentionally and purposely do anything to prevent the other party from carrying out his part of the agreement, or do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract, and the FSM Supreme Court will entertain such claims in the context of insurance

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[1] The heading for Public Law 14-66 reads "To enact a new title 37 of the Code of the Federated States of Micronesia to establish an Insurance Law for the Federated States of Micronesia, and for other purposes."

contracts, where the insurer possesses greater sophistication, provides the policy, can be expected to assist insureds in understanding the relevant terminology in the policy, and has a specialized role in processing claims. *Id.*

The duty of good faith and fair dealing is implied in the performance and enforcement of all contracts. Howard v. CitiFinancial, Inc., 195 F. Supp. 2d 811, 824 (S.D. Miss. 2002); Cenac v. Murry, 609 So. 2d 1257, 1272 (Miss. 1992). Under the circumstances of a particular case, there may be a duty to disclose information, based on a relationship of confidence or trust between the parties, or based on one party's superior knowledge or means of knowledge. Morton v. Allstate Ins. Co., 58 F. Supp. 2d 325, 328 (D. Vt. 1999) (citing Cheever v. Albro, 421 A.2d 1287, 1290 (Vt. 1980)).

During trial, Isaac testified that he has been an employee of OLI for approximately 25 years, 8 years serving as the manager of the Pohnpei branch. There is no question that during his years of employment, Isaac acquired extensive knowledge, experience, and sophistication in the insurance field, specifically over matters dealing with OLI and its various insurance policies. Isaac did not differentiate the different policies to Johnny or accurately inform her of the age requirement for cancer coverage for her daughter Primrose during his meetings with Johnny.

In Johnson v. Mutual Benefit Life Insurance Co., 847 F.2d 600 (Cal. 1988), Johnson had a policy with Mutual Benefit Life Insurance Company, and after the policy was issued, Johnson was treated for cancer. *Id.* at 601. Thereafter, a quarterly premium payment was made, but the company did not credit Johnson's account, which led to the termination of her policy. *Id.* at 601-02. Even after reinstatement, Johnson's account was placed on the wrong billing cycle, and a higher premium payment and wrong premium periods were applied. *Id.* at 602. The United States Ninth Circuit Court of Appeals held:

> Whether Johnson can ultimately recover under California law for breach of the implied covenant of good faith and fair dealing depends on whether she can convince a trier of fact that Mutual Benefit acted in bad faith when it deprived her of a bargained-for benefit. As used in this context, bad faith does not refer to misconduct of a malicious or immoral nature. Neal v. Farmers Ins. Exch., 21 Cal. 3d 910, 921-22 n.5, 148 Cal. Rptr. 389, 395 n.5, 582 P. 2d 980, 986 n.5 (1978). Rather, the bad faith concept emphasizes unfaithfulness to an agreed common purpose or to the justifiable expectations of the other party to the contract. *Id.* In short, a showing of bad faith requires that insurers not act unreasonably or arbitrarily when dealing with their insureds. Mission Ins. Group v. Merco Constr. Engineers, 147 Cal. App. 3d 1059, 1066, 195 Cal. Rptr. 781, 785 (1983).

OLI's actions, through its agents, were unreasonable because there was no distinction made between the life and cancer policies during the meetings between Johnny and Franklin, and later, with Isaac. There are differences in the policies, that would require the agents to differentiate between the policies and its terms and conditions.

Further, Isaac's assertion that Primrose was covered up to the age of 25 was also unreasonable. Given his years of experience of dealing with policies, the court finds that Isaac should have known of the age limitations and other restrictions under the cancer policy. The court therefore finds in favor of Johnny under her claim for breach of implied covenant of good faith and fair dealing.

During trial, OLI argued that Isaac was not authorized to make any decisions, or to alter or amend the policies, meaning that he did not have the authority to increase the 21 year age restriction for cancer coverage to age 25. A principal is bound by, and liable for, the acts which his agent does with or within the actual or apparent authority from the principal, and within the scope of the agent's

employment. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 469 (Pon. 2004); Black Micro Corp. v. Santos, 7 FSM Intrm. 311, 315-16 (Pon. 1995); FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM Intrm. 169, 174 (Chk. 2001); Bank of the FSM v. O'Sonis, 8 FSM Intrm. 67, 69 (Chk. 1997).

A general agent is one who has authority to transact all the business of an insurance company of a particular kind, or in a particular place, and whose powers are coextensive with the business entrusted in the agent's care . . . . `Accordingly, agents have been regarded as general agents where they fully represent the insurance company in a particular district and are authorized to solicit insurance, receive money and premiums, issue and renew polices, appoint subagents, and adjust loses. 43 AM. JUR. 2D *Insurance* § 145 (2003).

Here, as stated under the current cause of action, Isaac has been employed by OLI for approximately 25 years. Although he may not have had the power to unilaterally amend policies, the evidence presented is that he informed Johnny that cancer coverage was up to 25 years of age. Because Isaac was the manager of the OLI office here in Pohnpei, and aside from Franklin who was in a subordinate position, Isaac was the only OLI representative whom Johnny was in contact with, therefore, there was ample reason for Johnny to rely and accept statements made by Isaac as the truth.

The court finds that Isaac did make the oral assertion that the age restriction for cancer coverage was 25 years of age, and that OLI is liable for his actions as an agent for the company.

IV. CONCLUSION

The court determines that under the findings of facts found through trial, through witness testimony with the court being able to judge the demeanor and credibility of the witnesses, the entered exhibits, and other evidence, and the submissions and arguments of counsel, that the Plaintiff Johnny relied on the representations and actions of the agents of the Defendant Occidental Life Insurance to her detriment under the Plaintiff's second cause of action. The court finds that the Defendant Occidental Life Insurance actions were unreasonable under Plaintiff Johnny's cause of action for breach of implied covenant of good faith and fair dealings. The Plaintiff does not prevail on all of her other causes of action.

Based on these findings, the court hereby awards the Plaintiff Johnny the Covered Dependent Cancer First Occurrence Benefit of $10,000 under the cancer policy by Defendant Occidental Life Insurance. In the absence of a statute an award of prejudgment interest is in the discretion of the court. United States v. California State Bd. of Equalization, 650 F.2d 1127 (9th Cir. 1981), *aff'd*, 456 U.S. 901 (1982); Payne v. Panama Canal Co., 607 F.2d 155 (5th Cir. 1979).

"Prejudgment interest is also recoverable in cases where the plaintiff is entitled to recover a liquidated sum of money." Malem v. Kosrae, 9 FSM Intrm. 233, 237 (Kos. S. Ct. Tr. 1999) (citing 1 DAN B. DOBBS, HANDBOOK ON THE LAW OF REMEDIES, ch. 3 (1973). Since the damages amount was a liquidated sum and the insurance contract involved a promise to pay money if certain events occurred, Johnny is also awarded the statutory rate of interest at 9% from a reasonable time of sixty (60) days after the diagnosis of Primrose's cancer was submitted to the Defendants in a claim form for Accident and Health Policies on December 24, 2009. The parties shall bear their own fees and costs. The clerk is instructed to enter judgment.

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