IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

CENTURY INSURANCE COMPANY, LTD.,
Plaintiff-Appellee,

v.

HONG KONG ENTERTAINMENT (OVERSEAS) INVESTMENTS, LTD. DOING BUSINESS AS TINIAN DYNASTY HOTEL & CASINO, WAGON XY XIONG, WEI JIN AN, WEI HONG FOR HERSELF AND HER MINOR CHILD WEI YONG TAO AND SHUN LI,
Defendants-Appellants.

SUPREME COURT NO. CV-06-0002-GA
SUPERIOR COURT NO. 05-0061

Cite as: 2009 MP 4

Decided May 12, 2009

G. Anthony Long, Esq., Saipan, Northern Mariana Islands, for Defendant-Appellant
John D. Osborn, Esq. (briefed and argued) and Sean F. Frink, Esq., Saipan, Northern Mariana Islands, for Plaintiff-Appellee
BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; JOHN A. MANGLONA, Associate Justice

MANGLONA, J.:

¶ 1 Hong Kong Entertainment (Overseas) Investments[1] ("Tinian Dynasty") appeals the trial court's[2] grant of summary judgment on the grounds that the trial court erred in finding that Century Insurance Corporation ("Century Insurance") was under no duty to defend Tinian Dynasty against claims filed in a federal lawsuit or to pay damages in relation thereto. For the reasons set forth below, we AFFIRM the trial court's decision.

I

¶ 2 In April 2004, Century Insurance issued a public liability insurance policy and an umbrella policy to Tinian Dynasty. In September 2004, Wagon Xy Xiong, Wei Jin An, Wei Hong for herself and her minor child Wei Yong Tao, and Shun Li (collectively "the Wagon litigants") filed a lawsuit in the United States District Court for the Northern Mariana Islands (the "district court suit") against Tinian Dynasty seeking damages and other relief stemming from a series of alleged events during a trip to Tinian Dynasty.[3] Wei Jin An is Wagon's brother, Wei Hong is Wei Jin An's wife, Wei Yong Tao is her child, and Shun Li is Wagon's nephew.

¶ 3 In their complaint before the district court, the Wagon litigants, who are residents of the People's Republic of China ("PRC"), claimed they traveled to Tinian Dynasty to take a vacation in July 2004. Wei Hong purchased for herself, Wei Yong Tao, and Shun Li a tour package to Tinian Dynasty for $10,000 per person in the PRC. Wei Hong, Wei Yong Tao, and Shun Li flew to Saipan and then traveled by ferry to Tinian. Wagon and Wei Jin An met them on Saipan and accompanied them on the ferry. They were joined on the flight and ferry by Tommy Coelho ("Coelho"), a Tinian Dynasty employee.

¶ 4 Once the Wagon litigants arrived at Tinian Dynasty and checked into their rooms, they alleged that Wei Hong was entitled to $30,000 in gambling chips for the payments to Tinian Dynasty in the PRC.[4] At Wei Hong's direction, Wagon was given $30,000 worth of chips. However, the funds were given as "special chips . . . [that] differed in appearance from regular

---

[1] Hong Kong Entertainment (Overseas) Investments, Ltd., is doing business as Tinian Dynasty Hotel and Casino on the island of Tinian.

[2] All references to the trial court in this opinion refer to the Commonwealth Superior Court. All references to the district court refer to the United States District Court for the Northern Mariana Islands.

[3] For purposes of this opinion, we use the facts alleged by the Wagon litigants in the district court suit.

[4] The Wagon litigants also claim that they were required to pay "an extra fee per $1,000.00 in order to permit the transfer of money from the PRC to the Tinian Dynasty." Appellant's Excerpts of Record ("ER") at 60.

Tinian Dynasty house chips." Appellant's Excerpts of Record ("ER") at 60. After playing blackjack, Wagon possessed $22,000 worth of regular chips, and "paid $1,694.00 in special chips to Tinian Dynasty . . . for airfare, food and lodging and miscellaneous costs for the package tours from PRC to Tinian Dynasty."[5] *Id.* When Wagon and his brother sought to redeem the chips, they were told they could not do so. They went to see the manager on duty who informed them that they could not cash the chips without Coelho's permission. Coelho told Wagon and Wei Jin An that Tinian Dynasty would not redeem the chips and made various threats. Wagon called a friend who was a United States citizen to come to Tinian and help with the situation. Wagon and his family took the matter to the Tinian Police and agents of the Tinian Gaming Commission, but neither resolved the issue.

¶ 5 When Wagon and his family checked out of the Tinian Dynasty and went to the Tinian Airport, Coehlo, accompanied by another Tinian Dynasty employee, followed them and again threatened them. Coehlo insisted that Wagon stay on Tinian and continue to gamble with the chips. After Wagon flew back to Saipan, two vans followed him from the Saipan Airport to the the Commonwealth Ports Authority dock. The vans "hovered" around the area. ER at 62. Ultimately, the police spoke with one of the van drivers, who identified himself as a Tinian Dynasty employee. Wagon demanded in writing that Tinian Dynasty return the $22,000 in chips. Tinian Dynasty stated it would only pay for the chips in the PRC. Wagon and his family returned to China and told Tinian Dynasty they would be held responsible for any difficulty they experienced back in China. Tinian Dynasty later told Wagon by phone that it would give Wagon $30,000 for the $22,000 in chips if he brought the chips to Tinian Dynasty. Tinian Dynasty refused to confirm the offer despite being asked in writing three times to do so.

¶ 6 Following these events, the Wagon litigants filed the district court suit and claimed Tinian Dynasty intentionally inflicted emotional distress and invaded their privacy and seclusion. The Wagon litigants also filed claims for breach of the Consumer Protection Act, for money had and received under statute,[6] and conversion. Century Insurance defended Tinian Dynasty, but reserved the right to seek full reimbursement on the belief that neither policy covers these costs. Century Insurance also asserted that the insurance policies did not cover any potential judgments

---

[5] The complaint also alleges that "[t]he entire time that Wagon and his brother played blackjack, . . . Coelho stood by their side." ER at 60.

[6] A claim for "[m]oney had and received is based on money, or its equivalent, which in 'equity and good conscience' should be returned to the claimant and is often styled as money that should be returned 'where one is unjustly enriched at another's expense.'" *Jelmodi Holding, Inc. v. Raymond James Fin. Servs.*, 470 F.3d 14, 17 n.2 (1st Cir. 2006) (quoting *Rabinowitz v. People's Nat'l Bank*, 126 N.E. 289, 290 (Mass. 1920)).

against them in the district court suit. In October 2005, the district court lawsuit was dismissed by stipulation and the parties included a provision that each shall be responsible for their own fees and costs.

¶ 7 Thereafter, Century Insurance filed this matter in the trial court and, pursuant to 7 CMC § 2421 and Com. R. Civ. P. 57, asked the trial court to declare that: (1) neither the public liability policy nor the umbrella policy provides coverage for claims in the district court suit, (2) the policies do not provide coverage for any liability or obligation Tinian Dynasty might owe to the Wagon litigants in the district court suit, (3) the policies do not indemnify Tinian Dynasty against any verdicts against it from the district court suit, (4) Century Insurance must be reimbursed for the costs and fees of the district court suit, and (5) Century Insurance must be granted the costs of bringing this case in the trial court. Century Insurance moved for summary judgment and the trial court granted the same in December 2005. This appeal followed.

II

¶ 8 We first address the issue of jurisdiction. Tinian Dynasty contends that this Court lacks jurisdiction because: (1) the trial court has not resolved all the claims against all parties in this case, (2) the claims that have been resolved have not been certified as final pursuant to Rule 54(b) of the Commonwealth Rules of Civil Procedure, (3) the summary judgment order was not accompanied by a separate entry of judgment as required by *Commonwealth v. Kumagai*, 2006 MP 20.

¶ 9 The trial court's order reads in pertinent part:

> 1. Judgment [is granted] . . . that neither the Public Liability Policy . . . nor the Umbrella Policy . . . provide any insurance coverage to Dynasty in the District Court suit . . . .
> 2. [Century Insurance] has no obligation to defend Dynasty in the District Court suit . . . or to pay any judgment rendered therein, or to indemnify Dynasty against any sums for which Dynasty may be found liable in that suit, or tao [sic] pay any claims of any kind by reason of the incidents and events alleged in that suit.
> 3. [Century Insurance] . . . is entitled to recoup from Dynasty any defense costs incurred and fees paid in the District Court suit . . . subject to its valid reservation of rights.
> 4. [Century Insurance is entitled to] all reasonable costs of this suit.

Century Ins. Co. v. Hong Kong Entm't (Overseas) Invs., Ltd., Civ. No 05-0061 (NMI Super. Ct. Dec. 22, 2005) (Order Granting Plaintiff's Motion for Summary Judgment). The order makes no reference to Rule 54(b). However, the only parties with any stake in the litigation before the trial court were Century Insurance and Tinian Dynasty. The Wagon litigants are not engaged in this litigation as they only sued Tinian Dynasty in the district court. Century Insurance's complaint and Tinian Dynasty's answer do not mention any action taken by or against the Wagon litigants.

Accordingly, all issues before the trial court have been resolved against Tinian Dynasty and Century Insurance.

¶ 10 With all issues resolved before the trial court, Com. R. Civ. P. 54(b) no longer applies in this case. Com. R. Civ. P. 54(b) reads:

> When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express determination of the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Com. R. Civ. P. 54(b). Under this rule, if the trial court has not ruled on all claims, the trial court is required to certify the finality of a claim before that claim can be reviewed by this Court. "In the absence of express language, a lower court order is not appealable under Rule 54(b)." *Bank of Guam v. Mendiola*, 2007 MP 1 ¶ 6. However, as noted above, certification under Rule 54(b) is not necessary or applicable in this case as the trial court has ruled on all the claims at issue.

¶ 11 We now turn to the argument that we lack jurisdiction because of non-compliance with the separate document rule. In *Commonwealth v. Kumagai*, we made clear that "an appeal may only be taken from a judgment which is set forth on a separate document issued from the Superior Court." 2006 MP 20 ¶ 1. The basis of having such a rule is to promote "judicial economy and efficiency and so that parties and the courts are clear as to when a case is fully adjudicated below." *Id.* Therefore, "strict adherence to the separate document rule" will be enforced "*prospectively*." *Id.* ¶¶ 1, 23 (emphasis added).

¶ 12 Here, the notice of appeal was filed on January 23, 2006 and our decision in *Kumagai* was issued on September 1, 2006, approximately seven months later. It would therefore be unreasonable to apply the separate judgment rule enunciated in *Kumagai*. We therefore find that we have jurisdiction in this matter.

III

¶ 13 Tinian Dynasty next argues that the trial court improperly granted summary judgment on the grounds that both the umbrella and public liability policies required Century Insurance to

defend Tinian Dynasty against all claims filed by the Wagon litigants in the district court lawsuit.[7]

¶ 14 Summary judgment may be granted where "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Com. R. Civ. P. 56(c). In making a summary judgment determination, the trial court is required to consider "the evidence and inferences" most favorable to the party opposing the motion. *Estate of Mendiola*, 2 NMI 233, 240 (1991) (citation omitted). On appeal, this Court reviews the trial court's grant of summary judgment de novo. *Wabol v. Camacho*, 4 NMI 388, 389 (1996) (citing *Rios v. Marianas Pub. Land Corp.*, 3 NMI 512, 518 (1993)); *Sablan v. Tenorio*, 4 NMI 351, 355 (1996) (citing *King v. Board of Elections*, 2 NMI 398, 401 (1991)). In so doing, we "examine the evidence in the light most favorable to the non-moving party and affirm [the trial court] if 'there [i]s no genuine issue of material fact . . . and the trial court correctly applied the substantive law.'" *Wabol*, 4 NMI at 389 (quoting *Rios*, 3 NMI at 518).

¶ 15 "The . . . interpretation of language in an insurance policy involves a question of law." *Ito v. Macro Energy, Inc.*, 4 NMI 46, 54 (1993) (citation omitted); *see also Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 18 (1995) (citing *AIU Ins. Co. v. Superior Court*, 51 Cal. 3d. 807, 818 (1990)). Where a lawsuit creates a situation where an insurer may need to indemnify against a claim, there is a duty for the insurer to defend the insured against the claim. *Montrose Chem. Corp. of Cal. v. Can. Universal Ins. Co.*, 6 Cal. 4th 287, 295 (1993) (citation omitted). The duty to defend ends only when the action is resolved "or until it has been shown that there is *no* potential for coverage." *Id.* (citation omitted). Accordingly, if there is no possibility that the claims at issue are covered as a matter of law under the umbrella policy or the public liability policy, there is no duty for Century Insurance to defend Tinian Dynasty against the district court suit claims or to indemnify Tinian Dynasty. *See, e.g., Marie Y. v. Gen. Star Indem. Co.*, 110 Cal. App. 4th 928, 955-56 (2003); *Smith Kandal Real Estate v. Cont'l Cas. Co.*, 67 Cal. App. 4th 406, 414 (1998).

¶ 16 When determining if a duty to defend against a claim exists, the policy must be examined against the claims made in the complaint. *Montrose*, 6 Cal. 4th at 295. This comparison is known as the "eight-corners rule." *Am. Nat'l Gen. Ins. Co. v. Ryan*, 274 F.3d 319, 324 (5th Cir. 2001)) (citing *Nat'l Union Fire Ins. Co. v. Merchs. Fast Motor Lanes, Inc.*, 939 S.W.2d 139, 141 (Tex. 1997); *Am. Ins. Co. v. Bailey*, 133 F.3d 363, 369 (5th Cir. 1998)). Under "[t]he eight-corners rule, . . . '[r]esort to evidence outside the four corners of these two documents is generally

---

[7] Tinian Dynasty did not appeal the portion of the trial court's order requiring it to pay Century Insurance for the costs incurred in bringing this suit in the trial court.

prohibited.'" *Gore Design Completions, Ltd.*, 538 F.3d at 368 (quoting *GuideOne Elite Ins. Co. v. Fielder Rd. Baptist Church*, 197 S.W.3d 305, 307 (Tex. 2006)). When evaluating a claim under this rule, this Court assesses "whether the complaint, properly construed, alleges conduct covered by the policy." *St. Paul Fire & Marine Ins. Co. v. Compaq Computer Corp.*, 539 F.3d 809, 815 (8th Cir. 2008) (citing *GuideOne Elite Ins. Co.*, 197 S.W.3d at 308). The accuracy of the facts alleged in the claim is not taken into account in making this determination. *GuideOne Elite Ins. Co.*, 197 S.W.3d at 308 (citing *Argonaut Sw. Ins. Co. v. Maupin*, 500 S.W.2d 633, 635 (Tex. 1973); *Heyden Newport Chem. Corp. v. S. Gen. Ins. Co.*, 387 S.W.2d 22, 24 (Tex. 1965)). If there is no potential for coverage, there is no duty to defend or to indemnify.

Umbrella policy

¶ 17 We begin our analysis of the two policies by examining whether there is any potential for coverage under the umbrella policy. The relevant language of the umbrella policy states:

> Century Insurance . . . shall indemnify [Tinian Dynasty] for the Ultimate New Loss in excess of the Retained Limit which [Tinian Dynasty] shall become legally liable to pay compensation (excluding punitive or exemplary damages, fines and/or other penalties) by reason of liability arising out of:
>
> (a) Bodily Injury
> (b) Property Damage, or
> (c) Advertising Injury
>
> happening during the Period of Insurance within the Policy Territory and caused by an occurrence happening in connection with the Business of the Insured.

ER at 39. The umbrella policy defines an occurrence as:

> an event or series of events, including continuous or repeated exposure to conditions, which results in Personal Injury or Property Damage neither expected nor intended from the standpoint of the Insured. All such exposure to be substantially the same general conditions shall be deemed one occurrence. With respect to Advertising Injury, all damages involving the same injurious material or act, regardless or the frequency or repetition thereof, the number and kind of media used and the number of claimants[,] shall be deemed arising out of one occurrence.

Id. at 41.

¶ 18 Looking to the claims in the district court suit, the Wagon litigants argue in the intentional infliction of emotional distress claims that:

> Tinian Dynasty by and through Tommy Coelho and others did intend to cause shame, fear, embarrassment, humiliation, and anger to Wagon and his family members and to hold them unlawfully on Tinian, . . . Tinian Dynasty acted to protect its own financial interest at the expense of the Wagon Family and to avoid difficulty in its special arrangement with the CNMI for the issuance of CNMI visitor entry permits for PRC citizens. The Defendant's behavior was outrageous, without just cause, and in reckless and wanton disregard of the interests of the Wagon Family Plaintiffs.

Id. at 62-63. Regarding the invasion of privacy and seclusion claims, the Wagon litigants allege the following:

> With the authority of Tinian Dynasty, Tommy Coelho threatened the Wagon family, attempted to force them to use funds for gambling, attempted to confine them to Tinian against their will, and treated them as animals to be used for their money. . . . Tinian Dynasty invaded their seclusion and privacy and followed them to the Tinian Airport to harass them anew and then followed them on Saipan, again harassing and scaring them, . . . The Defendant's behavior was outrageous, without just cause, and in reckless and wanton disregard of the interest of the Wagon Family Plaintiffs.

Id. at 63-64.

¶ 19 In alleging intentional infliction of emotional distress and invasion of privacy and seclusion, the Wagon litigants claim that Tinian Dynasty behaved intentionally and/or recklessly in inflicting the alleged harms. Intentional conduct occurs when an "actor desires to cause consequences of his act, or that he believes that the consequences are substantially certain to result from it." Restatement (Second) of Torts § 8 A (1965). With respect to recklessness, the Restatement states that:

> [an] actor's conduct is in reckless disregard of the safety of another if he does an act or intentionally fails to do an act which it is his duty to the other to do, knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent.

Id. § 500. Furthermore, the Restatement directs that a claim for intentional infliction of emotional distress can only be made where actions were done intentionally or recklessly. *Id.* § 46. The Restatement specifically notes that such a claim can be made "where [an] actor desires to inflict severe emotional distress, and also where he knows that such distress is certain or substantially certain, to result from his conduct." *Id.* § 46 cmt. i. Similarly, the Restatement only provides for intentional conduct that impinges on the seclusion of another. Restatement (Second) of Torts § 652B (1977).[8]

¶ 20 The umbrella policy only covers "[a]n event or series of events, . . . which results in Personal Injury or Property Damage *neither expected nor intended* from the standpoint of the Insured." ER at 41 (emphasis added). Because the umbrella policy only covers unexpected and unintended events, there is no coverage for claims involving intentional or reckless conduct, such as those made by the Wagon litigants.

---

[8] The Restatement states that such intentional invasion "upon the solitude or seclusion of another . . . [creates] liability . . . for invasion of privacy, if the intrusion would be highly offensive to a reasonable person." Restatement (Second) of Torts § 652B (1977).

¶ 21 In addition, neither intentional infliction of emotional distress nor invasion of privacy and seclusion involves property damage or bodily injury, defined by the Restatement as "any physical impairment of the condition of another's body, or physical pain or illness." Restatement (Second) of Torts § 15 (1965). Furthermore, we note that insurance is based on the fortuity principle, which, as a general matter, "holds that 'insurance is not available for losses that the policyholder knows of, planned, intended, or is aware are substantially certain to occur.'" *Nat'l Union Fire Ins. Co. v. Stroh Cos.*, 265 F.3d 97, 106 (2d Cir. 2001) (quoting Barry R. Ostrager & Thomas R. Newman, *Handbook on Insurance Coverage Disputes* § 8.02, at 248 (5th ed. 1991) (collecting cases)).[9] The Wagon litigants allege events well within the control of Tinian Dynasty in both the intentional infliction of emotional distress and the invasion of privacy and seclusion claims described above. Thus, summary judgment was properly granted with respect to Century Insurance's coverage on these claims because there was no property damage involved and because they allege actions that Century could not have taken unintentionally.

¶ 22 The conversion, money had under statute, and Consumer Protection Act claims also do not involve bodily injury or property damage. The only potentially applicable portion of the umbrella policy to those claims is the advertising injury section. The umbrella policy defines advertising injury as:

> (a) libel, slander or defamation,
> (b) piracy, unfair competition, idea misappropriation under an implied contract,
> (c) infringement of copyright, title or slogan
> (d) invasion of right of privacy
> committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and arising out of any advertising activities conducted by or on behalf of the Insured in the course of the Business of the Insured.

ER at 40.

¶ 23 Under this language, there can be no question that the umbrella policy is only intended to cover claims stemming from advertising disputes. There is no allegation of any advertising issue within the conversion, money had under statute, and Consumer Protection Act claims filed by the Wagon litigants. ER at 64-65. We note that Tinian Dynasty argues that the Consumer Protection Act claim should be covered because the act "encompasses unfair competition and defines the term to mean 'an unlawful, unfair or fraudulent business practice and unfair, untrue or misleading advertising and any activity prohibited in 4 CMC § 5105.'" Appellant's Opening Br. at 13 (quoting 4 CMC § 5104(h)). However, this argument fails because the language of the policy

---

[9] We note that "[t]he application of the implied requirement of fortuity is 'universally recognized.'" *Univ. of Cincinnati v. Arkwright Mut. Ins. Co.*, 51 F.3d 1277, 1281 (6th Cir. 1995) (quoting *Adams-Arapahoe Joint Sch. Dist. No. 28-J v. Continental Ins. Co.*, 891 F.2d 772, 775 (10th Cir. 1989)).

specifically limits coverage to claims filed in an advertising context. The language of the policy is clear and does not cover any of the conversion, money had under statute, or Consumer Protection Act claims the Wagon litigants filed. Furthermore, these allegations also all go against the fortuity coverage principle because they were all within the control of Tinian Dynasty. Accordingly, there is no coverage under the umbrella policy for these claims, and summary judgment was properly granted on those claims as well.

Public liability policy

¶ 24 Having examined coverage under the umbrella policy, we now turn to the public liability policy. The public liability policy reads, in relevant part:

> The company will, in consideration of the payment of premium and subject to the Declaration, provision and stipulations herein, together with such other provisions, stipulations and agreements as may be added hereto, indemnify the Insured against all sums which the Insured shall become legally liable to pay in respect of:
> (a) Accidental bodily injury to any person,
> (b) Accidental loss of or accidental damage to property

ER at 16.

¶ 25 The Restatement notes that "[i]n popular usage the word 'accident' is frequently used to include an event which is caused by the negligence or other tortuous conduct of the actor." Restatement (Second) of Torts § 8 cmt. a (1965). In interpreting the term "accidental" in the present case, we are required to use its "plain and ordinary meaning against the background of a layman's understanding of the entire policy." *Ito*, 4 NMI at 68. Under the Commonwealth Code, "[a]n insurer is not liable for a loss caused by the willful act of the insured; but the insurer is not exonerated by the negligence of the insured or of the insured's agents or others." 4 CMC § 7505(b). Accordingly, the term "accidental" does not include intentional acts within the insurance context of the Commonwealth Code. This interpretation of accidental has also been used in other jurisdictions. *See Royal Globe Ins. Co. v. Whittaker*, 181 Cal. App. 3d 532, 537 (1986); *St. Paul Fire & Marine Ins. Co. v. Superior Court*, 161 Cal. App. 3d 1199, 1202 (1984). In addition, the fortuity principle again directs that actions such as these should not be covered because it also holds that insurance does not cover intentional acts. Therefore, after comparing the policy with the complaint, it is clear that neither the intentional infliction of emotional distress nor the invasion of privacy and seclusion claims are covered because the claims alleged willful acts that are not covered by the public liability policy. In addition, neither claim involves bodily injury or the loss of or damage to property, accidental or otherwise, which constitute the scope of the public liability policy's coverage. Accordingly, the trial court correctly granted summary

judgment declaring that there is no coverage under the public liability policy with regard to the intentional infliction of emotional distress and invasion of privacy and seclusion claims.

¶ 26 Finally, as we did for the umbrella policy, we consider whether the public liability policy provides coverage for the Consumer Protection Act, money had and received under statute, and conversion claims. As we noted previously, none of these claims involve bodily injury, and none involve the loss of or damage to property. Because the public liability policy only covers instances of bodily injury or the loss of or damage to property, we hold that the public liability policy does not provide coverage for these claims. Furthermore, the alleged events giving rise to these claims were not accidental, and are not covered by the public liability policy for that reason as well. Summary judgment was correctly granted by the trial court regarding these claims under the public liability policy.

IV

¶ 27 Because the trial court adjudicated all the claims below and because *Kumagai* was not in effect at the time this appeal was filed, we find that we have jurisdiction in this case. In addition, because neither the umbrella policy nor the public liability policy provides coverage for any of the claims alleged by the Wagon litigants in the district court suit, we hold that the trial court correctly granted summary judgment on all of Century Insurance's claims for declaratory judgment. Accordingly, the trial court's decision is AFFIRMED.

SO ORDERED this 12th day of MAY 2009.

Concurring:
Demapan, C.J., Castro, J.