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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Jeff D. Myers,

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No. CV-12-0843-PHX-DKD

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Plaintiff,

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v.

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ORDER

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U.S. Post Office,

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Defendant.

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The Court issues this revised Order to correct the erroneously filing of a draft order on January 24, 2013. Currently pending before the Court is Defendant U.S. Post Office’s (the Postal Service) Motion to Dismiss under Rule 12(b)(1) and (b)(6), Federal Rules of Civil Procedure (Doc. 4). The U.S. Post Office argues that Plaintiff’s claims are expressly prohibited by the postal matter exception to the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2680(b). Plaintiff objects to the Postal Service’s Motion to Dismiss, alleging that he brought an insurance contract claim, not a tort claim, and that the exceptions to the FTCA only apply to tort claims.

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For the reasons stated below, the Court **GRANTS** the Postal Service’s Motion to Dismiss all tort claims arising out of Plaintiff’s Complaint. The parties have consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c).

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BACKGROUND

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Myers alleges that the Postal Service is liable for damage which allegedly occurred when he shipped fully-insured packages containing “antique monkeys...to New England Auction Company to sell at auction and then we decided not to sell them at auction and they were

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1 shipped back to me [Plaintiff]” (Doc. 1-1 at 4). Myers asserts that all items were fully insured
2 and that he “want[s] to be paid for the insurance on the items.” *Id.* The Postal Service argues
3 that this Court does not have jurisdiction over a claim that the Postal Service damaged a
4 package in delivery, because the United States has not waived sovereign immunity for the loss,
5 miscarriage or negligent transmission of mail, as alleged in Myers’ complaint. The Postal
6 Service argues that such claims are prohibited by the postal matter exception to the FTCA.

7 DISCUSSION

8 Rule 12(b)(1) requires dismissal when the plaintiff’s complaint “lack[s] subject matter
9 jurisdiction.” Fed. R. Civ. P. 12(b)(1). “It is a fundamental principle of sovereign immunity
10 that federal courts do not have jurisdiction over suits against the United States unless Congress,
11 via a statute, expressly and unequivocally waives the United States’ immunity to suit.” *United*
12 *States v. Bein*, 214 F.3d 408, 412 (3rd Cir. 2000). “[W]hen the Government does consent to be
13 sued, ‘the terms of (the) waiver of sovereign immunity define the extent of the court’s
14 jurisdiction.’” *Id.* (quoting *United States v. Mottaz*, 476 U.S. 834, 841, (1986)). “[W]aivers of
15 the Government’s sovereign immunity, to be effective, must be ‘unequivocally expressed,’ and
16 any such waiver must be construed strictly in favor of the sovereign.” *United States v. Bein*,
17 214 F.3d at 412 quoting *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33-34 (1992)). The
18 FTCA provides that a suit against the United States shall be the exclusive remedy for persons
19 with claims for damages resulting from the negligent acts or omission of federal employees
20 acting within the scope of their office or employment. 28 U.S.C. § 2679(b)(1). There is,
21 however, an exception to the FTCA’s waiver of sovereign immunity: the waiver shall not apply
22 to “any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal
23 matters.” 28 U.S.C. § 2680(b).

24 Myers argues that his claim is an insurance contract claim, not a tort claim, and therefore
25 the claim is not prohibited by the postal matter exception to the FTCA. Although the remedy
26 Myers seeks is the payment of an insurance claim, his claim arises out of the “loss, miscarriage,
27 or negligent transmission of letters or postal matters.” Additionally, in the most recent Supreme
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IT IS FURTHER ORDERED granting the Postal Service's Motion to Dismiss the contract claims without prejudice.

DATED this 28th day of January, 2013.



David K. Duncan
United States Magistrate Judge