

1 In her complaint, Plaintiff Tang alleges that in February of 2014 she was a passenger in a
2 vehicle driven by Mahesh Balakrishnan that was involved in a collision with another car. The car
3 Plaintiff Tang was riding in was being driven on Isa Drive when Defendant Peji drove out in front
4 of the vehicle causing the two cars to collide. Defendant Peji was driving a car owned by
5 Defendant Martinez and insured by Defendant Royal Crown.

6 After filing the complaint, the process servers hired by Plaintiff Tang attempted to serve a
7 copy of the complaint and summons on defendants but were unable to do so. Plaintiff Tang then
8 filed a Motion to Permit Direct Action Against the Insurer of the vehicle, Defendant Royal Crown.
9 On September 25, 2015, Plaintiff Tang filed a Summons for Defendant Royal Crown notifying
10 Defendant Royal Crown of its right to file an answer to Plaintiff Tang's First Amended Complaint
11 ("FAC") which was filed on September 16, 2015. The Court granted Plaintiff Tang's motion to
12 permit direct action on September 25, 2015.

13 Defendant Royal Crown filed the instant motion to dismiss on January 12, 2016, citing NMI
14 R. Civ. P. 12(b)(1) and 12(b)(6) as the basis for its motion. The basis for the motion argues that the
15 Court does not have subject matter jurisdiction because (1) there is no justiciable issue in this case
16 because Plaintiff Tang failed to submit her claim to Defendant Royal Crown prior to bringing suit
17 as required under the insurance policy; (2) Plaintiff Tang cannot pursue a claim against Defendant
18 Royal Crown prior to establishing liability of Defendant Avelino first; and (3) the insurance policy
19 does not cover unlicensed drivers¹. Moreover, Defendant Royal Crown asserts that dismissal is
20 proper for failure to state a claim because Plaintiff Tang's FAC fails to state a claim for punitive
21 damages.

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¹ Plaintiff Tang's complaint specifically states that the driver of the vehicle, Defendant Peji, did not have her license at the time of the accident. See FAC § 18.

1 At the March 2, 2016, hearing the issue of sending this matter to mediation was also
2 discussed and both parties agree to submit the matter to mediation. The Court will issue an order
3 submitting the case to mediation and setting forth the appropriate scheduling deadlines shortly.

4 **LEGAL STANDARD**

5 Dismissal for failure to state a claim is improper “unless it appears beyond a doubt that the
6 plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Sablan*
7 *v. Tenorio*, 4 N.M.I. 351, 355 (1996).

8 The NMI’s Direct Action statute provides:

9 On any policy of liability insurance the injured person or his or her heirs or
10 representatives shall have a right of direct action against the insurer within the terms
11 and limits of the policy, whether or not the policy of insurance sued upon was
12 written or delivered in the Commonwealth, and whether or not the policy contains a
13 provision forbidding the direct action; provided, that the cause of action arose in the
14 Commonwealth and it has been determined that the insured cannot be personally
15 served the summons and complaint and if by affidavit or otherwise the court is
16 satisfied that with reasonable diligence, the defendant cannot be served. The action
may be brought against the insurer alone, or against both the insured and insurer
only if it has been determined that the insured cannot be personally served the
summons and complaint and if by affidavit or otherwise the court is satisfied that
with reasonable diligence, the defendant cannot be served, and that a cause of action
arises against the party upon whom service is made, or he is a necessary and proper
party to the action, the court may order that the insurer may be named in a direct
action lawsuit.

17 4 CMC § 7502(e) (emphasis added).

18 **DISCUSSION**

19 Defendant Royal Crown asserts various arguments to support its motion to dismiss pursuant
20 to 12(b)(1) and 12(b)(6), each of the arguments are discussed separately below.

21 **A. CONDITION PRECEDENTS**

22 First, Defendant Royal Crown offers two condition precedents that it argues must occur
23 prior to Plaintiff Tang bringing this direct action. First, Plaintiff Tang must first file a claim for
24 compensation with Defendant Royal Crown and be denied; and second, Plaintiff Tang must first

1 establish that Defendant Martinez was liable for the car accident. Defendant Royal Crown argues
2 that without the occurrence of these condition precedents, Plaintiff Tang’s claims must be dismissed
3 for lack of subject matter jurisdiction.

4 **i. Presentment of Claim**

5 Defendant Royal Crown first argues that there is no justiciable controversy between Plaintiff
6 Tang and itself because Plaintiff Tang has not yet submitted a claim for compensation arising from
7 the car accident to Defendant Royal Crown as required by the insurance policy. In contrast,
8 Plaintiff Tang asserts that she does not need to first present the claim to Defendant Royal Crown
9 because the CNMI’s Direct Action statute allows for a direct action against an insurer. 4 CMC §
10 7502(e).

11 To support this assertion, Plaintiff Tang cites to the NMI Supreme Court decision in *Bank of*
12 *Saipan v. Superior Court of the CNMI*. 2001 MP 5. In *Bank of Saipan*, the executor of an estate
13 brought suit against the executor’s prior legal counsel for legal malpractice. *Id.* ¶ 4. The defendant
14 attorney’s insurance company filed a motion to dismiss in the lower court, which was eventually
15 granted when the lower court determined that the arbitration provision in the insurance policy
16 divested the court of subject matter jurisdiction. *Id.* ¶ 6-7. The NMI Supreme Court eventually
17 overturned the lower court determining:

18 To give the Direct Action Statute force and effect, the phrase “whether or not the
19 policy contains a provision forbidding the direct action” must be read broadly and
20 supersede “terms and limits of the policy” where those terms have the effect, directly
or indirectly, of precluding direct action. Any other result would render the statute a
nullity since insurers would be free to word their way around the statute.

21 *Id.* ¶ 19.

22 Moreover, the NMI Court expressly held that “[t]he insurer cannot insert language in a
23 policy that would contravene the right of the injured party to bring a direct action as provided for in
24 the act.” *Id.* ¶ 23.

1 Here, it appears Defendant Royal Crown is arguing that Plaintiff Tang must first present her
2 claim to Defendant Royal Crown and ultimately be denied before a Direct Action can be brought.
3 However, the NMI Supreme Court's decision in *Bank of Saipan* is clear in that an insurer may not
4 try to circumvent the Direct Action statute through contractual language. With this in mind,
5 Defendant Royal Crown cannot include language in its insurance policy requiring that presentment
6 of the claim be done prior to an action being brought against Defendant Royal Crown. Therefore,
7 this argument is not persuasive.

8 **ii. Establishing Legal Liability of Insured**

9 Next, Defendant Royal Crown argues that Plaintiff Tang cannot bring a direct action prior to
10 the determination of liability of the insured, Defendant Martinez, being made. However, this
11 interpretation of the statute is in error. The CNMI Direct Action statute allows for a Direct Action
12 against an insurer after the court has determined that the defendant cannot be served a copy of the
13 summons and the complaint. 7 CMC ¶ 7502(e).

14 In this case, the Court has already determined on September 25, 2015, that a Direct Action
15 against Defendant Royal Crown was proper because Plaintiff Tang was unable to serve both
16 Defendant Peji and Defendant Martinez. Moreover, there is nothing in the statute that requires
17 liability to be first proven before a Direct Action adding an insurer to the lawsuit is allowed. For
18 this reason, the liability of the insured does not need to be proven prior to bringing a Direct Action
19 against an insurer.

20 **B. NO-LICENSE EXCLUSION IN POLICY COVERAGE**

21 Defendant Royal Crown also argues that dismissal is appropriate because the insurance
22 policy does not provide for coverage of non-licensed drivers, as is the case with Defendant Peji.
23 Plaintiff Tang argues that this issue is better suited for a summary judgment motion because it does
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1 not fall within either subject matter jurisdiction or failure to state a claim, but rather, is an
2 affirmative defense.

3 Rule 12(b)(6) examines the threshold issue of whether a plaintiff is entitled to present
4 evidence by allowing a defendant to challenge the contents of a complaint. *In re Estate of Roberto*,
5 2002 MP 23 ¶ 12 (citing *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)). A motion to dismiss
6 confines analysis to the allegations and implications contained on the face of the complaint. *Id.*
7 For this reason, 12(b)(6) is “a poor vehicle for a defendant relying on an affirmative defense. *Id.* fn.
8 7. This is because dismissal for failure to state a claim is improper unless “it appears beyond a
9 reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would
10 entitle him to relief.” *Sablan v. Tenorio*, 4 N.M.I. 351, 355 (1996).

11 Moreover, “[l]ike a motion to dismiss, a motion for summary judgment also tests whether a
12 case should move forward toward trial. However, the latter takes one additional step, assessing the
13 existence of genuine disputes of material fact and movant’s entitlement to judgment “as a matter of
14 law.” *Roberto*, 2002 MP 23 ¶ 14 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986);
15 *Borja v. Goodman*, 1 N.M.I. 225, 231 (1990)).

16 Here, Defendant Royal Crown is raising the no-license argument as an affirmative defense;
17 therefore, the issue is better resolved as a motion for summary judgment and the Court will treat it
18 as such. For the foregoing reasons, Defendant Royal Crowns motion for summary judgment is
19 denied.

20 The NMI Supreme Court has already invalidated an insurance policy provision which
21 sought to limit the insurer’s liability for non-licensed drivers. *Villagomez v. Manibusan*, 2013 MP 6.
22 In *Villagomez*, the NMI Supreme Court upheld the trial court’s invalidation of a no-license
23 exclusion as applied to an innocent third party holding that such a provision contravenes public
24 policy. *Id.* ¶ 18. Therefore, under this precedent, the no-license provision in the insurance policy is

