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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

GREAT AMERICAN INSURANCE
COMPANY, an Ohio corporation,

Plaintiff,

v.

SEA SHEPHERD CONSERVATION
SOCIETY, an Oregon nonprofit corporation,
PAUL WATSON, MARINE GAEDE, BEN
ZUCKERMAN, LANI BLAZIER, PETER
RIEMAN, ROBERT WINTNER, BOB
TALBOT, and SUSAN HARTLAND,

DefendantS.

Case No. C13-1017RSM

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

THIS MATTER comes before the Court on Motion for Summary Judgment by Plaintiff Great American Insurance Company (“Great American”). Dkt. # 10. Great American moves the Court for a declaratory judgment that it has no duty to defend or indemnify Defendants with regard to contempt proceedings in an underlying lawsuit for which Defendants seek coverage under a liability insurance policy. The Court heard oral argument from the parties on May 9, 2014. Having reviewed the parties’ briefs in support and opposition as well as the remainder of the record, the Court grants Plaintiff’s Motion and enters judgment in favor of Great American for the reasons stated herein.

Background

This insurance coverage action involves coverage under two liability Policies issued by Great American for defense costs incurred by Defendant Insureds. Great American issued to Defendant Sea Shepherd Conservation Society (“Sea Shepherd”) a first ExecPro Nonprofit Solution Policy for the period of June 23, 2011 to June 23, 2012 (the “2011 policy”) and a second

1 substantively identical Policy for the period of June 23, 2012 to June 23, 2013 (the “2012 Policy”).
2 The instant coverage dispute arises out of contempt proceedings in a lawsuit filed against
3 Defendants Sea Shepherd and its founder Paul Watson on December 8, 2011 by the Institute for
4 Cetacean Research (“ICR”), which enjoined Defendants from attacking ICR whaling research
5 vessels. *See The Institute of Cetacean Research, et al. v. Sea Shepherd Conservation Society, et*
6 *al.*, Case No. 2:11-cv-02043-RAJ, appeal docketed, No. 12-352266 (9th Cir. Apr. 10, 2012) (the
7 “ICR Litigation”). Great American seeks declaratory judgment that, under the terms of the
8 Policies and under the law of the State of Washington, it has no duty to defend or indemnify
9 Defendants for costs incurred in the ICR litigation, including contempt proceedings, based on the
10 lack of timely notice and a Policy exclusion precluding coverage for claims arising out of damage
11 to tangible property. Plaintiffs argue that coverage is warranted for the contempt proceedings as a
12 timely reported “Claim,” which they contend is independent of, and jurisdictionally separate from,
13 the ICR Litigation.

14 **1) 2011 and 2012 Insurance Policies**

15 Sea Shepherd’s 2011 and 2012 Policies both set forth Great American’s duty to defend its
16 Insureds, as well as its limits. Each Policy is described on its first page as a “Claims Made and
17 Reported Policy” and on its Declarations page as a “Claims Made Policy.” *See* Dkt. ## 1-1 & 1-2,
18 at pp. 1, 4. Section I of the Policies obligates Great American to pay for Loss and Costs of
19 defense for any “Claim” first made during the “Policy Period” against any Insured Person and/or
20 Organization for a Wrongful Act. *See Id.* at p. 4. The Policies define “Claim,” in relevant part, as:

21 A civil proceeding, including any appeals therefrom, made against any Insured
22 seeking monetary or non-monetary (including injunctive) relief commenced by
service of a complaint or similar pleading.

23 *Id.* at § III.A(2), p. 5. The Policies further set forth the definition of a Wrongful Act as, in relevant
24 part, “actual or alleged error, misstatement, misleading statement, act or omission, neglect or
25 breach of duty.” *Id.* at § III.R(1), p. 8. “Related Wrongful Acts” are defined as those which are
26 “causally connected by reason of any common fact, circumstance, situation, transaction, casualty,
27 event or decision.” *Id.* at § III.O, p. 7.

1 Several provisions limit the scope of coverage under the Policies. Principally at issue in
2 this action are the requirements for timely notice of a Claim and Exclusion IV.D, one of thirteen
3 distinct exclusion provisions set forth in the Policies. Notice requirements under the Policies are
4 provided in Section VII, according to which:

5
6 The Insureds shall, as a condition precedent of their rights under this Policy, give
7 the Insurer notice in writing of any Claim made during the Policy Period. Such
8 notice shall be given as soon as practicable after the date the President...or person
with equivalent responsibility has knowledge of the Claim, and in no event later
than ninety (90) days after the end of the Policy Year.

9 *Id.* at § VII.A, p. 11. Both Policies define “Policy Year” to mean, in relevant part, “the period of
10 one year following the effective date and hour of this Policy or the period of one year following
11 any anniversary date thereof falling within the Policy Period.” *Id.* at § III.M, at p. 7. Exclusion
12 IV.D, in relevant part, bars coverage under the Policies for any Claim made against any Insured,

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14 based upon, arising out of, related to, directly or indirectly resulting from or in
15 consequence of, or in any way involving: (1) bodily injury, sickness, disease or
16 death of any person, assault or battery; (2) damage to or destruction of any
tangible property or the loss of use of any tangible property; or (3) humiliation
mental anguish, or emotion distress....

17 *Id.* at § IV.D, p. 9. The reach of the Exclusions section as a whole is limited by a non-imputation
18 clause, providing that: “With respect to this section of the Policy, no fact pertaining to or conduct
19 by any Insured Person shall be imputed to any other Insured Person...”. *Id.* at § IV, p. 10.

20 **2) ICR Litigation and Ensuing Events**

21
22 On December 8, 2011, ICR filed suit against Defendants Sea Shepherd and Paul Watson in
23 the U.S. District Court for the Western District of Washington. ICR subsequently filed a motion
24 for preliminary injunction, which Judge Jones rejected on March 19, 2012. *See Great American*
25 *Insurance Co. v. Sea Shepherd, et al.*, 860 F.Supp. 2d 1216 (W.D. Wash. 2012), *rev’d*, 725 F.3d
26 940 (9th Cir. 2013).

1 The details of ensuing events are provided by the Report and Recommendation of the
2 Appellate Commissioner appointed for the ICR Litigation contempt proceedings, filed January 31,
3 2014. *See* Dkt. #97. In reliance on Judge Jones’s ruling, Watson and other members of the Sea
4 Shepherd Board prepared to conduct the ninth annual whale defense campaign, entitled
5 “Operation Zero Tolerance” (“OZT”). *See* Dkt. # 97, p. 6. Sea Shepherd took the leading
6 administrative role, organizing its foreign chapters and four vessels in a whale defense campaign
7 designed to prevent capture of whales by ICR in the Southern Ocean. Sea Shepherd of Australia
8 (“SSAL”), an independent foreign entity, took a leading role in preparing for OZT logistics. *See*
9 *id.* at pp. 2, 7. The majority of OZT funding had been secured when the Ninth Circuit Court of
10 Appeals issued a *sua sponte* injunction pending appeal on December 17, 2012, enjoining Sea
11 Shepherd and Watson from physically attacking or endangering any ICR vessels or approaching
12 them within 500 yards. *See Great American*, 702 F.3d 573.

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15 Following news of the injunction, the Sea Shepherd Board of Directors consulted with
16 counsel and formulated a strategy to comply with the injunction and withdraw from OZT. The
17 Board included Watson, who also served as paid Executive Director, and volunteer members Lani
18 Blazier, Marnie Gaede, Bob Talbot, Robert Wintner, Ben Zukerman, and Peter Rieman, all of
19 whom are Defendants in the instant action. Defendant Susan Hartland, who joined Sea Shepherd
20 in January 2012 as administrative director, also took part. The resulting “separation strategy”
21 called for Sea Shepherd to sever financial ties with OZT. Dkt. # 97, at pp. 15-20. Watson
22 immediately submitted his resignation, and the Board transferred the ships and equipment under
23 its ownership to SSAL. *Id.* at pp. 22-26.

24
25 The OZT took place, initiating several alleged violations of the preliminary injunction
26 between January 29 and February 28, 2013. *Id.* at pp. 31-39. The majority of the alleged violations
27 involved incursions on the safety perimeter established by the injunction, as well as two collisions.
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1 Watson remained on the *Steve Irwin* vessel in an observer capacity, and was thereby on the vessel
2 when it breached the safety perimeter. *Id.* at pp. 29, 38-39.

3 The Ninth Circuit issued its decision in the ICR Litigation on February 25, 2013, reversing
4 the district court and ordering the injunction to continue under further order of the court. *See Great*
5 *American*, 708 F.3d 1099. On June 7, 2013, the Ninth Circuit issued its mandate and returned
6 jurisdiction of the ICR Litigation to the Western District. *See* Case No. 12-35266, Dkt. # 161.

8 **3) Contempt Proceedings**

9 On February 11, 2013, ICR filed a motion for contempt against Sea Shepherd, as well as a
10 motion to appoint a special master to conduct contempt proceedings, based on alleged violations
11 of the injunction that took place during the OZT. On February 21, 2013, the Ninth Circuit referred
12 the contempt motion to the Appellate Commissioner. *See* Dkt. # 97 at p. 40. ICR amended its
13 motion for contempt on March 6, 2013, to allege additional violations and include Defendant
14 Watson and seven non-parties (five current directors of Sea Shepherd, former director Rieman,
15 and administrative director Hartland). On April 12, 2013, ICR filed the controlling Second
16 Amended Motion for Contempt (“SAMC”) against the same individuals, alleging four additional
17 violations. Dkt. # 1-4.

19 The Ninth Circuit entered a scheduling order for the contempt proceedings on April 16,
20 2013, providing for discovery and a separate hearing before the Appellate Commission. *See* Dkt. #
21 88, Ex. 2. On January 31, 2014, the Appellate Commissioner issued the Report and
22 Recommendation in the contempt proceeding following a hearing that took place from October 28
23 through November 6, 2013. *See* Dkt. # 97. The R&R recommended that the Defendants should not
24 be found liable for contempt. In particular, the Commissioner recommended against a finding of
25 personal liability for the volunteer directors and Hartford, as they took reasonable steps to comply
26 with the injunction based on advice of counsel. *See id.* at pp. 72-75. Both parties agreed at oral
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1 argument that the Appellate Commissioner's recommendations do not affect the disposition of this
2 summary judgment Motion.

3 **4) Insurance Coverage Action**

4 Sea Shepherd made its first written request for coverage related to the ICR Litigation in a
5 February 13, 2013 e-mail from Sea Shepherd's counsel, Charles Moure, to Great American,
6 attaching a copy of the original motion for contempt. *See* Dkt. # 11 (Marler Decl.), ¶ 4 & Ex. C.
7 Great American filed this action for a declaratory judgment on June 12, 2013 (Dkt. # 1),
8 disclaiming its obligation to provide coverage, followed by a Motion for Summary Judgment on
9 July 11, 2013 (Dkt. # 10). Great American's Motion was continued to allow for discovery under
10 F.R.C.P. 56(d) and re-noted to allow for consideration on December 27, 2013. *See* Dkt. ## 43, 86.

11 In the instant Motion, Great American takes the position that the ICR Litigation was a
12 "Claim" first made on December 9, 2011, during the 2011 Policy Period but not reported until
13 Moure's February 13, 2013 e-mail, well after the end of the 90-day grace period under the 2011
14 Policy. Great American contends that it consequently has no duty to cover the untimely reported
15 claim under Washington State law. Great American further contends that regardless of the timing
16 of notice, the claim would be barred under the § IV.D Exclusion, as it arises out of the assault and
17 property damage at issue in the ICR Litigation. *See* Dkt. # 10.

18 Defendants disagree that the claim was untimely made. Defendants contend that the
19 contempt proceedings constitute a separate and distinct claim first made and reported within the
20 2012 Policy Period. *See* Dkt. # 87. Defendants further argue that the contempt proceedings
21 involved allegedly wrongful acts by Insureds unrelated to those that gave rise to the ICR Litigation
22 and not arising out of bodily injury or property damage that would trigger § IV.D exclusion. They
23 also claim that the non-imputation clause operates to prevent excluded acts from being imputed to
24 the Defendant Insureds. Alternatively, Defendants claim that the 2011 Policy is ambiguous with
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1 respect to whether it is a “claims made” or “claims made and reported” policy. If the former,
2 Defendants argue that American General is obligated to provide coverage under it unless it can
3 demonstrate that it was actually prejudiced by lack of proper notice.

4 Analysis

5 **1) Standard of Review**

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7 To prevail on summary judgment, Great American must show that there is no genuine
8 dispute as to any material fact supporting its position and that it is entitled to judgment as a matter
9 of law. Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Great
10 American is thus entitled to summary judgment should Defendants fail to make a sufficient
11 showing on an essential element of their case with respect to which they bear the burden of proof
12 at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Material facts are those that may affect
13 the outcome of the suit under governing law. *Anderson*, 477 U.S. at 248. An issue of material fact
14 is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving
15 party.” *Id.*

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17 In ruling on a motion for summary judgment, the court does “not weigh the evidence or
18 determine the truth of the matter but only determine[s] whether there is a genuine issue for trial.”
19 *Crane v. Conoco*, 41 F.3d 547, 549 (9th Cir. 1994) (internal citations omitted). Facts and
20 reasonable inferences are viewed in the light most favorable to Defendants as the non-moving
21 party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). However,
22 conclusory or speculative testimony is insufficient to raise a genuine issue of fact to defeat
23 summary judgment. *Anheuser-Busch, Inc. v. Natural Beverage Distributors*, 60 F.3d 337, 345 (9th
24 Cir. 1995).

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26 Under Washington law, “[i]nterpretation of insurance policies is a question of law, in
27 which the policy is construed as a whole and each clause is given force and effect.” *Overton v.*
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1 *Consol. Ins. Co.*, 145 Wn.2d 417, 424, 38 P.3d 322 (2002). The Court gives policy terms a “fair,
2 reasonable, and sensible construction as would be given to the contract by the average person
3 purchasing insurance.” *Id.* (citations omitted). Insurance policy exclusions, as well as any
4 ambiguity in policy language, are to be strictly construed against the insurer. *American Best*
5 *Foods, Inc. v. Alea London, Ltd.*, 168 Wash.2d 398, 407, 229 P.3d 693 (2010); *Queen City Farms,*
6 *Inc. v. Central Nat’l Ins. Co. of Omaha*, 882 P.2d 703, 720, 126 Wn.2d 50, 81 (1994). However, if
7 the policy language is clear and unambiguous, the court must enforce it as written and may not
8 create ambiguity where none exists. *Quadrant Corp. v. American States Ins. Co.*, 154 Wash.2d
9 165, 171, 110 P.3d 733 (2005). In interpreting policies, courts are bound by the definitions
10 provided therein. *Overton*, 145 Wn. 2d at 427.

12 **2) Coverage Under 2011 Policy**

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14 Defendants devote a significant portion of their Response brief arguing that coverage may
15 be available under the 2011 Policy, though they elected not to press this claim at oral argument.
16 Nonetheless, the Court herein addresses coverage under the 2011 Policy, as the possibility of
17 coverage would preclude summary judgment at this stage. Defendants’ argument for coverage is
18 based on what they see as an ambiguity on the face of the 2011 policy, which refers to the Policy
19 as a “Claims Made and Reported Policy” on the D16100 form and on the Declarations Page as
20 merely a “Claims Made Policy.” *See* Dkt. # 1-1, at pp. 1, 4. According to Defendants, the Court
21 should resolve this ambiguity in favor of Insureds and find the 2011 Policy to be a Claims Made
22 policy, under which coverage is allegedly available for a Claim reasonably reported after its lapse
23 absent a showing of prejudice.

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25 Defendants’ argument fails, however, because the distinction they draw is one without a
26 difference. A claims-made policy functions identically to a claims-made-and-reported policy
27 under Washington law where, as here, it possesses a finite notice requirement. *See* Dkt. # 1-1, §
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1 VII.A (providing that insured must give notice within 90 days of the policy year as a condition
2 precedent to coverage). Unlike occurrence policies, which require only reasonable notice, claims-
3 made policies “attempt to define the risk so that it is ascertainable at the end of the policy period.”
4 *Safeco Title Ins. v. Gannon*, 54 Wash. App. 330, 774 P.2d 30, 34 (1989). Washington law thus
5 requires that the reporting requirements in claims-made policies be strictly construed in order to
6 enforce the bargained-for terms of the contract. *Id.* at 338 (“Critically [], claims-made policies
7 require that the notice be given *during the policy period* itself.”)(emphasis in original)(citing *Gulf*
8 *Ins. Co. v. Dolan, Fertig and Curtis*, 433 So.2d 512, 515-16 (Fla. 1983)).

10 Contrary to Defendants’ assertions, an insurer that issues a claims-made policy under
11 Washington law also does not need to show prejudice in order to deny coverage for an untimely
12 reported claim. *Id.*; see *Moody v. American Guar. and Libaility Ins. Co.*, 804 F.Supp.2d 1123
13 (W.D. Wash. 2011). A Washington court of appeals in *Safeco Title Ins. v. Gannon* explained that
14 applying the notice-prejudice rule to a claims-made policy would otherwise “expand coverage to
15 include subsequent claims based on facts unreported during the policy period or unrecognized as
16 potential claims by the insured – coverage not contracted for or provided.” 774 P.2d at 339.
17 Applying the notice-prejudice rule to the instant contract would also read the unambiguous notice
18 requirement out of the 2011 Policy, which courts under Washington law are not permitted to do.
19 See *Overton*, 145 Wn. 2d at 424. Accordingly, coverage is not available under the 2011 Policy for
20 a Claim first made in December 2011 but not reported until February 2013, well beyond the
21 Policy’s unambiguous deadline for notice.
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24 3) Coverage Under 2012 Policy

25 The principal question before the Court is whether coverage is available for defense costs
26 incurred in the contempt proceedings under the 2012 Policy. In arguing for coverage, Defendants
27 contend that the SAMC constitutes a separate and distinct Claim from the ICR Litigation, which
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1 was first made and timely reported during the 2012 Policy Period. As evidence of its status as a
2 separate Claim, Defendants point to three distinctions between the contempt proceedings and the
3 underlying ICR Litigation: 1) the contempt proceedings are “jurisdictionally separate” from the
4 ICR Litigation; (2) the SAMC added contemnors that were not originally parties to the ICR
5 Litigation; and (3) the SAMC alleged conduct that occurred after the ICR litigation was filed.
6 Great American disagrees, arguing that the contempt proceedings and ICR Litigation are either the
7 same Claim or “related” such that they are deemed one Claim under the terms of the Policy.
8 Deciding this issue requires the Court to interpret, as a matter of law, the terms of the 2012 Policy.
9 *Overton*, 145 Wn.2d at 424.

11 The Court looks to the definition provided in the 2012 Policy in construing the contours of
12 a “Claim.” *Overton*, 145 Wn.2d at 427; *Safeco Title Ins.*, 54 Wash. App. at 335. The 2012 Policy
13 defines a Claim, in relevant part, as a “civil proceeding, including any appeals therefrom, made
14 against any Insureds seeking monetary or non-monetary (including injunctive) relief commenced
15 by service of a complaint or similar pleading.” Dkt. # 1-2, § III.A.2. The plain language of this
16 term defeats Defendants’ first contention that the jurisdictional separation of the ICR Litigation
17 and the SAMC renders the latter a distinct claim. Rather, the SAMC is indisputably part of an
18 “appeal” from the ICR Litigation and thereby part of the Claim initiated by filing of the original
19 ICR complaint. Moreover, federal courts consistently construe a civil contempt proceeding as a
20 continuance of the underlying litigation rather than a separate civil proceeding. *See nCube Corp. v.*
21 *Sea Change Int’l, Inc.*, 809 F.Supp.2d 337, 345 (D. Del. 2011) (“a contempt proceeding is not a
22 new proceeding, but, rather, a continuation of the same proceeding”); *Consolidation Coal Co. v.*
23 *Local 1702, United Mineworkers of Am.*, 683 F.2d 827, 830 n. 3 (4th Cir. 1982); *Fox v. Capital*
24 *Co.*, 299 U.S. 105 (1936) (holding that civil contempt orders are interlocutory and hence not
25 reviewable as final orders). Nor does the presence of a separate scheduling order and hearings for
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1 the contempt proceedings render them a distinct Claim. Appeals necessarily take place on a
2 different schedule and with separate hearings than governed the suit in lower court.

3 The reasonable interpretation of a “Claim,” so defined, is that it encompasses the entire
4 ICR lawsuit that was initiated by service of complaint in December 2011. Defendants rely solely
5 on *Kilcher v. Cont’ Cas. Co.*, 2013 WL 1330193 (D. Minn. 2013), *rev’d* 2014 WL 1317296 (8th
6 Cir. 2014), for the proposition that a single legal action may contain multiple claims. However, the
7 district court’s decision in *Kilcher* was not only reversed on appeal, but it also interpreted a Policy
8 in which a Claim was more narrowly defined as “a written demand for monetary damages, or [] a
9 civil adjudicatory or arbitration proceeding for monetary damages....” *Id.* at *4. By contrast, a
10 “Claim” as defined in the instant matter is more capacious, referring to the entire civil proceeding
11 that follows service of the initial pleading. Given this definition, the natural interpretation is that
12 the entire lawsuit, including contempt proceedings initiated under it, constitutes a single Claim.
13 Courts interpreting insurance policies that defined “Claim” in similar terms have reached this
14 same conclusion. *See, e.g., Cmty Found. For Jewish Educ. v. Fed Ins. Co.*, 16 Fed.Appx. 462, 466
15 (7th Cir. 2001) (“If someone is asked what sort of civil proceeding is set in motion by the service
16 of a complaint or similar pleading, it is difficult to imagine any answer other than a lawsuit.”);
17 *Informix Corp. v. Lloyd’s of London*, 1992 WL 469802, *2 (N.D. Cal. 1992).

18 The Court also finds unavailing Defendants’ argument that the addition of new contemnors
19 and allegation of events that took place after the ICR complaint was filed transforms the SAMC
20 into a new “Claim.” Courts consistently hold that the addition of new causes of action in a civil
21 proceeding, ordinarily through an amended complaint, does not give rise to a new Claim. *See*
22 *Cmty Found. For. Jewish Educ.*, 16 Fed.Appx. at 467 (“The fact is that we are dealing with the
23 same complaint that is twice amended, and that is not a new claim.”); *National Union Fire Ins.*
24 *Co. of Pittsburgh, PA v. Willis*, 296 F.3d 336, 342 (5th Cir. 2002) (concluding that a new claim of
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1 misrepresentation set forth in a fourth amended complaint “does not give rise to a new theory of
2 recovery that is a separate claim governed by” a later in time policy). Giving the Policy language
3 its facially intended effect, to construe a lawsuit as a single claim, serves an important purpose of
4 “allowing the insurance company to know in advance that its exposure will not include the
5 outgrowth of a pre-policy lawsuit.” *Cmt Found. For Jewish Educ.*, 16 Fed.Appx. at 467. At the
6 same time, it protects the Insured by requiring that the insurance company be held “liable for
7 subsequent amendment to claims first brought during the policy period.” *Id.*

9 Moreover, even if it was not beyond the plain language of the Policy to construe the
10 SAMC as a new Claim, it is still “related” to the ICR Litigation under the terms of the Policy such
11 that they are deemed a single claim. Section V.B of the Policy (the “Related Claims Provision”)
12 aggregates Claims that involve “the same Wrongful Act or Related Wrongful Acts of one or more
13 insurers” into a single Claim. Section V.B further deems this single Claim to have been made on
14 the earlier of: 1) the earliest date any of the aggregated Claims was first made; or 2) the earliest
15 date on which any of the Wrongful or Related Wrongful acts was reported under the Policy. *See*
16 Dkt. # 11-2, at p. 10. The Policy defines “Related Wrongful Acts” as “Wrongful Acts which are
17 casually connected by reason of any common fact, circumstance, situation, transaction, casualty,
18 event or decision.” *Id.* at p. 7. In analyzing the requisite degree of casual connection necessary in
19 the insurance context, Washington courts have interpreted the phrase “causally connected” to be
20 akin to but-for causation, rather than proximate causation. *See, e.g., Butzberger v. Foster*, 151
21 Wash.2d 396, 405, 89 P.3d 689 (2004); *Beckman By and Through Beckman v. Connolly*, 79
22 Wash.App.265, 274, 898 P.2d 357 (1995).

25 Here, the SAMC and the ICR Litigation arise out of a common set of facts, circumstances,
26 and events – the Defendants’ alleged attacks on the ICR’s sailing vessels in the South Ocean. But
27 for the initiation of the ICR Litigation, and the preliminary injunction issued under it, there would
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1 have been no basis for contempt proceedings against Defendants. The SAMC’s addition of new
2 contemnors and new events does not change this analysis, where the SAMC and the ICR
3 Litigation share a causal relationship. *See WFS Financial, Inc. v. Progressive Casws. Ins. Co.,*
4 *Inc.*, 232 Fed. Appx. 624, 625 (9th Cir. 2007) (holding that a related claim provision applied to
5 “two different sets of plaintiffs in two different fora under two different legal theories” that shared
6 a common basis in fact). A reasonable Insured reading the Policy at issue in this case would have
7 little trouble finding contempt proceedings to be casually connected to the ICR Litigation, where
8 the contemnors are alleged to have violated the very injunction that the ICR Litigation put in
9 place, and the contempt proceedings could not have taken place but for the underlying ICR
10 Litigation.

11
12 Accordingly, the Court finds that the SAMC forms part of a single Claim that was first
13 made when the complaint initiating the ICR Litigation was filed in December 2011. As the Claim
14 was not first made during the 2012 Policy period, coverage is not available under the 2012 Policy.
15 As the Court finds that neither the 2011 nor the 2012 Policy provides coverage for the contempt
16 proceedings, the Court need not reach Plaintiff’s further argument that coverage would also be
17 precluded by Exclusion IV.D. While the result the Court reaches is unfortunate for Defendants,
18 who have been forced to defend against contempt proceedings that they evidently tried to prevent
19 and on which they may ultimately prevail and, perhaps, even recoup defense costs, it is
20 nonetheless dictated by the plain language of their bargained-for insurance Policies.

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Conclusions

For the foregoing reasons, the Court hereby ORDERS that Plaintiff Great American Insurance Company's Motion for Summary Judgment (Dkt. # 10) is GRANTED. The Court directs the Clerk to enter final judgment in favor of Plaintiff.

Dated this 23rd day of May 2014.



RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE