

NO. 26931

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

EMERSON M.F. JOU, M.D., Provider-Appellant-Appellant  
v.  
J.P. SCHMIDT, INSURANCE COMMISSIONER, DEPARTMENT OF COMMERCE  
AND CONSUMER AFFAIRS, STATE OF HAWAII, Appellee-Appellee,  
and  
LIBERTY MUTUAL FIRE INSURANCE COMPANY, Respondent  
Appellee-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 03-1-2107)

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STATE OF HAWAII

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SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Foley and Fujise, JJ.)

Provider-Appellant-Appellant Emerson M.F. Jou, M.D. (Jou) appeals from the Final Judgment filed on October 5, 2004 in the Circuit Court of the First Circuit<sup>1/</sup> (circuit court). The circuit court (1) entered judgment in favor of Appellee-Appellee J.P. Schmidt, Insurance Commissioner, Department of Commerce and Consumer Affairs, State of Hawai'i, (Insurance Commissioner) and Respondent-Appellee-Appellee Liberty Mutual Fire Insurance Company and against Jou and (2) affirmed the September 24, 2003 Commissioner's Final Order.

On appeal, Jou contends the circuit court:

- (1) erred in denying his demand for a jury trial;
- (2) erred in upholding the insurer's denial of treatments, already rendered, based on a backward-looking IME report;

<sup>1/</sup> The Honorable Eden Elizabeth Hifo presided.

(3) violated Article 9, §§ 1 & 2 of the Hawai'i Constitution by affirming the use of denials by insurers of medical care, nunc pro tunc, based on an IME report; and

(4) upheld the Insurance Commissioner and violated the right to a fair and unbiased tribunal under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, § 5 of the Hawai'i Constitution.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, as well as the relevant case and statutory law, we conclude that Jou's appeal is without merit.

Therefore,

The Final Judgment filed on October 5, 2004 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, December 21, 2007.

On the briefs:

Stephen M. Shaw  
for Provider-Appellant-  
Appellant.

David A. Webber,  
Deborah Day Emerson,  
Deputy Attorneys General,  
for Appellee-Appellee  
J.P. Schmidt.

Kevin P.H. Sumida,  
James H. Monma  
(Matsui, Chung)  
for Respondent-Appellee-  
Appellee Liberty Mutual  
Fire Insurance Co.

  
Presiding Judge

  
Associate Judge

  
Associate Judge