

NO. 27652

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

EMERSON M. RIMANDO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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FILED

EMERSON M.F. JOU, M.D., Provider-Appellant, v.  
J.P. SCHMIDT, Insurance Commissioner, Department of Commerce  
and Consumer Affairs, State of Hawaii, Appellee-Appellee, and  
USAA CASUALTY INSURANCE COMPANY, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 05-1-0615)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding J., Fujise and Leonard, JJ.)

In this secondary appeal, Plaintiff-Appellant Emerson M.F. Jou, M.D. (**Jou**) appeals from the Judgment filed in the Circuit Court of the First Circuit (**Circuit Court**) on November 8, 2005.<sup>1</sup> In a November 8, 2005 Decision and Order, the Circuit Court ruled in favor of Deputy Insurance Commissioner Gordon Ito (**Commissioner Ito**), for the Department of Commerce and Consumer Affairs of the State of Hawai'i (**DCCA**), and USAA Casualty Insurance Company (**USAA**). The Circuit Court affirmed Commissioner Ito's Final Order filed March 10, 2005, that adopted the August 15, 2002 Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order. Jou filed a timely notice of appeal on December 6, 2005.

After a careful review of the record and the arguments and supporting authorities presented by the parties, we resolve Jou's points of error as follows:

Jou argues that the DCCA and the Circuit Court erred in finding that USAA was not required to issue a formal notice of denial of benefits pursuant to HRS § 431:10C-304(3)(B) after it made both reduced and partial payments on Jou's claims. We

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

agree. See Jou v. Schmidt, No. 27369, 2008 WL 1875163, 9-10 (Hawai'i App., April 29, 2008) (Jou I).

We nevertheless reject Jou's argument that he was entitled to payment from USAA after the applicable policy limits were exhausted.<sup>2</sup> An insurer's obligation to pay no-fault personal injury protection benefits is outlined under HRS § 431:10C-304(1) (Supp. 1998), which provides in part:

For purposes of this section, the term "personal injury protection insurer" includes personal injury protection self-insurers. Every personal injury protection insurer shall provide personal injury protection benefits for accidental harm as follows:

- (1) Except as otherwise provided in section 431:10C-305(d)<sup>3</sup>, in the case of injury arising out of a motor vehicle accident, the insurer shall pay, without regard to fault, to the provider of services on behalf of the following persons who sustain accidental harm as a result of the operation, maintenance, or use of the vehicle, an amount equal to the personal injury protection benefits as defined in section 431:10C-103.5(a) payable for expenses to that person as a result of the injury:
  - (A) Any person, including the owner, operator, occupant, or user of the insured motor vehicle;
  - (B) Any pedestrian (including a bicyclist); or
  - (C) Any user or operator of a moped as defined in section 249-1; provided that this paragraph shall not apply in the case of injury to or death of any operator or passenger of a motorcycle or motor scooter as defined in section 286-2 arising out of a motor vehicle accident, unless expressly provided for in the motor vehicle policy[.]

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<sup>2</sup> As we noted in See Jou v. Schmidt, No. 27370, 2008 WL 1891378, 3 n.6 (Hawai'i App., April 30, 2008) (Jou II), an insurer's failure to issue a formal notice may subject the insurer to potential civil penalties pursuant to HRS § 431:10C-117(b) and (c) (1993).

<sup>3</sup> HRS § 431:10C-305(d) (Supp. 1998) provides:

- (d) The following persons are not eligible to receive payment of personal injury protection benefits:
  - (1) Occupants of a motor vehicle other than the insured motor vehicle;
  - (2) Operator or user of a motor vehicle engaging in criminal conduct which causes any loss; or
  - (3) Operator of a motorcycle or motor scooter as defined in section 286-2.

This subsection shall not preclude recovery in other capacities under a motor vehicle insurance policy covering a vehicle which the person did not occupy at the time of the accident.

(Emphasis added.)

It is well-recognized that an insurer retains the right to limit its liability by the terms of its policy. In Salviejo v. State Farm Fire and Casualty Co., 87 Hawai'i 430, 434-35, 958 P.2d 552, 556-57 (App. 1998), this court held:

Our jurisdiction follows the principle that liability insurers have the same rights as individuals to limit their liability, and to impose whatever conditions they please on their obligation, provided they are not in contravention of statutory inhibitions or public policy.

Id. at 434-35, 958 P.2d at 556-57 (citation and internal quotation marks omitted); see also Crawley v. State Farm Mut. Auto. Ins. Co., 90 Hawai'i 478, 484, 979 P.2d 74, 80 (App. 1999) ("the terms of the [insurance] policy should be interpreted according to their plain, ordinary, and accepted sense in common speech unless it appears from the policy that a different meaning is intended") (citations omitted); Foote v. Royal Ins. Co. of Am., 88 Hawai'i 122, 125, 962 P.2d 1004, 1007 (App. 1998) ("so long as the policy is clear and unambiguous, and not in contravention of statutory inhibitions or public policy, the insurance policy should be enforced on its terms") (citation omitted). Thus, as New York courts have also held, where "an insurer has paid the full monetary limits set forth in the policy, its duties under the contract of insurance cease." Hosp. for Joint Diseases v. State Farm Mut. Auto. Ins. Co., 8 A.D.3d 533, 534, 779 N.Y.S.2d 534, 535 (2004).

For these reasons, on the facts presented in this case, we hold that an insurer is not required, under HRS § 431:10C-304(1), to pay benefits once the full amount of the policy limits have been reached. Based on the plain language of HRS § 341:10C-304(1), USAA's obligation to pay no-fault/PIP benefits to its insureds is clearly limited to the amount equal to the no-fault benefits, that is, to the amount of benefits that remains available to make any payment that might be due. Once USAA paid the full amount of the policy limits, its obligation to pay any

additional outstanding bills due to the providers was extinguished.

USAA's policy states:

Regardless of the number of persons insured, policies or self-insurance applicable, claims made or insured motor vehicles to which this coverage applies, the Company's liability for all BNF [Basic No-Fault] benefits to or on behalf of any one covered person who sustains accidental harm in any one motor vehicle accident shall be \$20,000 in the aggregate.

Thus, it is undisputed that the aggregate limit under the applicable no-fault policy is \$20,000. On appeal, Jou challenges Commissioner Ito's conclusion of law that USAA therefore had no further responsibility for the bills incurred by the insured. However, Jou does not appeal the finding that the policy limits were, indeed, exhausted in this case.<sup>4</sup> Therefore, we conclude that the Circuit Court did not err in rejecting Jou's claim that he was entitled to additional payment from USAA.

Jou's alternative arguments and remaining points of error are without merit. Accordingly, we affirm the Circuit Court's November 8, 2005 Judgment.

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<sup>4</sup> Although the agency labeled this finding as a conclusion, the accuracy of that label is freely reviewable and this factual determination will be treated as a mixed question of fact and law for the purposes of our review. See Kilauea Neighborhood Ass'n v. Land Use Comm'n, 7 Haw. App. 227, 229, 751 P.2d 1031, 1034 (1988).

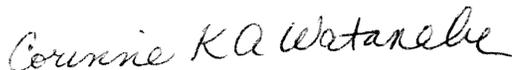
DATED: Honolulu, Hawai'i, June 4, 2008.

On the briefs:

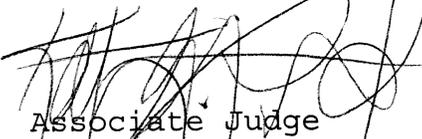
Stephen M. Shaw  
for Provider-Appellant.

Mark J. Bennett  
Attorney General, State of Hawai'i  
David A. Webber  
Deborah Day Emerson  
Deputy Attorneys General  
for Appellee-Appellee.

Randall Y.S. Chung  
James H. Monma  
(Matsui Chung)  
for Respondent-Appellee.

  
Presiding Judge

  
Associate Judge

  
Associate Judge

No. 27652; EMERSON M.F. JOU, M.D., Provider-Appellant, v. J.P. SCHMIDT, Insurance Commissioner, Department of Commerce and Consumer Affairs, State of Hawaii, Appellee-Appellee, and USAA CASUALTY INSURANCE COMPANY, Respondent-Appellee; SUMMARY DISPOSITION ORDER