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NO. 25093

IN THE SUPREME COURT OF THE STATE OF HAWAII

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EMERSON M.F. JOU, M.D., Plaintiff-Appellant,

vs.

FIRST INSURANCE COMPANY OF HAWAII, LTD.,  
Defendant-Appellee,

and

JOHN DOE 1 to 10, DOE CORPORATION 1 to 10,  
DOE PARTNERSHIP 1 to 10, and DOE ENTITY 1 to 10,  
Defendants.

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 00-1-2490)

SUMMARY DISPOSITION ORDER

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

Plaintiff-Appellant Emerson M.F. Jou, M.D. appeals from the June 13, 2002 final judgment of the Circuit Court of the First Circuit<sup>1</sup> entering judgment in favor of Defendant-Appellee First Insurance Company of Hawaii, Ltd. (First Insurance). Dr. Jou filed a thirteen count complaint against First Insurance, but only two of these counts, abuse of process and defamation, were submitted to the jury. In a special verdict, the jury found that First Insurance was liable to Dr. Jou on the abuse of process claim, but that First Insurance did not legally cause any damages to Dr. Jou. The jury also found in favor of First Insurance on the defamation claim. On appeal, Dr. Jou argues

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<sup>1</sup> The Honorable Sabrina S. McKenna presided over this proceeding.

that the circuit court erred by: (1) applying the worker's compensation "exclusivity doctrine"; (2) finding that Dr. Jou's claims for "other damages" were not in controversy; (3) instructing the jury that Dr. Jou was required to mitigate damages; (4) upholding the discovery master's sanctions; and (5) denying Dr. Jou's request for costs.

Upon carefully reviewing the record and briefs submitted, we hold as follows: (1) the circuit court did not err by concluding that it did not have jurisdiction to consider whether First Insurance correctly calculated the compensation due Dr. Jou for medical care he provided pursuant to Hawaii's workers' compensation law, Hawai'i Revised Statutes (HRS) chapter 386. The director of the Department of Labor and Industrial Relations (Director) determines the charges and adopts the fee schedules governing compensation for medical care rendered employees incurring a work injury. HRS § 386-21(c) (Supp. 2003). The Director also has original jurisdiction over all disputes arising under HRS chapter 386. HRS § 386-73 (1993) ("[T]he director of labor and industrial relations shall have original jurisdiction over all controversies and disputes arising under [chapter 386.]"); (2) this court will not consider Dr. Jou's arguments regarding "other damages" because he has not presented a reason for his argument or any authority supporting his argument. Hawai'i Rules of Appellate Procedure (HRAP) Rule

28(b)(7); (3) the circuit court did not err by instructing the jury that Dr. Jou had a duty to mitigate damages because this instruction is a proper statement of Hawai'i law. Tabieros v. Clark Equipment Co., 85 Hawai'i 336, 373, 944 P.2d 1279, 1316 (1997); (4) this court will not consider Dr. Jou's argument that the circuit court erred by denying Dr. Jou's request to strike the discovery master's sanction order because Dr. Jou failed to comply with HRAP Rule 28(b)(4); and (5) the circuit court did not abuse its discretion by denying Dr. Jou's request for costs because he was not the prevailing party. Therefore,

IT IS HEREBY ORDERED that the circuit court's final judgment filed June 13, 2002 is affirmed.

DATED: Honolulu, Hawai'i, November 12, 2004.

On the briefs:

Stephen M. Shaw  
for plaintiff-appellant  
Emerson M.F. Jou, M.D.

Dennis E.W. O'Connor,  
Kelvin H. Kaneshiro,  
and Jeffrey K. Hester  
(of Reinwald, O'Connor  
& Playdon LLP) for  
defendant-appellee  
First Insurance Company  
of Hawaii, Ltd.