

chaff." Senda v. Semes, 8 FSM R. 484, 494 (Pon. 1998).

Accordingly, under FSM Civil Rule of Procedure 12(b)(6), this Court hereby GRANTS Defendant's Motion to Dismiss this case, for failure to state a claim upon which relief can be granted; without prejudice.

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FSM SUPREME COURT TRIAL DIVISION

SILIPINO HAIRENS,	)	CIVIL ACTION NO. 2015-023
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
FEDERATED SHIPPING CO. LTD.,	)	
	)	
Defendant.	)	
_____	)	

ORDER

Beauleen Carl-Worswick  
Associate Justice

Hearing: May 2, 2016  
Decided: May 24, 2016

APPEARANCES:

For the Plaintiff: Michael J. Sipos, Esq.  
P.O. Box 2069  
Kolonía, Pohnpei FM 96941

For the Defendant: Fredrick L. Ramp, Esq.  
Ramp & Mida Law Firm  
P.O. Box 1480  
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HEADNOTES

Employer - Employee

Pohnpei and the FSM have no workers' compensation law. Hairens v. Federated Shipping Co., 20 FSM R. 404, 406 (Pon. 2016).

Civil Procedure – Summary Judgment – Procedure

In determining the merit of a summary judgment motion, a court will consider all the facts in the light most favorable to the non-moving party. Hairens v. Federated Shipping Co., 20 FSM R. 404, 407

Hairens v. Federated Shipping Co.  
20 FSM R. 404 (Pon. 2016)

(Pon. 2016).

Civil Procedure – Summary Judgment – Grounds; Civil Procedure – Summary Judgment – Procedure

A court must deny a summary judgment motion unless it, viewing the facts presented and inferences in the light most favorable to the nonmoving party, finds that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. When the trial court denies a summary judgment motion, it should delineate between those material facts that are in dispute and those that are not. Hairens v. Federated Shipping Co., 20 FSM R. 404, 407 (Pon. 2016).

Employer - Employee

The underlying purpose of Workers' Compensation Statutes is removal of the burden regarding work-place injury from an employee and instead, place it on the industry he served, irrespective of the cause for said injury. For employees within the statute's reach, Workers' Compensation is the exclusive remedy for accidental injuries sustained in the work place. While providing workers with benefits on a no-fault basis, the flip side of this arrangement is the provision for immunity from common law negligence suits for employers covered by the statute. Hairens v. Federated Shipping Co., 20 FSM R. 404, 407 (Pon. 2016).

Employer - Employee

The central tenet of Workers' Compensation is that of true no-fault insurance. In essence, employees were provided wage replacement and medical benefits resulting from industrial accidents for their respective injuries, in exchange for relinquishing the right to pursue a civil remedy. This exclusive remedy doctrine has been gradually eroded. Hairens v. Federated Shipping Co., 20 FSM R. 404, 407 (Pon. 2016).

Contracts – Interpretation

The interpretation of terms within contracts constitutes a matter of law to be determined by the court. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon. 2016).

Contracts – Interpretation; Insurance

An insurance contract in the FSM that made reference to "the benefits provided under the Workers' Compensation of the CNMI," only intended to merely utilize 4 N. Mar. I. Code § 9310 to ascribe a dollar amount to the benefits to which an injured employee would be entitled, as opposed to adopting the entire CMNI Workers' Compensation Program. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon. 2016).

Contracts – Interpretation

In interpreting a contract, the words thereof, are to be given their plain and ordinary meaning. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon. 2016).

Contracts – Interpretation

Clauses that are knowingly incorporated into a contract should not be treated as meaningless. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon. 2016).

Contracts – Interpretation

Any ambiguities in a contract provision should be construed more strictly against the party who wrote it. Hairens v. Federated Shipping Co., 20 FSM R. 404, 408 (Pon. 2016).

Contracts – Accord and Satisfaction

For there to be an accord and satisfaction, there must be an offer in full satisfaction of a debt, accompanied by acts and declarations that amount to a condition that if the offer is accepted, it is in

full satisfaction of the obligation. Hairens v. Federated Shipping Co., 20 FSM R. 404, 409 (Pon. 2016).

Employer - Employee; Insurance; Torts – Negligence

When an insurance carrier's endorsement contained within an employer's policy limited the applicability of the CNMI Workers' Compensation Program to "the benefits provided under the Workers' Compensation Law of the CNMI," (which would entail that statute's "determination of pay," that statute's exclusive remedy provision setting forth tort immunity does not apply, and an employee would not be forestalled from also bringing a civil action sounding in negligence. Hairens v. Federated Shipping Co., 20 FSM R. 404, 409 (Pon. 2016).

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COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

On December 7, 2015, Defendant filed a Motion for Summary Judgment and Plaintiff's Opposition was submitted on January 13, 2016. A Hearing on the subject Motion for Summary Judgment was conducted on May 2, 2016, at which Attorney Frederick L. Ramp appeared on behalf of Defendant and Attorney Michael J. Sipos for Plaintiff.

I. BACKGROUND:

The underlying Complaint, sounding in negligence, was filed on June 10, 2015; seeking damages for a work-related injury sustained by Plaintiff arising out of work performed in the course and scope of employment for Defendant. An insurance policy had been taken out by Defendant to cover Workers' Compensation and liability. As such, a Workers' Compensation claim was processed and a payment remitted to Plaintiff in the amount of \$13,144.95 for the work-related injury.

The parties do not dispute that Plaintiff sustained injuries at the work place of Defendant, while in the employ of the latter. In addition, there exists no disagreement between the two sides that this Plaintiff/employee received worker's compensation from the insurance carrier, with whom Defendant/employer had a policy, in a determinate amount; based on a specific calculation enumerated within the CNMI Workers' Compensation Statute.

Given the fact that Pohnpei has no Workers' Compensation law, much less the FSM, the relevant policy made reference to the Workers' Compensation Statute of the CNMI (known as the "Workers' Compensation Program), constituting the governing law, in terms of the benefits to be furnished.<sup>1</sup> Defendant maintains, that 4 N. Mar. I. Code § 9305 of the Workers' Compensation Program, which sets forth the exclusivity provision in the CNMI, whereby Workers' Compensation benefits embody the sole remedy of an injured employee applies herein; thereby foreclosing the subject tort action. In support of its position, Defendant additionally notes that, allowing an injured worker the ability to obtain compensation from both Workers' Compensation benefits and an award from a tort action, would essentially constitute a "double-dipping."<sup>2</sup>

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<sup>1</sup> Workers' Compensation Endorsement for Defendant's Insurance Policy (Def.'s Mot. for Summ. J., Ex. 1, at 2).

<sup>2</sup> Def.'s Mot. for Summ. J. at 16.

Hairens v. Federated Shipping Co.  
20 FSM R. 404 (Pon. 2016)

Plaintiff counters, that an endorsement to the instance carrier's relevant policy, providing: "the coverage afforded by this policy shall be based exclusively on the benefits provided under the Workers' Compensation Law of the CNMI," limits the applicability of said statute to the finite determination of benefits (i.e. the calculation of an amount to be disbursed to an injured worker) and this insertion of this clause connotes an intent not to encompass the entire Workers' Compensation Program (which includes a provision, whereby Workers' Compensation benefits constitute the exclusive remedy of an injured employee - N. Mar. I. Code § 9305), as binding on the relevant policy. Finally, Plaintiff concedes that the payout of Workers' Compensation benefits would invariably be credited toward any potential award from an independent tort settlement or Judgment; thereby obviating a claim of double recovery.

In issue therefore, is whether the Workers' Compensation benefits remitted to the injured employee, precludes this Plaintiff from bringing the instant cause of action against the Defendant/employer, given the incorporation of the CNMI Workers' Compensation Statute (or as Plaintiff avers: merely the section pertaining to benefits) into the policy with its insurance carrier, by virtue of the aforementioned endorsement? Specifically, the relevant analysis to be undertaken, entails determining if material facts necessary for this issue, which is subject of the present Motion for Summary Judgment, are undisputed.

#### II. SUMMARY JUDGMENT STANDARD:

In determining the merit of a motion for summary judgment, a Court will consider all the facts in the light most favorable to the non-moving party. "A court must deny a summary judgment motion unless it, viewing the facts presented and inferences in the light most favorable to the nonmoving party, finds that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 569 (Pon. 2011). Furthermore, "when the trial court denies a summary judgment motion[,] it should delineate between those material facts that are in dispute and those that are not." Smith v. Nimea, 16 FSM R. 186, 191 (Pon. 2008).

#### III. WORKERS' COMPENSATION BENEFITS:

The underlying purpose of Workers' Compensation Statutes is removal of the burden regarding work-place injury from an employee and instead, placing it on the industry he served; irrespective of the cause for said injury. Workers' Compensation achieves this purpose by abolishing the right of an injured worker to sue his employer in tort for a job-related injury and in exchange, replaces that remedy with strict liability, along with the rapid recovery of benefits. For employees within the statute's reach, Workers' Compensation is the exclusive remedy for accidental injuries sustained in the work place. While providing workers with benefits on a no-fault basis, the flip side of this arrangement is the provision for immunity from common law negligence suits for employers covered by the statute.

Therefore, the central tenet of Workers' Compensation is that of true no-fault insurance. In essence, employees were provided wage replacement and medical benefits resulting from industrial accidents for their respective injuries, in exchange for relinquishing the right to pursue a civil remedy. Nevertheless, the exclusive remedy doctrine, by which this legal quid pro quo is referenced, has been gradually eroded by the creation of numerous exceptions (third party liability; dual capacity; intentional injury; intentional torts and/or non-physical claims; occupational disease claims; Racketeer Influenced and Corrupt Organization Act (RICO) claims and bad faith handling), which expose an employer to

financial liability over and above its Workers' Compensation obligation.<sup>3</sup> Notwithstanding this Workers' Compensation backdrop, from which the present case evolved, the Motion for Summary Judgment under consideration can be resolved solely from a contract construction perspective.

#### IV. ANALYSIS:

Under the facts of this case, the Court does not find it necessary to address the availability of exceptions to the exclusive remedy doctrine within this jurisdiction, since the endorsement within the policy issued to Defendant by the insurance carrier set forth: "the coverage afforded by this policy shall be based exclusively on the benefits provided under the Workers' Compensation Law of the CNMI. . . ."<sup>4</sup> Interpretation of terms within contracts constitutes a matter of law to be determined by the Court. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 351 (App. 2012). Since this language utilized by the insurance carriers imply made reference to "the benefits provided under the Workers' Compensation of the CNMI," there is also no need to broach the issue, with respect to the propriety of the insurance carrier's utilization of the CNMI Workers' Compensation Program *in toto* within the FSM, as the controlling law for the policy issued Defendant.

In other words, given the plain meaning of the above-mentioned clause within the endorsement, a reasonable inference can be drawn *to wit*: the parties intended to merely utilize 4 N. Mar. I. Code § 9310, entitled: "Determination of Pay," in the CNMI statute (in terms of ascribing a dollar amount, regarding benefits to which an injured employee would be entitled), as opposed to the entire Workers' Compensation Program. "In interpreting a contract, the words thereof[,] are to be given their plain and ordinary meaning." Hauk v. Board of Dirs., 11 FSM R. 236, 241 (Chk. S. Ct. Tr. 2002).

Furthermore, "it is a well established principle of contract construction[,] that clauses which are knowingly incorporated into a contract should not be treated as meaningless." FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001). Finally, assuming *arguendo*, that the clause in question is subject to varying interpretation, it has long been held that "rules of interpretation dictate that any ambiguities in a contract provision should be construed more strictly against the party who wrote it." Bank of the FSM v. Bartolome, 4 FSM R. 182, 185 (Pon. 1990).

An additional averment by Defendant is predicated upon a cover letter that accompanied the \$13,144.95 check transmitted to Plaintiff, which stated acceptance of the draft was tantamount to an exercise of the Plaintiff/employee's exclusive remedy under Defendant's subject Workers' Compensation insurance policy. In contradistinction, numerous communiques from the Attorney for Plaintiff provided express notice, that such acceptance would not prejudice any forthcoming tort liability claims against Defendant/employer.

Albeit within the context of an accord and satisfaction, Richmond Wholesale Meat Co. v. Kolonia

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<sup>3</sup> Recent Appellate cases that demonstrate some of the issues and complexity surrounding the exclusive remedy doctrine include *inter alia*: Missouri Alliance for Retired Americans v. Department of Labor & Industrial Relations, 277 S.W.3d 670 (Mo. 2009); Schroeder v. Peoplease Corp., 18 So. 3d 1165 (Fla. Dist. Ct. App. 2009); Robinson v. Hooker, 323 S.W.3d 418 (Mo. Ct. App. 2010); Rothwell v. Nine Mile Falls Sch. Dist., 206 P.3d 347 (Wash. Ct. App. 2009); Watters v. Department of Social Servs., 15 So. 3d 1128 (La. Ct. App. 2009); Jones v. Ruth, 31 So. 3d 115 (Ala. Civ. App. 2009); McDonalds Corp. v. Ogborn, 309 S.W.3d 274 (Ky. Ct. App. 2009); and Brown v. Southern Ingenuity, Inc., 4 So. 3d 974 (La. Ct. App. 2009).

<sup>4</sup> Workers' Compensation Endorsement for Defendant's Insurance Policy (Def's Mot. for Summ. J., Ex. 1, at 20).

Consumer Coop. Ass'n (I), 7 FSM R. 387 (Pon. 1996), is instructive. The Richmond Court held: "For there to be an accord and satisfaction, there must be an offer in full satisfaction of a debt[,] accompanied by acts and declarations that amount to a condition that if the offer is accepted, it is in full satisfaction of the obligation." *Id.* at 389. Accordingly, whether the subject cover letter is scrutinized as an accord and satisfaction; novation or attempt to stave off any subsequent tort litigation, given the numerous representations by Plaintiff's Counsel to the contrary, there was no meeting of the minds and Defendant would be estopped from relying on a claim that such an agreement by and between the parties had been reached.

Moreover, in view of the fact that the insurance carrier's endorsement contained within Defendant's policy limited the applicability of the CNMI Workers' Compensation Program to "the benefits provided under the Workers' Compensation Law of the CNMI," (which would entail the section involving "Determination of Pay" - 4 N. Mar. I. Code § 9310), the exclusive remedy provision found in § 9305 (which sets forth tort immunity) does not apply. Thus, Plaintiff would not be forestalled from also bringing a civil action sounding in negligence.

V. CONCLUSION:

In sum, after having examined the instant matter under a summary judgment standard, whereby the facts are considered in the light most favorable to Plaintiff, since genuine material factual issues remain concerning the alleged tort liability of Defendant, summary judgment must be denied. Consequently, there exist genuine material facts, with respect to allowing Plaintiff the additional civil redress to restore perceived loss of benefits for the injuries sustained during the course and scope of his employment.

Accordingly, the Court hereby DENIES Defendant's Motion for Summary Judgment.

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FSM SUPREME COURT APPELLATE DIVISION

CATALINO SAM, WELERINO SAM, and  
ELTER JOSEPH,

Appellants,

vs.

FSM DEVELOPMENT BANK,

Appellee.

APPEAL CASE NO. P8-2014

OPINION

Argued: May 6, 2016  
Decided: May 25, 2016