IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GREAT AMERICAN INSURANCE COMPANY, Plaintiff, vs. DISCOVERY HARBOUR COMMUNITY ASSOCIATION, Defendants.	CIV. NO. 24-00095 SASP-WRP ORDER GRANTING PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

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Before the Court is Plaintiff Great American Insurance Company's ("Great American") 12(c) Motion for Judgment on the Pleadings ("Motion"), filed on September 6, 2024. [ECF No. 42.] As to Count I of the Complaint, Great American seeks a declaratory judgment that two underlying state court lawsuits filed against Defendant Discovery Harbour Community Association (the "Association") are related and therefore subject to a single policy limit under the insurance policy issued by Great American to the Association. The Association opposes the Motion, arguing that the two lawsuits are distinct and unrelated. The Motion came on for hearing on November 26, 2024. The Court, having reviewed the matter and for reasons to be discussed, finds that Great American's Motion should be granted.

I. BACKGROUND

This case concerns an insurance coverage dispute between Great American, an insurance company, and the Association, the policyholder. [ECF No. 1 at PageID.2.] The

operative pleading is the Complaint which asks for Declaratory Relief pursuant to 28 U.S.C. § 2201 against the Association, Evelyn Eklund, Candice Casper, Rollie Litteral, and Ellen Morrow (collectively, the "Insureds" or the "Defendants"). [ECF No. 1 at PageID.2.] Specifically, the Motion seeks an order entering judgment on the pleadings on the "single claim" issue against all Defendants stated in Count I of the Complaint.[1] [ECF No. 1 at PageID.28.]

In 2009, Great American issued a "claims made" Non-Profit Organization Executive Protection Insurance Policy ("the Policy") to the Association, which provides coverage only for claims initiated during the active policy period, regardless of the underlying incident's temporal origin. [*Id*.] The Policy, which provides liability coverage for the Association and its board, stipulates a maximum aggregate limit of liability of $1 million dollars for all losses resulting from all claims made during the policy period from December 8, 2009, through December 8, 2011. [ECF No. 26-1 at PageID.206,214,223 and ECF No. 1 at PageID.2,8.]

As a "claims made" policy, the insuring agreement states: "[i]f during the Policy Period…a Claim is first made against an Insured for a Wrongful Act, … the Insurer shall pay on their behalf Loss resulting from such Claim." [ECF No. 26-1 at PageID.222.] The Policy's related claims provision provides that two or more Claims involving the "same Wrongful Act or Related Wrongful Acts" shall be considered "a single Claim," which "shall be deemed to have been made on…the earliest date on which any such Claim was first made." [*Id*. at PageID.223.]

The two state court lawsuits at issue ("Two Lawsuits") were filed by South Point Investment Group, LLC ("SPIG") against the Association. [ECF No. 1 at PageID.3.] The first lawsuit (the "First SPIG Lawsuit") was filed on May 25, 2016, in the Circuit Court of the Third

[1] Regarding Counts II-IV, the parties, in a stipulation filed May 14, 2024, stayed litigation as to those counts. [ECF No. 32.]

Circuit, Hawai‘i, captioned *South Point Investment Group, LLC v. Discovery Harbour Community Association*, with Case No.: 16-1-0195. [ECF No.1 at PageID.13.] The second lawsuit (the "Second SPIG Lawsuit") was filed on February 18, 2018, in the same court, captioned *South Point Investment Group, LLC v. Discovery Harbour Community Association*, with Case No.: 18-1-052. [*Id*.]

In both cases, SPIG sued the Association, challenged its existence, and disputed the legitimacy of the Discovery Harbour governing documents, including the use of restrictions. Additionally, both lawsuits involve five parcels of land owned by SPIG within the Discovery Harbour Subdivision. [ECF No. 1 at PageID.3.] The 2016 lawsuit against the Association sought declaratory relief regarding acts prior to 2012, specifically its status as a homeowners' association, SPIG's membership obligations, and development rights.[2] The 2018 lawsuit against the Association and individual board members sought tort damages for alleged misrepresentations made to third parties between 2015 and 2017 that intended to diminish and interfere with SPIG's property and development rights.

Because both cases challenged the existence and legitimacy of the Association, the Two Lawsuits contain over 100 allegations incorporated into each cause of action, including at least a dozen identical allegations of wrongful acts, addressing the history and formation of the Association, the involved parcels of land, and the applicability of restrictive covenants to the SPIG property. Great American asks the Court to grant the Motion on the basis that the two underlying SPIG Lawsuits constitute "related" claims under the Policy. [ECF No. 42 at PageID.416.]

[2] In its filings, Great American represented that it would provide coverage–defense and potential indemnity–to the Association for the First SPIG Lawsuit, subject to a reservation of rights. [ECF No. 42-1 at PageID.423.]

II. STANDARD OF REVIEW

Rule 12(c) of the Federal Rules of Civil Procedure states, "After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." The standard governing a Rule 12(c) motion for judgment on the pleadings is "functionally identical" to that governing a Rule 12(b)(6) motion. *Webb v. Trader Joe's Co., 9*99 F.3d 1196, 1201 (9th Cir. 2021); *United States ex rel. Caffaso v. Gen. Dynamics C4 Sys., Inc*., 637 F.3d 1047, 1054 n.4 (9th Cir. 2011); *accord Pit River Tribe v. Bureau of Land Mgmt*., 793 F.3d 1147, 1155 (9th Cir. 2015) ("Analysis under Rule 12(c) is 'substantially identical' to analysis under Rule 12(b)(6) because, under both rules, a court must determine whether the facts alleged in the complaint, taken as true, entitle the plaintiff to a legal remedy"); *see Luzon v. Atlas Ins. Agency, Inc*., 284 F.Supp.2d 1261, 1262 (D. Haw. 2003) (The standard governing a Rule 12(c) motion for judgment on the pleadings is essentially the same as that governing a Rule 12(b)(6) motion).

When adjudicating a Rule 12(c) motion, the court accepts as true the allegations of the nonmoving party. *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989). Moreover, the court construes the factual allegations in a complaint in the light most favorable to the nonmoving party. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). Under Rule 12(c), "Judgment on the pleadings is properly granted when [, accepting all factual allegations in the complaint as true,] there is no issue of material fact in dispute, and the moving party is entitled to judgment as a matter of law." *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012) (quoting *Fleming*, 581 F.3d at 925). "A fact is 'material' when, under the governing substantive law, it could affect the outcome of the case. A 'genuine issue' of material fact arises if 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.' *Thrifty Oil Co. v. Bank of Am. Nat'l Trust & Sav. Ass'n,* 322 F.3d 1039, 1046 (9th Cir.

2003) (quoting *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)).

The Court need not accept conclusory allegations, unwarranted deductions of fact, or unreasonable inferences. *See Cholla Ready Mix, Inc. v. Civish,* 382 F.3d 969, 973 (9th Cir. 2004). "[C]onclusory allegations without more are insufficient to defeat a motion to dismiss for failure to state a claim." *McGlinchy v. Shell Chem. Co.,* 845 F.2d 802, 810 (9th Cir. 1988). Judgment on the pleadings is improper when the district court goes beyond the pleadings to resolve an issue; such a proceeding must properly be treated as a motion for summary judgment. Fed.R.Civ.P. 12(c). *See also Hal Roach Studios Inc. v. Richard Feiner & Co*., 896 F.2d at 1550; *Elvig v. Calvin Presbyterian Church,* 375 F.3d 951, 954-55 (9th Cir. 2004).

III. DISCUSSION

On September 6, 2024, Great American filed the present motion for judgment on the pleadings under Rule 12(c), arguing that the Two Lawsuits constitute a single claim under the policy's "related" claims provision, limiting coverage to $1 million. [ECF No. 1 at PageID.2.] Both lawsuits challenge whether SPIG's property is subject to the Association's restrictive covenants and allege the same wrongful acts by the Association that interfere with SPIG's property rights. Specifically, it contends that a comparative analysis of the SPIG Lawsuits reveals over 100 factual allegations that are either identical or substantially similar. [ECF No. 42 at PageID.416.] Great American seeks a judgment on the pleadings that declares the Two Lawsuits are made solely during the Policy and is therefore subject to the Policy's $1 million limited liability.

The Association argues unpersuasively that the Answer and Counterclaim present facts which, if taken as true, demonstrate that the claims arise from distinct factual

circumstances. [ECF No. 45 at PageID.470.] Such statements, devoid of external facts or details beyond the allegations in the Two Lawsuits are insufficient to defeat a Rule 12 motion. *See Eurosemillas, S.A. v. Uttarwar*, 854 Fed. Appx. 137, 139 (9th Cir. 2021) ("conclusory allegations…[are] not enough to survive a motion for judgment on the pleadings"). The Association's claim that the Two Lawsuits are unrelated amounts to nothing more than a conclusory allegation. The Association's sole reliance on denying the allegations in its Answer fails to provide any factual or evidentiary basis for its position. Moreover, its denial of the claims does not address the central issue of this Motion–whether there are over 100 identical allegations contained in both lawsuits. Critically, the Association does not argue that Great American misstates the similarities between the underlying lawsuits or dispute the Policy's language. As such, the Association's Answer and Counterclaim fail to create a genuine dispute warranting further consideration and do not justify denial of the Motion.

In the alternative, the Association's blanket denial[3] lacks precision, creating ambiguity about what they are contesting: the factual basis and veracity of the allegations, or merely their existence. This approach is inconsistent with the readily available evidence in the Two Lawsuits, which contain identical and substantively identical factual allegations.[4] Notably,

[3] The Association's denial in its Answer state that they "lack knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis deny them." [ECF No. 34 at PageID.333-334.]

[4] The Court conducted a side-by-side comparison of the Two Lawsuits' allegations and finds over 100 factual allegations to be identical or substantively identical. To illustrate the point in this opinion, the Court focuses on comparing paragraphs 4-6 of both lawsuits, though this analysis could be extended to all 104 paragraphs alleged to be identical or substantively identical:

2016 Complaint (Ex. A to Motion)	2018 Complaint (Ex. B to Motion)
¶4: HOA has interfered with SPIG's development and use of the Subject Properties by claiming the Subject Properties are members of the HOA.	¶4: HOA has interfered with SPIG's development and use of the Subject Properties by claiming the Subject Properties are members of the HOA.

in the Association's reply brief supporting consolidation of the Two Lawsuits,[5] it prepared a side-by-side table acknowledging their substantial overlap. [ECF No. 1-8.] The Association stated: "a comparison of SPIG's two Complaints, depicted in the Motion through a comparative table, which SPIG does not challenge, demonstrates that the relief sought by SPIG in the actions, while different, is predicated on identical and substantively identical factual allegations, over 100 in number, asserted in each Complaint." [*Id.* at PageID.112, n.1.] Given this prior admission, the Association's current stance–relying on its Answer and Counterclaim to deny the similarity between the lawsuits–not only appears disingenuous, but also contradicts its own previous assertions.[6]

Thus, for reasons further stated below, the Court is precluded from considering the Association's Answer and Counterclaim in its analysis. *See*, *e.g.*, *Git Sum Au v. Ass'n of Apt. Owners of the Royal Iolani*, 2014 WL 3895866 *4 (D. Haw. Aug. 7, 2014) ("the court need not accept as true allegations that contradict…the exhibits attached to the complaint) (citing *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)).

This Court finds Great American's arguments persuasive that the Two Lawsuits are "related" claims, and the same earlier policy applies to the two lawsuits. Consequently, the

¶5: HOA has opposed SPIG's development of the Subject Properties by claiming that the Commercial Lots are in fact residential lots.	¶5: HOA has opposed SPIG's development of the Subject Properties by claiming that the Commercial Lots are in fact residential lots.
¶6: HOA has claimed that the Golf Course Lots are both subject to restrictive covenants and membership in the HOA.	¶6: HOA has claimed that the Golf Course Lots are both subject to restrictive covenants and membership in the HOA.

[5] Given that the Association's position was stated in allegation number 5 of the Complaint and the Association's reply brief was attached as an exhibit to the Complaint, the Court may properly consider the Association's reply brief in this Rule 12(c) analysis.

[6] The Association is represented by the same counsel in this case.

insureds will have a single $1 million limit in total for the two lawsuits, hereby granting Great American's Motion as to Count I of the Complaint.

A. Interpretation of the policy is a question of law and is limited to the allegation of the Two Lawsuits

Under Hawai'i law, the interpretation of an insurance policy is a question of law. *Brown v. KFC Nat'l Mgmt. Co*., 82 Haw. 226, 921 P.2d 146 (Haw. 1996); *Bigelow v. Great Am. Ins. Co.*, 2023 WL 3024089, *3 (D. Haw. Apr. 20, 2023) ("interpretation of an insurance policy is a question of law for the Court"). Hawai'i follows the complaint allegation rule, which assesses coverage based on the allegations in the underlying complaint. *Burlington Ins. Co. v. Oceanic Design & Constr., Inc.*, 383 F.3d 940, 944 (9th Cir. 2004). This analysis considers both factual allegations and policy terms. *Allstate Ins. Co. v. Riihimaki*, 2012 WL 1983321, *42 n. 21 (D. Haw. May 30, 2012); *Bigelow*, 2023 WL 3024089 at *3. Courts must uphold a policy's plain language and avoid creating ambiguity. *Marcos v. State Farm Fire & Cas. Co*., 2022 U.S. Dist. LEXIS 128330, *12 (D. Haw. June 13, 2022).

Here, the Association does not dispute the terms of the Policy which states: "More than one Claim [i.e., the Two Lawsuits] involving the same wrongful conduct or related wrongful acts…shall be considered a single claim." However, the Association argues that the Court should consider the Answer and Counterclaim. The Court is not persuaded by this argument as it is inconsistent with Hawai'i's complaint allegation rule. Thus, the Court confines its analysis to the Complaint, the Policy, and the Two Lawsuits that are attached to the Complaint.

B. The 'related' claims analysis focuses on the similarities of the lawsuits, not differences.

i. The Two Lawsuits being litigated independently is immaterial.

The Association argues unpersuasively that the Two Lawsuits are not related because they have been litigated independently. The Association's analysis contradicts

established case law, as the determination of whether two or more claims are related hinges on the similarities of the allegations, not their differences. Courts assess the similarity of the acts and evaluate whether they arise from common or logically connected facts. *See, e.g., Navigators Specialty Ins. Co. v. Double Down Interactive, LLC*, 2019 WL 3387458, *6-7 (W.D. Wash., 2019) ("the Court looks not to whether there are differences between the two claims at issue, but instead whether there is 'any common fact, circumstance, situation, transaction, event or decision'").

Therefore, the fact that the two lawsuits have been litigated independently is inconsequential.

ii. The Two Lawsuits remain factually connected, despite the lawsuits being in 2016 and 2018.

Regarding whether the cases are temporally related, the Court examines the plain language of the Policy, which defines "related" claims as those involving: (i) the "same Wrongful Act" (e.g., alleged acts, errors, etc.) or (ii) "Related Wrongful Acts" (e.g., acts "logically or causally connected by any common fact, circumstance, situation," etc.). Additionally, other circuits that have addressed this issue have emphasized that the relatedness of claims must be evaluated in the context of the specific type of insurance involved, considering whether there is a causal connection between the acts and whether the alleged errors result in the same injury. *Vozzcom, Inc. v. Great American Ins. Co. of New York*, 374 Fed. Appx. 906, 907-08 (11th Cir. 2010) (*citing Pantropic Power Prods., Inc. v. Fireman's Fund Ins. Co*., 141 F. Supp. 2d 1366, 1371 (S.D. Fla. 2001) (finding because acts of retaliation and negligence shared temporal proximity, involved same individuals, and the later acts occurred because of prior acts of harassment, related claims were shown to exist)).

In *Vozzcom*,[7] the court determined that three claims were "related" when the plaintiffs, who were cable installers who worked for Vozzcom during roughly the same time frame, alleged they were denied overtime coverage in violation of the Fair Labor Standards Act violations. *Id.* at 908. The court ruled in favor of the insurer, concluding that these factors rendered the claims "at the very least" interrelated. *Id.* at 907.

Here, although the timeframes of the Two Lawsuits differ, they remain temporally and factually connected. The Two Lawsuits arise from the Association's legal authority and formation, involve the same Plaintiff (SPIG), and name the same Defendant (Association). [ECF No. 1-5 at PageID.59 and ECF No. 1-6 at PageID.78.] The disputes center on the same five parcels of land owned by SPIG and relate to the Association's "Protective Covenants" ("Original CC&Rs"). Like in *Vozzcom*, the Two Lawsuits involve the same parties, are rooted in the history and formation of the Association and concern the same parcels of land and the applicability of their restrictive covenants.

iii. The existence of one common wrongful act is sufficient.

The Court finds the Association's argument that the two lawsuits share only superficial similarities unpersuasive. [ECF No. 45 at Page.ID.481.] While the Association contends that the 2016 and 2018 actions involve different claims and remedies, it fails to provide any evidence to counter the principle that the existence of one common wrongful act is sufficient to establish relatedness.

[7] Although the *Vozzcom* ruled on a summary judgment motion, this Court finds its analysis of the 'related' issue persuasive. The reasoning employed in *Vozzcom* is directly applicable to the present Motion and can be appropriately adapted to the pleading-based analysis required under Rule 12(c).

The Fifth Circuit has held that two lawsuits constitute a single claim under the policy if they arise from at least one common wrongful act. *Turner v. Cincinnati Ins. Co*., 9 F.4th 300 (5th Cir. 2021) (stating that "The [insured] Plaintiffs' arguments as to how the two lawsuits were different does not overcome the clear similarities between them both...the Bartlett lawsuit and the Nelson lawsuit are based on at least one common 'wrongful act' or 'interrelated wrongful act' and therefore constitute a single claim under the insurance policy."). In *Turner*, the insured's role in creating and maintaining "high-pressure sales culture" to promote fraud was a key factor common to both lawsuits and central to claims in each. *Id*. at 317. The allegations in both lawsuits were virtually identical, including misrepresentations about program quality, aggressive sales techniques, overcrowding, shortages of qualified instructors, and inadequate facilities and equipment. *Id*. at 305.

Similarly, applying the Fifth Circuit's ruling here, the common wrongful act shared between the 2016 and 2018 lawsuits, in the context of related claims under the insurance policy, involves the Association's alleged authority and representations. Specifically, the Association's authority and ability to make representations to the County of Hawai'i and its officials–representations intended to diminish SPIG's property rights and interfere with its ability to develop its properties–constitute the common wrongful act central to both the 2016 and 2018 lawsuits. [ECF Nos. 1-5 at PageID.60; 1-6 at PageID.79.] This parallels the reasoning in *Turner*, where a shared foundational issue linked the claims, despite differences in specific allegations and timeframes. Here, the Association's authority and representations serve as the common thread linking the two lawsuits, just as the "high-pressure sales culture" did in *Turner*.

Although some allegations in the 2018 Lawsuit occurred after the 2016 Lawsuit, they all arise from interrelated acts surrounding the Association's formation and legal authority and are thus deemed to be a single claim first made in 2016 under the 2009-2011 policy period.

Considering these facts and the Policy's broad definition of "interrelated wrongful acts," this Court finds that the acts underlying the SPIG lawsuits constitute "interrelated wrongful acts" under the Policy. Accordingly, this Court finds that the claims are related.

C. The substantial factual overlap between the lawsuits, as acknowledged by the Association, establishes a logical and causal connection between them.

i. Claims can be "related" despite different causes of action.

The Ninth Circuit has held that claims may be deemed related despite having different causes of action. In *WFS Fin., Inc.*, the Ninth Circuit examined that despite two lawsuits "filed… under two different legal theories," because of "the common basis for these suits," they [were] causally related and d[id] not present such 'attenuated or unusual' relationship that a reasonable insured would not have expected the claims to be treated as a single claim under the policy." 232 Fed. Appx. 624, 625-626 (9th Cir. 2007). The second claim in that case involved an "interrelated wrongful act" to the act to the first, making it subject to the same policy limits.

Applying the Ninth Circuit's reasoning here, the Two Lawsuits, though seeking different types of relief–declaratory judgment and tort damages–stem from "Related Wrongful Acts." Because claims can be "related" despite different causes of action, Great American's reasoning supports treating the Two Lawsuits as a single claim under the same policy.

ii. Claims can be "related" despite different parties involved.

Claims may still be considered "related" even if they involve different parties. In *Zunenshine v. Executive Risk Indem*., 182 F.3d 902 (2d Cir.1999), the Second Circuit held that "it is immaterial that the two lawsuits involved different parties…because the above-quoted policy terms clearly focus on the existence of common facts." Similarly, the Northern District of Illinois ruled that differences in damages sought, legal theories advanced, venue, and parties … are irrelevant for determining relatedness. *Hanover Ins. Co. v. R.W. Dunteman Co*., 446 F. Supp. 3d 336, 347 (N.D. Ill. 2020).

Here, the 2018 Lawsuit included a Doe Defendant paragraph naming Evelyn Eklund, Candice Casper, Rollie Litteral, and Ellen Morrow as John Does 1-4, alleging their involvement in representations to the County and County-appointed committees. [ECF No. 45 at PageID.478.] In contrast, the 2016 Lawsuit did not include any individual defendants.

Despite this difference, both lawsuits are fundamentally linked through their basis in "Related Wrongful Acts." Thus, the variation in parties between the Two Lawsuits does not negate the lawsuits being related.

IV. CONCLUSION

Based on the foregoing, the Court finds that the First and Second SPIG Lawsuits are "related" claims under the Policy and therefore constitute a single claim subject to a single policy limit. Accordingly, Great American's Motion for Judgment on the Pleadings as to Count I is hereby GRANTED.

IT IS SO ORDERED.

DATED: Honolulu, Hawai‘i, February 3, 2025.

Shanlyn Park
United States District Judge