IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	
Plaintiff,	
v.	**Civ. No. 15-00511 ACK-KJM**
IAIN MORRIS,	
Defendant,	
and	
LAWRENCE SCOTT BUCKNELL,	
Intervenor-Defendant.	

ORDER GRANTING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT AGAINST DEFENDANT IAIN MORRIS, AND SUMMARY JUDGMENT AGAINST INTERVENOR-DEFENDANT LAWRENCE SCOTT BUCKNELL, AND DENYING INTERVENOR-DEFENDANT'S COUNTER MOTION FOR SUMMARY JUDGMENT ON COUNTERCLAIM

For the reasons set forth below, the Court GRANTS Plaintiff State Farm Mutual Automobile Insurance Company's Motion for Default Judgment or, in the Alternative, for Summary Judgment Against Defendant Iain Morris, and Summary Judgment Against Intervenor-Defendant Lawrence Scott Bucknell, ECF No. 23, and DENIES Intervenor-Defendant Lawrence Scott Bucknell's Counter Motion for Summary Judgment on Counterclaim, ECF No. 28.

PROCEDURAL BACKGROUND

On December 11, 2015, Plaintiff State Farm Mutual Automobile Insurance Company ("State Farm") filed a Complaint

for Declaratory Judgment ("Complaint") asking this Court for a declaration that State Farm has no duty to defend or indemnify Defendant Iain Morris for claims asserted against him in an underlying lawsuit brought by Intervenor-Defendant Lawrence Scott Bucknell, or for any other claims that may arise out of the subject matter of the underlying lawsuit. Complaint at 9, ECF No. 1.

On January 22, 2016, State Farm's counsel filed a declaration stating that a certified copy of the Complaint had been served on Morris by certified mail on January 19, 2016. ECF No. 10. Attached to the declaration was an executed receipt of service. ECF No. 10-1. Morris having failed to file a responsive pleading or otherwise defend against the Complaint, on March 7, 2016, State Farm requested that the Clerk of Court enter Morris's default. ECF No. 15. Thus, on March 8, 2016, the Clerk of Court filed an Entry of Default against Iain Morris as to the Complaint for Declaratory Judgment. ECF No. 16.

Meanwhile, on February 22, 2016, the Court approved a stipulation between State Farm and Bucknell permitting Bucknell to intervene in this case as a defendant. ECF No. 11. Bucknell thereafter filed an Answer to State Farm's Complaint on March 23, 2016. ECF No. 20. Additionally, Bucknell filed a Counterclaim for Declaratory Relief ("Counterclaim") requesting this Court to declare that State Farm must indemnify Morris for

the claims asserted against him in the underlying lawsuit and any other claims that may arise out of the same. ECF No. 20-1 at 5-6. State Farm filed an Answer to Bucknell's Counterclaim on April 12, 2016. ECF No. 22.

On April 26, 2016, State Farm filed its Motion for Default Judgment or, in the Alternative, for Summary Judgment Against Defendant Iain Morris, and Summary Judgment Against Intervenor-Defendant Lawrence Scott Bucknell, along with a Memorandum in Support of Motion ("Pl.'s Mot."). State Farm also filed a Concise Statement of Facts in Support of its Motion ("Pl.'s CSF"). ECF No. 24. State Farm argues that it is entitled to default judgment against Morris due to Morris's failure to plead in response to or otherwise defend against the Complaint. Pl.'s Mot. at 1. Alternatively, State Farm argues that summary judgment is appropriate against Morris because Morris does not qualify as an "insured" under the subject car insurance policy for any of the claims asserted against him in the underlying lawsuit. Id. at 1-2. Consequently, State Farm asserts that the Court should grant summary judgment in its favor as to Bucknell because State Farm owes no duty to indemnify Morris for claims asserted against him by Bucknell in the underlying lawsuit. Id. at 2.

On June 27, 2016, Bucknell filed an Opposition to State Farm's Motion and a Counter Motion for Summary Judgment on

Counterclaim, along with a Combined Memorandum in support thereof ("Def.'s MSJ").[1] Bucknell also filed a Separate and Concise Statement of Facts in Support of his Motion and in Opposition to State Farm's Motion ("Def.'s CSF").[2] Bucknell argues that State Farm's policy is inconsistent with Hawaii law, public policy, and the reasonable expectations of laypersons, and that the Court should therefore deny State Farm's Motion for Summary Judgment and declare that State Farm is obligated to defend and indemnify Morris in the underlying lawsuit. Def.'s MSJ at 3-4, 13.

On July 1, 2016, State Farm filed a combined Reply in support of its Motion and Opposition to Bucknell's Counter Motion ("Pl.'s Reply"). ECF No. 31. Bucknell filed a Reply in support of his Counter Motion ("Def.'s Reply") on July 11, 2016. ECF No. 34.

The Court held a hearing regarding the Motions on July 18, 2016.

---

[1] Bucknell states that he does not dispute State Farm's description of the factual and procedural background of this case. Def.'s MSJ at 4. He also incorporates State Farm's CSF into his memorandum by reference. Id.

[2] Bucknell states that he accepts the facts as set forth in State Farm's CSF and incorporates the exhibits attached to State Farm's CSF into his own CSF by reference. Def.'s CSF at 2-3. Bucknell does not state any further material facts in his CSF.

FACTUAL BACKGROUND

I. The Underlying Lawsuit

On December 2, 2013, Bucknell filed a complaint against Morris in the Circuit Court of the First Circuit, State of Hawaii for injuries Bucknell allegedly sustained when a rental car Morris was driving collided with Bucknell's motorcycle. Pl.'s CSF ¶ 1; Bucknell v. Morris, Civil No. 13-1-3140-12 VLC, Circuit Court of the First Circuit, State of Hawaii, Decl. of Counsel Ex. A, ECF No. 24-2.

The complaint alleges that on July 22, 2013, Morris was driving a rental car in the eastbound lane of Kamehameha Highway when he attempted to execute a left turn into a parking area just as Bucknell was approaching from the opposite direction on his motorcycle. Decl. of Counsel Ex. A ¶¶ 6-10. The complaint states that Morris, in failing to yield the right-of-way to Bucknell, caused the vehicles to collide, resulting in "serious and permanent injuries to [Bucknell], including but not limited to head injury, spinal injury, internal injuries, lower leg paralysis, multiple abrasions, contusion, and lacerations." Id. ¶¶ 11-13. Bucknell asserts that, as a result, he has incurred medical and therapeutic expenses in excess of $522,595.50, which expenses continue to accrue. Id. ¶ 14.

The complaint alleges two causes of action: 1) negligence and 2) punitive damages. Id. ¶ 2. Bucknell prays for special, general, and punitive damages, as well as prejudgment interest from July 22, 2013 until judgment is entered, attorney's fees and costs, and such other relief as the court deems just and equitable. Id. ¶ 4.

State Farm is currently providing a defense to Morris in the underlying lawsuit subject to a full reservation of rights. Pl.'s CSF ¶ 12.

II. The Rental Transaction

Morris entered into a rental agreement with Advantage Rent A Car ("Advantage") for the rental of a 2012 Toyota Corolla on June 11, 2013. Id. ¶ 5. On July 22, 2013 – the date of the collision – Morris had been in possession of the rental car for 41 consecutive days. Id. ¶ 6.

On the rental agreement Morris listed a home/business address in Hollister, California. Id. ¶ 7. Alternatively, Morris resides in Colorado Springs, Colorado. Id. ¶ 7.

III. State Farm's Insurance Policy

William G. Morris and Judith A. Morris are listed as the named insureds on a State Farm Car Policy, Policy No. 147 0655-C17-06D (the "Policy"). Id. ¶ 10; Decl. of Counsel Ex. H at 2, ECF No. 24-10. William G. Morris and Judith A. Morris are Defendant Morris's parents. See Complaint ¶ 17; Def.'s MSJ at

2. The Policy is written on Colorado Policy Form 9806B and insures a 2009 Subaru Outback. Pl.'s Mot. at 4.

The Policy states that State Farm "will pay damages an insured becomes legally liable to pay because of . . . bodily injury to others . . . caused by an accident that involves a vehicle for which that insured is provided Liability Coverage by this policy." Policy at 7. Relevant here, an "insured" is defined in the Policy to include "resident relatives" for "the maintenance or use of . . . a non-owned car[] or . . . a temporary substitute car." Id. at 6. The Policy further provides:

> Non-Owned Car means a car that is in the lawful possession of you or any resident relative and that neither:
>
> 1. is owned by:
>
> a. you;
>
> b. any resident relative;
>
> c. any other person who resides primarily in your household; or
>
> d. an employer of any person described in a., b., or c. above; nor
>
> 2. has been operated by, rented by, or in the possession of:
>
> a. you; or
>
> b. any resident relative

during any part of each of the 31 or more consecutive days immediately prior to the date of the accident or loss.

. . . .

Temporary Substitute Car means a car that is in the lawful possession of the person operating it and that:

1. replaces your car for a short time while your car is out of use due to its:

    a. breakdown;

    b. repair;

    c. servicing;

    d. damage; or

    e. theft; and

2. neither you nor the person operating it own or have registered.

If a car qualifies as both a non-owned car and a temporary substitute car, then it is considered a temporary substitute car only.

. . . .

Resident Relative means a person, other than you, who resides primarily with the first person shown as a named insured on the Declarations Page and who is:

1. related to that named insured or his or her spouse by blood, marriage, or adoption, including an unmarried and unemancipated child of either who is away at school and otherwise maintains his or her primary residence with that named insured; or

2. a ward or a foster child of that named insured, his or her spouse, or a person described in 1. above.

Id. at 4-5.

IV. Advantage Rent A Car Insurance

Advantage had an insurance policy covering Morris's rental car. Pl.'s CSF ¶ 13. It has tendered the policy's $20,000 bodily injury limit to Bucknell. Id.; Pl.'s Mot. at 2 n.1; Def.'s MSJ at 11.

STANDARD

I. Default Judgment

Securing a default judgment pursuant to Federal Rule of Civil Procedure 55 is a two-step process. See Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986). First, "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a).

After default has been entered, a party may then apply to the court for entry of a default judgment. See Fed. R. Civ. P. 55(b)(2). Entry of default judgment is an issue within the trial court's discretion. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980). Courts start with "the general rule that default judgments are ordinarily disfavored." Eitel, 782 F.2d at 1472. The Ninth Circuit has enumerated a list of factors

that courts may consider in determining whether to enter default judgment, including:

> (1) the possibility of prejudice to the plaintiff; (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id. at 1471-72.

Upon entry of default, "the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true." TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987) (quoting Geddes v. United Fin. Grp., 559 F.2d 557, 560 (9th Cir. 1977)); see also Fed. R. Civ. P. 8(b)(6) ("An allegation – other than one relating to the amount of damages – is admitted if a responsive pleading is required and the allegation is not denied."). However, it is still incumbent on the plaintiff to establish that it is entitled to the relief which it seeks. See Cripps v. Life Ins. Co. of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992). "[N]ecessary facts not contained in the pleadings, and claims which are legally insufficient, are not established by default." Id.

II. Summary Judgment

Summary judgment is proper where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Rule 56(a) mandates summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); see also Broussard v. Univ. of Cal. at Berkeley, 192 F.3d 1252, 1258 (9th Cir. 1999).

"A party seeking summary judgment bears the initial burden of informing the court of the basis for its motion and of identifying those portions of the pleadings and discovery responses that demonstrate the absence of a genuine issue of material fact." Soremekun v. Thrifty Payless, Inc., 509 F.3d 978, 984 (9th Cir. 2007) (citing Celotex, 477 U.S. at 323); see also Jespersen v. Harrah's Operating Co., 392 F.3d 1076, 1079 (9th Cir. 2004). "When the moving party has carried its burden under Rule 56 [(a)] its opponent must do more than simply show that there is some metaphysical doubt as to the material facts [and] come forward with specific facts showing that there is a genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 586–87 (1986) (citation and internal quotation marks omitted); see also Anderson v. Liberty Lobby,

Inc., 477 U.S. 242, 247–48 (1986) (stating that a party cannot "rest upon the mere allegations or denials of his pleading" in opposing summary judgment).

"An issue is 'genuine' only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute is 'material' only if it could affect the outcome of the suit under the governing law." In re Barboza, 545 F.3d 702, 707 (9th Cir. 2008) (citing Anderson, 477 U.S. at 248). When considering the evidence on a motion for summary judgment, the court must draw all reasonable inferences on behalf of the nonmoving party. Matsushita Elec. Indus. Co., 475 U.S. at 587; see also Posey v. Lake Pend Oreille Sch. Dist. No. 84, 546 F.3d 1121, 1126 (9th Cir. 2008) (stating that "the evidence of [the nonmovant] is to be believed, and all justifiable inferences are to be drawn in his favor").

"In insurance disputes, the insurer is only required to establish the absence of a genuine issue of material fact regarding the question of coverage pursuant to the plain language of the insurance policies and the consequent entitlement to the entry of judgment as a matter of law." Burlington Ins. Co. v. United Coatings Mfg. Co., 518 F. Supp. 2d 1241, 1246 (D. Haw. 2007) (internal quotation marks and citation omitted).

III. Diversity Jurisdiction

The court has diversity jurisdiction to hear this case pursuant to 28 U.S.C. § 1332. State Farm is an Illinois corporation, Morris is a resident of either California or Colorado, and Bucknell is a resident of Hawaii. Complaint ¶¶ 1-2; Counterclaim ¶ 1-3. Federal courts sitting in diversity apply state substantive law and federal procedural law. Hanna v. Plumer, 380 U.S. 460, 465 (1965); Erie v. Tompkins, 304 U.S. 64, 78 (1938). A federal court is bound by the decisions of a state's highest court when interpreting state law. Ariz. Elec. Power Coop., Inc. v. Berkeley, 59 F.3d 988, 991 (9th Cir. 1995). However, "[i]n the absence of such a decision, a federal court must predict how the highest state court would decide the issue using intermediate appellate court decisions, decisions from other jurisdictions, statutes, treatises, and restatements as guidance." Id.

DISCUSSION

I. Framework for Construing Insurance Contracts

Under Hawaii law, courts look to the plain language of the insurance policy to determine the scope of the insurer's duties. Dairy Rd. Partners v. Island Ins. Co., Ltd., 92 Haw. 398, 411 (2000); Burlington Ins. Co. v. Oceanic Design & Const. Inc., 383 F.3d 940, 945 (9th Cir. 2004) ("In Hawaii, the terms of an insurance policy are to be interpreted according to their

plain, ordinary, and accepted sense in common speech."); see also Haw. Rev. Stat. § 431:10-237 ("Every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy, and as amplified, extended, restricted, or modified by any rider, endorsement or application attached to and made a part of the policy.").

"In the context of insurance coverage disputes, [the court] must look to the language of the insurance policies themselves to ascertain whether coverage exists, consistent with the insurer and insured's intent and expectations." Hawaiian Ins. & Guar. Co. v. Fin. Sec. Ins. Co., 72 Haw. 80, 87 (1991). At the same time, insurance policies must be "in accordance with the reasonable expectations of a layperson." Hawaiian Isle Adventures, Inc. v. N. Am. Capacity Ins. Co., 623 F. Supp. 2d 1189, 1194 (D. Haw. 2009). "[B]ecause insurance contracts are contracts of adhesion, they must be construed liberally in favor of the insured, and any ambiguity must be resolved against the insurer." Id. A contract term is considered ambiguous only if it is "capable of being reasonably understood in more ways than one." Cho Mark Oriental Food, Ltd. v. K & K Int'l, 73 Haw. 509, 520 (1992). "[T]he parties' disagreement as to the meaning of a contract or its terms does not render clear language ambiguous." State Farm Fire & Cas. Co. v. Pac. Rent-All, Inc., 90 Haw. 315, 324 (1999).

Finally, "insurers have the same rights as individuals to limit their liability and to impose whatever conditions they please on their obligation, provided they are not in contravention of statutory inhibitions or public policy." Dairy Rd. Partners, 92 Haw. at 411 (quoting First Ins. Co. of Haw., Inc. v. State, 66 Haw. 413, 423 (1983)) (brackets omitted).

a. Duty to Defend

The duty to defend under Hawaii insurance law is broad, and "arises wherever there is the mere potential for coverage." Commerce & Indus. Ins. Co. v. Bank of Haw., 73 Haw. 322, 326 (1992). Hawaii abides by the "complaint allegation rule," whereby the determination of whether an insurer has a duty to defend focuses on the claims and facts that are alleged. Burlington, 383 F.3d at 944. Thus, "[t]he duty to defend 'is limited to situations where the pleadings have alleged claims for relief which fall within the terms for coverage of the insurance contract.'" Id. (quoting Hawaiian Holiday Macadamia Nut Co. v. Indus. Indem. Co., 76 Haw. 166, 169 (1994)). "Where pleadings fail to allege any basis for recovery within the coverage clause, the insurer has no obligation to defend." Hawaiian Holiday, 76 Haw. at 169 (quotation marks and citation omitted). As the Hawaii Supreme Court has explained:

> The obligation to defend is broader than the duty to pay claims and arises wherever there is the mere *potential* for coverage. In

> other words, the duty to defend rests primarily on the *possibility* that coverage exists. This possibility may be remote but if it exists, the insurer owes the insured a defense. All doubts as to whether a duty to defend exists are resolved against the insurer and in favor of the insured.

Tri-S Corp. v. W. World Ins. Co., 110 Haw. 473, 488 (2006) (emphasis in original); see also Burlington, 383 F.3d at 944 ("The duty to defend exists irrespective of whether the insurer is ultimately found not liable to the insured and is based on the possibility for coverage, even if remote, determined at the time suit is filed.").

On a motion for summary judgment regarding its duty to defend, the insurer bears the burden of proving there is "no genuine issue of material fact with respect to whether a *possibility* exists that the insured would incur liability for a claim covered by the policy." Tri-S, 110 Haw. at 488 (brackets omitted, emphasis in original). The insured's burden, on the other hand, "is comparatively light, because it has merely to prove that a *possibility* of coverage exists." Id. (brackets omitted, emphasis in original).

b. Duty to Indemnify

The insurer owes a duty to indemnify the insured "for any loss or injury which comes within the coverage provisions of the policy, provided it is not removed from coverage by a policy exclusion." State Farm Fire & Cas. Co. v. Cabalis, 80 F. Supp.

3d 1116, 1122 (D. Haw. 2015) (quoting Dairy Rd. Partners, 92 Haw. at 413). On a motion for summary judgment regarding the issue of whether it has a duty to indemnify the insured, the insurer is "*not* required to disprove any *possibility* that its insured might be liable for a claim asserted in the underlying lawsuits." Dairy Rd. Partners, 92 Haw. at 413 (emphasis in original). Here, the insurer must only "establish the absence of a genuine issue of material fact regarding the question of coverage pursuant to the plain language of the insurance policies and the consequent entitlement to the entry of judgment as a matter of law." Id.

II. Default Judgment

Based upon a consideration of the Eitel factors, the Court finds that State Farm is entitled to default judgment against Morris and discusses each factor in turn.

a. Possibility of Prejudice to State Farm

State Farm will suffer prejudice if default judgment is not entered against Morris. State Farm is currently defending Morris in the underlying lawsuit pursuant to a reservation of rights, and is entitled to a determination whether it in fact owes a duty to defend or indemnify Morris for the same. This factor therefore weighs in favor of default judgment.

b. Merits of State Farm's Substantive Claim

Under the terms of the Policy, State Farm has agreed to "pay damages an insured becomes legally liable to pay because of . . . bodily injury to others . . . caused by an accident that involves a vehicle for which that insured is provided Liability Coverage . . . ." Policy at 7. An "insured" includes a "resident relative" for whom coverage will be provided for the "maintenance or use of . . . a non-owned car; or . . . a temporary substitute car." Id. at 6.

The "non-owned car" provision in the Policy requires that the vehicle at issue not have been "operated by, rented by, or in the possession of . . . any resident relative during any part of each of the 31 or more consecutive days immediately prior to the date of the accident or loss." Id. at 5. The Complaint alleges that Morris rented the car on June 11, 2013 and that the accident occurred on July 22, 2013, meaning that Morris had been in possession of the vehicle for 41 consecutive days when the accident occurred. Complaint ¶¶ 9, 11. Thus, based on the allegations in the Complaint, Morris is not entitled to coverage under the "non-owned car" provision of the Policy because he had possession of the vehicle for each of the 31 or more days prior to the accident.

Next, a "temporary substitute car" is defined in the Policy as a car that "replaces your car for a short time while

your car is out of use due to its: a. breakdown; b. repair; c. servicing; d. damage; or e. theft . . . .” Policy at 5. “Your car” is defined as the vehicle listed on the Policy’s declarations page, which in this case is a 2009 Subaru Outback. See Policy at 6; Decl. of Counsel Ex. H at 2. The Complaint claims that Morris’s use of the rental car does not qualify as a “temporary substitute car,” and there is no indication in any of the filings in this case that Morris rented the car to replace the 2009 Subaru Outback for any of the reasons delineated in the Policy. Morris is therefore not covered under the “temporary substitute car” provision of the Policy, based on the allegations in the Complaint.

The Court finds meritorious State Farm’s claim that Morris does not qualify as an “insured” under the Policy, and this factor thus weighs in favor of default judgment.

c. Sufficiency of the Complaint

This factor weighs in favor of default judgment. The allegations of the Complaint are sufficiently pled and are supported by facts in the record.

d. Sum of Money at Stake

The sum of money at stake favors default judgment. No damages are sought in this action; rather, State Farm seeks a declaration as to the rights of the parties under the Policy at issue.

e. Possibility of Dispute Concerning Material Facts

Here there is little possibility of dispute concerning the facts material to this action. The issue of whether Morris is entitled to a defense or indemnification from State Farm may be determined by comparing the coverage afforded by the Policy to the allegations in the underlying lawsuit. This factor also weighs in favor of default judgment.

f. Whether Default Was Due to Excusable Neglect

The Court finds that Morris's default was not due to excusable neglect. State Farm served Morris with a copy of the Complaint on January 19, 2016 and obtained an executed receipt of service. ECF No. 10-1. Both State Farm and Bucknell have continued to serve copies of their filings on Morris, including copies of State Farm's initial request to the Clerk of Court for an entry of default and the instant Motions. Morris has so far made no appearance, has made no motion to set aside the Entry of Default, and has filed no opposition to State Farm's instant Motion. Morris's default appears to stem from his own willful decision not to participate in the instant litigation. This factor therefore weighs in favor of default judgment.

g. Policy Favoring Decision on the Merits

While the court recognizes the strong policy favoring resolution of cases on the merits, further proceedings as to

Morris at this juncture would be futile given his failure to participate in the instant litigation. Further, State Farm's request for declaratory relief requires that this Court construe as a matter of law whether or not Morris is entitled to coverage, which entails comparing the language of the Policy at issue to the allegations in the underlying lawsuit. As discussed above, the merits of State Farm's claims weigh in favor of a finding that State Farm has no duty to defend or indemnify Morris for the claims asserted in the underlying lawsuit. Therefore, the policy favoring decision of cases on the merits does not offset the other factors weighing in favor of default judgment.

Weighing all of the Eitel factors together, the Court finds that State Farm is entitled to default judgment against Morris. The Court therefore GRANTS State Farm's Motion to the extent it seeks the same.

III. Summary Judgment

The Court next turns to State Farm's Motion for Summary Judgment against Bucknell. Importantly, a finding of default judgment against Morris does not require that a finding of summary judgment against Bucknell follow. Bucknell is entitled to defend against State Farm's declaratory judgment action on the merits, and the Court will not construe as true the well-pleaded factual allegations in the Complaint as to

Bucknell. See Westchester Fire Ins. Co. v. Mendez, 585 F.3d 1183, 1189 (9th Cir. 2009) ("A default entered against an insured policyholder . . . should not prevent an injured third party . . . from proceeding on its own behalf. The argument for permitting another party to proceed is especially powerful in the context of third-party liability insurance, where the insured may lose interest and the injured party has the primary motivation to pursue the claim."). "[W]here there are several defendants, the transgressions of one defaulting party should not ordinarily lead to the entry of a final judgment, let alone a judgment fatal to the interests of other parties." Id.

a. Whether Morris is an "Insured" Under the Terms of the Policy

State Farm contends it is entitled to summary judgment because Morris does not qualify as an "insured" under the terms of the Policy. Pl.'s Mot. at 11. As in its argument regarding default judgment, State Farm asserts that Morris does not qualify for coverage because he is not a "resident relative" who used a "non-owned car" or "temporary substitute car." Id.

i. "Non-Owned Car" Provision

Again, for a vehicle to qualify as a "non-owned car" under the Policy, it must not have been "operated by, rented by, or in the possession of . . . any resident relative during any part of each of the 31 or more consecutive days immediately

prior to the date of the accident or loss." Policy at 5. State Farm argues that because Morris had possessed the rental car for 41 days on the date of the accident he is not entitled to coverage. Pl.'s Mot. at 12-13.

Bucknell does not appear to dispute that the provision on its face precludes coverage for the accident. In fact, Bucknell agrees with and incorporates into his own memorandum State Farm's version of the facts, including the fact that Morris had possessed the rental car for 41 days at the time of the collision. See Def.'s MSJ at 4; Pl.'s Mot. at 4. Instead, Bucknell argues that the Policy's "non-owned car" provision conflicts with Hawaii law, is contrary to public policy, and does not comport with the reasonable expectations of laypersons. See Def.'s MSJ at 5-13.

1. Whether the Provision Conflicts with Hawaii Law

Bucknell contends the Policy conflicts with two Hawaii statutes that, when read together, require State Farm to provide liability insurance for rental cars for a period up to six months. Def.'s MSJ at 5-10. Bucknell cites to Hawaii Revised Statute ("HRS") § 287-26, which states:

> A driver's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon the person by law for damages arising out of the use by the person of any motor vehicle not owned by the person,

> within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

Noting that rental cars are considered "U-drive motor vehicles" under Hawaii motor vehicle insurance law, Bucknell also cites to HRS § 431:10C-103 for the following definitions:

> "U-drive motor vehicle" means a motor vehicle which is rented or leased or offered for rent or lease to a customer from an operator of a U-drive rental business.
>
> "U-drive rental business" means the business of renting or leasing to a customer a motor vehicle for a period of six months or less notwithstanding the terms of the rental or lease if in fact the motor vehicle is rented or leased for a period of six months or less.

Reading these statutes together, Bucknell argues that because Hawaii law will recognize a car as a rental vehicle for up to six months, a liability insurance provider must provide coverage for rental cars for no less than six months. Def.'s MSJ at 9.

State Farm counters Bucknell's argument first by pointing out that HRS § 287-26 is a "financial responsibility" statute that sets out requirements for drivers, rather than an insurance statute that outlines the type of coverage required for an insured vehicle. Pl.'s Reply at 4.

Further, State Farm asserts, HRS § 287-26 does not prescribe the extent of coverage that must be afforded to drivers of non-owned cars, and the fact that HRS § 431:10C-103

states that a car may be considered a rental vehicle for up to six months does not require that insurers provide coverage for this amount of time. Id. at 6-7. State Farm instead points to HRS § 431:10C-301(a)(2), which states that "[a]n insurance policy covering a motor vehicle shall provide . . . in the case of a U-drive motor vehicle, insurance to pay on behalf of the renter . . . sums which the renter or operator may be legally obligated to pay for damage or destruction of property of others . . . arising out of the operation or use of the motor vehicle." The statute further provides that a motor vehicle insurance policy must include liability coverage of at least $20,000 per person, with an aggregate limit of $40,000 per accident. HRS § 431:10C-301(b)(1). As the parties both agree, Morris purchased an insurance policy from Advantage that included the statutorily required minimum, which has already been tendered to Bucknell. Pl.'s CSF ¶ 13.

Bucknell seems to concede that Advantage's policy met the statutorily required minimum, but argues that Morris's State Farm Policy is required to insure Morris for the accident as well. Def.'s Reply at 5. However, there is no statute requiring that a driver possess insurance coverage beyond the statutory minimum. Furthermore, the State Farm Policy does provide coverage for "non-owned cars" such as rental cars; it has simply chosen to limit that liability by imposing a 31-day

time limitation on its "non-owned car" provision, as is its right. See Dairy Rd. Partners, 92 Haw. at 411 (quoting First Ins. Co. of Haw., 66 Haw. at 423) ("[I]nsurers have the same rights as individuals to limit their liability and to impose whatever conditions they please on their obligation, provided they are not in contravention of statutory inhibitions or public policy.") (brackets omitted).

Bucknell also disregards the fact that the Morris's Policy was written using a Colorado policy form and in accordance with Colorado law. See Pl.'s Mot. at 4; Decl. of Counsel Ex. H at 2; Policy at 41. Clearly, it would be impractical for State Farm to issue policies in one state that complied with the laws of each of the other 49 states. If anything, the more appropriate inquiry would look into whether the Policy comports with Colorado law – but Bucknell does not raise this argument. Furthermore, as has already been discussed, Morris purchased an insurance policy for the rental car from Advantage that satisfied the statutorily required minimum.

Turning now to the "non-owned car" provision itself, State Farm contends that the provision complies with Chapter 431 of the Hawaii Revised Statutes, and that a similar provision has been upheld by the Hawaii Intermediate Court of Appeals ("ICA"). Pl.'s Mot. at 13-14, 21-22; see also Crawley v. State Farm Mut.

Ins. Co., 90 Haw. 478 (Ct. App. 1999). State Farm argues that Crawley stands for the proposition that a car does not qualify as a "non-owned car" for insurance coverage purposes when it is driven longer than the time limitation provided in the provision. Pl.'s Mot. at 13. Bucknell argues that Crawley is inapplicable because the case did not involve a rental car, did not address what Bucknell calls the "regular use doctrine," and did not discuss the scope of HRS § 287-26. Def.'s MSJ at 8.

In Crawley, seventeen-year-old Michelle Delacruz was involved in a car accident that injured several passengers in her vehicle. Crawley, 90 Haw. at 479. Delacruz resided with her father and was driving his car at the time of the accident. Id. at 479-80. Plaintiff-appellants thereafter made a demand on Delacruz's mother's insurance provider for coverage of their personal injury claims, claiming that the provider was required to extend coverage under the policy's "non-owned car" provision. Id. at 480-481. The court ultimately decided that because Delacruz did not live with her mother she did not qualify as an "insured" under the policy, and that the "non-owned car" provision therefore did not impose a duty on the insurer to provide coverage. Id. at 487.

The court then stated in dicta that even if Delacruz were an "insured" under the policy, the insurer would not be required to provide coverage under the "non-owned car"

provision. Id. at 487. The provision stated that a "car which has been operated . . . or in the possession of an *insured* during any part of each of the last [twenty-one] or more consecutive days" was not a "non-owned car." Id. (emphasis and brackets in original). Because Delacruz had "daily use" of the car for at least twenty-one days prior to the accident, the court concluded that the vehicle would not qualify as a "non-owned car" for coverage purposes. Id. The court explained, "An exclusion such as the twenty-one-day clause is intended to prevent the insured from obtaining coverage on a regularly available vehicle without paying a premium." Id. (quotation marks and brackets omitted).

Bucknell seizes on this "regularly available" language to argue that Crawley denied coverage under what Bucknell calls the "regular use doctrine," which states that a vehicle that is regularly used is not entitled to coverage under a "non-owned car" provision. Def.'s MSJ at 6-7. Because, as Bucknell puts it, "renting a car is an infrequent and casual use of an undescribed automobile," rental cars are not subject to the "regular use doctrine" and therefore may not be excluded from coverage under limitations in "non-owned car" provisions. Id. at 7. However, the court made very clear that it was because Delacruz had daily use of the car "for at least [twenty-one] consecutive days prior to the accident" that coverage would be

precluded if she was an "insured." Crawley 90 Haw. at 487. The inquiry thus focused on the time limitation, which, according to the court, was the mechanism the insurer had chosen in order to define what constituted a "regularly available vehicle."

In support of his argument regarding the "regular use doctrine," Bucknell cites to cases in several other jurisdictions for the proposition that "[a] rental car is *not* considered a car made available for regular use." Def.'s MSJ at 7 (emphasis in original). However, in the cases Bucknell cites, the relevant provisions differed from the instant "non-owned car" provision in an important way – they lacked a time limitation that barred coverage beyond a certain number of days. In a case before the Idaho Supreme Court, the relevant provision defined "non-owned car" as a car that was not "furnished or available for . . . regular or frequent use." State Farm Mut. Auto. Ins. Co. v. Robinson, 926 P.2d 631, 636 (Idaho 1996). In a case before the West Virginia Supreme Court, an exclusion stated that the insurer would not provide coverage for any vehicle, other than "your covered vehicle," which was "furnished or available for your regular use." Am. States Ins. Co. v. Tanner, 563 S.E.2d 825, 828 (W. Va. 2002).

Thus, Bucknell's argument regarding "regular use" misses the point. There is not a "regular use doctrine" in insurance law that defines when a car is to be considered a

"non-owned car" for coverage purposes. Rather, "regular use" is a benchmark used in some insurance policies to determine whether or not a car will be considered a "non-owned car" under the terms of that specific policy. Such provisions operate similar to how a time limitation operates in the "non-owned car" provisions in other policies, including the one at issue here.

Ultimately, the 31-day time limitation is the mechanism by which State Farm has chosen to limit its liability on "non-owned cars." As noted above, insurance companies are entitled to limit their liability, so long as they do so in accordance with law and public policy. While the ICA expressed only in dicta its approval of a "non-owned car" provision containing a time limitation, the Court gleans from its statement that such provisions are in accordance with Hawaii law. See Ariz. Elec., 59 F.3d at 991 ("In the absence of . . . a decision, a federal court must predict how the highest state court would decide the issue . . . .").

For the foregoing reasons, the Court FINDS that the Policy's "non-owned car" provision does not conflict with Hawaii law.

2. Whether the Provision is Contrary to Public Policy

Bucknell next argues that limiting coverage for rental cars to 31 days is contrary to public policy. Def.'s MSJ at

10-11. Bucknell maintains that Hawaii public policy "strongly favors non-owned car coverage," as evidenced by HRS § 287-26, and that non-owned car coverage is particularly crucial in Hawaii because it is a "travel hub" for tourists. Id. at 10. Bucknell further states that the 31-day limitation on coverage is arbitrary, and that "providing financial protection to insureds and injured persons significantly outweighs State Farm's interest in artificially capping the length of rental coverage." Id. at 11. He also contends that when an insured individual rents a car, the insured car often remains at home, meaning that the insurer's underwriting risk is not materially affected by also covering the rental car. Id.

The Court is not persuaded by Bucknell's arguments. For one, the fact that the Policy complies with Hawaii law cuts against Bucknell's contention that it offends public policy. See Anderson v. State Farm Ins. Co., 300 F. App'x 470, 471 (9th Cir. 2008) (finding that an insurance policy's exclusions did not offend public policy when the exclusions were consistent with state statutory law and the purpose behind the exclusions). Furthermore, the ICA has expressed a policy reason in favor of the limitations contained in "non-owned car" provisions. As the Crawley court explained, "An exclusion such as the twenty-one-day clause is intended to prevent the insured from obtaining coverage on a regularly available vehicle without paying a

premium." Crawley, 90 Haw. at 487 (quotation marks and brackets omitted). Thus, the Court disagrees with Bucknell that the 31-day time limitation is arbitrary. Rather, it represents a decision by State Farm to discontinue coverage for a non-owned vehicle after an insured has been in possession of that vehicle for approximately one month, in order to avoid a situation where the insured is effectively able to obtain long-term coverage on a car for which he has not paid a premium.

Bucknell notes that while it is true that Advantage has tendered the statutorily required minimum amount to Bucknell, the $20,000 he received constitutes "meaningless financial protection." Def.'s MSJ at 11. Indeed, Bucknell is paralyzed and has medical bills in excess of $500,000. Id.; Decl. of Counsel Ex. A ¶ 14. The Court understands Bucknell's frustration and recognizes that the terms of the Policy place him in a particularly unfortunate situation. However, the "non-owned car" provision does not offend public policy and the Court must construe it as written.

For the foregoing reasons, the Court FINDS that the "non-owned car" provision is not contrary to public policy.

3. Whether the Provision Comports with the Reasonable Expectations of Laypersons

Finally, Bucknell argues that the Policy does not comport with the reasonable expectations of laypersons, because

"[m]ost Hawaii consumers reasonably expect that their personal insurance will follow them while they are driving a rental car, no matter how long the rental period." Def.'s MSJ at 12.

However, as State Farm points out, the Hawaii Supreme Court has stated that the reasonable expectations of laypersons "are derived from the insurance policy itself, which is subject to the general rules of contract construction." Del Monte Fresh Produce (Haw.), Inc. v. Fireman's Fund Ins. Co., 117 Haw. 357, 368 (2007) (internal quotation marks omitted). "This involves construing the policy according to the entirety of its terms and conditions, and the terms themselves . . . should be interpreted according to their plain, ordinary, and accepted sense in common speech unless it appears from the policy that a different meaning was intended." Id. (quotation marks and brackets omitted). Importantly, a court must honor these reasonable expectations even when "painstaking study of the policy provisions would have negated those expectations." Id.

Here, Bucknell does not argue that the "non-owned car" provision is ambiguous. Indeed, the provision plainly states that a vehicle will not be considered a "non-owned car" for coverage purposes when it has been operated, rented, or possessed by a "resident relative" for each of the 31 or more consecutive days immediately prior to the accident. This language is clear and unambiguous, and thus a layperson would be

expected to construe the provision to mean that after 30 days of possessing a rental car, he would no longer receive coverage for the vehicle under the "non-owned car" provision.

For the foregoing reasons, the Court FINDS that the Policy's "non-owned car" provision comports with the reasonable expectations of laypersons.

Because the "non-owned car" provision comports with Hawaii law, public policy, and the reasonable expectations of laypersons, the Court FINDS that the provision is valid and that its 31-day time limitation precludes coverage for Morris's rental car.[3]

---

[3] As noted above, the Morris's Policy was written in accordance with Colorado law. See Decl. of Counsel Ex. H at 2; Policy at 41. Further, the Policy states, "Without regard to choice of law rules, the law of the state of . . . Colorado will control . . . in the event of any disagreement as to the interpretation and application of any provision in this policy . . . ." Policy at 41. Although neither party has raised the issue of which law governs the Court's analysis and both parties make their arguments with reference to Hawaii law, the Court finds that the State Farm Policy and the "non-owned car" provision comport with Colorado law, in addition to Hawaii law. In accordance with Colorado Revised Statute § 10-4-620, which requires that an automobile insurance policy include liability coverage of at least $25,000 per person, $50,000 per accident, and $15,000 for property damage, the Policy at issue provides $100,000 per person, $300,000 per accident, and $100,000 for property damage. See Decl. of Counsel Ex. H at 2. The Policy thus provides Colorado's required statutory minimums.

Additionally, under Colorado law, "An insurer may impose any terms and conditions consistent with public policy as it sees fit . . . . However, any terms or provisions of an insurance contract that attempt to dilute, condition, or limit statutorily mandated coverage violate public policy." Christian v. State Farm Mut. Auto. Ins. Co., 962 P.2d 310, 312 (Colo. App.

ii. "Temporary Substitute Car" Provision

As noted above, a "temporary substitute car" is a car that "replaces your car for a short time while your car is out

---

1997). With respect to "non-owned car" provisions, the Colorado Court of Appeals has explained that "[t]he purpose of a non-ownership clause . . . is to provide the insured with coverage while the insured is engaged in the occasional or infrequent use of an automobile other than the one specified in the policy, but not to provide liability coverage in regard to unspecified automobiles which are furnished or available for the insured's frequent or regular use." Waggoner v. Wilson, 507 P.2d 482, 521-22 (Colo. App. 1972).

Colorado courts have consistently upheld the validity of policies precluding coverage for vehicles that are not owned and that have been available for "frequent" or "regular use." See, e.g., Iowa Mut. Ins. Co. v. Addy, 286 P.2d 622, 624 (Colo. 1955) ("The automobile here involved was in regular use as contrary to casual or infrequent use made necessary by the conditions enumerated in the policy. That being true the exclusionary clause is made effective and should here be applied."); Christian, 962 P.2d at 312 (finding that a "non-owned car" provision that excluded from coverage a car "furnished or available for . . . regular or frequent use" was valid, though provision was not challenged on this basis). Although the Colorado cases focus on "regular use," as explained above, this is due to the fact that the policies at issue limited liability using this benchmark. A time limitation is equally valid.

With regards to the reasonable expectations of laypersons, the Colorado Court of Appeals has stated, "The test of the meaning of a word or phrase under the reasonable expectations doctrine is what an ordinary layperson would have understood it to mean. Resort to the doctrine may be appropriate in unique circumstances or circumstances of extreme unconscionability . . . . However, the doctrine supplements, but does not substitute for the ordinary rule that insurance policies are contracts and therefore generally are to be construed according to well-settled principles of contract construction." Shelter Mut. Ins. Co. v. Breit, 908 P.2d 1149, 1152 (Colo. App. 1995) (citation omitted). Here, the circumstances are neither unique nor unconscionable. Yet even applying the doctrine, because the language of the "non-owned car" provision at issue is clear, the plain meaning of the provision must govern, and it clearly precludes coverage for Morris's rental car.

of use due to its: a. breakdown; b. repair; c. servicing; d. damage; or e. theft . . . ." Policy at 5. State Farm argues that the rental car does not qualify as a "temporary substitute car" because it was not used to replace the 2009 Subaru Outback listed on the Policy's declarations page. Pl.'s Mot. at 17. State Farm points out that the named insureds' address is in Colorado; that Morris listed on his rental agreement a home/business address in California, and that he alternatively resides in Colorado; and that the car was rented in Hawaii. Id. at 15-16. Thus, State Farm argues, "the rental car in this case was simply a conventional short-term rental by someone who did not have a vehicle of his own in the area and was not meant to replace the Subaru because it was unable to be used." Id. at 17.

Bucknell makes no argument with regards to the "temporary substitute car" provision, and there is nothing in the record indicating that the rental car was meant to temporarily replace the 2009 Subaru Outback. The Court therefore FINDS that the rental car does not qualify as a "temporary substitute car," and that Morris is not entitled to coverage under this provision.

In sum, the Court FINDS as a matter of law that neither the "non-owned car" provision nor the "temporary substitute car" provision afford coverage to Morris under the

Policy. Furthermore, the Policy does not conflict with Hawaii law, is not contrary to public policy, and comports with the reasonable expectations of laypersons. The Court therefore GRANTS State Farm's Motion for Summary Judgment against Bucknell, and DENIES Bucknell's Counter Motion for Summary Judgment on his Counterclaim.

CONCLUSION

For the foregoing reasons, the Court GRANTS State Farm's Motion for Default Judgment or, in the Alternative, for Summary Judgment Against Defendant Iain Morris, and Summary Judgment Against Intervenor-Defendant Lawrence Scott Bucknell, and DENIES Bucknell's Counter Motion for Summary Judgment on Counterclaim. In so doing, the Court finds as a matter of law that State Farm has no duty to defend or indemnify Morris for claims asserted against him in the underlying lawsuit.

IT IS SO ORDERED.

DATED: Honolulu, Hawai'i, July 19, 2016.

Alan C. Kay
Sr. United States District Judge