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IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

GUAM INDUSTRIAL SERVICES, INC. dba
GUAM SHIPYARD; and MATTHEWS
POTHEN,

Plaintiffs,

vs.

ZURICH AMERICAN INSURANCE
COMPANY, a corporation; and STARR
INDEMNITY & LIABILITY COMPANY, a
corporation,

Defendants.

ZURICH AMERICAN INSURANCE
COMPANY, a corporation; and STARR
INDEMNITY & LIABILITY COMPANY, a
corporation,,

Plaintiffs,

vs.

GUAM INDUSTRIAL SERVICES, INC. dba
GUAM SHIPYARD; MATTHEWS POTHEN;
THE UNITED STATES OF AMERICA, by
and through the Secretary of Transportation for
the Maritime Administration,

Defendants.

Civil Case No. 11-00014

ORDER

as consolidated with

Civil Case No. 11-00031

1
2 Before the court is Guam Industrial Services and Matthews Pothén's (hereinafter
3 "Plaintiffs") Motion to Strike Defendant Starr Indemnity and Liability Company's Answer and
4 For Default Judgment (*see* ECF No. 48) and the parties' Stipulation Re: (1) Motion to Strike
5 Starr's Answer, and (2) Leave for Plaintiffs to File a Third Amended Complaint (*see* ECF No.
6 82).
7

8 Pursuant to the stipulation, the Plaintiffs are limiting the relief sought by their motion
9 (ECF No. 48) to an order requiring Defendant Starr to post a surety bond pursuant to 22 G.C.A.
10 § 15207.¹ Defendant Starr disputes that it is obligated to post a surety bond and argues that
11 because (1) the insurance was procured through an authorized surplus line broker and (2) the
12 type of insurance procured is one of transportation and navigation (marine insurance policy), it
13 is exempted pursuant to 22 G.C.A. § 15204, from obtaining a certificate of authority as required
14 by 22 G.C.A. § 15101. 22 G.C.A. § 15204 provides the following:
15
16

17 The provisions of the *foregoing sections* do not apply to contracts
18 of reinsurance or to contracts of insurance covering risks of
19 transportation and navigation, or to contracts of insurance made
20 through authorized surplus line broker or agents, nor do they
21 apply to an insurer not authorized in this territory or its
22 representatives, in investigating, adjusting losses or otherwise
23 complying in this territory with the terms of its insurance
24 contracts made in a state wherein the insurer was authorized and
25 in which the property or risk was located or residing at time of the
26 execution of the contract.

25
26 ¹ 22 G.C.A. § 15207(a) provides in its entirety: "[b]efore any unauthorized insurer shall file or
27 cause to be filed any pleading in any action, suit or proceeding instituted against it, such
28 unauthorized insurer shall either (1) file with the clerk of the court in which such action, suit or
proceeding is pending a bond with good and sufficient sureties, to be approved by the court, in
an amount to be fixed by the court sufficient to secure the payment of any final judgment which
may be rendered in such action; or (2) procure a certificate of authority to transact the business
of insurance in this territory."

1 22 G.C.A. § 15204 (emphasis added). The question becomes what constitutes “foregoing
2 sections” as stated in 22 G.C.A. § 15204, and whether this includes 22 G.C.A. § 15101.
3
4 Applying the canon of statutory construction,² the court finds that the “foregoing sections” in 22
5 G.C.A. § 15204 applies only to the foregoing sections contained in Article 2 of Chapter 15 of
6 Division 2 of Title 22 of the Guam Code Annotated, in that “any person, corporation,
7 association or partnership” is exempted from the limitations set forth in Article 2 (to aid,
8 negotiate or act as an agent to an unauthorized insurer) provided that the insurance contract
9 covers risks of transportation and navigation, or that the insurance is obtained through an
10 authorized surplus line broker or agent. 22 G.C.A. § 15801 allows an authorized surplus agent
11 or broker to act as an agent for an unlicensed insurer. Without 22 G.C.A. § 15204 making an
12 exemption to licensed surplus line brokers, the brokers or agents would run into a problem of
13 noncompliance with 22 G.C.A. §§ 15201 through 15203, which are the “foregoing sections” of
14 22 G.C.A. § 15204 within Article 2. This is further supported by the fact that 22 G.C.A. § 15208
15 imposes a penalty to “any person, corporation, association or partnership” in violation of the
16 sections contained in Article 2. Applying 22 G.C.A. § 15204 alongside 22 G.C.A. § 15208, “any
17 person, corporation, association or partnership” that is exempted by 22 G.C.A. § 15204 would
18 not be penalized pursuant to 22 G.C.A. § 15208.
19
20

21 Moreover, it would be a stretch to interpret “foregoing sections” in 22 G.C.A. § 15204 to
22 include sections outside of Article 2, as that would encompass more than just Article 1 of
23 Chapter 15 of Division 2 of Title 22 of the Guam Code Annotated, because insurance law is
24 governed by the entire Division 2 of Title 22 of the Guam Code Annotated.
25
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28 ² See *United States v. Maciel-Alcala*, 612 F.3d 1092, 1098 (9th Cir. 2010) (Statutory provisions are not examined in isolation but rather the words in a statute are read in their context and with a view to their place in the overall statutory scheme (citations omitted)).

1 Finally, Guam's insurance law states that insurers doing business in Guam through an
2 authorized surplus line broker or agent are unlicensed insurers who "may be sued upon any
3 cause of action arising under any policy of insurance so issued and delivered by it." *See* 22
4 G.C.A. § 15806. Reading this alongside 22 G.C.A. § 15207, such unlicensed insurers must
5 obtain a certificate of authority or post a bond to defend such suit. 22 G.C.A. § 15207 is very
6 clear in that it does not contain any exemptions. It should also be noted that 22 G.C.A. § 15204
7 is before 22 G.C.A. § 15207, which does not fall as one of the "foregoing sections" in Article 2.
8

9
10 Accordingly, the court hereby **GRANTS** the stipulation and **ORDERS** the following:

- 11 1. Plaintiffs are granted leave to file a Third Amended Complaint within fourteen (14) days
12 of this court order.
- 13 2. Pursuant to 22 G.C.A. § 15207, Defendant Starr shall post a surety bond in the amount
14 of \$3,706,911.00 within thirty (30) days of this court order.
- 15 3. Nothing in the parties' stipulation or in this court order shall prevent the Plaintiffs from
16 filing the same Motion to Strike or a similar motion, in the event Defendant Starr fails to
17 post a surety bond pursuant to 22 G.C.A. § 15207.

18
19 In light of the parties' stipulation, the hearing date scheduled for August 22, 2012 to
20 hear the Plaintiffs' Motion to Strike and for Default Judgment is hereby vacated.
21

22 **SO ORDERED.**
23
24



25 /s/ Frances M. Tydingco-Gatewood
26 Chief Judge
27 Dated: Aug 02, 2012
28