

HEADNOTES

Jurisdiction – Personal – Long-Arm

A "long-arm statute" is a legislative act that provides for personal jurisdiction over persons and corporations who are not residents of the state or country, and who go into a state or country voluntarily, directly or by an agent, for limited purposes, and for claims which are related to those purposes. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 209 n.1 (Yap 2015).

Civil Procedure – Dismissal – Before Responsive Pleading; Jurisdiction – Personal

When properly raised, personal jurisdiction is an important threshold issue since a court that lacks personal jurisdiction over a defendant cannot enter a valid judgment against that defendant. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 209 (Yap 2015).

Jurisdiction – Personal – Long-Arm

The FSM Supreme Court may exercise personal jurisdiction over non-residents for any cause of action that arises from the transaction of any business within the FSM, the commission of a tortious act within the FSM; and contracting to insure any person, property, or risk located within the FSM at the time of contracting. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 210 (Yap 2015).

Insurance; Jurisdiction – Personal – Long-Arm

Insuring vessels that later navigate through FSM waters is not, by itself, sufficient to give the court personal jurisdiction over the insurer. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 210 (Yap 2015).

Insurance; Jurisdiction – Personal – Long-Arm

Since the FSM long-arm statute only requires for personal jurisdiction that the defendant be a party to a contracting to insure a risk located in the FSM, it may cover an agency providing underwriting and claims services for the actual insurers at Lloyd's of London. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 210-11 n.2 (Yap 2015).

Insurance; Jurisdiction – Personal – Long-Arm

Since the FSM long-arm statute specifically provides for personal jurisdiction over non-residents contracting to insure any person, property, or risk located within the FSM at the time of contracting, it does not allow the court to exercise personal jurisdiction over an insurer that insured a vessel that was not located in the FSM, but was in Singapore at the time of contracting for marine insurance. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 211 (Yap 2015).

Jurisdiction – Personal – Long-Arm

The court may not have personal jurisdiction over an insurer when the insurer did not sell insurance in the FSM and did not provide insurance-like services to its insureds when they were present in the FSM. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 211 (Yap 2015).

Insurance; Jurisdiction – Personal – Long-Arm

Without a direct action statute, an injured third-party cannot sue an insurer directly because an insurer has no contractual obligation to persons other than its insured, at least until a court determines the liability of its insured and the insurer cannot be joined as a party to a lawsuit to determine that liability. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205,

People of Eauripik *ex rel.* Sarongelfeg v. Osprey Underwriting Agency, Ltd.
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Insurance; Jurisdiction – Personal – Long-Arm

Even without a direct action statute, an insurer with world-wide coverage could expect to be called upon to help defend its insured in FSM courts. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 211 (Yap 2015).

Jurisdiction – Personal – Long-Arm

The reach of the FSM's long-arm statute is circumscribed by the constitutional requirement that the putative defendant must have "minimum contacts" with the forum so that requiring him to litigate here does not offend traditional notions of fair play and substantial justice. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 212 (Yap 2015).

Jurisdiction – Personal – Long-Arm

In analyzing the degree and extent of a defendant's business contacts with the forum jurisdiction, it is the nature and quality of acts and not their number that determines whether business transactions have occurred. It does not mean that any single act suffices to allow personal jurisdiction. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 212 (Yap 2015).

Jurisdiction – Personal – Long-Arm

Two e-mails and a letter that the defendant sent to recipients in the FSM and a letter of undertaking in a civil action, are insufficient to establish the minimum contacts necessary to establish personal jurisdiction over the defendant. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 212 (Yap 2015).

Jurisdiction – Personal – Long-Arm

When the FSM plaintiffs are not parties to the insurance contract that the defendant allegedly tortiously breached with its I-Kiribati or Taiwanese insured; when it was to that insured that the economic harm was targeted although that harm had a secondary effect in the FSM; when the insurer has no meaningful presence in the FSM; and when the tortious acts that the defendant is alleged to have committed, were directed toward and targeted its insured, not the plaintiffs, personal jurisdiction is not established over the defendant because, since the plaintiffs' claims against the defendant are claims assigned to the plaintiffs by the insured, the case, at its heart, is a dispute between the insured and the insurer over insurance coverage. While an insurer who issues a policy under which it has a duty to defend its insured anywhere in the world, must expect, if the need arises, to defend its insured against a third-party's claim in the FSM, it cannot reasonably expect to be sued by its insured anywhere in the world in a dispute over insurance coverage. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 212 (Yap 2015).

Insurance

Generally, an insurer has the duty to defend, the duty to indemnify, the duty to settle, and the duty (or implied covenant) of good faith and fair dealing. These duties are all owed to its insured with whom the insurer has a contractual relationship, not to injured third-party claimants. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 213 (Yap 2015).

Insurance; Torts – Breach of Implied Covenant of Good Faith

An injured claimant may not sue an insurer for breach of the duty of good faith and fair dealing. The duty is a product of the fiduciary relationship created by the contract between the insurer and its insured. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 213 (Yap 2015).

Insurance; Torts – Breach of Implied Covenant of Good Faith

An insured's cause of action for the insurer's breach of the covenant of good faith and fair dealing is assignable to the injured third-party claimant, and the assignee may sue on it. People of Eauripik *ex rel.* Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 213 (Yap 2015).

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COURT'S OPINION

READY E. JOHNNY, Associate Justice:

On April 14, 2015, defendant Osprey Underwriting Agency, Ltd. ("Osprey"), filed its Motion to Dismiss for Lack of Personal Jurisdiction. The plaintiffs filed their opposition on May 22, 2015, and Osprey filed its reply on June 12, 2015. Also pending before the court is Osprey's motion to stay proceedings until the London arbitration panel proceedings conclude. The court addresses the personal jurisdiction motion first because if Osprey prevails on the personal jurisdiction issue then the motion to stay, for all intents and purposes, becomes moot.

I. BACKGROUND

This case arises from the August 28, 2011 grounding of the *F/V Teraka No. 168* on the reef of Eauripik atoll. The vessel's owner, Marin Marawa, Ltd. ("Marin"), had earlier obtained a protection and indemnity marine insurance policy from Osprey Underwriting Agency, Ltd. ("Osprey") that provided Marin with up to \$10 million coverage for claims against the *F/V Teraka No. 168*. Efforts, in September 2011, to refloat the *F/V Teraka No. 168* and remove it from the reef were unsuccessful. It was abandoned. Eventually, to lessen the danger of environmental damage to Eauripik atoll, the vessel's fuel was salvaged.

The People of Eauripik ("Eauripik") filed a class action suit (Civil Action No. 2011-3002) in the FSM Supreme Court, Yap venue, against the *F/V Teraka No. 168* and Marin and others for the damage caused to their reef and their subsistence livelihood by the grounding. Osprey arranged for a Guam attorney to defend Marin and the *F/V Teraka No. 168*.

During the litigation, Marin sought to avail itself of the statutory limitation of liability defense, 19 F.S.M.C. §§ 1101-1108, which the court ruled was available to a vessel owner only if a Limitation of Liability Fund was "constituted," 19 F.S.M.C. 1107(1)(b), "either by depositing the proper sum with the Supreme Court, or by lodging with the court an irrevocable letter of credit or other form of security acceptable to the court," 19 F.S.M.C. 1108(4). People of Eauripik *ex rel.* Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 (Yap 2012). Marin was permitted to raise the defense, *id.* at 316, but the parties disagreed over the correct fund amount. The court determined that the proper amount was \$1,529,129.15 plus 9% interest from August 28, 2011, the date the *F/V Teraka No. 168* ran aground on Eauripik atoll, until the date the liability fund was constituted. People of Eauripik *ex rel.* Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 540 (Yap 2013). The court and reconfirmed that amount. People of Eauripik *ex rel.* Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 630 (Yap 2013). The fund was constituted in March, 2013, when that sum was paid into court.

Sometime before then, Osprey began questioning whether the *F/V Teraka No. 168* had been properly registered and flagged in the Republic of Kiribati. Osprey's contention was that, if the *F/V Teraka No. 168* was not properly flagged, then Osprey was not liable for the *F/V Teraka No. 168*'s coverage because the vessel was not in compliance with the policy. Osprey threatened to discontinue the defense of Marin and the *F/V Teraka No. 168*, to refuse coverage, and to not provide the funds to

constitute the limitation of liability fund. In March 2013, Osprey agreed to contribute \$1.2 million toward constituting the limitation of liability fund but only if Marin released Osprey from any further liability for the *F/V Teraka No. 168's* Eauripik grounding incident. Marin felt it had no choice but to comply, and the limitation fund was constituted with Marin itself providing the additional funds.

In early 2014, Marin settled with Eauripik for a sum greater than the amount in the limitation of liability fund (total settlement \$2,255,000) and for Marin's assignment to Eauripik of all of its claims and causes of action against Osprey arising out of or in connection with the *F/V Teraka No. 168* grounding incident Eauripik atoll. Civil Action No. 2011-3002 was afterward concluded. The *F/V Teraka No. 168* remains on the reef.

On July 2, 2014, the People of Eauripik, as Marin's assignees, filed this lawsuit in the FSM Supreme Court against Osprey and various Osprey Directors and Claims Managers alleging that the defendants were liable to Marin (and thus now to them as its assignees) for their tortious bad faith and insurer misconduct, for breach of the *F/V Teraka No. 168* marine insurance policy and the duty of good faith and fair dealing owed to Marin by Osprey, and for fraudulent misrepresentation. Eauripik also seeks declaratory relief that the *F/V Teraka No. 168* marine insurance policy was in full force and effect and covered all reasonable defense costs and that Osprey is liable for the full policy amount. Eauripik also alleges that Osprey is directly liable to them for misleading them about whether the *F/V Teraka No. 168* would be removed from Eauripik reef and further claims that Osprey has directly injured them by not removing the *F/V Teraka No. 168* from the reef.

Eauripik claims that venue and jurisdiction are proper in this court because Osprey's fraudulent and bad faith conduct either occurred within or was purposefully directed toward the FSM and this venue. Eauripik asserts that, under the FSM long-arm statute,¹ 4 F.S.M.C. 204(1), the court has personal jurisdiction over Osprey because Osprey "has been and is doing business in the FSM and/or specifically taking actions in and toward the FSM and/or have committed acts or omissions that have resulted in damage in the FSM." Compl. at 2, para. 4 (July 2, 2014).

Osprey answered. It asserted that it was not an insurer and that the *F/V Teraka No. 168's* marine insurance policy was not its policy. It further claimed that the court did not have jurisdiction over the complaint's subject-matter or personal jurisdiction over Osprey; that the complaint failed to state a claim on which relief could be granted and persons who were needed for an just adjudication had not been joined; that the claims were barred by accord and satisfaction with Eauripik's assignor (Marin); that the claims were barred by estoppel and waiver; that Eauripik had not pled fraud with sufficient particularity; that the court's jurisdiction was barred by a mandatory, binding arbitration clause in the insurance contract; and that as an insurance agency, Osprey owed no duty to Eauripik.

II. PERSONAL JURISDICTION ANALYSIS

The issue now before the court is whether the court has personal jurisdiction over Osprey. When properly raised, this is an important threshold issue since a court that lacks personal jurisdiction over a defendant cannot enter a valid judgment against that defendant. *Lee v. Lee*, 13 FSM R. 252, 256 (Chk. 2005). Osprey contends that the court cannot exercise personal jurisdiction over it without violating the constitutional guarantee of due process of law.

¹ A "long-arm statute" is a legislative act that provides for personal jurisdiction over persons and corporations who are not residents of the state or country, and who go into a state or country voluntarily, directly or by an agent, for limited purposes, and for claims which are related to those purposes. *Foods Pacific, Ltd. v. H.J. Heinz Co. Australia*, 10 FSM R. 200, 204 n.2 (Pon. 2001).

A. *Osprey's Position*

Osprey states that it is an insurance underwriting agency located in London, England, that it does not maintain an office in the FSM, does not employ any FSM citizens, does not undertake or conduct any business activities in the FSM, does not insure any risks based in the FSM, does not own or control any property or bank accounts in the FSM, does not directly solicit business in the FSM, that its employees do not travel to the FSM, and that it is not involved in any litigation in the FSM other than this lawsuit. Osprey maintains that its only contacts with the FSM were two e-mails from its representatives to persons in the FSM, a letter of undertaking it filed on Marin's behalf in Civil Action No. 2011-3002, and a letter from its London attorney to the FSM Secretary of Transportation. Osprey asserts that these minimal contacts are insufficient to vest the court with personal jurisdiction over it.

B. *Eauripik's Position*

Eauripik contends that those facts are wholly irrelevant because Osprey has conceded that it insures vessels that operate through and within the FSM and because Osprey provides cover to vessels on a worldwide basis. Eauripik asserts that Osprey has committed tortious conduct directed toward the FSM. In particular, Eauripik contends that Osprey tortiously induced Marin's Guam attorney to conceal the abandonment of the *F/V Teraka No. 168* so that Osprey would not be exposed to greater liability.

Eauripik contends that the court has personal jurisdiction over Osprey under three provisions of the FSM long-arm statute. Those provisions provide for the FSM Supreme Court to exercise personal jurisdiction over non-residents for "any cause of action" that arises from: "(a) The transaction of any business within the Federated States of Micronesia . . . (e) The commission of a tortious act within the Federated States of Micronesia; [and] (f) Contracting to insure any person, property, or risk located within the Federated States of Micronesia at the time of contracting." 4 F.S.M.C. 204(1). Eauripik asserts that Osprey admitted to conducting business in the FSM when it acknowledged insuring vessels (including the *F/V Teraka No. 168*) that operate through and within the FSM. Eauripik contends that Osprey committed tortious conduct within the FSM when it did not reveal that the *F/V Teraka No. 168* had been abandoned, when it informed Marin that Marin should proceed as a prudent uninsured, when it coerced Marin and pulled its insurance coverage of the *F/V Teraka No. 168*, and when it monitored and influenced the settlement discussions and resolution on Guam in January, 2014, which was brought about through Osprey's bad faith directed to Marin. And Eauripik contends that Osprey is subject to the court's personal jurisdiction because Osprey receives insurance premium payments for many vessels that could have navigated in FSM waters. Eauripik argues that Osprey could have restricted its coverage to exclude the FSM from its insurance coverage, but since it did not, it must expect to be haled into an FSM court.

C. *Long-Arm Statute's Reach*

1. *Insuring Vessels*

Insuring vessels that later navigate through FSM waters is not, by itself, sufficient to give the court personal jurisdiction over the insurer.² The statute specifically provides personal jurisdiction over

² The court disregards Osprey's claim that technically it is not an insurer but is an agency providing underwriting and claims services for the actual insurers at Lloyd's of London. The FSM long-arm statute only requires for personal jurisdiction that the defendant be a party to a "[c]ontracting to insure" a risk located in the FSM. Osprey was a party to a contracting to insure when it placed the risk at Lloyd's. Because of the

non-residents "[c]ontracting to insure any person, property, or risk located within the Federated States of Micronesia at the time of contracting." 4 F.S.M.C. 204(1)(f). The F/V *Teraka No. 168* was not located in the FSM at the "time of contracting." It was in Singapore when Marin obtained the marine insurance from Osprey. Subsection 204(1)(f) therefore does not allow the court to exercise personal jurisdiction over Osprey regardless of whatever contacts Osprey had with the FSM afterward. And even if some other (unnamed and unknown) vessel had been present in the FSM when it contracted with Osprey for coverage (although Eauripik does not cite a single instance of this) that would still not give the court personal jurisdiction over Osprey since this case does not arise from that (hypothetical) contracting.

Eauripik relies on *Puerto Rico v. SS Zoe Colocotroni*, 628 F.2d 652 (1st Cir. 1980) and *McKeithen v. M/T Frosta*, 435 F. Supp. 572 (E.D. La. 1977), for the proposition that a court may have personal jurisdiction over a non-resident marine insurer that has no office in and sells no insurance in the jurisdiction. Eauripik overlooks two important points that distinguish *SS Zoe Colocotroni* and *M/T Frosta* from this case. First, in both those cases, the insurer, although it did not sell insurance in the jurisdiction, did provide insurance-like services to its insureds in the jurisdiction. *SS Zoe Colocotroni*, 628 F.2d at 667-68 (insurer's local law firm was managing or general agent that accepted service of process, arranged repatriation and burial of insureds' seamen, and, when needed, took actions to forestall or limit potential claims against insureds); *M/T Frosta*, 435 F. Supp. at 575 (insurer regularly and repeatedly maintained insurance on a substantial number of vessels navigating Louisiana's territorial waters (the Mississippi), insurer's New Orleans representative arranged for insured's crew members' medical services, obtained watchmen, executed bonds and letters of guaranty for insureds, and appeared in insureds' admiralty and legal proceedings). Osprey provided no such services to its insureds when they were present in the FSM.

Second, both jurisdictions, Puerto Rico and Louisiana, allow, by statute, direct actions against insurers as co-defendants with their insured, by injured third-parties, and it was pursuant to those statutes that the insurers were made co-defendants by the injured plaintiffs in those cases. *SS Zoe Colocotroni*, 628 F.2d at 656 n.2, 669-70; *M/T Frosta*, 435 F. Supp. at 576, 582. The FSM does not have a direct action statute. If it did, an insurer with worldwide coverage might anticipate being haled, along with its insured, into an FSM court by an injured FSM plaintiff. Without such a statute, an injured third-party cannot sue an insurer directly because an insurer has no contractual obligation to persons other than its insured, at least until a court determines the liability of its insured and the insurer cannot be joined as a party to a lawsuit to determine that liability. *Moses v. M.V. Sea Chase*, 10 FSM R. 45, 52-53 (Chk. 2001); *Wilson v. Pohnpei Family Headstart Program, Inc.*, 7 FSM R. 411, 413 (Pon. 1996).

Even without a direct action statute, an insurer with world-wide coverage could expect to be called upon to help defend its insured in FSM courts. But this case does not involve the defense of Osprey's insured, but instead involves the insured's assignees suing the assignor's insurer, Osprey, for the insured's (Marin's) claims against Osprey, not their own claims against Marin.

2. Conducting Business

There is no personal jurisdiction over Osprey under 4 F.S.M.C. 204(1)(f) or under 4 F.S.M.C.

distinctive and unique structure of Lloyd's, see *Edinburgh Assurance Co. v. R.L. Burns Corp.*, 479 F. Supp. 138, 144-46 (C.D. Cal. 1979); see also 2 THOMAS J. SCHOENBAUM, ADMIRALTY AND MARITIME LAW § 19-1, at 403-04 (2d ed. 1994), Osprey's interpretation would prevent the FSM Supreme Court from ever exercising personal jurisdiction over it even if it had arranged for insurance cover for vessels home-ported in the FSM that never or rarely left FSM waters.

204(1)(a) as Osprey does not conduct business within the FSM. It has no agent here. It does not solicit business here. It hired and provided a Guam attorney to defend its insured here, as its policy required it to do, but that does not constitute doing business here. The reach of the FSM's long-arm statute is circumscribed by the constitutional requirement that the putative defendant must have "minimum contacts" with the forum so that requiring him to litigate here does not offend "traditional notions of fair play and substantial justice." Yap v. M/V Cecilia I, 13 FSM R. 403, 410-11 (Yap 2005). In analyzing the degree and extent of a defendant's business contacts with the forum jurisdiction, it is the nature and quality of acts and not their number that determines whether business transactions have occurred. *Id.* at 411. It does not mean that any single act suffices to allow personal jurisdiction. *Id.* In National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 130 (Pon. 1999), two or four letters and unspecified phone calls sent into the FSM were insufficient in themselves to establish the minimum contacts necessary to establish personal jurisdiction. The two e-mails and a letter that Osprey sent to recipients in the FSM and a letter of undertaking in Civil Action No. 2011-3002, are insufficient to establish the minimum contacts necessary to establish personal jurisdiction over Osprey.

3. *Tortious Conduct*

Eauripik contends that Osprey is subject to the court's personal jurisdiction because it has committed tortious acts in the FSM. In New Quick Co., 9 FSM R. at 132, the defendants were not parties to the contract they allegedly tortiously interfered with and had no meaningful presence in the FSM, and although the economic harm was supposedly targeted to an FSM plaintiff, it was insufficient to establish personal jurisdiction over the defendants. Here, it is the FSM plaintiffs who are not parties to the insurance contract that Osprey allegedly tortiously breached with its I-Kiribati or Taiwanese insured and it was to Marin that the economic harm was targeted, although that harm had a secondary effect in the FSM, when it left Marin with insufficient resources. Osprey has no meaningful presence in the FSM. The tortious acts that Osprey is alleged to have committed, were directed toward and targeted its insured, Marin, not Eauripik. These allegedly tortious acts economically harmed Marin, an entity with no meaningful presence in the FSM.

Personal jurisdiction was not established in New Quick Co. when the alleged tortious conduct resulted only in economic consequences in the FSM because mere economic injury suffered in the forum is insufficient to establish the requisite minimum contacts to sustain long-arm jurisdiction. New Quick Co., 9 FSM R. at 132. When the tortious conduct is not shown to have occurred in FSM, and the alleged harm flowing from the conduct cannot be said to have been "targeted" to the FSM, it does not persuade the court that the defendants have caused an "effect" in this forum sufficient to justify jurisdiction over them under the FSM long-arm statute. *Id.* at 131.

Eauripik's claims against Osprey are claims assigned to Eauripik by Marin. Essentially, they are Marin's claims that assert that its marine insurance policy for the *F/V Teraka No. 168* was in full force and effect while Osprey's claim is that the policy was not in effect because the vessel was not properly flagged in Kiribati. At its heart, this case is a dispute between Marin, the insured, (whose claims are assigned to Eauripik) and Osprey, the insurer, over insurance coverage. While an insurer who issues a policy under which it has a duty to defend its insured anywhere in the world, must expect, if the need arises, to defend its insured against a third-party's claim in the FSM, it cannot reasonably expect to be sued by its insured anywhere in the world in a dispute over insurance coverage. *See, e.g., QMI Holdings, Inc. v. Royal Ins. Co. of Canada*, 149 F.3d 1086, 1095 (10th Cir. 1998). Osprey cannot reasonably be expected that just because it gives its insured worldwide protection and indemnity coverage that its insured might sue it over the terms of its policy anywhere in the world.

The tortious acts that Osprey is alleged to have committed against Marin were not committed in the FSM although they had an effect in the FSM. Since they were committed against Marin they

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were committed either in Kiribati, where Marin is incorporated, or in Taiwan, the location from where Marin's owners and operators apparently direct Marin's business, or possibly in Guam, where Osprey directed the attorney it hired to defend Marin and where it allegedly interfered with and improperly influenced settlement negotiations between Eauripik and Marin. And, of course, Osprey also committed those acts in England where its headquarters is located. England, and at least one or more of the other three jurisdictions, ought to be able to assert personal jurisdiction over Osprey for the claims and causes of action that Marin assigned to Eauripik. The FSM cannot.

4. *Direct Injury Claim*

Eauripik also contends that Osprey is subject to the court's personal jurisdiction because Osprey directly injured Eauripik when it failed to remove the *FIV Teraka No. 168* from Eauripik reef. Eauripik claims that Osprey misled Eauripik about whether the *FIV Teraka No. 168* would be removed from the reef. Eauripik asserts that Osprey was duplicitous and did not deal with it or the FSM's Receiver of the Wreck fairly or in good faith.

Generally, an insurer has the duty to defend, the duty to indemnify, the duty to settle, and the duty (or implied covenant) of good faith and fair dealing. These duties are all owed to its insured with whom the insurer has a contractual relationship, not to injured third-party claimants. "[A]n injured claimant may not sue an insurer for breach of good faith and fair dealing. The duty is a product of the fiduciary relationship created by the contract between the insurer and its insured." *O.K. Lumber Co. v. Providence Wash. Ins. Co.*, 759 P.2d 523, 526 (Alaska 1988). Eauripik thus does not have a cause of action on this claim against Osprey because Osprey does not owe it a duty it could have breached. This, of course, does not mean that Eauripik cannot sue Osprey for Osprey's alleged breach of the covenant or duty of good faith and fair dealing that Osprey owed to Marin, and which Marin assigned to Eauripik. An insured's cause of action for the breach of the covenant of good faith and fair dealing is assignable to the injured third-party claimant. *Id.* at 525. And the assignee may sue on it.

Eauripik can thus sue Osprey on the claims that Marin has assigned to Eauripik. Eauripik just cannot sue Osprey on those claims in this jurisdiction because the court cannot exercise personal jurisdiction over Osprey under the FSM long-arm statute or under the Constitution since Osprey does not have the minimum contacts with the FSM required to pass constitutional muster.

D. *Summary*

While an insurer, such as Osprey, providing worldwide marine insurance coverage to its insureds might expect to be called upon to defend an insured in any maritime jurisdiction in the world, it does not follow that the insurer would expect to defend itself against claims by its insured, or its insured's assignees, in a court anywhere in the world. If Marin could not have sued Osprey in an FSM court, then Eauripik, standing in Marin's shoes, should not be able to either. Generally, an insurer's duty is to its insured, and it has no duty to other parties, including parties injured by its insured.

The FSM long-arm statute, 4 F.S.M.C. 204(1), does not authorize personal jurisdiction over Osprey in this case, and if it did, Osprey does not have the minimum contacts with the FSM needed to require it to litigate those claims here without offending the traditional notions of fair play and substantial justice.

III. POSSIBLE INTERLOCUTORY APPEAL

The court realizes the importance of today's ruling that it lacks personal jurisdiction over defendant Osprey Underwriting Agency, Ltd. Since this is an interlocutory order because it does not

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dispose of all claims against all defendants, the court is willing to entertain a motion that the court make the statement required by Appellate Rule 5(a) that would permit a party to afterward ask the appellate division for permission to make an immediate interlocutory appeal. The People of Eauripik may file any such motion in the trial division within fourteen days of entry of this order.

III. CONCLUSION

Osprey Underwriting Agency, Ltd.'s motion to dismiss it for the lack of personal jurisdiction is granted. The plaintiffs, the People of Eauripik may move for the inclusion for the inclusion of an Appellate Rule 5(a) statement in this order so that permission may be sought from the appellate division to pursue an immediate interlocutory appeal.

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FSM SUPREME COURT TRIAL DIVISION

PACIFIC INTERNATIONAL, INC.,)	CIVIL ACTION NO. 2014-046
)	
Plaintiff,)	
)	
vs.)	
)	
THE NATIONAL GOVERNMENT OF THE)	
FEDERATED STATES OF MICRONESIA, by)	
and through its Agency, the FSM PROGRAM)	
MANAGEMENT UNIT (PMU),)	
)	
Defendant.)	
_____)	

ORDER DENYING INTERVENTION

Beauleen Carl-Worswick
Associate Justice

Decided: October 12, 2015

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