

***** NOT FOR PUBLICATION *****

NO. 26828

IN THE SUPREME COURT OF THE STATE OF HAWAII

FIREMAN'S FUND INSURANCE COMPANY, Plaintiff-Appellant

vs.

AIG HAWAII INSURANCE COMPANY, INC., Defendant-Appellee

APPEAL FROM THE FIFTH CIRCUIT COURT
(CIV. NO. 01-1-0111)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon review of the statements supporting and contesting jurisdiction and the record, it appears that the circuit court's September 10, 2004 order determines that the arbitration of the attorneys' fees and costs issue raised in Civil No. 01-1-0111 is not precluded by Special Arbitration Rule 2-5. The September 10, 2004 order is not a final order appealable under the collateral order doctrine, but is an order supplementing the circuit court's March 15, 2002 order compelling arbitration of the attorneys' fees and costs issue raised in Civil No. 01-1-0111. The March 15, 2002 order has been appealed in No. 25035 and the September 10, 2004 order was transmitted to the supreme court as a supplemental record to No. 25035. The September 10, 2004 order is reviewable on appeal of the March 15, 2002 order. Therefore,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

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IT IS FURTHER ORDERED that Fireman's Fund Insurance Company may request permission to file a supplemental brief in No. 25035 on the issue raised in the September 10, 2004 order.

DATED: Honolulu, Hawai'i, January 21, 2005.