

NO. 24402

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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JACKIE MADURA and JOHN MADURA, Plaintiffs-Appellants,

vs.

AIG INSURANCE COMPANY, Defendant-Appellee,

and

JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS 1-10,  
DOE CORPORATIONS 1-10, DOE "NON-PROFIT" CORPORATIONS 1-10,  
DOE ENTITIES 1-10, and DOE GOVERNMENTAL ENTITIES 1-10,  
Defendants.

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 00-1-0019)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Duffy, JJ.,  
and Intermediate Court of Appeals Judge Fujise,  
in place of Acoba, J., Recused)

Plaintiffs-appellants Jackie Madura and John Madura [collectively, the plaintiffs] appeal from the first circuit court's grant of summary judgment in favor of AIG Insurance Company (AIG).<sup>1</sup> At issue is the interpretation of Hawai'i Revised Statutes (HRS) § 431:10C-103(23)(B) (1993) as it read at the time that Jackie Madura was allegedly injured by an unidentified automobile. AIG contends that HRS § 431:10C-103(23)(B) precludes the plaintiffs from receiving uninsured motorist (UM) benefits from AIG because the plaintiffs did not notify AIG (the plaintiffs' insurer) that they had a legal action

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<sup>1</sup> The Honorable Gary W.B. Chang presided over this matter.

arising out of the accident within thirty days or as soon as practicable after the accident. The plaintiffs, on the other hand, argue that their claim is timely because the two-year limitations period set forth by HRS § 431:10C-315(a) (1993 & Supp. 2003), rather than the thirty day period in HRS § 431:10C-103(23) (B), is the governing statute of limitations for their claim.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advocated and the issues raised, we hold that the circuit court did not err in granting AIG's cross-motion for summary judgment. Specifically, we hold that:

- (1) the plain language of HRS § 431:10C-103(23) (B) applies to the plaintiffs' claim. At the time of Jackie Madura's accident, HRS § 431:10C-103(23) (B) provided that a claimant's injury will not be deemed to have been caused by an uninsured motor vehicle unless the claimant notified her or his insurer within thirty days or as soon as practicable thereafter that she or he had a legal action arising out of the accident. Although the legislature subsequently amended HRS § 431:10C-103 to remove the thirty day notification provision, see 2000 Haw. Sess. L. Act 66, § 1 at 122, these amendments do not apply retroactively. HRS § 1-3 (1993);

(2) the circuit court properly held that the plaintiffs did not notify AIG of their claim within thirty days or as soon as practicable thereafter. Even if the plaintiffs proved at trial that they failed to notify AIG of their claim because they did not believe they had a claim against AIG, the outcome would not change: the phrase "as soon as practicable" does not encompass a plaintiff's subjective belief as to the existence of a potential claim. Whereas this court construes insurance contracts in favor of the insured, Dairy Road Partners v. Island Ins. Co., Ltd., 92 Hawai'i 398, 411-12, 992 P.2d 93, 106-07 (2000), this court construes statutory provisions according to their plain and obvious meaning, In re Trust Created Under Will Dated Nov. 15, 1917 of Cunha, 104 Hawai'i 267, 270-71, 88 P.3d 202, 205-06 (2004). HRS § 431:10C-103(23)(B) provides that a claimant must notify the insurer of a UM claim "within thirty days or as soon as practicable thereafter"; in the instant case, viewing the evidence in a light most favorable to the plaintiffs, the plaintiffs did not notify AIG of their claim as soon as practicable because the plaintiffs could have investigated their claim long before September 8, 1999: there is nothing in the record to suggest that the

plaintiffs were incapable of investigating their claim. Therefore, the circuit court correctly granted AIG's motion for summary judgment because the plaintiffs' allegations, even if proven at trial, do not establish that the plaintiffs notified AIG as soon as practicable after Jackie Madura's accident;

- (3) the circuit court properly considered AIG's untimely notice of claim defense. The plaintiffs argue that Hawai'i Rules of Civil Procedure Rule 8(c) should have prevented the circuit court from considering AIG's timeliness defense and that the circuit court erred by considering this issue. However, the plaintiffs' complaint for declaratory relief put HRS § 431:10C-103(23) (B) at issue: the plaintiffs were required to prove that their injuries were caused by an uninsured motor vehicle as defined by HRS § 431:10C-103(23) (B) in order to recover UM benefits. Therefore, the plaintiffs -- rather than AIG -- put the timeliness of their notification to AIG at issue. AIG was not required to assert HRS § 431:10C-103(23) (B) as an affirmative defense; instead, AIG's contention that the plaintiffs were not entitled to UM benefits was sufficient to allow it to argue that the plaintiffs did not satisfy HRS § 431:10C-103(23) (B). Consequently,

the circuit court did not err in considering AIG's argument that the plaintiffs failed to satisfy the statutory requirements of HRS § 431:10C-103(23) (B); and (4) AIG need not prove that it was prejudiced by the plaintiffs' untimely claim. The instant case involves a statutory notice requirement, rather than a notice requirement in an insurance contract. HRS § 431:10C-103(23) (B) does not require the insurer to demonstrate prejudice. Thus, the circuit court did not err when it granted summary judgment without AIG having proven that it had been prejudiced by the untimely notice of claim.

Therefore, IT IS HEREBY ORDERED that the circuit court's June 29, 2001 judgment, granting summary judgment in favor of AIG, is affirmed.

DATED: Honolulu, Hawai'i, July 21, 2004.

On the briefs:

Richard C. Sutton, Jr.  
and Jason M. Tani (of Rush  
Moore Craven Sutton Morry  
& Beh) for plaintiffs-  
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Harvey E. Henderson, Jr.  
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