NO. 22150

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of WAYNE METCALF,[1] Insurance Commissioner of the State of Hawai'i, Petitioner

vs.

THE HAWAIIAN INSURANCE & GUARANTY COMPANY, LIMITED, a Hawai'i corporation, UNITED NATIONAL INSURANCE COMPANY LIMITED, a Hawai'i corporation; and HAWAIIAN UNDERWRITERS INSURANCE CO., LTD., a Hawai'i corporation, Respondents

and

4000 OLD PALI ROAD PARTNERS and SHERMAN S. HEE, Petitioners-Appellants

vs.

WAYNE METCALF, Insurance Commissioner of the State of Hawai'i, in his capacity as the Liquidator of HUI/UNICO In Liquidation, Inc., Respondent-Appellee

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APPEAL FROM THE FIRST CIRCUIT COURT
(S.P. NO. 92-0524)

MEMORANDUM OPINION
(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Petitioners-Appellants 4000 Old Pali Road Partners, a general partnership (Partners), and Sherman Hee, a general partner of the partnership (Hee), (collectively, Appellants) appeal from the June 28, 1998 judgment of the first circuit court (the court) denying their petition for approval of Class 4

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[1] Pursuant to Hawai'i Rules of Appellate Procedure Rule 43(c)(1), Wayne Metcalf, the current Insurance Commissioner of the State of Hawai'i, has been substituted for Linda Chu Takayama, the commissioner at the time this case was filed.

creditor status under Hawai‘i Revised Statutes (HRS) § 431:15-332 (1993),[2] or, alternatively, for a court determination as to their status as creditors in the reorganization and liquidation proceedings involving Respondents-Appellees The Hawaiian Insurance & Guaranty Company, Limited (HIG), Hawaiian Underwriters Insurance Co., Ltd. (HUI), and United National Insurance Company, Ltd. (UNICO) (collectively, Appellees).[3] We affirm the aforesaid judgment.

I.

A.

Partners was issued an insurance policy for commercial property coverage and commercial general liability coverage (the

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[2] HRS § 431:15-332 governs the distribution of payment from an insurer's estate and creates nine separate classes of priority, with Class 1 receiving first priority and states in pertinent part:

> **Priority of distribution**. The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be:
>
> . . . .
>
> (4) Class 4. All claims under policies for losses incurred[.]

(Emphasis added.)

[3] HIG, HUI, and UNICO were domestic insurance companies licensed to do business in Hawai‘i. HIG, HUI, and UNICO operated their businesses on a consolidated basis.

policy) by HIG, effective November 11, 1991 to November 11, 1992. The policy covered property located in Kapaʻa, Kauaʻi (the property) and stated in relevant part that HIG could terminate the policy in accordance with the cancellation provision of the "Common Policy Conditions." That provision stated, inter alia, that "[HIG] may cancel this policy by mailing or delivering written notice of cancellation at least . . . 10 days before the effective date of cancellation if [HIG] cancel[s] for nonpayment of premium[.]" According to the policy, notice would be mailed to the insured at its last known mailing address, and "proof of mailing [would] be sufficient proof of notice." Four Star Insurance Agency was listed as the agent on the policy.

An endorsement to the policy entitled "Hawaiʻi Changes -- Cancellation and Nonrenewal" (the cancellation endorsement) superseded the "Common Policy Conditions" cancellation provision with a condition allowing termination on thirty days' prior notice:

> [HIG] may cancel this policy prior to the expiration of the agreed term, or one year from the effective date of the policy or renewal, whichever is less, only for one or more of the following reasons, by delivering to the First Named Insured written notice of cancellation, at least 30 days before the effective date of cancellation:
>
> 1. Nonpayment of premium[.]

(Emphases added.) The endorsement indicated it applied inter alia to coverage provided under "COMMERCIAL PROPERTY - LEGAL LIABILITY COVERAGE FORM" and "COMMERCIAL PROPERTY - MORTGAGE HOLDER'S ERRORS AND OMISSIONS COVERAGE FORM."

Partners failed to pay the monthly premium of $930.98 for the month of July 1992. According to an affidavit by an HIG employee, on July 31, 1992, HIG mailed to Partners at its address, a notice of cancellation which was to be effective beginning September 1, 1992.[4] Partners also failed to pay the insurance premium for August 1992. On September 11, 1992, Hurricane Iniki struck Kauaʻi and damaged the property.

That same day, Hee notified HIG of damage to the property by calling Four Star Insurance Agency. On September 18, 1992, Hee learned that the policy had been cancelled as of September 1, 1992. On October 13, 1992, HIG received a backdated check from Hee for $2,139, but applied only $459.94 to the premium that was due, and refunded the remainder to Appellants. Appellants made numerous attempts to contact HIG to determine the status of their claim, but were "essentially stonewalled[.]"

B.

1.

On December 18, 1992, then-Hawaiʻi State Insurance Commissioner Linda Chu Takayama (the Insurance Commissioner) filed an ex parte petition in the instant case, S.P. 92-0524, to seize the assets of HIG and its wholly-owned subsidiaries, HUI

[4] A notice of cancellation was also mailed on July 31, 1992 to Bank of Hawaii's Income Property Loan Department and Finance Factors, Ltd., which were listed in the policy as mortgage holders and loss payees.

and UNICO, pursuant to HRS § 431:15-202 (1993).[5] The attached affidavit of the Insurance Commissioner stated she found "HIG [wa]s insolvent and that further transaction of business would be hazardous to HIG's policyholders, creditors, and the public[;] HIG ha[d] informed the Insurance Division that it ha[d] approximately $360 million in available assets . . . and approximately $440 million in current claims." The court granted the seizure order.

On December 24, 1992, the court ordered HIG, HUI and UNICO into rehabilitation (rehabilitation order), pursuant to HRS

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[5] HRS § 431:15-202 states in relevant part:

> **Court's seizure order.** (a) The commissioner may file in the circuit court of the first judicial circuit of this State a petition alleging, with respect to a domestic insurer:
>
> (1) That there exist any grounds that would justify a court order for a formal delinquency proceeding against an insurer under section 431:15-301 or section 431:15-306;
>
> (2) That the interests of policyholders, creditors or the public will be endangered by delay; and
>
> (3) The contents of an order deemed necessary by the commissioner.
>
> (b) Upon a filing under subsection (a), the court may issue forthwith, ex parte and without a hearing, the requested order which shall direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of the insurer, and of the premises occupied by it for transaction of its business, and until further order of the court, enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from transaction of its business except with the written consent of the commissioner.

(Emphases added.)

§ 431:15-301 et seq. (1993),[6] and confirmed the Insurance Commissioner as Rehabilitator. The rehabilitation order was apparently modified on December 30, 1992, requiring that all proceedings involving HIG, HUI and UNICO would be stayed for ninety days in accordance with HRS § 431:15-304 (1993).[7]

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[6] HRS § 431:15-301 states in relevant part:

> **Grounds for rehabilitation** (a) The commissioner may apply by petition to the circuit court of the first judicial circuit for an order authorizing the commissioner to rehabilitate a domestic insurer . . . , on any one or more of the following grounds whenever the commissioner reasonably believes that the insurer may be successfully rehabilitated without substantial increase in the risk of loss to the insurer's policyholders, creditors, or to the public:
>
> (1) The insurer is insolvent.
>
> (2) The insurer is in such condition that the further transaction of business would be hazardous, financially, to its policyholders, creditors or the public[.]

(Emphasis added).

[7] HRS § 431:15-304 states in relevant part:

> **Actions by and against rehabilitator.** (a) Any court in this State before which any action or proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order against the insurer is entered, shall stay the action or proceeding for ninety days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take such action respecting the pending litigation as the rehabilitator deems necessary in the interests of justice and for the protection of creditors, policyholders and the public. . . .

(Emphasis added.)

On January 20, 1993, the court declared HUI and UNICO insolvent pursuant to HRS § 431:15-103(10) (1993)[8] and ordered the stay to be lifted in situations where the Rehabilitator chose to proceed as a claimant, sought recovery of assets or declaration of rights, or determined that it was in the best interest of HIG, HUI, or UNICO that the proceeding not be stayed. This order also lifted the stay imposed under HRS § 431:15-313 (1993), which prohibited, after the appointment of a liquidator, the initiation or continuation of any action against an insurer or the liquidator.[9]

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[8] "Insolvency" or "insolvent," pursuant to HRS § 431:15-103(10), is defined in relevant part as follows:

> (B) For any other insurer [other than one issuing only assessable fire insurance policies], that it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of:
>
> (i) Any capital and surplus required by law for its organization, or
>
> (ii) The total par or stated value of its authorized and issued capital stock.
>
> (C) As to any insurer licensed to do business in this State as of July 1, 1988, who does not meet the standard established under subparagraph (B), the term insolvency or insolvent shall mean, for a period not to exceed three years from July 1, 1988, that it is unable to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the commissioner under provisions of this code.

[9] HRS § 431:15-313 states in pertinent part:

> **Actions by and against liquidator.** (a) Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this State, no action at law or equity shall be brought against the insurer or liquidator, whether in this State or elsewhere, nor shall

(continued...)

On March 24, 1993, the court extended the ninety-day stay on all actions pending against HIG until July 20, 1993, except for Hurricane Iniki claims and workers' compensation claims.

2.

On April 12, 1993, the Rehabilitator moved for court approval of a plan which proposed the continued operation of HIG and the liquidation of HUI and UNICO (the reorganization plan). Under the reorganization plan, it was intended that the claims of HIG, HUI, and UNICO policyholders would be treated equally and paid in full, and that claimants, including policyholders, would be mailed a "Proof of Claim and Election" form (claim form) within thirty days after plan approval. Under the plan, if the amount due to a claimant was unliquidated or disputed by the Rehabilitator, that claim would not be paid until reduced to a liquidated amount. To determine the amount due, a claimant could

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[9](...continued)

any such existing actions be maintained or further presented after issuance of such order. The courts of this State shall give full faith and credit to injunctions against the liquidator or the company or the continuation of existing actions against the liquidator or the company, when such injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states.

(Emphases added.) The references in the January 20, 1993 order to HRS § 431:15-313 and "the liquidator" appear to be premature, as the Insurance Commissioner was not appointed Liquidator until May 25, 1993. See infra at 10.

"pursue such actions or proceedings as may be necessary to determine the amount[.]" Once the disputed amount was determined, the claimant would be paid pursuant to and subject to any election made under the reorganization plan.

The Rehabilitator was directed to give notice of the plan "to the persons who would be entitled to notice if HIG were to be liquidated[,]" in the manner indicated by HRS § 431:15-311 (1993).[10]

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[10] HRS § 431:15-311 states in relevant part:

> **Notice to creditors and others**. (a) Unless the court otherwise directs, the liquidator shall give cause or cause to be given notice of the liquidation order as soon as possible by:
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> . . . .
>
> (4) First class mail to all persons known or reasonably expected to have claims against the insurer including all policyholders, at their last known address as indicated by the records of the insurer; and
>
> (5) Publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in such other locations as the liquidator deems appropriate.
>
> (b) Notice to potential claimants under subsection (a) shall require claimants to file with the liquidator their claims together with proper proofs thereof under section 431:15-326, on or before a date the liquidator shall specify in the notice. . . . All claimants shall have a duty to keep the liquidator informed of any changes of address.
>
> (c) If notice is given in accordance with this section, the distribution of assets of the insurer under this article shall be conclusive with respect to all claimants, whether or not they received notice.

(Emphases added.)

Stay orders "extant on the [a]pproval of the [p]lan" were to remain in effect, unless otherwise provided by the plan or by court order.

3.

On April 25, 1993, notice of the Rehabilitator's motion for approval of the reorganization plan, set for hearing on April 30, 1993, was published in the Honolulu Advertiser, along with the announcement that copies of the motion and proposed plan were available at the HIG office. It is not disputed on appeal that the proposed reorganization plan established September 23, 1993 as the deadline to submit claims against HIG.

Apparently, sometime in April 1993, Appellants wrote to the Insurance Commissioner regarding the status of their claim.

On May 25, 1993, the proposed reorganization plan was approved by the court and the Insurance Commissioner was appointed Liquidator of HUI and UNICO. Under the reorganization plan, HUI and UNICO were to assume all of HIG's liabilities before December 24, 1992, the date upon which the court ordered HIG, HUI, and UNICO into rehabilitation. In approving the reorganization plan, the court, inter alia, also lifted the stay imposed pursuant to HRS § 431:15-304. See supra note 7.

On September 28, 1993, Appellants received a response to their April 1993 letter from the director of claims for the

Liquidator. The letter declared that notice of the cancellation of the policy had been mailed to Partners and, thus, Partners had received notice of cancellation according to the policy.

On June 2, 1994, the Insurance Commissioner moved for approval of further implementation of the reorganization plan, which included, inter alia, the merger of HUI and UNICO "for administrative convenience." On July 7, 1994, the court approved the merger of HUI and UNICO, thereby creating "HUI/UNICO in Liquidation, Inc." (HUI/UNICO).

II.

On September 15, 1994, Appellants filed a separate suit in Civ. No. 94-3526, outside S.P. 92-0524 (which was the rehabilitation proceeding).[11] Appellants apparently amended their complaint on December 23, 1994 (first amended complaint), identifying HIG, HUI, UNICO, and HUI/UNICO in Liquidation, Inc. as parties, and alleging that HIG's assets had been seized by the Insurance Commissioner and its creditors' claims assigned to HUI/UNICO. The complaint also alleged Partners had no record reflecting receipt of notice of cancellation of the policy, the

[11] Because Civil No. 94-3526 is a related case and both parties extensively refer to it, judicial notice is taken of the records in Civil No. 94-3526, pursuant to Hawai'i Rules of Evidence (HRE) Rule 201 (1993). An appellate court may in its discretion take judicial notice of records of a case on appeal. Roxas v. Marcos, 89 Hawai'i 91, 110 n.9, 969 P.2d 1209, 1228 n.9 (1998). See also Armbruster v. Nip, 5 Haw. App. 37, 43, 677 P.2d 477, 482 (1984) (taking judicial notice of part of the record in a related case which was not on appeal).

notice was given only to Four Star Insurance Agency, and such notice was received less than thirty days prior to the cancellation date. Appellants set forth one count for breach of contract and a second count for bad faith, for "[f]ailing to give proper notice of cancellation as provided under . . . [the policy]" and for "[d]enial of coverage under the [p]olicy[.]"

On January 13, 1995, HIG, HUI, UNICO, and HUI/UNICO filed a motion to dismiss or, alternatively, for summary judgment in Civ. No. 94-3526, in which they argued that Appellants' claims were "assumed claims" as defined by the reorganization plan.[12] As such, they contended that Appellants' civil suit should be dismissed on the ground that assumed claims could only be brought against HUI/UNICO in Liquidation, Inc., and that S.P. 92-0524, the rehabilitation proceeding, was "the exclusive forum" for such claims. Alternatively, the defendants maintained that Appellants' complaint was time-barred because the property was damaged on September 11, 1992, the insurance policy provided that legal action against HIG must be taken within two years after the date of property damage, and that Appellants' original complaint

[12] According to the reorganization plan, "assumed claims" were all of HIG's existing obligations to its creditors who had claims against HIG arising from terminated or unrenewed insurance contracts from or after December 24, 1992 (the date HIG was ordered into rehabilitation), or claims "for any reason" including those arising from insurance contracts on or prior to December 24, 1992. However, claims of creditors who had "opted out" of the reorganization plan under section 4.5 were not considered "assumed claims."

had been filed on September 16 1994, after the two-year period had expired.

On March 9, 1995, Appellants filed a memorandum in opposition to this motion, asserting that: (1) HIG should not be allowed to "delegate" its claims to HUI/UNICO and thereby obtain release from liability; (2) the court had jurisdiction to hear the civil case under section 4.6 of the reorganization plan, which allowed an action to determine the amount owed to the claimant when the claim was unliquidated; (3) the policy's two-year limitation for filing suit had been waived because HIG, HUI, and UNICO had stipulated to rehabilitation; (4) the stay imposed by the court and by statute made compliance with the two-year limitation "impossible"; (5) the two-year period was tolled between Appellants' notifying HIG of the damage and HIG's formally denying liability; and (6) HIG had failed to provide Appellants with proper notice of their rights in the rehabilitation proceedings.

On March 13, 1995, Appellants filed a cross-motion for summary judgment, raising the identical arguments contained in their March 9, 1995 opposition memorandum, with an additional claim for attorney's fees and costs.

On March 24, 1995, HIG and HUI/UNICO filed a memorandum in opposition to the cross-motion, arguing, inter alia, that: (1) HIG did not waive the insurance policy's two-year limitation;

(2) unlike stays in bankruptcy cases, the stays in rehabilitation and liquidation proceedings did not prohibit the filing of a suit against HIG; (3) due process had not been violated because notice had been published regarding the April 30, 1993 hearing for approval of the reorganization plan, the availability of the claim forms, and the claim submission deadline; and (4) the cancellation endorsement -- and, thus, the requirement of thirty days' notice -- did not apply; HIG was required to give only ten days' notice under the Common Policy Conditions.

Both motions were heard on March 28, 1995 by Circuit Judge Wendell Huddy. Judge Huddy's minute order[13] (Judge Huddy's order) granted Appellees' motion for summary judgment and denied Appellants' motion. The court found that Appellants had received notice of the rehabilitation proceedings because there was extensive media coverage of it and because Appellants had attempted to present their claims to the Insurance Commissioner, apparently sometime in April 1993; that Appellants had had an opportunity, but had failed to object to the reorganization plan; that orders staying proceedings pending against HUI/UNICO for various periods did not preclude filing an action against Appellees; and that cancellation under the insurance policy had been communicated by mail:

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[13] The minute order was made a part of the record in S.P. No. 92-0524. See infra note 16.

> [Plaintiffs] entered into an insurance policy contract w[ith] Def[endan]t HIG. The policy period was 11/11/91 to 11/11/92.
>
> On or about 7/31/92, HIG mailed a cancellation to [Plaintiffs]. The notice was for non-payment of the premium. Although [Plaintiffs'] ins[urance] agent rec[eived] the notice, it is disputed whether or not [Plaintiffs] rec[eived] the notice. The notice indicated that cancellation was effective 9/1/92.
>
> On 9/11/92, Hurricane Iniki damaged premises subject of the policy.
>
> On 9/14/94, [Plaintiffs] filed a claim with Def[endan]t HIG for their property losses sustained as a result of Iniki.
>
> On 9/16/94, [Plaintiffs] filed a complaint against Def[endan]ts for breach of contract (Ct. 1) [and] bad faith (Ct. II).
>
> On 12/24/92, the c[ourt] placed Def[endan]ts in rehabilitation pursuant to HRS [§] 431:15-301 and appointed the Ins[urance] Commissioner as Rehabilitator.
>
> On 5/25/93, the c[ourt] approved a plan for reorganization of Def[endan]t HIG [and] liquidation of Def[endan]ts HUI [and] UNICO. Under the plan certain claims against HIG were assumed by HUI and UNICO [and] HIG.
>
> On 7/5/94, the c[ourt] approved the Commissioner's request for further implementation of the plan.
>
> [Plaintiffs] had notice of the rehabilitation/liquidation proceedings for the following reasons:
>
> 1) The events were highly publicized (media, TV, radio [and] newspaper); [and]
>
> 2) [Plaintiffs] attempted to present their claim to representatives of the Rehabilitator/Liquidator.
>
> Although they had an opportunity to do so, [Plaintiffs] failed to object to the plan.
>
> As part of the rehabilitation proceedings, the c[ourt] entered orders staying proceedings pending against Defendants for various periods. The orders did not preclude filing [of] an action against them.

In conclusion, Judge Huddy granted Appellees' motion for summary judgment and denied Appellants' motion, on the ground that Appellants' complaint was "time barred" and the

"rehabilitation proceeding" was the "exclusive forum" for their claims:

> The [circuit court] grants Def[endan]ts' m[otion for] summary judgment [and] denies [Plaintiffs'] m[otion for] summary judgment for the following reasons:
>
> 1) The relevant policy stipulates that mailing of a notice of cancellation for non-payment of premiums is the requisite method of cancellation.
> Here, [HIG] complied with the policy requirement.
>
> 2. [Plaintiffs'] complaint is time-barred; [and]
>
> 3. The rehabilitation proceeding is the exclusive forum for [Plaintiffs'] claims.

(Emphases added.)

A written order granting the defendants' motion for summary judgment and denying the plaintiffs' motion for summary judgment was filed on April 18, 1995, but did not memorialize the contents of the minute order. Judge Huddy, however, did enter a written judgment on May 8, 1995 (the Judge Huddy judgment), which made no reference to the "exclusive forum" language found in the minute order but resolved all of Appellants' claims against them, stating:

> Pursuant to the Order Granting Defendants' Motion to Dismiss Complaint or, in the Alternative, for Summary Judgment Filed on January 13, 1995, and Denying Plaintiffs' Cross Motion for Summary Judgment Filed on March 13, 1995, entered on _____;[14]
>
> IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment be and is hereby entered in favor of Defendants THE HAWAIIAN INSURANCE & GUARANTY COMPANY, LTD., HAWAIIAN UNDERWRITERS INSURANCE CO., LTD. nka HUI/UNICO In Liquidation, and HUI/UNICO In Liquidation, Inc. and against Plaintiffs 4000 OLD PALI ROAD PARTNERS and SHERMAN HEE as to all claims set forth in Plaintiffs' First Amended Complaint,

[14] It appears that the date of a written order was intended to be stamped into this space, but for some unknown reason, was left blank.

> filed on December 23, 1994. There are no remaining claims or parties.

(Emphasis added). Appellants appealed the Judge Huddy judgment in Supreme Court appeal No. 18988.

On July 17, 1997, this court, in No. 18988, issued a summary disposition order affirming the Judge Huddy judgment as follows:

> Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments made and the issues raised by the parties,
>
> IT IS HEREBY ORDERED that the judgment or order from which the above-captioned appeal is taken is hereby affirmed.

On July 28, 1997, Appellants a filed a motion for reconsideration,[15] which was denied on August 25, 1997. This court entered final judgment on its summary disposition order on August 28, 1997. Accordingly, Appellants' claims were finally determined on August 25, 1997.

III.
A.

While the appeal from Judge Huddy's judgment in Civ. No. 94-3526 was pending before this court, Appellants filed a petition on January 2, 1996, before Circuit Judge Virginia Crandall, in S.P. No. 92-0524 (the petition). In a supporting memorandum, Appellants stated that they sought a determination by

[15] The motion for reconsideration was not made a part of the record in the instant case.

the court that their claim was "not a late claim filed pursuant to [HRS] § 431:15-325," but "was a class 4 claim (i.e., a priority claim under a policy of insurance)," or in the alternative, "a determination by [the circuit] court as to the priority of their claim[.]" Appellants urged their understandings that, under the rehabilitation plan, their claims against HIG would have had to be liquidated and assigned to HUI/UNICO as "assumed claims," the Liquidator was to mail notice to claimants so they could "make an election and/or the claim [could] be liquidated," notice had never been mailed to them and, thus, they were "precluded from participating in a meaningful fashion."

Second, Appellants asserted that the combination of the cancellation provisions in the "Common Policy Conditions" and the endorsement rendered the policy ambiguous, because the policy "permit[ted] cancellation for a failure to pay a premium by two different methods" and, hence, the policy "should be construed against [HUI/UNICO]." They disputed HUI/UNICO's representation that notice of the cancellation was mailed on July 31, 1992, pointing out that the certificate of mailing "indicate[d] only that 'something' was mailed." They contended that, because they did not learn of the termination of coverage until September 18, 1992, HIG had "failed to deliver notice within 30 days of the effective date of cancellation [and, c]onsequently, the [p]olicy

was in effect at the time of Hurricane Iniki." As such, Appellants maintained that their claim arose under the policy and constituted a Class 4 claim under HRS § 431:15-332.

On January 10, 1998, HUI/UNICO moved for a stay of the petition action, explaining that the appeal in Civ. No. 94-3526 was pending in this court. On February 13, 1996, the parties stipulated to, and the court granted, a stay until a final determination was made in the appealed case.

After this court affirmed the Judge Huddy judgment, Appellants filed an ex parte motion, on February 19, 1998, to set a hearing on the petition. On March 10, 1998, in a supplemental memorandum in opposition to the petition, HUI/UNICO argued that the doctrines of res judicata, collateral estoppel, and law of the case barred Appellants from bringing the petition.

On March 13, 1998, Appellants filed a reply memorandum, contending for the first time that "Judge Huddy . . . lacked subject matter jurisdiction to rule on the issue of cancellation of [Appellants'] insurance policy or the timeliness of [Appellants'] claims."

B.

A hearing on the petition in S.P. 92-0524 was held before Judge Crandall on March 18, 1998. She took the matter under advisement and, then, in a minute order, "denied"

Appellants' petition and ruled that Judge Huddy's order[16] had resolved the substantive issues in the case by determining that Appellants' suit was time-barred and that the rehabilitation proceeding was the exclusive forum for Appellants' claim (Judge Crandall's ruling):

> In Civil No. 94-3526, Petitioner brought an action against [HIG], [HUI] and [UNICO], both which are now known as HUI/UNICO, ("Respondent" herein). Judge Huddy granted the Defts' motion for summary judgment and denied the Pltf's motion for summary judgment: 1) [HIG] properly cancelled [Appellants'] insurance policy prior to Hurricane Iniki, 2) that the lawsuit was time-barred by the two-year limitation period in the policy, and 3) that HIG was released from all potential liability by the May 1993 rehabilitation order. The claims against HIG were assigned to HUI/UNICO and became assumed claims.[17] As to the claims against HUI/UNICO, Judge Huddy ruled that this special proceeding, the rehabilitation/liquidation proceeding, is the exclusive forum for the disposition of assumed claims against HUI/UNICO.

Judge Crandall's ruling denied Appellants' petition on the ground that Judge Huddy's rulings had been affirmed by this court and, hence, "the substantive claims" had already been resolved against Appellants:

> Judge Huddy's rulings were affirmed in their entirety. Therefore, the substantive claims as to whether notice was properly given and whether the insurance policy was properly cancelled have already been resolved against [Appellants]. In addition, the timeliness of

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[16] It appears that Judge Huddy's minute order was made a part of the record in S.P. No. 92-0524. At the March 18, 1998 hearing in S.P. No. 92-0524, counsel for both parties referred to Judge Huddy's minute order. At the conclusion of the hearing, Judge Crandall requested copies of the briefs in the supreme court appeal of Civil No. 94-3526. Neither party objected to her request. The briefs, however, had already been filed in S.P. No. 92-0524 as an exhibit to HUI/UNICO's January 10, 1996 motion for a stay of proceedings related to Appellants' January 2 petition. Judge Huddy's minute order was attached to Appellants' opening brief as Appendix B. Thus, the minute order was a part of the documents filed in the special proceeding case.

[17] The reference to claims against HIG appear to refer to Appellants' claims.

> the claim has also been resolved against [Appellants]. The petition is therefore denied.

On May 11, 1998, Judge Crandall entered a written order denying Appellants' petition, which stated as follows:

> The [c]ourt, having considered all of the pleadings, memoranda and declarations filed herein, having reviewed the records and files in the related matter[,] Supreme Court No. 18988, and having heard the arguments of counsel, and good cause existing therefor,
>
> IT IS HEREBY ORDERED, ADJUDGED AND DECREED that [Appellants' petition] is DENIED.

Judgment thereon was entered on June 23, 1998, stating in relevant part that "[j]udgment is hereby entered in favor of [the Insurance Commissioner] in his capacity as the Liquidator of [HUI/UNICO] and against [Appellants]" (the Judge Crandall judgment).

On December 21, 1998, Appellants filed a notice of appeal from the Judge Crandall judgment.[18]

IV.

Appellants raise three arguments in the instant appeal. First, they argue that Judge Crandall erred in ruling that Appellants' substantive claims had been resolved because, by ruling that "the rehabilitation proceeding" was the "exclusive forum" for Appellants' claims, "Judge Huddy divested [himself] of jurisdiction to rule on the matter before [him]" and the

[18] Appellants originally filed a notice of appeal on July 23, 1998, but that appeal was dismissed for lack of certification under Hawai'i Rules of Civil Procedure Rule 54(b). The defect was cured on December 16, 1998, when Judge Crandall granted Appellants' motion for Rule 54(b) certification.

doctrines of res judicata and collateral estoppel cannot apply when the initial court lacks jurisdiction. Second, they maintain that they timely filed their claims. Third, they urge they should be accorded Class 4 creditor status.

Appellees contend that Judge Huddy had jurisdiction, that the Judge Huddy judgment properly disposed of the substantive issues, and that res judicata and collateral estoppel bar Appellants from relitigating these issues. They assert that the policy had been properly cancelled prior to Hurricane Iniki because the endorsement requiring thirty days' notice did not apply to Appellants' property coverage. They further argue that judicial estoppel prevents Appellants from raising inconsistent positions.[19]

We believe that Judge Huddy was not without "jurisdiction," as Appellants assert, and that Appellants are collaterally estopped from raising their second and third claims.

[19] Appellees essentially take the same position on appeal that they took below but additionally assert that judicial estoppel precludes Appellants from arguing a position inconsistent with one taken in a previous case, pointing out that Appellants had argued in Civ. No. 94-3526 that Judge Huddy had jurisdiction to hear the case. In light of our disposition of the case, we need not address the judicial estoppel issue.

V.

A.

When interpreting decrees, judgments, or orders, "[t]he interpretation or construction of a decree[, judgment, or order] presents a question of law for the courts and . . . is to be construed reasonably." Cain v. Cain, 59 Haw. 32, 39, 575 P.2d 468, 474 (1978) (citing Smith v. Smith, 56 Haw. 295, 301, 535 P.2d 1109, 1114 (1974)). In this regard, "'[a] trial court's interpretation or construction is not binding on an appellate court and is fully reviewable on appeal.'" Hana Ranch, Inc. v. Kumakahi, 6 Haw. App. 341, 349, 720 P.2d 1023, 1029 (1986) (quoting Wohlschlegel v. Uhlmann-Kihei, Inc., 4 Haw. App. 123, 130, 662 P.2d 505, 511 (1983)).

B.

A minute order is an informal record of court proceedings. It has no binding effect. See Jenkins v. Jenkins, 685 A.2d 817, 823 (Md. Ct. Spec. App. 1996) (holding that if the court states that a written order is to follow, a final judgment does not arise prior to signing that order); Fox v. Fox, 273 P.2d 585, 586 (Cal. Dist. Ct. App. 1954) (stating that there is no appeal from a minute order which merely authorizes issuance of a written judgment). Any perceived ambiguity arising from Judge Huddy's minute order was ultimately resolved in the Judge Huddy

judgment. That judgment, by its language, left no question open as to jurisdiction and, on its face, resolved the merits of Appellants' claims against them. The judgment clearly indicated that judgment was granted in favor of HIG and HUI/UNICO and against Appellants "as to all claims set forth in [Appellants' f]irst [a]mended [c]omplaint" and that "[t]here [were] no remaining claims or parties." Therefore, that judgment decided the claims raised in Appellants' first amended complaint and implicitly confirmed Judge Huddy's jurisdiction in the case.

C.

This court's July 17, 1997 summary disposition order stated that "the judgment or order from which the above-captioned appeal is taken is hereby affirmed." Accordingly, this court upheld the Judge Huddy judgment, which resolved all claims against Appellants, including Appellants' cross-motion for summary judgment. Contrary to Appellants' assertion, the summary disposition order was not required to reflect that the judgment was affirmed in part as to Appellants' claims and reversed in part as to jurisdiction.[20] This is because the Judge Huddy

[20] In their reply brief, Appellants state that Judge Huddy's ruling was inconsistent, as it determined that proceedings under S.P. 92-0524 was the "exclusive forum" but "decided the substantive issues anyway." Appellants contend that this court failed to rule on the "inconsistency," by "simply 'affirm[ing]' [Judge Huddy's] ruling without any written opinion" and that "[a]fter this court affirmed Judge Huddy's ruling without a written opinion, Judge Crandall perpetuated the problem." In their opening brief, Appellants indicate that

(continued...)

judgment did not reflect any lack of subject matter jurisdiction in the court.

Under the circumstances, we conclude that Appellants' construction of the Judge Huddy judgment and this court's summary disposition order were not reasonable. See Cain, 59 Haw. at 39, 575 P.2d at 474 (stating that interpretation of a decree is a question of law and is to be construed reasonably).

VI.

We note that while Judge Huddy's minute order referred to the rehabilitation proceedings as the "exclusive forum," and, thus, as the appropriate place to bring a claim against HIG, it does not follow that Judge Huddy lacked subject matter jurisdiction in Civil No. 94-3526. There is no suggestion either in his minute order or in the Judge Huddy judgment that the court lacked subject matter jurisdiction over the merits of the case in Civil No. 94-3526. Plainly, had subject matter jurisdiction been lacking, there would have been a dismissal of the civil case, not a judgment on the merits. Neither the Judge Huddy judgment nor

[20](...continued)
because this [c]ourt filed a summary disposition order on July 17, 1997 which affirmed the "judgment or order from [Civ. No. 95-3526] (Appendix C) without a memorandum opinion addressing each one of Appellants' contentions, Appellants had no choice but to construe that ruling as a directive to take their claims to the special proceeding court, presid[ed] by [Judge Crandall].

this court's summary disposition order suggested that Judge Huddy lacked subject matter jurisdiction to determine the merits.

VII.

Subject matter jurisdiction is "'the power and authority on the part of the court to hear and judicially determine and dispose of the cause pending before it.'" In re Keamo, 3 Haw. App. 360, 366, 650 P.2d 1365, 1370 (1982) (quoting State v. Villados, 55 Haw. 394, 396, 520 P.2d 427, 430 (1974)).

Under HRS § 603-21.5 (1985),[21] the circuit court generally has subject matter jurisdiction over "[c]ivil actions and proceedings[,]" and, under HRS § 603-21.9 (1985),[22] "[t]o make such judgments, decrees, orders . . . and do such other acts . . . necessary to carry into full effect the power . . . given to them[.]" Plainly, then, Judge Huddy, sitting as a division of the circuit court, had subject matter jurisdiction in Civil No.

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[21] HRS § 603-21.5 states in pertinent part that "[t]he several circuit courts shall have jurisdiction, except as otherwise expressly provided by statute, of . . . . [c]ivil actions and proceedings[.]"

[22] HRS § 603-21.9 states:

> **Powers.** The several circuit courts shall have power:
>
> . . . .
>
> (6) To make and award such judgments, decrees, orders, and mandates, issue such executions and other processes, and do such other acts and take such other steps as may be necessary to carry into full effect the powers which are or shall be given to them by law or for the promotion of justice in matters pending before them.

94-3526. We perceive nothing in HRS chapter 431 or the reorganization plan that would limit his authority.

Assuming, arguendo, that the claims made in Civil No. 94-3526 should have been properly brought in S.P. 92-0524, the Hawai‘i Insurance Code, HRS chapter 431 (1993), reveals no limitation on subject matter jurisdiction of the several divisions of the circuit court with respect to matters in rehabilitation or liquidation proceedings under HRS § 431:15-301 et seq. Certainly, Appellants point to none. HRS § 431:15-104 states in relevant part:

> **Jurisdiction and venue.**
>
> . . . .
>
> (c) No court of this State has jurisdiction to entertain, hear or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer, or praying for an injunction or restraining order or other relief preliminary to, incidental to, or relating to that type of proceedings other than in accordance with this article [15].
>
> . . . .
>
> (g) All actions herein authorized shall be brought in the circuit court of the first circuit.

(Emphases added). The qualification in HRS § 431:15-104(c) merely requires that a court exercising jurisdiction over a complaint requesting any of the proceedings enumerated or "relief preliminary to, incidental to, or relating to that type of proceedings" must do so in consonance with HRS chapter 431, article 15, which pertains to supervision, rehabilitation, and liquidation of insurance companies. HRS § 431:15-104(g) confirms

that the first circuit court has jurisdiction over proceedings brought under article 15. These provisions do not restrict the circuit court's subject matter jurisdiction over the civil action brought by Appellants.

Under the reorganization plan, the circuit court had subject matter jurisdiction over enforcement of the plan and claims arising thereunder. Sections 12.1 and 12.2 of the reorganization plan vested jurisdiction in the circuit court to hear and determine all such disputes, controversies, and suits:

> 12.1. Continuing Jurisdiction. . . . [T]he Court[23] shall retain exclusive and continuing jurisdiction over the rehabilitation of HIG to enforce the provisions of the [reorganization p]lan and to ensure that the intent and purposes of the [reorganization p]lan are carried out and given effect.
>
> 12.2 Without limiting the generality of Section 12.1 above, the Court shall retain exclusive jurisdiction for the following purposes:
>
> 12.2.1 To consider any modification or amendment to the [p]lan; and
>
> 12.2.2. To hear and determine:
>
> 12.2.2.1 All disputes, if any, as may arise concerning the classification, allowance, or disallowance or the claims . . .;
>
> 12.2.2.2 All controversies, suits and disputes, if any, as may arise in connection with the interpretation or enforcement of the [p]lan[.]

(Emphases added.) Since Judge Huddy's court was a division of the circuit court, his court had subject matter jurisdiction,

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[23] The reorganization plan expressly defined "court" as "the Circuit Court of the First Circuit, State of Hawai'i in the proceedings hereinabove captioned." Thus, the reorganization plan's references to "the court" refers to the first circuit court's exercise of jurisdiction with respect to the proceedings denominated as S.P. 92-0524.

were it required, over claims falling within the scope of the plan.

On the other hand, the reorganization plan did not preclude subject matter jurisdiction in the circuit court as to matters arguably outside the rehabilitation proceedings. Section 12.4 of the plan provided as follows:

> 12.4 Proceedings in Another Forum. If the Court[24] declines to exercise jurisdiction, or is otherwise without jurisdiction over any matter set forth in this Section 12, this Section 12 shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court, public authority or commission having jurisdiction over such matters.

(Emphases added.) Thus, even if, as contended by Appellants, Judge Huddy's reference to "exclusive forum" envisioned the filing of Appellants' claims in the rehabilitation proceeding, Judge Huddy had, by virtue of sitting as the presiding judge of a division of the first circuit court, subject matter jurisdiction over matters falling in and outside of the rehabilitation proceedings.[25]

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[24] See supra note 23.

[25] While a division of the circuit court could, for judicial convenience, be assigned all matters related to a rehabilitation proceeding, nothing in the statute or the reorganization plan here required it, nor would such an assignment necessarily preclude subject matter jurisdiction in any other division of the circuit court.

VIII.

A.

It remains to be determined whether, as Judge Crandall held, the doctrines of res judicata and collateral estoppel bar Appellants' petition based on the judgment in Civ. No. 94-3526.

This court has defined res judicata and collateral estoppel as follows:

> The doctrine of res judicata basically provides that "[t]he judgment of a court of competent jurisdiction is a bar to a new action in any court between the same parties or their privies concerning the same subject matter, and precludes the relitigation, not only of the issues which were actually litigated in the first action, but also of all grounds of claim and defense which might have been properly litigated in the first action but were not litigated or decided."
>
> Collateral estoppel is an aspect of res judicata which precludes the relitigation of a fact or issue which was previously determined in a prior suit on a different claim between the same parties or their privies. Collateral estoppel also precludes relitigation of facts or issues previously determined when it is raised defensively by one not a party in a prior suit against one who was a party in that suit and who himself [or herself] raised and litigated the fact or issue.

Marsland v. International Soc. for Krishna Consciousness, 66 Haw. 119, 124, 657 P.2d 1035, 1038-39 (1983) (quoting Ellis v. Crockett, 51 Haw. 45, 55-56, 451 P.2d 814, 822-823 (1969)) (emphasis added). Thus, the collateral estoppel doctrine "applies to a subsequent suit between the parties or their privies on a *different* cause of action and prevents the parties or their privies from relitigating *any issue* that was actually litigated and finally decided in the earlier action." Dorrance v. Lee, 90 Hawai'i 143, 148, 976 P.2d 904, 909 (1999) (citation

omitted; italicized emphases in original; underscored emphasis added). It must also be determined that "the issue decided in the prior adjudication was essential to the final judgment[.]" Id. at 149, 976 P.2d at 910. Hence, under the collateral estoppel doctrine, as applicable to the instant case, the same parties or their privies may not raise in a subsequent action those issues essential to the final judgment which were "actually litigated" and fully decided in a prior case.

B.

Appellants do not dispute that the parties involved in Civ. No. 94-3526, the "earlier action," are in privity with the parties in S.P. 92-0524, the instant "subsequent suit." In Civil No. 94-3526, the amended complaint filed by Appellants named HIG, HUI, UNICO and HUI/UNICO as defendants in an action to recover on the policy. In S.P. No. 92-0524, Appellants seek recovery as creditors in the rehabilitation proceeding involving the same entities on the same policy. The Insurance Commissioner, in his or her capacity as Rehabilitator of HUI/UNICO, was involved in both cases.

In light of the Judge Huddy judgment, the ultimate issue "actually litigated" in Civ. No. 94-3526 was whether HIG failed "to honor its contract of insurance with [Appellants]." As indicated previously, the first amended complaint alleged that

HIG had failed to "to give proper notice of cancellation as provided under . . . [the policy]" and had improperly "[d]eni[ed] . . . coverage under the [p]olicy[.]" There is apparently no dispute that Judge Huddy determined that "mailing of a notice of cancellation for nonpayment is the requisite method of cancellation[,]" that HIG "complied with the policy requirement[,] and, furthermore, that under the policy Appellants' suit was "time-barred."

By Appellants' petition in S.P. No. 92-0524, Judge Crandall was presented with the questions of whether Appellants had received appropriate notice under the reorganization plan and of whether their claim was a Class 4 claim under HRS § 431:15-332. As contended in their supporting memorandum, Appellants' assertion that they were entitled to notice and Class 4 status was premised on a supposed ambiguity in the policy created by the Common Policy Conditions' cancellation provision and the endorsement's cancellation provision. The effect of the cancellation provisions in precluding Appellants' claim, however, was an issue "actually litigated" and "essential" to the Judge Huddy judgment. By virtue of that judgment and this court's July 17, 1997 summary disposition order affirming it, the effect of the cancellation provisions on termination of the policy was "finally decided." Accordingly, Judge Crandall was correct in

determining that Appellants were collaterally estopped from pursuing their petition.

IX.

For the foregoing reasons, the judgment filed herein on June 23, 1998 is affirmed.

DATED: Honolulu, Hawai‘i, October 11, 2000.

On the briefs:

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