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Supreme Court
SCWC-29322
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SCWC-29322

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

MARIE WEITE, Respondent/Plaintiff-Appellant/Cross-Appellee,

vs.

MATSUO MOMOHARA, Petitioner/Defendant-Appellee/Cross-Appellant,

and

DOE DEFENDANTS 1-10.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CIV. NO. 05-1-1525)

DISSENT BY RECKTENWALD, C.J.

I respectfully dissent.

I would accept the application for writ of certiorari to address the narrow issue of whether, pursuant to HRS § 431:10C-301.5, a covered loss deductible (CLD) should be deducted prior or subsequent to the apportionment of recoverable damages. See Weite v. Momohara, 124 Hawai'i 236, 259-63, 240 P.3d 899, 922-26 (App. 2010).

HRS § 431:10C-301.5 (2004) provides:

Covered Loss Deductible. Whenever a person effects a recovery for bodily injury, whether by suit, arbitration, or settlement, and it is determined that the person is entitled to recover damages, the judgment, settlement, or award shall be reduced by \$5,000 or the amount of personal injury protection benefits incurred, whichever is greater, up to the maximum limit. The covered loss deductible shall not include benefits paid or incurred under any optional additional coverage or benefits paid under any public assistance program.

(Emphasis added).

I believe that in the circumstances of the instant case, HRS § 431:10C-301.5 mandates that the CLD be deducted from the "judgment." Although judgment is not defined in the statute, one common definition is "[a] court's final determination of the rights and obligations of the parties in a case." Black's Law Dictionary 918 (9th ed. 2009). Therefore, based on the plain language of HRS § 431:10C-301.5, I believe that the statute requires that the deduction of the CLD occur at the end of the process of determining the amount of judgment, i.e., subsequent to the apportionment of damages.

/s/ Mark E. Recktenwald

