DISSENTING OPINION BY MOON, C.J.,
IN WHICH LEVINSON, J., JOINS

I respectfully dissent from the majority's holding because I believe that the doctrine of collateral estoppel applies in this case and that the trial court was bound by the arbitrator's decision.

Based on the arbitrator's decision that treatment under the December 1993 Plan was compensable, Flores argues that the doctrine of collateral estoppel barred the trial court from subsequently ruling that treatments by Basto and Aloha Island Clinic after December 31, 1993 were not reasonable and necessary medical expenses. This court has stated that

> [c]ollateral 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.

Dorrance v. Lee, 90 Hawai'i 143, 148, 976 P.2d 904, 909 (1999) (emphasis in original) (ellipses omitted) (quoting Foytik v. Chandler, 88 Hawai'i 307, 314-15, 966 P.2d 619, 626-27 (1998)). We have previously held that a party may be estopped from relitigating issues previously determined by a Court Annexed Arbitration Program arbitrator. Dorrance, 90 Hawai'i at 150-51, 976 P.2d at 911-12. To establish collateral estoppel, or issue

preclusion, and, thus, bar relitigation of the issue, four requirements must be met:

> (1) the issue decided in the prior adjudication is identical to the one presented in the action in question; (2) there is a final judgment on the merits; (3) the issue decided in the prior adjudication was essential to the final judgment; and (4) the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication.

Citizens for the Protection of the North Kohala Coastline v. County of Hawai‘i, 91 Hawai‘i 94, 102, 979 P.2d 1120, 1128 (1999) (brackets omitted).

A. Identical Issues

"[C]ollateral estoppel requires only that the issue decided in the prior adjudication be identical to the one presented in the present action[.]" Dorrance, 90 Hawai‘i at 150, 976 P.2d at 911 (emphasis in original omitted). In the present case, the issue in both the arbitration and the civil trial was whether treatment under the December 1993 Plan was compensable. The arbitrator decided that the chiropractic and massage treatments specified in the December 1993 Plan were appropriate and reasonable; however, the trial court found otherwise. Barretto claims that the issues were not identical in the two proceedings because the arbitrator was not required to decide whether Flores's injuries were caused by Barretto's negligence, whereas the trial judge was required to make a determination as to causation. Although I agree that Barretto's negligence was not an issue in the arbitration proceeding, I disagree that the

arbitrator was not required to determine that Flores's injuries were causally related to the accident.

In the arbitration, Flores alleged that AIG improperly denied him chiropractic benefits proposed under the December 1993 Plan. Hawai'i Revised Statutes (HRS) § 431:10C-304(1)(B) (1993) outlines an insurer's obligation to provide no-fault benefits, stating that "[e]very no-fault insurer shall provide no-fault benefits for accidental harm," under specified conditions. (Emphasis added.) Accidental harm is defined as "bodily injury, death, sickness, or disease caused by a motor vehicle accident to a person." HRS § 431:10C-103(1) (1993) (emphasis added). Together, HRS §§ 431:10C-103(1) and -304 indicate that the liability of no-fault insurers is limited to injuries "caused by a motor vehicle accident." Therefore, a decision that a no-fault insurer must provide benefits under HRS chapter 431:10C necessarily requires finding a causal connection between the motor vehicle accident and the injuries sustained.

Similarly, HRS § 431:10C-103(10)(A) (1993) provides in pertinent part:

> (A) No-fault benefits, sometimes referred to as personal injury protection benefits, with respect to any accidental harm means:
> (i) All appropriate and reasonable expenses necessarily incurred for medical, hospital, surgical, professional, nursing, dental, optometric, ambulance, prosthetic services, products and accommodations furnished, and x-ray. The foregoing expenses may include any nonmedical remedial care and treatment rendered in accordance with the teachings, faith, or

> belief of any group which depends for healing upon spiritual means through prayer;
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> (ii) All appropriate and reasonable expenses necessarily incurred for psychiatric, physical, and occupational therapy and rehabilitation[.]

(Emphasis added.) Thus, no-fault benefits include those appropriate and reasonable expenses necessarily incurred as a result of treatment received for injuries caused by a motor vehicle accident. In other words, the relevant no-fault statutes require that treatment for which benefits will be paid must be causally related to a motor vehicle accident. Accordingly, in deciding whether treatment under the December 1993 Plan was compensable, the arbitrator was necessarily required to determine (1) that Flores's injuries were causally related to the motor vehicle accident and (2) that chiropractic and massage treatments pursuant to the plan were reasonable in light of those injuries.[1] Moreover, the circuit court had already entered summary judgment in Flores's favor as to Barretto's negligence in causing the accident, and the circuit court found at trial that the accident caused Flores's injuries. Consequently, the issue of the compensability of treatment under the December 1993 Plan was identical in the arbitration and at trial.

[1] I agree with the majority that the arbitrator was required to analyze whether Flores's injuries required a treatment plan that exceeded the no-fault guidelines and whether such treatment was appropriate and reasonable. However, a determination that Flores's injuries were caused by the motor vehicle accident was foundational to that analysis.

B. Final Judgment on the Merits

In the present case, the arbitration proceeding was conducted pursuant to HRS chapter 658. See HRS § 431:10C-213 (1993).[2] However, Barretto argues that the arbitrator's award had no preclusive effect on the trial court because the arbitrator's decision was not confirmed pursuant to HRS § 658-8 (1993) and, therefore, was not a final judgment according to HRS § 658-12 (1993).[3] I disagree.

Barretto relies upon Oppenheimer v. AIG Hawai'i Ins. Co., 77 Hawai'i 88, 881 P.2d 1234 (1994), in which this court held that HRS § 658-12 allows direct appeals from orders confirming, modifying, or correcting an arbitration award. Id.

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[2] HRS § 431:10C-213 provides:

> (a) A claimant, insurer, or provider of services may submit any dispute relating to a no-fault policy to an arbitrator by filing a written request with the clerk of the circuit court in the circuit where the accident occurred.
> (b) The administrative judge of each circuit court shall maintain a current list of persons qualified and willing to act as arbitrators and shall, within ten days of the date of filing of a request for arbitration, appoint an arbitrator from such list to hear and determine the claim.
> (c) Except as otherwise provided herein, the arbitration shall be in accordance with and governed by the provisions of chapter 658.
> (d) Any fee or cost of the arbitrator shall be borne equally by the parties unless otherwise allocated by the arbitrator.
> (e) An appeal may be taken from any judgment of the arbitrator to the circuit court in the manner provided for in rule 72 of the Hawaii Rules of Civil Procedure.

(Emphasis added.)

[3] HRS § 658-12 states in pertinent part, "Upon the granting of an order, confirming, modifying, or correcting an award, the same shall be filed in the office of the clerk of the circuit court and this shall constitute the entry of judgment. An appeal may be taken from such judgment as hereinafter set forth."

at 92, 881 P.2d at 1238. However, appealability and finality are related but distinguishable concepts. See generally Labayog v. Labayog, 83 Hawai‘i 412, 422, 927 P.2d 420, 430 (App.), cert. dismissed, 83 Hawai‘i 545, 928 P.2d 39 (1996). Appellate jurisdiction and collateral estoppel implicate different policy concerns. For purposes of appellate jurisdiction, the requirement of a final judgment prevents piecemeal litigation. Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai‘i 115, 118-19, 869 P.2d 1334, 1337-38 (1994) (citing Powers v. Ellis, 55 Haw. 414, 417, 520 P.2d 431, 433 (1974)). However, the purpose of collateral estoppel is to prevent inconsistent results, prevent duplicative litigation, and promote finality and judicial economy. See Dorrance, 90 Hawai‘i at 148-49, 976 P.2d at 909-10 (citations omitted). Thus, for purposes of collateral estoppel, the requirement of a final judgment ensures that the decision to be given preclusive effect is not tentative or subject to change. See Glover v. Fong, 42 Haw. 560, 574 (1958); see also Kauhane v. Acutron Co., Inc., 71 Haw. 458, 465, 795 P.2d 276, 279 (1990) (holding that, once the plaintiff withdrew his appeal, the circuit court's judgment became final for res judicata purposes); Silver v. Queens Hospital, 63 Haw. 430, 439-40, 629 P.2d 1116, 1123-24 (1981) (holding that the plaintiff's claims were barred by res judicata when the federal court's judgment was finalized by denial of his petition for certiorari). Therefore, to

determine whether the arbitrator's decision in this case had preclusive effect on the trial court requires an examination as to whether the arbitrator's decision was tentative or subject to change.

This court has noted that:

> An arbitration award is considered to be final when consideration of the submitted issues has been concluded and a resolution reached. Although there is no requirement that the award be self-executing, and although "it is not faulty because litigation may ensue in enforcing it," it should be "sufficiently definite that only ministerial acts of the parties are needed to carry it into effect," and "clear enough to indicate unequivocally what each party is required to do."

Wayland Lum Constr., Inc. v. Kaneshige, 90 Hawai'i 417, 424, 978 P.2d 855, 862 (1999) (citations omitted). Here, the arbitrator resolved the issue submitted to him when he concluded that the treatment proposed under the December 1993 Plan was compensable. The award was sufficiently definite to indicate what each party was required to do, and AIG, in fact, paid for the disputed treatments. Once the arbitrator's decision was issued, HRS § 658-11 (1993) required that "[n]otice of a motion to vacate, modify, or correct [the] award . . . be served . . . within 10 days after the award [was] made and served." Failure to bring a timely motion to vacate, modify, or correct an arbitration award precludes a party from challenging the award. Excelsior Lodge Number One v. Eyecor, Ltd., 74 Haw. 210, 222-23, 847 P.2d 652, 658 (1992). Because neither party moved to vacate, modify, or correct the arbitrator's decision in the present case, neither

could challenge the award at the time of trial. Moreover, neither party moved to confirm the arbitration award pursuant to HRS § 658-8, thereby waiving their right to judicial review of the arbitrator's decision. See generally Arbitration of Bd. of Directors of Ass'n of Apartment Owners of Tropicana Manor, 73 Haw. 201, 213, 830 P.2d 503, 510 (1992). Thus, the arbitrator's decision was neither tentative nor subject to change. Accordingly, I would hold that, under the facts of this case, the arbitrator's decision was final for purposes of collateral estoppel.

C. Essential to the Final Judgment

The sole issue in the arbitration was whether the treatment prescribed under the December 1993 Plan was compensable. Therefore, that determination was clearly essential to the arbitrator's final award.

D. Parties in Privity

Regarding privity, this court noted:

> As the preclusive effects of judgments have expanded to include nonparties in more and more situations[,] . . . it has come to be recognized that the privity label simply expresses a conclusion that preclusion is proper. As to privity, current decisions look directly to the reasons for holding a person bound by a judgment.

Bush v. Watson, 81 Hawai'i 474, 480, 918 P.2d 1130, 1136, reconsideration denied, 81 Hawai'i 474, 918 P.2d 1130 (1996) (citation omitted). Under certain circumstances, an insurer and its insured may be deemed to be in privity for purposes of

collateral estoppel based upon the obligations created by the insurance contract. See, e.g., Medeiros v. First Ins. Co., 50 Haw. 401, 403, 441 P.2d 341, 343-44, reh'g denied, 50 Haw. 468, 441 P.2d 341 (1968). Generally speaking, an insured and his or her insurer share a common interest, that is, to limit liability in a tort action to within the policy limits. The common interest diverges where liability exceeds the policy limits, thus, exposing the insured to personal liability. However, as we noted in Medeiros, factors other than the obligations created by the insurance contract may influence whether parties should be deemed in privity:

> We do not believe [holding that the insurer and the insured are in privity is] an unjust application of collateral estoppel in view of the alternative of embarrassment engendered by possible contradictory findings with respect to [the insured's] negligence in the tort suit against him and the one against the alleged insurer. . . . The Insurance Company is not a complete stranger to the relationship between the plaintiffs herein and [the insured]. Its liability, if any, would be vicarious in the sense that it would be held liable to the plaintiffs only if, in the first place, [the insured] is found liable to the plaintiffs, and secondly, only if the factual basis of this liability brings him within the coverage of the policy.

Id. at 403-04, 441 P.2d at 344. Similarly, in Tradewind Insurance Co., Ltd. v. Stout, 85 Hawai'i 177, 938 P.2d 1196 (App.), cert. denied, 85 Hawai'i 81, 937 P.2d 922 (1997), the Intermediate Court of Appeals (ICA) considered the following equitable factors before precluding litigation based on collateral estoppel:

> [W]hether it would be generally unfair in the second case to use the result in the first case, whether assertion of the plea of estoppel by a stranger to the judgment would create [an] anomalous [result], whether the party adversely affected by the collateral estoppel offers a sound reason why he should not be bound by the judgment, and whether the first case was litigated strenuously or with vigor.

Id. at 188, 938 P.2d at 1207 (citation omitted) (some brackets added).

Under the circumstances of this case, I believe that it would not be generally unfair to adopt the arbitrator's finding regarding damages in the subsequent tort action. As indicated above, one of the purposes of collateral estoppel is to avoid the kind of anomalous and inconsistent results in the present case, that is, where the arbitrator found that Flores was entitled to compensation for the treatment of injuries resulting from the accident pursuant to the December 1993 Plan and the trial court found that Flores could not recover for the identical treatments. The record reflects that the arbitration award and the damages awarded at trial were well within the insurance policy's limits, demonstrating the shared common interest of Barretto and AIG. In light of Barretto's liability for the accident and AIG's obligation to indemnify Barretto for the civil judgment, AIG is the party ultimately liable for the judgment in the tort action. AIG, as a party to the arbitration, vigorously litigated and actively participated in pre-arbitration and arbitration proceedings, as well as submitted a post-arbitration brief. In light of the foregoing circumstances and the fact that AIG has

not offered a sound reason why it should not be bound by the arbitrator's decision, I would hold that AIG -- as the party in the arbitration proceeding and as the party ultimately liable for the judgment in the tort action -- is deemed in privity with Barretto. I would also hold that, as in both Medeiros and Tradewind, application of collateral estoppel does not lead to an unjust result in the present case.

Based on the foregoing, I would hold that, under the facts of this case, collateral estoppel applies, and the trial court was bound by the arbitrator's decision.