

Electronically Filed
SECOND CIRCUIT
2CSP-23-0000057
11-SEP-2024
02:06 PM
Dkt. 2015 ORDG

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT
STATE OF HAWAI'I

In re Maui Wildfire Cases

Case No. S.P. No. 2CSP-23-0000057
(Other Non-Vehicle Tort – Maui Fire)

**AMENDED ORDER GRANTING THE COURT'S
OWN MOTION FOR RESERVED QUESTIONS
TO THE HAWAI'I SUPREME COURT UNDER
HRAP RULE 15(a) ; APPENDIX A**

**AMENDED ORDER GRANTING THE COURT'S OWN MOTION FOR RESERVED
QUESTIONS TO THE HAWAI'I SUPREME COURT UNDER HRAP RULE 15(a)**

This Court heard the Individual Action Plaintiffs' Motion for (1) Reserved Questions to The Hawai'i Supreme Court Under HRAP Rule 15(a) or (2) Leave to Take an Interlocutory Appeal Under HRS § 641-1(b) of the Court's August 19, 2024 Order (the "**Motion**") on August 30, 2024 at 9:00 a.m. JESSE M. CREED, ESQ., CYNTHIA K. WONG, ESQ., JACOB LOWENTHAL, ESQ. and JAN K. APO, ESQ., appearing in Court as Plaintiffs' Liaison Counsel, and VINCENT RABOTEAU, ESQ. and ADAM ROMNEY, ESQ., appearing in Court as counsel for Non-Party Subrogation Plaintiffs. Lawyers representing the settling defendants and others representing uncertified class actions plaintiffs in federal court appeared and argued.

Numerous other attorneys appeared in Court and noted their appearances on a sign-in sheet but offered no argument.

The Court has considered the Motion, all responsive memoranda filed in the Special Proceeding related to the Motion, the oral arguments presented, and all other relevant filings in this Special Proceeding. The Court shall enter a separate order denying the motion as presented. The Court ORDERS as follows:

1. The Court finds and concludes that the presentation of questions of law to the Supreme Court of Hawai'i is of urgent public importance and necessity. Because so many have been impacted by the Maui Fires of August 2023, this Court invokes the authority provided for in HRAP Rule 15 (a) and grants its own motion for reserving questions to the Hawai'i Supreme Court. The Court uses this procedure to: 1) allow the Supreme Court of the State of Hawai'i to address three questions of law; and, 2) assist this court in facilitating a course of action that shall result from the answers to each question ensuring that the rights AND duties of all interested persons and parties are in compliance and compatible with the laws of the State of Hawai'i even if they differ and contrast with the laws and public policies of mainland jurisdictions.

2. Rule 15(a) of the Hawai'i Rules of Appellate Procedure provides: "A circuit court ... may reserve for the consideration of the Supreme Court a question of law arising in any proceeding before it." The Supreme Court of the Territory of Hawai'i has ruled that questions may be reserved to the Supreme Court for consideration after the trial court has ruled on the question at issue. *See Honolulu Plantation Co. v. H. Tsunoda*, 27 Haw. 835, 836-37 (Terr. Haw. 1924) ("[T]he mere fact of [the trial judge's] having already expressed his view upon the point or of having already made a ruling will not of itself, in the absence of other controlling circumstances, render impossible or improper the reservation of the questions.") This Court

concludes that it is appropriate to reserve a question to the Supreme Court even though it has decided a particular issue. Because of the uncertainty of the law in this area, the effect upon large numbers of people and entities, the intervention of the Supreme Court of Hawai‘i by answering the reserved questions shall provide guidance on the legal, equitable, and public policy bases for this Court to proceed.

3. The Court acknowledges that the subrogating insurers contest the jurisdiction of this Court to decide matters that are included within lawsuits that have been brought in the First Circuit. While acknowledging those jurisdictional arguments, the subrogating insurers have been accorded notice (albeit short), and an opportunity to be heard.

4. In light of the “global settlement,” the Court FINDS that reserving the following three questions (the “**Reserved Questions**”) for consideration by Supreme Court of the State of Hawai‘i would: 1) be in the best interest of all Parties including the self-described non-party Subrogating Insurers; 2) further judicial economy and party resources; and, 3) ensure the orderly administration of justice:

Question 1: Does the holding of *Yukumoto v. Tawarahara*, 140 Haw. 285 (2017), 400 P.3d 486, (2017) that limited the subrogation remedies available to health insurers to reimbursement from their insureds under HRS § 663-10 and barred independent actions against tortfeasors who settled with the insureds extend to property and casualty insurance carriers?

Question 2: Is a property and casualty insurer's subrogation right of reimbursement prejudiced by its insured's release of any tortfeasor when the settlement documents and release preserve those same rights under HRS § 663-10?

Question 3: Under the circumstances of the Maui Fire Cases and the terms of the “Global Settlement,” does the law of the State of Hawai‘i require that insureds be made whole for all claimed injuries or damages before their insurers can pursue a subrogation right of recovery or reimbursement against a third-party tortfeasor?

5. The Court finds and concludes that the Reserved Questions are solely questions of law that are the subject of the dispute between the Parties and the Subrogating Insurers and that resolution of these issues by the Supreme Court of the State of Hawai‘i shall have a material and immediate impact on the viability of the “Global Settlement.”

6. Therefore, the Court ORDERS that the Reserved Questions be transmitted to the Hawai‘i Supreme Court to consider in its discretion.

7. The Court further ORDERS that the Clerk of the Second Circuit Court electronically file this Order regarding the Reserved Questions with the Hawai‘i Supreme Court and the attached Appendix A that sets forth the four reserved questions.

8. The Court further ORDERS under HRAP Rule 15(b) that the Clerk of the Second Circuit transmit images of the following docket entries in Special Proceeding No. 2CSP-23-57 to the Hawai‘i Supreme Court:

1655

1688

1740

1741

1743

1744

1748

1750

1751

1753

1756

1758

1760

1762

1764

1766

1778

1780

1783

1903

1905

1907

1909

1920

1924

1948

1954

1958

1959

1961

1967

1968

1973

1975

1977

1985

1991

2005

2007

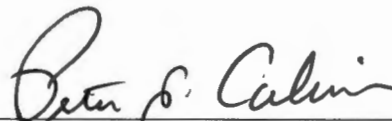
2009

The Court takes judicial notice that the following entries are each Returns and Acknowledgement of Service of pleadings upon the subrogating insurers. The pleadings pertaining to these docket entries are noted but not transmitted:

1772-1774; 1787-1796; 1798-1807; 1813-1822; 1824-1830; 1832-1841; 1843-1852; 1854-1863; 1865-1878; 1880-1896; 1898-1901; and, 1922.

9. It is further ordered that any party that has ordered the transcript of proceedings from the hearings of July 26, 2024, August 13, 2024, and August 29, 2024 shall file copies in this proceeding and shall also seek permission to file them with the Clerk of the Supreme Court once this order has been docketed. This Court deems those transcripts essential for review by the Supreme Court but no party filed them in this proceeding for transmission.

DATED: Wailuku, Maui, Hawai'i, SEP 11 2024



JUDGE OF THE ABOVE-ENTITLED COURT



APPENDIX A

Question 1: Does the holding of *Yukumoto v. Tawarahara*, 140 Haw. 285 (2017), 400 P.3d 486, (2017) that limited the subrogation remedies available to health insurers to reimbursement from their insureds under HRS § 663-10 and barred independent actions against tortfeasors who settled with the insureds extend to property and casualty insurance carriers?

Question 2: Is a property and casualty insurer's subrogation right of reimbursement prejudiced by its insured's release of any tortfeasor when the settlement documents and release preserve those same rights under HRS § 663-10?

Question 3: Under the circumstances of the Maui Fire Cases and the terms of the “Global Settlement,” does the law of the State of Hawai‘i require that insureds be made whole for all claimed injuries or damages before their insurers can pursue a subrogation right of recovery or reimbursement against a third-party tortfeasor?