Margaret Wille & Associates, LLLC
Margaret Dunham Wille #8522
David Swatland #10929
Timothy Vandeveer #11005
P.O. Box 6398
Kamuela, Hawaii 96743
Tel: 808-854-6931
Email: mw@mwlawhawaii.com
Attorney for:
Plaintiff Royal Bloodline of David

LEONARD G. HOROWITZ
5348 Vegas Drive, Suite 353
Las Vegas, NV 89108
Telephone: 310-877-3002
E-mail: editor@medicalveritas.org
Plaintiff pro se

SHERRI KANE
5348 Vegas Drive, Suite 353
Las Vegas, NV 89108
Telephone: 310-877-3002
E-mail: editor@medicalveritas.org;
Plaintiff pro se

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

LEONARD G. HOROWITZ, an individual; SHERRI KANE, an individual; ROYAL BLOODLINE OF DAVID, a dissolved corporation sole. Plaintiffs, vs. STEWART TITLE GUARANTY COMPANY; FIRST AMERICAN TITLE CO., and DOES 1 through 50, Inclusive Defendants	CIV. NO. 16-00666LEK-KJM (Negligence; Breach of Duty) **MEMORANDUM IN SUPPORT OF PLAINTIFFS' RULE 60(b) MOTION FOR RELIEF FROM FINAL JUDGMENT [FRCP 60(b)(1)(2)(3)(5); LR 7.5]; DECLARATION OF COUNSEL; PROPOSED ORDER; CERTIFICATE OF SERVICE.** JUDGE: Hon. Leslie E. Kobayashi and Kenneth J. Mansfield NON-HEARING MOTION

MEMORANDUM IN SUPPORT OF PLAINTIFFS' RULE 60(b) MOTION FOR RELIEF FROM FINAL JUDGMENT

This Memorandum details the basis upon which Plaintiffs seek relief from the Honorable Court's dispositive Order of December 21, 2018, (Doc. # 113; **Exhibit 1**; hereafter, the "Order"). The principal triggering event for this request is the July 22, 2019 vacation by the Intermediate Court of Appeals (ICA) of the underlying non-judicial foreclosure ("NJF") that was the basis for Stewart Title Co.'s refusal to defend Plaintiff Royal Bloodline of David ("Royal's") title to the subject property (hereafter, "Property") **(Exhibits 2-3)**. Under these circumstances, FRCP Rule 60(b)(5) supports reconsideration of this court's Order since, "an earlier judgment that has been reversed or vacated[,]" makes "applying it prospectively . . . no longer equitable . . ."

In addition, there is new evidence of Stewart's failure to inform Plaintiff Royal of a cloud on the title of the access to the Property (designated "Remnant B") the purchase of which had been part of the original acquisition. Said omission resulted in Plaintiffs not being aware of the title problems concerning access to the Property, such that it was not until 2018 that Plaintiffs realized that the Foreclosing Mortgagee's administrator, Attorney Paul J. Sulla, Jr. (hereafter "Sulla") and Halai Heights, LLC ("HHLLC"), Sulla's sham limited liability company, had usurped the extension of this access roadway (designated "Remnant A")—a parcel that was not part of the NJF.[1]

The net result of Stewart's breach, Royal was dissolved. As part of the dissolution the Property was transferred to successors Horowitz and Kane, and Horowitz was forced into bankruptcy by Stewart's non-appearance and proximal improprieties in the non-judicial foreclosure ("NJF") as well as in the related judicial foreclosure action.

[1] On December 4, 2019 Attorney Paul J. Sulla, Jr. and Halai Heights, LLC were indicted for forgery and theft based on the inclusion of the access road parcel Remnant A in the deed for the NJF property. See 3CPC-19-0000968, **Exhibit 4**.

The ICA's 7/22/19 Judgment on Appeal (JOA) in CAAP 16-0000163 (**Exhibits 2-3**) effectively negates Stewart's primary argument that the Plaintiffs had 'lost' their Title and interest in the subject Property due to the NJF, and therefore Stewart had no further obligation to Plaintiffs. For these reasons, Stewart's Policy (hereafter, the "Policy"; **Exhibit 5**) now requires Stewart's appearance to defend the Title in the remanded state case, Civ. No. 14-1-0304 (hereafter, "0304").

More good cause to relieve the Order due to "mistakes, inadvertence, . . . or excusable neglect" is permitted by Rule 60(b)(1). It follows that this Court's approval of the NJF that is now vacated can also be viewed as a "mistake;" and "[t]he law in this circuit is that errors of law *are* cognizable under Rule 60(b)." *Liberty Mut. Ins. Co. v. EEOC*, 691 F. 2d 438 - Court of Appeals, 9th Circuit 1982.

The Order of December 21, 2018, (Doc. # 113; **Exhibit 1**, pp. 13-14) also mistakenly misapprehended Plaintiffs' interests as deriving from a (never-existing) "joint venture" between Royal, Horowitz and Kane. In doing so, the Court mistakenly failed to address Plaintiffs' arguments as to why they have standing, including: 1) that Royal still has standing because Horowitz in this and related litigation is still winding up its affairs as part of Royal's dissolution process; and 2) that the individual officers of Royal, Horowitz and Kane, have standing based on the assignment of the property to them as part of Royal's dissolution process (its death) and not as an arms-length transaction.

I. Summary of Relevant Facts

The "Policy" (**Exhibit 5**) was issued in January 2004. Defendant First American ("FA") served as the escrow administrator, Stewart's sales agent, and title research firm. FA directed the Policy land descriptions and insurance coverage inclusions and exclusions that are substantially inaccurate and or incomplete.

First, the Policy did not include mention of the litigation lien of the previously defrauded buyer of the same Property, Philip Maise. Secondly, another of the now apparent problems with Stewart's title report was its inaccurate representation "AS TO ITEM II: [the "043" lot] "The property does not appear to have access of record to any public street, road or highway."

Contrariwise, based on recent discovery of a County record included in Damerville's December 2, 2019—correspondence from Mr. Sulla's to County tax officials—at the time of the 2004 sale, County of Hawaii ("COH") records showed that an access roadway to the central part of the Property had originally existed prior to a lava flow, and reconstruction had been agreed upon by County officials and designated on County maps. A "County Resolution No. 119-03" was recorded in public records to secure access to the aforementioned insured properties, 043 and 049. The public records make recorded encumbrances associated with this Resolution clear. Stewart knew about, or should have known about, and failed to disclose, an easement through this roadway granted by the County to our eastern neighbor that also provides access to the insured 043 Property and the neighboring 042 Property. The easement and maintenance encumbrance requires Royal to upgrade and maintain this access roadway.

These public records and requirements evidence Stewart's false representation that Parcel 043 did not have access to a public road or highway. In fact, it had an old access roadway, an encumbrance to restore that roadway, and an additional encumbrance to maintain that roadway that connects to the highway.

Sufficient facts to discover these encumbrances were identified by the sale documents provided to Stewart. They describe "a road remnant of approximately 1.5 acres. Exact legal description to follow in escrow." These facts compelled the Defendants' duty to identify this road access corridor, and related encumbrances on title, in the Policy.

At the time of the sale, Horowitz was unaware of these encumbrances, and Defendants did not advise Royal and Horowitz about them.

Simply put, Defendants failed to inform Royal et. al. of at least two liens or encumbrances on the Property appearing in the aforementioned public records causing unmarketability of title and access restrictions to the central part of the Property from the highway: 1) the failure to disclose that the Seller had already entered into a sale of the same property to at least two other parties (one holding a litigation encumbrance); and 2) the more recently discovered failure to disclose encumbrances on the access road parcel to the Property TMK (3) 1-3-001:095.[2]

By way of background, immediately following the close of escrow in 2004, Lee threatened to foreclose with the Plaintiffs' $200,000 down-payment in his pocket. Shortly thereafter, Horowitz learned Philip Maise and his partner Didier Flament were involved in a legal action against the Seller Lee resulting from Lee's attempt to sell this same subject property to Maise while concealing a federal lien on the property relating to federal drug charges against Lee. Lee, now Royal's mortgagee, began challenging the legality of Horowitz's Bed and Breakfast operation (which had been the same prior use of the property by Lee), including filing a complaint with the County Planning Department that Horowitz was operating an unpermitted commercial business using unpermitted constructions. Thereafter, the property insurance company that had previously insured the same

[2] The 2004 closing of the Property was made contingent upon Defendant FA's administered "Agreement for Closing Escrow" transferring rights to the "Remnant A" access road to Royal from the County of Hawaii. The Defendants' omission of Remnant A's location, ownership by the County of Hawaii, and related encumbrances, immediately burdened Royal and Horowitz. The Policy neglected two road maintenance encumbrances, contributed to the Seller's 2005 judicial foreclosure, and Sulla's now vacated 2010 non-judicial foreclosure. Both foreclosures were based on altered documents. In essence, Lee and Sulla both forged legal documents to secure Remnant A, 043 and 049 lots, because the spa facilities, saunas and geothermal bathing pools, could not be accessed without that access roadway that connects through the insured contiguous "Remnant B" to the highway as detailed in public records filed by County officials in 2003, before the close of escrow and issuance of the Policy.

business and property for Lee cancelled its policy. Although Royal's mortgage payments were all timely made, Lee filed for judicial foreclose in 2005 for these reasons—failure to keep insurance and unpermitted constructions.

After the property insurance policy was canceled, Plaintiffs were unable to obtain another insurance policy given that the property was located in a Lava 1 High Risk Zone and they were unable to continue using the property as a Bed and Breakfast business, causing severe financial and emotional distress. Meanwhile Horowitz continued to make the monthly mortgage payments of $2333.33, and did so for the full term of 5 years.

In 2008, Royal and Horowitz, et. al., defeated Lee's judicial foreclosure and was awarded $200,000 in damages for the Seller having misrepresented the spa as a commercial property operating legally. As directed by the Court, Plaintiffs then paid the remainder of the sum due under the mortgage ($154,204.13), that is the amount due over and above the $200,000 damages award. Then, while evading notices to release the Mortgage, Paul Sulla entered an appearance as attorney for Lee in 2009. Despite the jury's finding in favor of Royal and despite Royal having completely paid off the remainder due on the mortgage, attorney Sulla then made a far-fetched claim that Royal's original counterclaim was not drafted with sufficient particularity in regard to the fraud counterclaim. This argument was repeating rebuffed by the Judge, but then remarkably even after an appeal had been filed, the Judge did a one-hundred-and-eighty-degree about-face, and ruled in favor of Sulla's motion for judgment notwithstanding the verdict.

One month before the Seller's death in June 2009, Sulla assigned the Mortgage and Note to a newly created entity titled "Revitalize, Gospel of Believers" (hereafter, "Revitalize") with Lee who was gravely ill being the Overseer, and Sulla's strawman Jason Hester, being its Successor Overseer. Shortly thereafter, upon the death of Lee, Sulla substituted Revitalize for the Seller in the foreclosure action. As mentioned upon, then following repeated motions that

were denied, the court eventually agreed with Sulla's "lack of particularity" argument and reversed the $200,000 damage award.

Meanwhile, while the reversal of the damages award to Royal and Horowitz was under appeal, in March 2010, Revitalize commenced the now vacated NJF to secure the Property in favor of Sulla's strawman, church "Overseer" Jason Hester. Based on the NJF, that the ICA now declared to be invalid, Sulla acquired possession of the Plaintiffs' Property, by way of his security agreement with Hester.

In 2011, realizing Sulla's NJF was invalid, Royal's Overseer, Horowitz, filed a claim with Stewart to defend Title. Stewart denied the claim and justified its breach by stating, "it appears the property originally insured in Schedule A . . . was foreclosed upon and conveyed to Jason Hester by Mortgagee's Affidavit. . . Since you no longer retain an estate or interest in the land, you are no longer an insured . . ."

Between April 17, 2015 through May 11, 2015, Horowitz received a series of e-mails from First American's previous client and similarly defrauded buyer of the Property, Philip Maise, disclosing evidence of Seller Lee's unscrupulous actions to resell the litigation-encumbered property. In these mailings, Maise informed Horowitz that the transactions by which Maise was defrauded by Lee concealing the federal lien, were known to and administered by the same FA escrow officers who Lee had secured to administer escrow for Royal and Horowitz. It was at this point in time that Plaintiffs realized the deception and encumbrances that should have been revealed by FA and in Stewart's title report.

Plaintiffs herein then filed an appeal of non-judicial foreclosure, and finally after four final judgments were ruled inadequate, on the fifth request for review of a final judgment, the ICA reviewed the non-judicial foreclosure and on July 22, 2019 vacated the circuit court decision. (**Exhibits 2 and 3**)

Most recently, on December 2, 2019, State deputy prosecutor Damerville forwarded the new evidence concerning the adjacent parcel "Remnant A" which provided access to the subject Property and was neglected by the Defendants.

Then in the related criminal case, on December 4, 2019, Sulla was indicted by the State for "Theft in the First Degree" and "Forgery in the Second Degree" for forging and filing his Halai Heights LLC (HHLLC) warranty deed that added the County's land description of Remnant A owned by Royal to the description of the subject NJF parcel, "043", thus usurping all the acreage in favor of Attorney Sulla and his newly created HHLLC. (**Exhibit 4 "Indictment"**)

II. Procedural Background

As set forth in the subject Order of December 21, 2018, the Court is familiar with the relevant procedural background in this case (Doc. # 113; **Exhibit 1**, pp. 2-6) precluding the need for further review.[3]

III. Legal Framework

A. FRCP Rule 60(b) states in relevant parts:

(b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; . . .

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; . . .

(c) TIMING AND EFFECT OF THE MOTION.

[3] Plaintiffs are however willing to provide a detailed procedural history or any other requested material in a supplement submission.

(1) *Timing.* A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

IV. Argument

A. Timely Made Motion

This Rule 60(b) Motion is timely filed since it is based on the vacation of a judgment and made within a reasonable period of time (less than a year since the December 21, 2018 judgment in this case. (Doc. # 113; **Exhibit 1**) Specifically, Rule 60(c) does not have a one year limit in cases such as this where the basis is vacation of a judgment. (Rule 60(b)(5) and Rule 60 (c)(1). This Motion is also made timely, within one year, pursuant to other Rule 60(b)(2)(3) justifications for relief that apply under the circumstances.

B. Rule 60(b)(5) permits relieving the Order based on the ICA's vacation of the underlying Circuit Court decision

Rule 60(b)(5) permits relieving the Order that was based on an earlier judgment that has been vacated; and "applying it prospectively is no longer equitable."

The Ninth Circuit has made clear that Rule 60(b)(5) "permits relief when 'a prior judgment upon which it is based has been reversed or otherwise vacated." *Tomlin v. McDaniel*, 865 F. 2d 209 - Court of Appeals, 9th Circuit 1989. The *Tomlin* court made clear that such relief is "based in the sense of res judicata, or collateral estoppel, or somehow part of the same proceeding. 11 C. Wright & A. Miller, *Federal Practice and Procedure* § 2863, at 202-04 (1973) . . . ." The instant case presents such a situation. The ICA's JOA vacated a non-judicial foreclosure (NJF); and remanded for further proceedings. The JOA stated that the Foreclosing Mortgagee "failed to satisfy his initial burden of showing that the non-judicial foreclosure sale was conducted in a manner that was fair, reasonably diligent, and in good faith, and that Revitalize had obtained an adequate price for the Property. In

turn, the burden never shifted to the defendants to raise any genuine issue of material fact." (**Exhibit 3**, JOA p. 14; "' . . . Plaintiff's Motion for Summary Judgment' is vacated.")

The relationship in that case to the instant case is intimate. Both cases arise from the same series of transactions. The now vacated quiet title final judgment was used by Stewart to justify the insurer's defense in this case and denied Policy coverage. In contrast, this is not simply one case being precedent for a separate and distinct case as discussed in *Lubben* 453 F.2d 645 at 650. ("The relation between the present judgment and the prior judgment . . . [is] closer than that of a later case relying on the precedent of an earlier case . . . *Lubben*, 453 F.2d at 650." Stewart, and the Order too, relied on the now vacated foreclosure to deprive the Plaintiffs of the relief they sought as victims of the decisional mistakes made by the state courts.

The JOA reversal now restores Stewart's contractual obligations, the denial of which would create more grave injustice, compounding of damages, and severe distress to the Plaintiffs. Hence, the foreclosure actions were proximal to the Defendants' failure to inquire reasonably and diligently into the public records relating to the accessway and its encumbrances.

Given the ICA ruled the NJF defective, it is now indisputable that Stewart failed to reasonably investigate and to defend Royal's title. Therefore, under *Hart v. Ticor Title Ins. Co.*, 2012 Haw. LEXIS 83 (Haw. March 27, 2012), the seminal question is not who is currently the insured, but whether Royal and/or Royal's assignees, not barred by contract,[4] has standing under these facts, to bring suit for tortious bad faith sounding in contract.[5] "Once the possibility of coverage triggered

[4] *Under the Hawaii statutes, insurance contracts permit assignments, unless proscribed by clear unambiguous contract language (see *Del Monte v. Fireman's Fund Ins. Co.*, 183 P.3d 734, 117 Hawai'i 357 (Haw., 2007).)

[5] Under *Best Place,. Inc. v. Penn America Ins. Co., 920 P.2d 334* (Haw. *1996*) the applicable statute of limitations for bad faith sounding in contract is 6 years.

the duty to defend, . . . [the Insurer] had the duty to defend, regardless of whether the allegations were 'groundless, false or fraudulent.'" (*Id*.) According to the *Ticor* court, any ambiguities in the insurance contract must be resolved in favor of the insured, and the insurer's duty to defend arises at the mere potential of coverage under the policy.

For these reasons, this Court's Order should, therefore, be relieved with respect to Royal and the individual pro se Plaintiffs since prospectively applying the mistaken Order and underlying now vacated ruling is no longer equitable," only unjust, and further damaging. Rule 60(b)(5).[6]

C. FRCP Rule 60(b)(1) also justifies this Motion by reason of mistake.

FRCP Rule 60(b)(1) also provides grounds for relief from the Order by reason of "mistake, inadvertence, surprise, or excusable neglect." Errors of decisional law (i.e., the law of the case) "in this circuit . . . are cognizable under Rule 60(b)." *Liberty Mut. Ins. Co*. (Op. cit), citing *Gila River Ranch, Inc. v. United States,* 368 F.2d 354, 356 (9th Cir. 1966). The Ninth Circuit has recognized that Rule 60(b) may be used to reconsider the Court's own mistake or inadvertence. *See Liberty Mut. Ins. Co. v. E.E.O.C.,* 691 F.2d 438, 441 (9th Cir.1982) (holding that the "law in this circuit is that errors of law are cognizable under Rule 60(b)"); *see also Kingvision Pay-Per-View Ltd. v. Lake Alice Bar,* 168 F.3d 347, 350 (9th Cir.1999) ("the district court can correct its own mistake months after judgment, under Rule 60(b)").

[6] One could likewise consider this matter pursuant to FRCP Rule 60(b)(2), given that the JOA made clear that the NJF was improper, and that "newly discovered evidence . . . could not have been discovered in time to move for a new trial under Rule 59(b)." Furthermore, the JOA and Sulla's Criminal Indictment provides grounds for relief pursuant to FRCP Rule 60(b)(3), in that vacation of the NJF now subjects Stewart's actions and verified misrepresentation that the Plaintiffs "lost title" to the Court's greater scrutiny.

Additional decisional mistakes appear to also have been made by the Court, in its 6/30/17 Order, and are worthy of reconsideration, including failing to recognize the continuing role and responsibility of Horowitz in winding up the dissolution of Royal, thereby justifying the continued standing of Royal, and failing to recognize the standing of the individual plaintiffs based on their being insureds on the basis of (1) as a matter of law by way of the dissolution (death) of Royal, and or 2) based on the lack of an anti-assignment clause in Stewart's title insurance Policy.

1. Royal and the individual Plaintiffs are Insureds

The 6/30/17 Order (on page 14) required the Plaintiffs to justify their interests and standing as "insureds" thusly: "While it is arguably possible that Plaintiffs could amend their Amended Complaint to state claims against First American and Stewart Title, Plaintiffs must first explain how they are covered by the respective policies, and set forth a cognizable claim for relief." 6/30/17 Order, 2017 WL 2836990, at *6." Then, in the Court's 12/21/18 dismissal Order (on pp. 13-14), the Court mistakenly ruled against the Plaintiffs' justified by a misapprehended 'joint venture argument.' "[T]he Court rejects Plaintiffs' theory that it became an insured under the Policy as joint venturers, and denies Plaintiffs' Objections as to their compliance with the Court's 6/30/17 Order."

However, Plaintiffs never made a "joint venture" argument. Instead, Horowitz, as the Overseer of the Washington State corporation sole ecclesiastical ministry named The Royal Bloodline of David, was dutifully and legally authorized to defend Royal's interests as the 'body corporate,' and as such had standing as the officer responsible for winding up the business of Royal.

Misapprehending these parties' administrative agreements, association with, and functions within Royal, the Court then ruled defective the Plaintiffs' reply to the 6/30/17 Order for neglecting to characterize a non-existing "joint venture."

The Court's clear error is discerned by the Court's clear definition of a "joint venture:" "A joint venture is a mutual undertaking by two or more persons to carry out a single business enterprise for profit." (Order, p. 13)

There was no for-profit "single business enterprise" ever contemplated by the Plaintiffs to be carried out by the operation of a dissolved (virtually "deceased") non-profit ecclesiastical corporation sole; nor even if Royal had survived the economic and litigation duress caused by the Defendants' neglect of Plaintiffs' rights under the Policy.[7]

2. The assignment of the title insurance Policy was actually anticipated by way of the supplemental provision that Stewart put in the Policy that in addition to Royal, added Horowitz as a party to the title policy contract.

In its Policy, Stewart appears to have anticipated an assignment by Royal to Horowitz, when it added a clause titled: "CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE." It was Stewart that for purposes of the policy, required Royal to assign its interests to Horowitz in order to issue the Policy as evidenced by **Exhibit 9**—the "Assignment of Buyer's Interest in DROA" (the signed original copy of which is presumed to be in First American's

[7] Correcting the record, *Del Monte v. Fireman's Fund Ins. Co.*, 183 P.3d 734, 117 Hawai'i 357 (Haw., 2007), overrules the majority's holdings regarding insurance transfers by operation of law. Hawaii law makes clear that 'in contracts of adhesion' Courts will interpret the language to allow for insurance coverage; especially where the harm occurred prior to any transfer. This holding relies firmly on **HRS § 431:10-228 Assignment of policies law that states: "**(a) A policy may be assignable or not assignable, as provided by its terms." Given this overriding importance of the Policy language, in the *absence* of any "anti-assignment clause," the assignees' (Horowitz and Kane's) are *insured*. (*Id*.) Furthermore, **HRS §490:2-210 Delegation of performance;** assignment of rights law assures the assignment of Royal's interests in the policy to the pro se Plaintiffs in the absence of any added burden on the company. (*Id*, section (2)).

possession; Dkt. nos. 10, 11, Horowitz Affidavit, p. 2, paragraph 3.) "In this instant case the named insured, RBOD, and its "body corporate" HOROWITZ, are both "wholly owned by the same person"— HOROWITZ; with KANE—"an affiliate of the named insured"—similarly empowered by 'DISCIPLINE IV' of the RBOD's 'Instrument of Acknowledgment.'" (Dkt. nos. 10, 11, pg. 33, footnote 14.] "KANE is RBOD's Scribe" [Dkt. nos. 10, 11, pg. 1; **Exhibit 10**] And notably, said Policy lacks an anti-assignment clause.

Furthermore, upon Royal's dissolution ("death") Horowitz and Kane became successor insureds by operation of law. See e.g. *North Fork Land And Cattle LLLP v First American Title Ins. Company* 362 P. 3d 341 (Supreme Ct. Wy. 2015) ("Transfers to fiduciary or corporate successors are included within the list of transfers by operation of law which qualify for continued coverage of the title insurance policies." Id. at 349.) In *Fork Land & Cattle, LLLP v. First Am. Title Ins. Co.*, 2015 WY 150, ¶ 22, 362 P.3d 341, 349 (Wyo. 2015)

In reversing the lower court, in *North Fork Land and Cattle LLLP*, the Court found the successors-in-interest to be the "insured" within the meaning of a policy similar to the subject Policy in this case. Therein, the Court explained that even where there was a transfer of the interest by quitclaim deed rather than occurring "*automatically",* where there was no actual arms-length purchase and sale, the successors-in-interest are subsumed as "insured" though not expressly named in the insurance policy. Likewise in the instant case, although not expressly named in the Policy, Horowitz and Kane, the two officers of Royal, as the successors-in-interest to the property of Royal as part of its dissolution, are also insureds on the same basis; so that Royal's non-arms-length administrators/successors-in-interest qualify as "insured".

As explained by the Court in *North Fork Land and Cattle LLLP*, allowing for such persons other than those expressly named in a title insurance policy to have standing as "insureds" has been recognized by the Title Insurance

organization ALTA at least since 2006. In 2006, ALTA revised its standard policy such that those who qualify as a "successor insured" based on being a successor-in-interest versus a separate owner depends on whether there was a purchase and sale—and not on whether the original insured's successor-in-interest obtained the property technically by "operation of law", such as in the case of dissolution of a corporation.

For each of these reasons, Plaintiffs ask the Court to reconsider its finding concerning the standing of the corporate and individual Plaintiffs, and find that Stewart owes the Plaintiffs-insureds the duty to represent Plaintiffs before the circuit court now that the NJF has been vacated and remanded to the circuit court for action consistent with the ICA decision.

D. Rule 8 defects can be timely remedied by guidance from licensed counsel Margaret Wille

Plaintiffs recognize that this Court's Order also pointed to other reasons for its decision, but those reasons can be remedied in an amended complaint.

Specifically, in its Order this Court dismissed this case stating, "[T]he Proposed Second Amended Complaint did not comply with Fed. R. Civ. P. 8 in spite of warnings from both this Court and the magistrate judge; [F&R at 12-18;] . . ."

At this juncture however, with attorney Margaret Wille representing Royal and overseeing the court filings, Plaintiffs ask the Court to allow for submission of an amended complaint in a concise and plain statement consistent with FRCP Rule 8(a) "General Rules of Pleadings". To allow for an amended complaint, here where the Plaintiffs were previously acting pro se without the guidance of Counsel, at this juncture, allowing for a revised complaint that is succinct and concise is certainly consistent with FRCP 15 "Amended and Supplemental Pleadings" subsection 15(a)(2): "The court should freely give leave [to amend] when justice so requires."

V. CONCLUSION

Under the circumstances, Plaintiffs ask this Court's reconsideration of its judgment to allow Plaintiffs to file an amended pleading setting forth the appropriate claims, and asks the Court for 30 days in which to do so.

Respectfully submitted.

DATED: December 16, 2019; Honolulu, HI

/S/ MARGARET WILLE/
_____

MARGARET WILLE
TIMOTHY VANDEVEER
DAVID SWATLAND
MARGARET WILLE & ASSOCIATES LLLC
Attorneys for THE ROYAL BLOODLINE OF DAVID

/S/ LEONARD G. HOROWITZ/
_____

LEONARD G. HOROWITZ, Plaintiff pro se

/S/ SHERRI KANE/
_____

SHERRI KANE, Plaintiff pro se