

NOT FOR PUBLICATION

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K. HAMAKAHO
CLERK, APPELLATE COURTS
STATE OF HAWAII

NO. 27345

IN THE SUPREME COURT OF THE STATE OF HAWAII

HAWAII PROVIDERS NETWORK, INC., Plaintiff-Appellant

vs.

AIG HAWAII INSURANCE COMPANY, INC., ALLSTATE INDEMNITY CO., ALLSTATE INSURANCE CO., AMERICAN AUTOMOBILE INSURANCE COMPANY, AMERICAN INSURANCE COMPANY, ASSOCIATED INDEMNITY CORP., BUDGET RENT-A-CAR SYSTEMS, INC., DAI-TOKYO ROYAL STATE INSURANCE COMPANY, LIMITED, FIREMAN'S FUND INSURANCE COMPANY OF HAWAII, INC., FIRST INDEMNITY INSURANCE OF HAWAII, INC., FIRST INSURANCE COMPANY OF HAWAII, LTD., GEICO CASUALTY CO., GEICO INDEMNITY CO., GOVERNMENT EMPLOYEES INSURANCE COMPANY, HARTFORD ACCIDENT AND INDEMNITY COMPANY, ISLAND INSURANCE COMPANY, LTD., LIBERTY MUTUAL FIRE INSURANCE COMPANY, LIBERTY MUTUAL INSURANCE CO., NATIONAL SURETY CORP., PROGRESSIVE CASUALTY INSURANCE COMPANY, PROGRESSIVE HAWAII INSURANCE CORP., PROGRESSIVE NORTHERN INSURANCE COMPANY, PROGRESSIVE NORTHWESTERN INSURANCE COMPANY, PROGRESSIVE SPECIALTY INSURANCE COMPANY, ROYAL INSURANCE COMPANY OF AMERICA, STATE FARM MUTUAL AUTOMOBILE INSURANCE CO., STATE NATIONAL INSURANCE COMPANY, THE HAWAIIAN INSURANCE AND GUARANTY COMPANY, LIMITED, TIG INSURANCE COMPANY, TIG PREMIER INSURANCE COMPANY, TOKIO MARINE AND FIRE INSURANCE CO., LTD., TRADEWIND INSURANCE COMPANY, TRAVELERS INSURANCE CO., USAA CASUALTY INSURANCE CO.,
Defendants-Appellees

and

JOHN AND JANE DOES 1-10, DOE CORPORATIONS 1-10,
DOE PARTNERSHIPS 1-10 and DOE ENTITIES 1-10, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 00-1-2905)

SUMMARY DISPOSITION ORDER

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

In this appeal, Plaintiff-Appellant Hawaii Providers Network, Inc. (HPN) appeals from the June 1, 2005 final judgment of the circuit court of the first circuit (the court)¹ granting summary judgment in favor of Defendants-Appellees insurance companies² (Defendants) in accordance with the February 21, 2001 stipulation entered into by HPN and Defendants.³

On November 17, 1999, HPN, as assignee of the claims of approximately 550 Hawai'i health care providers, filed suit in Civil No. 99-4269-11 (HPN I) against Defendants alleging that after the repeal of Hawai'i Administrative Rules (HAR) Title 12, chapter 13, Defendants improperly made reduced payments for personal injury protection services based on the new workers' compensation fee schedule established in HAR Title 12, chapter

¹ The Honorable Victoria S. Marks presided.

² Defendants-Appellees are AIG Hawaii Insurance Co., Allstate Insurance Co., Allstate Indemnity Co., American Automobile Insurance Co., American Insurance Co., Associated Indemnity Corp., Budget Rent-a-Car Systems, Inc., DAI-Tokyo Royal State Insurance Co., Fireman's Fund Insurance Co. of Hawaii, Inc., First Indemnity Insurance of Hawaii, Inc., First Insurance Company of Hawaii, Ltd., Geico Indemnity Co., Geico Casualty Co., Government Employees Insurance Co., Hartford Accident and Indemnity Co., The Hawaiian Insurance and Guaranty Co., Island Insurance Co., Liberty Mutual Fire Insurance Co., Liberty Mutual Insurance Co., National Surety Corp., Progressive Casualty Insurance Co., Progressive Hawaii Insurance Corp., Progressive Northern Insurance Co., Progressive Northwestern Insurance Co., Progressive Specialty Insurance Co., Royal Insurance Co. of America, State Farm Mutual Automobile Insurance Co., State National Insurance Co., The Hawaii Insurance and Guaranty Corp., TIG Insurance Co., TIG Premier Insurance Co., Tokio Marine and Fire Insurance Co., Tradewind Insurance Company, Travelers Insurance Co., and USAA Casualty Insurance Co. [collectively, Defendants].

³ The provisions of the February 21, 2001 stipulation entered by the parties are reproduced infra.

15. Hawaii Providers Network, Inc. v. AIG Hawaii Ins. Co., 105 Hawai'i 362, 367-69, 98 P.3d 233, 238-40 (2004). On July 11, 2000, the court in HPN I entered an order granting summary judgment in Defendants' favor. On September 12, 2000, judgment in HPN I was subsequently filed stating that the order granting summary judgment "disposed of all claims pending" between HPN and Defendants and that "no claims remain pending in this action."⁴

On September 20, 2000, following the filing of the judgment in HPN I, and during the pendency of Hawaii Providers, a second complaint was filed by HPN in Civil No. 00-1-2905-09 (HPN II) containing identical parties and claims as those raised in HPN I, except for the identity of health care providers listed as assignors.⁵

On February 21, 2001, a Stipulation and Order Staying Proceedings (the stipulation), drafted by HPN's counsel, was approved by the court in HPN II and filed. The stipulation states as follows:

It is hereby stipulated by and among the parties hereto, through their respective counsel, as follows:
1. [Defendants] hereby accept and acknowledge service of the complaint in this action;

⁴ The court's July 11, 2000 order and September 12, 2000 judgment did not elucidate any bases for granting summary judgment in favor of Defendants and against HPN. However, at the May 1, 2000 hearing on the motion, the court "conclud[ed] that the director's enactment of Chapter 15 and the repeal of Chapter 13 was essentially an amendment, an amendment which permitted - which is permitted by [Hawai'i Revised Statutes (HRS) § 431:10C-308.5] within the phrase 'as may be amended.'"

⁵ According to Plaintiff-Appellant Hawaii Providers Network, Inc. (HPN), HPN II was filed to preserve the claims of the assignors in HPN II while the appeal in HPN I was being decided.

2. The complaint in this action is identical to the Third Amended Complaint in Civil No. 99-4269-11 (RWP) [HPN I] (which civil number is referred herein to as the "Related Case"), except for the health care providers listed as assignors on Exhibit A attached thereto[;]

3. None of the defendants shall be required to file an answer or other pleading in response to the complaint herein except as provided in paragraph 5 below;

4. A final judgment has been entered in the Related Case which disposes of all claims of all parties. [HPN] has taken an appeal from that final judgment.

5. All proceedings in this case shall be stayed pending the outcome of the appeal in the Related Case. If the final judgment in the Related Case is affirmed on appeal, this case will be dismissed with prejudice. If the final judgment in the Related Case is reversed on appeal or if the Related Case is remanded to the circuit court for further proceedings, [Defendants] shall file answers or other pleadings in response to the complaint herein within 45 days of the entry of the judgment on appeal in the Related Case.

(Emphases added.)

On August 26, 2004, this court affirmed the court's judgment in HPN I and held in pertinent part, as follows:

Accordingly, after the director repealed HAR Title 12, chapter 13, referred to in HRS Section 431:10C-308.5(a), and adopted in 1996, HAR Title 12, Chapter 15, the latter became the fee schedule governing payments to no-fault benefit providers under HRS Section 431:10C-308.5.

Because the September 12, 2000 judgment of the first circuit court . . . granting summary judgment in favor of [Defendants] against [HPN] was consistent with the foregoing, we affirm the said judgment.

105 Hawai'i at 364, 98 P.3d at 235 (emphasis added).

On September 7, 2004, HPN filed a motion for reconsideration, requesting that this court review its opinion in Hawaii Providers. That motion was denied on October 5, 2004. It was observed by this court that the court's September 12, 2000 judgment did not elucidate any bases for granting summary judgment in favor of Defendants and against HPN. However, at the May 1, 2000 hearing on the motion, it was noted that the court "conclud[ed] that the director's enactment of Chapter 15 and the

repeal of Chapter 13 was essentially an amendment, an amendment which permitted - which is permitted by [HRS § 431:10C-308.5] within the phrase 'as may be amended.'" On that same day, this court entered an Order of Amendment. In pertinent part, the Order of Amendment amended the opinion by deleting the bracketed material and adding the underscored material as follows:

Line 8 from the bottom of page 23: correctly enforced the schedule in HAR Title 12, chapter 15 as of January 1, 1996.

Lines 8-11 from the top of page 24: vehicle insurance rates." Id. Under the circumstances, [and because the commissioner's memorandum directed insurers to apply] Title 12 chapter 15[, this fee schedule] was properly applied by insurers as of January 1, 1996.

On October 6, 2004, HPN submitted its objection to Defendants' proposed notice and judgment on appeal, stating:

[HPN], hereby objects to the proposed form of Notice and Judgment on Appeal submitted on September 1, 2004, by attorney Richard B. Miller on behalf of several of the defendants-appellees. That proposed form of Notice and Judgment on Appeal satisfactorily dealt with the case based upon [the court's] decision on August 26, 2003. It does not deal with (and obviously could not have dealt with) the amendments to that decision set forth in the Order of Amendment filed herein on October 5, 2004.

As [the court's] Order of Amendment of October 5, 2004, concludes only that the insurers properly applied the fee schedule as of January 1996, there remains for consideration the issue of the fees paid for the six month period from July 1, 1995 through December 31, 1995. This remaining issue requires that the case be remanded to the lower court for consideration consistent with this Court's decision, as amended[.]

(Emphases added.) Notwithstanding the request, Defendants' proposed notice and judgment on appeal was entered on October 29, 2004.

On November 10, 2004, HPN filed a motion to amend this court's judgment in Hawaii Providers to reflect a partial

reversal and remand to the court. On December 22, 2004, this court denied HPN's motion. In doing so, this court stated as follows:

The partial reversal and remand requested by HPN is unnecessary inasmuch as (1) in its motion for partial summary judgment, HPN sought a ruling from the court covering "the period from January 1, 1993, the effective date of HRS Section 431:10C-308.5, through at least December 31, 1997, [that] the [Defendants] have been and remained obliged to compensate HPN's assignors pursuant to HRS Section 431:10C-308.5(a) and HAR Title 12, Chapter 13," (2) the court's July 11, 2000 order granting summary judgment in favor of [Defendants] and September 12, 2000 judgment did not provide a specific basis for the court's decision, (3) at the hearing on the motion, however, the court generally "conclu[ded] that the director's enactment of Chapter 15 and the repeal of Chapter 13 was essentially an amendment" . . . ; thus, the courts order granting summary judgment pertained to the date of enactment of Chapter 15, (4) this court indicated in its opinion that chapter 15 was effective on the date of enactment, which was January 1, 1996, and (5) HAR Title 12, chapter 13, thus, was the governing fee schedule up until December 31, 1995, and chapter 15 was the governing fee schedule as of January 1, 1996.

(Some emphases added and some in original.) (Some brackets added and some in original.)

On March 21, 2005, Defendants moved for dismissal of the complaint with prejudice or for summary judgment in HPN II. Conversely, HPN filed a motion to lift the stay. On April 8, 2005, the court heard both motions. The court orally granted Defendants' motion in the following manner:

Reviewing the record of HPN I, it appears to this court that there was a final judgment that went up on appeal; that the final judgment was affirmed; that there was no specific reversal or remand. So based on that record together with the stipulation, the defendants' motion for dismissal or, in the alternative, for summary judgment is granted.

(Emphasis added.)

On appeal, HPN argues that the court erred in granting summary judgment in the underlying matter (1) because the

judgment of this court in Hawaii Providers was not an affirmation of a final judgment of HPN I and (2) because Hawaii Providers did not affirm a final judgment of HPN I, the stipulation entered into by the parties in HPN II did not permit the granting of the dismissal or summary judgment. In response, Defendants maintain that (1) the summary judgment granted by the court in HPN I is a final judgment, (2) this court in Hawaii Providers affirmed that final judgment, and (3) pursuant to the stipulation, the court properly granted summary judgment, or (4) in the alternative, the case was correctly dismissed as res judicata bars HPN's prosecution in the instant case.

Defendants' first argument is dispositive of the present appeal. A "final judgment" disposes of all claims of all parties. Arthur v. Sorenson, 80 Hawai'i 159, 162, 907 P.2d 745, 748 (1995). Based on a review of the record of HPN I, the decision by the court was a final judgment, as it is well established that an appellate courts jurisdiction is limited to a review of final judgments, orders and decrees. Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). The judgment in HPN I was not entered under the collateral order doctrine; the Forgay doctrine, pursuant to HRS 641-1(b) as an interlocutory appeal; nor was it certified as an appeal pursuant to Hawai'i Rules of Civil Procedure Rule 54(b). Wong v. Takeuchi, 83 Hawai'i 94, 98-99, 924 P.2d 588, 592-93 (App. 1996). There being no jurisdictional issue, the court's

judgment in HPN I constituted a final judgment, and this court in Hawaii Providers accepted HPN I on appeal.

Furthermore, this court decided that an amendment to reflect a partial reversal and remand in Hawaii Providers was unnecessary inasmuch as the court in HPN I determined that "the director's enactment of Chapter 15 and the repeal of Chapter 13 was essentially an amendment" and the court's order granting summary judgment in HPN I "pertained to the date of enactment of Chapter 15." Furthermore, it was concluded that "chapter 15 was effective on the date of enactment, which was January 1, 1996," and that Chapter 13 "was the governing fee schedule up until December 31, 1995, and chapter 15 was the governing fee schedule as of January 1, 1996."

HPN alleged that Defendants improperly paid reduced amounts based on the new workers' compensation fee schedule established in HAR Title 12, chapter 15. In their complaint in HPN I, HPN sought "the amount equal to the difference between what [D]efendants paid to [HPN's] Assignors and the amount legally owed to [HPN's] Assignors under the workers' compensation schedule . . . in HAR Title 12 chapter 13." Hence, HPN only claimed that Defendants and the Insurance Commissioner erred in following the fee schedule in Title 12, chapter 15 instead of the fee schedule under HAR Title 12 chapter 13 after December 31, 1995. HPN did not make a separate claim that payments were

withheld or that they were underpaid prior to January 1, 1996, the effective date of Title 12, chapter 15. Therefore, contrary to HPN's characterization of the instant case, "all rights and liabilities and all claims of all parties have . . . been terminated." Sorenson, 80 Hawai'i at 162, 907 P.2d at 748. The stipulation evinces the intention by all the parties to dismiss HPN's claims against Defendants if a final judgment by the court was affirmed by this court in Hawaii Providers as has been determined, supra.⁶ See In re Doe, 90 Hawai'i 200, 208, 978 P.2d 166, 174 (App. 1999) (explaining that "an agreement to terminate, by means of mutual concessions, a claim [that] is disputed in good faith or unliquidated" and an agreement to terminate proceedings "is an amicable method of settling or resolving bona fide differences or uncertainties and is designed to prevent or put an end to litigation" (quoting Sylvester v. Animal Emergency Clinic of Oahu, 72 Haw. 560, 565-66, 825 P.2d 1053, 1056 (1992))).

Therefore, in accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

⁶ Moreover, under the stipulation, HPN conceded that a final judgment was entered. That stipulation reads that "[a] final judgment has been entered in the Related Case which disposes of all claims of all parties. [HPN] has taken an appeal from that final judgment."

IT IS HEREBY ORDERED that the court's June 1, 2005 final judgment granting summary judgment in favor of Defendants is affirmed.

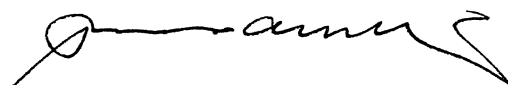
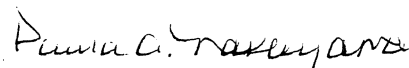
DATED: Honolulu, Hawai'i, May 23, 2006.

On the briefs:

Paul Maki for plaintiff-appellant.

Richard B. Miller (Tom Petrus & Miller) for defendants-appellees
AIG Hawaii Ins. Company, Inc.,
Dai-Tokyo Royal State Insurance Company, Budget Rent-a-Car Systems, Inc., First Indemnity Insurance of Hawaii, Inc., First Insurance Company of Hawaii, Inc., Geico Indemnity Co., Geico Casualty Co., Government Employees Insurance Company, Liberty Mutual Fire Insurance Company, Progressive Casualty Insurance Company, Progressive Hawaii Insurance Corp., Progressive Northern Insurance Company, Progressive Northwestern Insurance Company, Progressive Specialty Insurance Company, TIG Insurance Company, TIG Premier Insurance Company, Tokio Marine and Fire Insurance Co., Ltd., and The Hawaiian Insurance and Guaranty Company.

Jeffrey H .K. Sia and Gary S. Miyamoto (Ayabe, Chong, Nishimoto, Sia & Nakamura) for defendants-appellees Hartford Accident and Indemnity Company and Travelers Insurance Co.



Kama E. Dulle, Jr.

On the joinders:

Keith K. Hiraoka and James
Shin (Roeca, Louie & Hiraoka)
for defendants-appellees
American Automobile Insurance
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Michael N. Tanoue and Jeffrey S.
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Kevin P.H. Sumida and James H.
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