

*** NOT FOR PUBLICATION ***

NO. 23988

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

ASSOCIATED STEEL WORKERS, LTD.,
and JOHN MULLEN & COMPANY, INC.,
Petitioners-Appellees,

vs.

THOMAS MIYASHIRO,
Respondent-Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P. NO. 98-0637)

SUMMARY DISPOSITION ORDER

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

The respondent-appellant Thomas Miyashiro appeals from the order of the circuit court of the first circuit, the Honorable Karen Blondin presiding, denying Miyashiro's October 17, 2000 motion to adjudicate attorneys' fees on future credit [hereinafter, "motion to adjudicate fees"], entered December 19, 2000 [hereinafter, "order denying Miyashiro's motion"].

On appeal, Miyashiro contends as follows: (1) "[t]he . . . order [of the Director of the State of Hawai'i Department of Labor and Industrial Relations, Disability Compensation Division, [hereinafter, 'the Director']] authorizing future credit total[ing] \$83,360.22, and requiring fees to be assessed dated June 30, 2000, was final and conclusive"; (2) petitioner-appellee John Mullen & Co., Inc. [hereinafter, "Mullen"] "benefit[t]ed, and relied on the future credit when it refused to pay permanent partial disability [hereinafter, 'PPD'] of \$24,011.52, and further medical payments to Miy[a]shiro's medical provider"; (3) "Mullen was estopped, since it relied on 'future

***** NOT FOR PUBLICATION *****

credit' when it refused to pay [PPD] and further medical benefits to Miyashiro"; and (4) "Miyashiro is entitled to an equitable share for attorneys' fees on the future credit."

The petitioners-appellees Associated Steel Workers, Ltd. [hereinafter, "ASW"] and Mullen [collectively hereinafter, "the Appellees"] counter that the circuit court did not err in entering the order denying fees, insofar as: (1) "attorneys' fees are not properly assessed against the entire future credit, or residuary" because (a) "there is no basis for [Miyashiro's] use of the entire residuary," (b) "future credit must not be confused with future benefit," and (c) Miyashiro "misapplies the Alvarado v. Kiewit Pacific Co., 92 Hawai'i 515, 993 P.2d 549 (2000),] formula"; and (2) Miyashiro "failed to show any evidence of [a] calculable future benefit," inasmuch as (a) he "did not request that attorneys' fees be calculated upon the \$24,011.52 of the PPD award," and (b) he presented "no other evidence of [a] calculable future benefit."

Miyashiro replies (1) that the circuit court's October 27, 1999 order granting the Appellees' petition to allow first lien against the proceeds of Miyashiro's settlement [hereinafter, "order granting the Appellees' lien"] "is res judicata," (2) that "an equitable formula can be devised on future credit awarded by the Director," and (3) that "Mullen's interpretation would lead to an absurdity and is contrary to public policy."

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold that the circuit court did not err in entering the December 19, 2000 order

*** NOT FOR PUBLICATION ***

denying Miyashiro's motion. Accordingly, we affirm the order.

In Alvarado, this court "granted certiorari to further explain and clarify the proper method to compute the distribution of a settlement or judgment pursuant to . . . [Hawai'i Revised Statutes (HRS)] § 386-8 [(1993)]." 92 Hawai'i at 516, 993 P.2d at 550. Alvarado reasoned and held in relevant part:

. . . [U]nder HRS § 386-8, the starting point to determine an employer's "share" is to be calculated as (1) the fraction equal to the amount of workers' compensation expended, plus calculable future benefits, divided by the total amount of the settlement. This fraction will then be (2) multiplied by the total amount of reasonable attorney's fees and costs incurred by the employee in the course of pursuing the recovery action. This "share" (computed in steps 1 and 2) should then be (3) subtracted from the total compensation already expended to date, by the employer. This results in a first lien that the employer may assert against the settlement amount. However, prior to the execution of the lien, the remainder of the attorney's fees and costs should be (4) deducted from the settlement corpus. Then, (5) the amount of the employer's first lien (already calculated as compensation expended minus share of the attorney's fees and costs) may be asserted against the settlement. If a portion of the settlement corpus remains after the employer's execution of the lien, (6) the employee is entitled to that remainder, subject to the requirement that the employee first exhaust all necessary future workers' compensation payments from that remainder prior to requesting future compensatory payments from the employer or its insurance carrier for the compensable injuries arising out of the same incident.

92 Hawai'i at 518-19, 993 P.2d at 552-53 (some emphases added and some in original) (footnotes omitted). Alvarado noted as follows:

HRS § 386-8 provides in relevant part:

After reimbursement for his compensation payments the employer shall be relieved from the obligation to make further compensation payments to the employee under this chapter up to the entire amount of the balance of the settlement or the judgment, if satisfied as the case may be, after deducting the costs and expenses, including attorney's fees.

(Emphases added.)

92 Hawai'i at 519 n.4, 993 P.2d at 553 n.4.

***** NOT FOR PUBLICATION *****

In other words, employers are not required to pay proportionate shares of attorneys' fees on the entire remainder of the settlement corpus; rather, employers must pay such shares only if the Director orders payment of a further, calculable worker's compensation benefit. See Alvarado, 92 Hawai'i at 519 n.4, 993 P.2d at 553 n.4. Indeed, it would defy logic to construe Alvarado as requiring an employer to pay a proportionate share of attorneys' fees on the entire remainder, prior to any further compensation award by the Director, because the Director may never need to award the injured employee further compensation (i.e., the employee's injuries may have been fully compensated by prior awards and no further awards are necessary). In such cases, a premature "deduction" of attorneys' fees based on the remainder would result in a windfall to the employee, insofar as the employer would have paid attorneys' fees without ever reaping the benefit of relief from a further compensation payment. Thus, pursuant to Alvarado, an employer must "deduct" attorneys' fees only upon a calculable future benefit that the Director has awarded and not upon the entire remainder of the settlement corpus.

In the present matter, it is noteworthy that, in the June 30, 2000 decision and order, the Director expressly found that "the [PPD] awarded in the Director's Order of 4/15/99 and any attendant attorney's fees should be offset against the proceeds from the settlement of [Miyashiro's] third party action." (Emphasis added.) Thus, inasmuch as Miyashiro has not appealed the Director's decision, and because Miyashiro actually insists that "[t]he [o]rder of the Director . . . was final and

***** NOT FOR PUBLICATION *****

conclusive and binding on both parties," Miyashiro has no claim for attorneys' fees predicated upon the Appellees' relief from the obligation to pay the PPD award. See HRS § 386-8.

Pursuant to Alvarado, Miyashiro is entitled to the \$83,360.22 remaining from the settlement corpus (i.e., Miyashiro's proceeds from the settlements, less attorneys' fees, the Appellees' lien, and the PPD award), "subject to the requirement that [Miyashiro] first exhaust all necessary future workers' compensation payments from that remainder prior to requesting future compensatory payments from the [Appellees] . . . for the compensable injuries arising out of the same incident." 92 Hawai'i at 519, 993 P.2d at 553 (emphasis added). Moreover, as noted in Alvarado, the Appellees' relief "from the obligation to make further compensation payments" (i.e., any worker's compensation payments awarded after the PPD award) up to \$83,360.22 is contingent upon the deduction of "costs and expenses, including attorneys' fees." HRS § 386-8. In light of the foregoing, the June 30, 2000 decision and order merely recognized that \$83,360.22 is the remainder of the settlement corpus and found that, should any further worker's compensation payments arise, the circuit court had jurisdiction to determine the Appellees' share of attorneys' fees: "The Director . . . finds [that the Appellees'] future credit is \$83,360.22. The Director . . . finds any attorney's fees to be assessed against the future credit must be determined by the [circuit c]ourt."

As discussed supra, Miyashiro cannot allege that the PPD award was a "calculable future benefit" from which he may deduct attorneys' fees pursuant to HRS § 386-8. Notwithstanding

***** NOT FOR PUBLICATION *****

a vague reference to unspecified "medical benefits," Miyashiro provides no evidence that the Director has awarded him any further compensation payments upon which the circuit court could calculate attorneys' fees. The circuit court, therefore, did not err in orally ruling that, although the Director ordered that the future credit was in the amount of \$83,360.22, the Director did not decide "that [Miyashiro] is entitled to future benefits in that amount[,] and there's no certainty that [Miyashiro] will ever be awarded that amount in future benefits." Likewise, the circuit court did not err in entering the order denying Miyashiro's motion "on the grounds that it is not appropriate to calculate attorney's fees on the future credit and there was insufficient evidence of any future benefit." Therefore,

IT IS HEREBY ORDERED that the circuit court's December 19, 2000 order denying Miyashiro's motion from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, January 31, 2005.

On the briefs:

Sidney J.Y. Wong and
Colette H. Gomoto,
of Wong, Oshima & Kondo,
for the petitioners-
appellees Associated
Steel Workers, Ltd.,
and John Mullen & Co., Inc.

Herbert R. Takahashi,
Stanford H. Masui,
Danny J. Vasconcellos,
and Rebecca L. Covert,
of Takahashi, Masui &
Vasconcellos, for the
respondent-appellant
Thomas Miyashiro