

Electronically Filed
SECOND CIRCUIT
2CSP-23-0000057
26-JUL-2024
10:44 AM
Dkt. 1655 ORD

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWA'I

IN THE MATTER OF THE	)	2CSP-23-57(2)
PETITION FOR THE	)	
COORDINATION OF MAUI	)	SUA SPONTE ORDER OF THE
FIRE CASES.	)	COURT RE: HEARING ON THE
	)	EFFECT OF HRS SECTION
	)	663-10 ON ALL MAUI FIRE CASES
	)	
	)	

SUA SPONTE ORDER OF THE COURT RE:
HEARING ON THE EFFECT OF HRS SECTION 663-10
ON ALL MAUI FIRE CASES

Between August 7 and August 9, 2023, fire destroyed and caused massive destruction, death, injury, and damage to thousands of people, businesses, and others on the Island of Maui. As of this date, over 600 lawsuits have been filed that arise out of the losses and harm suffered. Those lawsuits are pending in the First Circuit, Second Circuit, and the United State District Court of Hawaii.

In the spring of 2024, this Court appointed retired judges Louis Meisinger, and Daniel Buckley, of Los Angeles, CA, and Keith Hunter, Hawaii's own mediator par excellence, to serve as Court appointed neutrals. The Court granted the mediators' discretion to create, coordinate, manage, conduct and order ALL parties to participate in alternative dispute resolution.

The Court did not participate in any of the “settlement discussions.” The parties gave updates as to the continuation of discussions so that the planning of future Court hearings could be considered.

Then on July 18, 2024, the Court, along with undoubtedly many others, learned for the first time details of what media reports purported to be “a global settlement.” These reports proved to be premature.

This Court has not received any notice from any party or attorney, as required by the Rules of Professional Responsibility, of any settlement let alone one of a global nature. Neither, however, has the Court received any notice from the Mediators that an impasse had been reached in the negotiation process.

Then on July 23, 2024, this Court received a letter from Liason Counsel requesting an “urgent” status conference to understand the mechanics that might be used to resolve insurer subrogation liens. The Court set an informal status conference for all Maui Fire Cases for Friday, July 26, 2024.

Since the setting of that conference the Court has received communications from attorneys representing various defendants of their joinder in the request for a status conference. The essential purpose of the conference is to explore the path forward so that a “global settlement” can not only be discussed but achieved.

The Court is aware and mindful that numerous insurers have made payments to the Maui Fire victims for property and other losses. Indeed, the media reports referenced over \$2 billion in payments.

Many of those insurers have filed a standalone lawsuit seeking recovery for those payments from various defendants. That lawsuit is pending in the First Circuit and is assigned to the Hon. Dean E. Ochiai.

The recovery of losses paid by insurers, commonly known as subrogation claims, can arise from any number of lawful sources. Those legal theories may include statutory, contractual, or equitable sources.

In general, a subrogation claim asserted by an insurer allows that paying entity to step into the shoes of its insured to whom payment has been made to recover what it paid as a result of the wrongful conduct of another. Thus despite the filing of a separate lawsuit pending in a different circuit, THIS COURT FINDS AND CONCLUDES that it has jurisdiction, authority and legal duty to review and resolve subrogation liens in the event of settlement of any Maui Fire Case. This authority flows from HRS Sec. 663-10.

Because the subrogation claims are inextricably tied to the just, efficient, and economic determination of all the Maui Fire Cases, this Court has the authority to bring together all necessary persons and entities to achieve that result. This authority also derives from the designation of all the Maui Fire Cases as complex matters pursuant to HRCC Rule 12.

It is therefore Ordered that:

1. The Court shall conduct a hearing on Tuesday, August 13, 2024, at 10:00 AM HST to review all matters that have or could arise by way of operation of HRS Sec 663-10 in the event that any single, group, or global resolution of the Maui Fire Cases is reached.

2. Plaintiffs in all Maui Fire Cases may file memoranda setting forth their position no later than 3:00 PM HST, Friday, August 2, 2024.

3. Defendants and any insurer may file memoranda setting forth their position no later than 3:00 PM HST, Friday, August 9, 2024.

4. All pleadings shall be filed in this Special Proceeding.

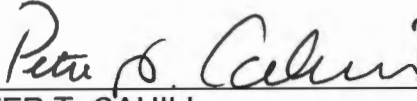
5. The Court is aware that most of the insurers are not currently named as parties in the Maui Fire Cases and do not receive electronic notifications of filings in the special proceeding.

The plaintiffs and defendants in the special proceeding are tasked with the responsibility of serving this order upon all insurers or their counsel that have brought or may assert "subrogation" liens.

6. Counsel or parties that wish to speak at the hearing **MUST APPEAR IN PERSON**. There shall be **NO ZOOM**. Others may watch on this Court's **YOUTUBE** channel, information can be found on the Judiciary website.

7. Nothing in this order changes the authority of the mediators to continue with settlement discussions. The Court reiterates that because IT has statutory authority and the duty to resolve "lien" issues in the event of a settlement or post-verdict, the Court-appointed mediators have the same authority and discretion vis-à-vis the subrogation insurers.

DATED: Wailuku, Hawaii, July 26, 2024.


PETER T. CAHILL
Judge of the above entitled Court

