

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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HAWAII MANAGEMENT ALLIANCE ASSOCIATION,
Appellant-Appellant,

vs.

THE INSURANCE COMMISSIONER and the DIVISION OF
INSURANCE of the DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS, STATE OF HAWAI'I; and KEVIN BALDADO,
Appellees-Appellees.

NO. 24801

MOTION FOR RECONSIDERATION AND CLARIFICATION
AND ORDER OF AMENDMENT
(CIV. NO. 01-1-1061)

DECEMBER 16, 2004

MOON, C.J., LEVINSON, NAKAYAMA, ACOBA, AND DUFFY, JJ.

The motion for reconsideration filed on November 29, 2004 by the appellees-appellees, the Insurance Commissioner and the Division of Insurance of the Department of Commerce and Consumer Affairs, State of Hawai'i [hereinafter collectively, "State"], requesting that this court review its published opinion, filed on November 18, 2004, is hereby granted in part and denied in part.

The State's request for clarification of this court's opinion is granted. The opinion of the court filed on November 18, 2004 is hereby amended as follows (deleted material is bracketed and new material is double underscored):

Line 4 from the top of page 35:

Thus, although the Hawai'i legislature is entitled to regulate insurance by requiring external review

[without infringing upon] (because external review laws are not necessarily preempted by ERISA), HRS § 432E-6 too closely resembles adjudication and therefore is preempted by § 1132(a).¹⁶ We emphasize, however, that our holding applies only to those plans covered by ERISA: Hawaii's external review law continues to apply to those plans that are excluded from ERISA coverage. See 29 U.S.C. § 1003(b) (2000) (excluding, inter alia, governmental and church plans from ERISA coverage).

An amended opinion is being filed concurrently with this order, incorporating the foregoing amendments. The Clerk of the Court is directed to provide a copy of this order and a copy of the amended opinion to the parties and notify the publishing agencies of the changes. The Clerk of the Court is further instructed to distribute copies of this order of amendment to those who received the previously filed opinion.

IT IS FURTHER ORDERED that the State's motion is denied in all other respects.

Girard D. Lau,
Deputy Attorney General,
for appellees-appellees
the Insurance Commissioner
and the Division of Insurance
of the Department of Commerce
and Consumer Affairs, State
of Hawai'i, on the motion