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IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

7	NATIONAL PACIFIC INSURANCE, )	CIVIL ACTION NO. 94-748
8	INC., )	
	Plaintiff, )	DECISION AND ORDER
9	v. )	GRANTING DEFENDANTS'
10		MOTION TO DISMISS
11	PACIFIC BASIN INSURANCE, INC. )	
12	and JOSEPH C. REYES, )	
13	Defendants. )	

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This matter came before the Court on November 2, 1994, and was submitted on post-hearing memoranda. Defendants move to dismiss the complaint arguing that Plaintiff is an unauthorized insurer and as such is denied access to CNMI courts by 4 CMC § 7305(f) ("the Act").

**I. FACTS**

On January 16, 1987, National Pacific Insurance, Inc. ("NPI Guam"), a Guam corporation, and Defendant Pacific Basin Insurance, Inc. ("Pacific Basin"), a domestic corporation, entered into an agency agreement ("the agreement"). Defendant Reyes signed the agreement as President of Pacific Basin. Pursuant to the agreement Pacific Basin was to sell insurance on NPI Guam's

**FOR PUBLICATION**

1 behalf. In 1987, NPI Guam applied for and received certificates  
2 of registration as a domestic and as a foreign corporation in the  
3 CNMI. Later in 1987, NPI Guam applied for a Certificate of  
4 Authority to engage in the business of insurance in the CNMI and  
5 was denied because it had not been in the business of insurance  
6 for the requisite five years. Subsequently, NPI Saipan was  
7 created as a domestic corporation in the CNMI.

8  
9 **II. PROCEDURAL HISTORY**

10 On July 21, 1994, Plaintiff initiated this suit, claiming  
11 that Defendants breached the agency agreement by withholding and  
12 converting premiums due Plaintiff. Defendants responded by filing  
13 a Motion to Dismiss the Complaint on August 31, 1994. On October  
14 28, 1994, Plaintiff filed an amended complaint, which dropped the  
15 allegations against Reyes in his individual capacity, and a  
16 Memorandum of Points and Authorities in Opposition of the Motion  
17 to Dismiss. In addition, NPI Guam assigned its claims against  
18 Defendants to NPI Saipan. On November 21, 1994, Defendants filed  
19 a Motion in Further Support of the Motion to Dismiss. On November  
20 2, 1994, the Court heard the motion and ordered further briefing  
21 on the issue of the application of the Act.

22 Defendants contend that the complaint should be dismissed, as  
23 Plaintiff is an unauthorized insurer and is denied access to CNMI  
24 courts by the Act.

25 Plaintiff counters that the Act applies only to foreign  
26 insurers; Plaintiff, as a domestic insurer, is beyond its scope.  
27 Alternatively, Plaintiff contends that the Act only prevents  
28 unauthorized foreign insurers from maintaining actions against

1 their insureds. Further, Plaintiff claims that the agency  
2 agreement is enforceable pursuant to section 178 of the  
3 Restatement 2d of Contracts, governing contracts made in  
4 violation of a statute. Finally, Plaintiff argues that, even if  
5 the Act is applicable, it is entitled to restitution.

6  
7 **III. ISSUES**

8 1) Whether the Act is applicable where the plaintiff is a  
9 domestic insurer attempting to enforce a claim assigned to it by  
10 a foreign insurer.

11 2) Whether the Act prevents an unauthorized insurer from  
12 instituting a legal action in the CNMI against any defendant or  
13 only against an insured.

14 3) Whether the Restatement 2d of Contracts § 178 mandates  
15 the enforcement of an agency agreement entered into in violation  
16 of 4 CMC § 7395(b).

17 4) Whether a plaintiff precluded by the Act from initiating  
18 an action in the CNMI is entitled to restitution.

19  
20 **IV. ANALYSIS**

21 **A. PLAINTIFF'S STATUS AS A DOMESTIC CORPORATION**

22 The Commonwealth Insurer Act of 1983 ("Insurer Act") requires  
23 foreign insurers to obtain a certificate of authority from the  
24 insurance commissioner prior to engaging in the "transaction of  
25 business" in the Commonwealth. 4 CMC § 7301(a), et seq. A  
26 companion statute, the Unauthorized Insurer Act sets out penalties  
27 for insurers, and those who aid them, in the transaction of  
28 business in contravention of the Insurer Act. One form of penalty

1 is embodied in the Act, the provision at issue, which states in  
2 full:

3 (f) Institution of action by unauthorized  
4 insurer. No unauthorized insurer shall institute or  
5 file, or cause to be instituted or filed, any suit,  
6 action or proceeding in the Commonwealth, until the  
insurer has obtained a certificate of authority to  
transact insurance business in the Commonwealth.

7 It is conceded that NPI Guam is: i) a foreign insurer; ii)  
8 transacting business in the CNMI; iii) without a certificate of  
9 authority to do so. Defendants argue that NPI Guam should  
10 therefore be precluded by the Act from instituting an action in  
11 the CNMI. Further, pursuant to the laws of assignment, any  
12 assignee of NPI Guam's claims is subject to any defenses available  
13 against NPI Guam. *Weiner King Systems, Inc. v. Brooks*, 628  
14 F.Supp. 843, 846 (W.D.N.C.1986); Restatement 2d of Contracts §  
15 336. Plaintiff's claims derive solely from NPI Guam. Plaintiff  
16 was not a party to the agency agreement, and therefore, has no  
17 independent claim against Defendants. Plaintiff's interest  
18 derives solely from NPI Guam's assignment of claims. Thus, as  
19 Defendants points out, Plaintiff is effectively standing in the  
20 shoes of NPI Guam and is subject to the same defenses. *Weiner*  
21 *King Systems, supra.*; Restatement 2d of Contracts § 336.

22  
23 **B. THE CNMI UNAUTHORIZED INSURER ACT**

24 **1. insurer requirements and penalty provisions**

25 "Closed door statutes" preclude a corporation which fails to  
26 comply with licensing requirements from access to the local  
27 courts. Such statutes contain express provisions to the effect  
28 that foreign corporations which violate licensing provisions may

1 not maintain any suit or action at law or in equity in the courts  
2 of the state. *Hemphill v. Orloff*, 48 S.Ct. 577 (1928); 36 AMJUR  
3 2d § 282. Such statutes render the contracts of noncomplying  
4 corporations unenforceable in the courts of that state. *White*  
5 *Sewing Mach. Co. v Harris*, 96 N.E. 857 (Ill. 1911); 36 AMJUR 2D §  
6 282. The CNMI Act is such a closed door statute.<sup>1/</sup>

7 Plaintiff states that the case law pertaining to unauthorized  
8 insurer acts clearly indicate that the protection of the insured  
9 is the sole focus. *Seamans v. Christian Bros. Mill Co.*, 68 N.W.  
10 1065 (Minn. 1898)(suit by receiver of unlicensed insurance company  
11 to recover premiums due under insurance contract failed; contract  
12 held illegal and unenforceable); *Bothwell v. Buckbee, Mears Co.*,  
13 297 N.W. 724 (Minn. 1926)(same); *Ballentine v. Covington, supra*  
14 (unlicensed insurance agent's suit to recover premiums due under  
15 insurance contract failed; contract held illegal and  
16 unenforceable); *Swing v. Munson*, 43 A. 342 (Pa. 1899)(same);  
17 *Franklin Life Ins. Co. v. Ward*, 187 So. 462 (Ala. 1939)(defendant-  
18 insurer can not use fact that it is unlicensed as a defense  
19 against enforcement of insurance contract); *Hartford Fire Ins. Co.*  
20 *v. Galveston H. & S.A.R.Y.CO.*, 239 S.W. 919 (Tex. 1922)(payment of  
21 policy by foreign insurer to insured did not constitute "doing  
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23 <sup>1/</sup> Other licensing statutes are not accompanied by penalty  
24 provisions. The courts in these jurisdictions are split as to  
25 whether to enforce contracts entered into by noncomplying  
26 corporations. The majority hold that these contracts are illegal  
27 and therefore unenforceable. *Bothwell v. Buckbee, Mears Co.*, 48  
28 S.Ct. 124 (1927); *Ewell v. Daggs*, 2 S.Ct 408 (1883); *Cunningham v.*  
*Rockway Fast Motor Freight*, 11 A.2d 422 (N.J. 1940); *Ballentine v.*  
*Covington*, 96 SE 92 (S.C. 1896). In the case at bar, both parties  
have attempted to use this split to support their opposing  
positions on enforcement. However, these attempts ignores the  
fact that these cases are not on point, as they do not involve a  
penalty provision.

1 business" in the state so as to preclude suit by insurer for  
2 excess money paid by mistake). Plaintiff argues the Act is not  
3 intended to prohibit actions where the interest of the insured is  
4 not at stake.

5 Plaintiff relies heavily upon *Georgia Home v. Boykin*, 34 So.  
6 1012 (Ala. 1903). *Georgia Home* allowed an action brought by an  
7 unauthorized insurer against its agent to recover premiums. The  
8 defendant moved to dismiss the complaint, asserting that the  
9 plaintiff insurer could not recover due to its violation of the  
10 state licensing requirements. Said requirements provided that:  
11 "before any insurance company not organized under or by the laws  
12 of this state, shall transact any business of insurance, other  
13 than life or accident insurance in this state, through agents or  
14 otherwise, it shall pay into the treasury of the state, the sum of  
15 one hundred dollars," etc. *Georgia Home*, at 1017 (emphasis  
16 added). The court rejected argument, reasoning that the  
17 regulations violated were limited to dealings between insurers and  
18 their insureds.

19 The Court rejects Plaintiff's analysis. The holding in  
20 *Georgia Home* is not persuasive here for two reasons. First, as  
21 Defendants state, it is based upon a statute which is  
22 significantly distinguishable from the Act. In *Georgia Home*, the  
23 statute bars only the unauthorized "transaction of the business of  
24 insurance." In contrast, the Act categorically bars the  
25 unauthorized "transaction of business".

26 Second, *Georgia Home* ignores the issue before us: the  
27 interpretation of a penalty provision. *Georgia Home* does not  
28 involve a penalty provision. Thus, it is not on point, despite

1 the much vaunted fact that the plaintiff was an unauthorized  
2 insurer and the defendant was its agent.

3 Likewise, the other authorities cited by Plaintiff are off  
4 point. Not one involves a closed door statute or other form of  
5 penalty provision. All rest upon licensing requirements without  
6 reference to enforcement statutes. *Bothwell v. Buckbee*, Mears  
7 Co., 297 N.W. 724 (Minn. 1926) (arguing contract unenforceable for  
8 violating law of foreign state where it was executed); *Seamans v.*  
9 *Christian Bros. Mill Co.*, 68 N.W. 1065 (Minn. 1898)(same);  
10 *Ballentine v. Covington*, 98 S.E. 92 (S.C. 1896)(arguing contract  
11 unenforceable based upon illegality under domestic laws); *Swing v.*  
12 *Munson*, 43 A. 342 (Pa. 1899)(same); *Franklin Life Ins. Co. v.*  
13 *Ward*, 187 So. 462 (Ala. 1939)(same); *Hartford Fire Ins. Co. v.*  
14 *Galveston H. & S.A.R.Y.CO.*, 239 S.W. 919 (Tex. 1922).

15 In contrast, cases cited by Defendants interpret licensing  
16 requirements for foreign corporations accompanied by closed door  
17 statutes mirroring the Act. These cases hold that such statutes  
18 obstruct suits against agents and other non-insureds. *National*  
19 *Bank of Price v. Parker*, 194 P. 661, 663 (Utah 1920)(enforcing  
20 statute denying right of noncomplying corporation to sue; *Thomas*  
21 *Mfg Co. v. Knapp*, 112 N.W. 989 (Minn. 1907) ((closed door provision  
22 precluded corporate plaintiff from recovering against its agent).  
23 Numerous additional cases are in line. *Wilson v. William*, 222 F.2d  
24 692, 697 (10th Cir. 1955); *King Copper Co. v. Dreher*, 191 P. 99  
25 (Col. 1920); *Bailey v. Parry Mfg. Co.*, 158 P. 583 (Okla. S.Ct.  
26 1916); *Billingslea Grain Co. v. Howell*, 205 S.W. 671 (Tx. 1918);  
27 *Goodner Krumm Co. v. J.L. Owens Mfg. Co.*, 152 P. 86, 87 (Okla.  
28 1915).

1 Penalty provisions accompanying licensing requirements for  
2 foreign corporation and for foreign insurers have analogous  
3 functions. They are designed to protect the public by deterring  
4 noncompliance. Hence, the Court finds the application of the Act  
5 to an entity other than an insured to be consistent with the  
6 intent of the Act.

7 Therefore, the Court concludes that the Act prevents the  
8 initiation or maintenance of any suit in the CNMI based upon the  
9 claims of an unauthorized insurer. <sup>2/</sup>

#### 11 C. RESTATEMENT 2D OF CONTRACTS

12 RESTATEMENT 2D OF CONTRACTS § 178 reads:

13 (1) A promise or other form of an agreement is  
14 unenforceable on grounds of public policy if  
15 legislation provides that it is unenforceable or the  
16 interest in its enforcement is clearly outweighed in  
17 the circumstances by a public policy against the  
18 enforcement of such terms.<sup>3/</sup>

19 <sup>2/</sup> The Court also rejects Plaintiffs proposed reliance on  
20 § 431-328 of the Hawaii Act. The Hawaii Act and the CNMI Act are  
21 materially dissimilar. The scope of the Hawaii Act's penalty is  
22 expressly limited to the avoidance, or rendering unenforceable, by  
23 insureds of insurance contracts. If the CNMI Legislature had  
24 intended such a result, they would have likewise included language  
25 of limitation, especially with the Hawaii model as a guide.  
26 However, as they did not it would be in direct contravention of  
27 the most basic rules of statutory construction to engraft  
28 limitations onto the plain meaning of the Act.

29 <sup>3/</sup> The Court assumes that when Plaintiff speaks of an  
30 agreement entered into in violation of a statute, it is referring  
31 to 4 CMC §§ 7395(b) and 7305(a) and (h), as well as 4 CMC §  
32 7305(f).

33 4 CMC § 7305 (a) and (h) read in full:

34 (a) Representing or placing insurance with  
35 unauthorized insurers prohibited. No person,  
36 corporation, association or partnership may act as agent for any  
37 insurer not authorized to transact business in the Commonwealth,  
38 or negotiate for, or place, or aid in placing insurance coverage  
in the Commonwealth for another with any such insurer.

(continued...)



1       RESTATEMENT 2D OF CONTRACTS § 178.

2             Plaintiff argues that pursuant to this section the agency  
3 agreement is enforceable. Seven CMC § 3401 directs the CNMI  
4 courts to apply the common law as expressed in the restatements,  
5 in the **absence of written law to the contrary.**

6             Plaintiff argues that the Restatement section must be applied  
7 as it does not conflict with any written law, and that in doing so  
8 it will be found that public policy weighs in favor of enforcement  
9 of the agreement.

10            The Court rejects this view. It is not presented with an  
11 ambiguous law or an absence of written law in this area, which  
12 would invoke the Restatement. Four CMC § 7305(f) on its face  
13 prevents unauthorized insurers from instigating any court action.  
14 This prohibition obviously includes action to enforce contracts.  
15 Thus, while the Act does not render contracts voidable or void ab  
16 initio, it effectively renders them unenforceable. Hence, it is

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19             \_\_\_\_\_  
              <sup>3/</sup>(...continued)

20             (h) Penalty. Any person, corporation, association or  
21 partnership violating any of the provisions of this section may be  
22 found guilty of a misdemeanor and shall, upon conviction, be  
subject to a fine of not less than \$1,000 nor more than \$2,000, or  
imprisonment of not more than six months, or both such fine and  
imprisonment.

23             Note, that, under 4 CMC § 7301(b)(1)(D), to qualify to hold  
24 a certificate of authority an insurer must "[h]ave appointed a  
25 general agent who is qualified according to the standards set  
26 forth in § 7303(a);" The court points this out to explain what  
27 may appear to be a inconsistency. On the one hand, establishing  
28 an agent is a prerequisite to obtaining authorization to transact  
insurance business; on the other hand, acting as an agent of an  
unauthorized insurer is illegal. Nevertheless, these provisions,  
when read together, simply mean that, in order to apply for a  
certificate of authorization, an insurer must appoint an agent,  
however, that agent may not commence acting as his agent until the  
insurer receives authorization.

1 in direct contravention with the Restatement provision proffered  
2 by Plaintiff.

3  
4 **D. EQUITABLE RELIEF**

5 The equities of a claim must be evaluated in order to determine  
6 whether denying relief would result in unjust enrichment. *Taimano*  
7 *v. Young*, 2 CR 285 (D.N.M.I. App. 1985). This can not be done  
8 without examining the merits of a case. Thus, this Court can not  
9 address the issue of restitution without vitiating the closed door  
10 statute. The Court refuses to do so, even if such a refusal could  
11 result in a hardship. Closed door statutes are punitive. They  
12 are intended to act as painful deterrents to the unauthorized  
13 practice of business. The Act was established to further the  
14 public good by penalizing noncomplying insurers. The penalty lies  
15 in the insurer's inability to seek redress in the CNMI for its  
16 grievances. It is implicit in such statutes that private wrongs  
17 may have to be left unsatisfied for the greater good of the public  
18 as a whole. Even jurisdictions whose licensing and registering  
19 laws are not accompanied by penalty provisions, often refuse to  
20 enforce contracts on behalf of noncomplying corporations against  
21 their agents in light of the public good, stating that: "it would  
22 be to make the public policy of the state subsidiary to the  
23 propriety and policy of the rule of public law which forbids an  
24 agent to question the right of his principal to money collected by  
25 him for the principal. Such a rule ignores the broad and  
26 controlling rights of the public." *Cunningham v. Brockway Fast*  
27 *Motor Freight, Inc.*, 11 A.2d 422, 427 (N.J. 1940).

1           Moreover, it is well established that the "clean hands"  
2 doctrine applies to restitution cases. *Kaiser v. Thompson*, 232  
3 P.2d 142; 65 AMJUR § 9. Consequently, even if the merits of this  
4 case were inspected, it is highly probable that NPI Guam's  
5 transgression of the Commonwealth Insurer Act would impede the  
6 granting of restitution. As opined by the *Kaiser* court, "a person  
7 can not maintain an action if, in order to establish his cause of  
8 action, he must rely in whole or on part on an illegal or immoral  
9 act or transaction to which he is a party, or where he must base  
10 his cause of action, in whole or on part, on a violation by  
11 himself on the criminal or penal laws."

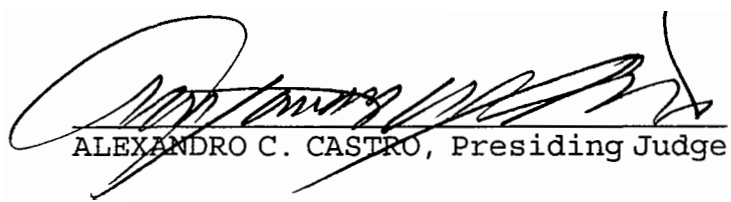
12           Therefore, the Court denies Plaintiff's request for  
13 restitution.

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V. CONCLUSION

For the foregoing reasons, the Defendants' motion to dismiss  
the complaint is GRANTED.

So ORDERED this 14<sup>th</sup> day of March, 1995.

  
ALEXANDRO C. CASTRO, Presiding Judge