

1 claims for breach of fiduciary duty and unfair insurance settlement practices are barred as a matter of law.
2 Plaintiffs counter that these causes of action will lie and that, in any case, Defendant is barred from bringing
3 the motion because it asks only for partial summary judgment.

4 **I. Motions for Partial Summary Judgment are Allowed**

5 In opposition to the instant motion, Plaintiffs claims that motions for partial summary judgment have
6 been barred in this jurisdiction by the actions of the Commonwealth Supreme Court in *Bank of Saipan v.*
7 *Superior Court (Carlsmith)*, 2001 MP 7. In that case, a party had filed a “Motion for Partial Summary
8 Judgment” under Rule 56(d) on a non-dispositive question of fact. *Id* at ¶ 8. The trial court granted the
9 motion, deeming a party’s previous statement a binding admission. *Id* at ¶ 10.² The Supreme Court
10 reversed the trial court, following the majority of jurisdictions in finding that Rule 56(d) does not permit “an
11 independent motion to obtain summary judgment on part of a claim.” *Id* at ¶ 20. Indeed, the Supreme
12 Court held that Rule 56(d) existed primarily to “save the serviceable fruits of a court’s denial of a
13 procedurally accurate, but ultimately unsuccessful motion for summary judgment.” *Id*. Plaintiffs argue that
14 the instant motion is barred because it too is a motion for partial summary judgment and is not dispositive
15 of all the issues in the case. A careful examination of the case reveals that Plaintiffs are in error.

16 The *Bank of Saipan* Court did not bar all motions styled as motions for partial summary judgment.
17 Nor did it bar a motion that would dispose of some, but not all, claims. It simply held that Rule 56(d) could
18 not be the grounds for a motion for summary judgment. *Id*. It then defined the class of barred motions to
19 include any that would dispose of only “part of a claim.” *Id*. A motion for summary judgment need not
20 be dispositive of all issues in the case, so long as it is dispositive of any claims at which it is directed. Any
21 other conclusion would lead to the perverse result that, for example, a plaintiff could preserve for trial
22 twelve claims that were clearly lacking in factual or legal basis simply by including one well-pleaded claim
23 in the complaint. It is precisely to prevent prosecution of such baseless claims that summary judgment
24 exists. In the instant matter, Defendant’s motion was not brought under Rule 56(d), but rather under Rule
25 56(b)-(c). Furthermore, Defendant’s motion does not seek to dispose of only “part of a claim,” but rather

27 ² Commonwealth Rule of Civil Procedure 56(d) allows a court deciding a motion for summary judgment to enter
28 a non-dispositive judgment on factual elements of a cause of action.

1 it seeks to dispose of two of the claims in their entirety. This is clearly proper, both under the rules and the
2 case law.

3 **II. A Private Right of Action Does Exist under the Unfair Settlement Practices Provisions**
4 **of the Commonwealth Insurance Code**

5 Plaintiffs' third cause of action alleges that Defendant has harmed Plaintiffs by dealing with them
6 in a manner that violates the unfair claim settlement practices section, 4 CMC § 7302(g)(1),³ of the
7 Commonwealth Insurance Act of 1983, 4 CMC §§ 7101, *et seq.* [hereinafter Commonwealth Insurance
8 Code]. In moving for summary judgment on this cause of action, Defendant argues that there is no private
9 right of action for violation of the unfair claim settlement practices section of the Commonwealth Insurance
10 Code. The statute itself is not entirely clear, but a careful examination of the statute using the rules of
11 statutory construction set forth by our Commonwealth Supreme Court reveals that a private right of action
12 does exist.

13 In deciding whether a private right of action exists under an ambiguous statute, a court must
14 consider three questions: “(1) Is the Plaintiff one of the class for whose benefit the statute was enacted?;
15 (2) Is there any indication of legislative intent, explicit or implicit, either to create such a remedy or deny
16 one?; (3) Is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for
17 Plaintiff?” *Castro v. Div. of Public Lands*, 1997 MP 29 ¶ 14, 5 N.M.I. 131, 143. Weighing the first
18 factor is very simple. The Plaintiffs, as consumers of insurance, are clearly within the scope of a law
19 designed to protect such consumers from unfair claim settlement practices.

20 The second factor, legislative intent to create a private right of action, is more complicated.

21 ³ The law prohibits insurers from doing any of the following, without just cause and as a general business
22 practice:

23 (A) Misrepresenting to claimants pertinent facts or policy provisions relating to coverages
at issue;

24 (B) Failing to acknowledge with reasonable promptness pertinent communications with
respect to claims arising under its policies;

25 (C) Failing to adopt and implement reasonable standards for the prompt investigation of
claims arising under its policies;

26 (D) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims
submitted in which liability has become reasonably clear; or

27 (E) Compelling policyholders to institute suits to recover amounts due under its policies by
offering substantially less than the amount ultimately recovered in suits brought by them.

28 4 CMC § 7302(g)(1)(A)-(E).

1 Because the Legislature did not state explicitly whether a private right of action would lie, the Court must
2 look to the statute for clues to its intent. The Commonwealth Insurance Code governs the insurance
3 business within the Commonwealth. The Commonwealth Insurance Code is administered and enforced
4 primarily by an Insurance Commissioner, who is empowered to issue administrative orders and to initiate
5 prosecutions to enforce such orders. 4 CMC §§ 7104-7108. It is clear that the Legislature intended the
6 Commissioner to have an important role in enforcing the Insurance Code. However, this role appears to
7 be largely discretionary. The Commissioner is not required to investigate particular consumer complaints
8 and does not have to bring any enforcement action, except in cases where any investigations that are
9 undertaken “cause [the Commissioner] to believe that any person has violated any penal provision of this
10 division or of any other laws relating to insurance.” 4 CMC § 7107(b). Furthermore, the Commissioner
11 is not empowered to seek recovery for injuries caused to individuals by illegal claim settlement practices.
12 Without a private right of action, such individuals would have no way to recover damages for injuries
13 resulting from such practices.

14 Furthermore, the Commonwealth Insurance Code does allow recovery for wrongfully denied
15 claims. Specifically, the policy holder may recover “the amount of the loss . . . together with all reasonable
16 attorney’s fees for prosecution and collection of the loss.” 4 CMC § 7505(h). Certainly, the amount of
17 attorney fees incurred by an insured would be increased if the insurer were engaging in unfair claim
18 settlement practices prohibited under 4 CMC § 7302(g)(1). Because policy-holders are allowed to
19 recover the extra attorney fees accrued due to the illegal behavior of the insurer, it would be odd if they
20 were prohibited from basing a claim for damages on such behavior. The permissive nature of the
21 administrative enforcement scheme and the right of private individuals to recover fees is clear evidence that
22 the Legislature intended that violations of 4 CMC § 7302(g)(1) should give rise to a private right of action.

23 Finally, the third *Castro* factor requires this Court to consider whether allowing a private right of
24 action is consistent with the underlying purposes of the legislation. The Court concludes that it is. The law
25 was clearly intended to protect consumers from predatory insurance practices. It was also clearly intended
26 to allow injured consumers to recover their costs if they must file a lawsuit to enforce their rights under a
27 contract of insurance. A private right of action deters insurers from engaging in illegal claim settlement
28

1 practices and it compensates the victims of such practices. A private right of action is therefore fully
2 consistent with the purposes of the statute. The Court must conclude that a private action will arise for
3 violations 4 CMC § 7302(g). Defendant's motion to dismiss Plaintiffs' third cause of action must be and
4 is DENIED.

5 **III. The Question of Whether a Fiduciary Duty Arises between Insured and Insured is Not**
6 **Properly before the Court.**

7 Plaintiffs' second cause of action alleges "[b]reach off [sic] Covenant of Good Faith and Fair
8 Dealing in Violation of Fiduciary Duties." In moving for summary judgment on this cause of action,
9 Defendant argues that the insurer is not a fiduciary of the insured and therefore owes the insured no
10 fiduciary duties. Plaintiffs counter by arguing that a fiduciary relationship does exist. Both sides cite case
11 law in other jurisdictions to support their arguments. The Court finds it unnecessary to consider these
12 arguments because the duty of good faith and fair dealing also arises under the insurance contract.
13 Defendant conceded as much during the motion hearing and Defendant has never disputed the validity of
14 the contract. The allegations contained in the cause of action are relevant to a claim for breach of
15 contractual duties and the Court is therefore reluctant to strike them simply because they are inelegantly
16 worded. Therefore, Defendant's motion to dismiss Plaintiffs' second cause of action is DENIED.

17 **CONCLUSION**

18 For the reasons stated above, Defendant's motion for partial summary judgment is DENIED.
19 SO ORDERED this 30th day of June 2003.

20 /s/ _____
21
22 JUAN T. LIZAMA, Associate Judge